

ACTS
OF
THE LEGISLATURE
OF
WEST VIRGINIA,
AT ITS
ADJOURNED SESSION,
COMMENCING JANUARY 11, 1882.



WHEELING:
W. J. JOHNSTON, PUBLIC PRINTER.

1882.

ACTS OF 1882.

CHAPTER I.

AN ACT to change the name of the town of Portland, in the county of Preston.

[Passed January 12, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That the town of Portland, in the county of Preston, as the same has heretofore been laid off into lots, streets and alleys, and as the same may hereafter be laid off into lots, streets and alleys, shall be hereafter known as the town of Cranberry, and by that name shall have and exercise all the powers that were by law vested in the said town of Portland.

Name of town
of Portland
changed.

[Approved January 19, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER II.

AN ACT to amend and re-enact section twelve of chapter one of the Acts of one thousand eight hundred and eighty-one, fixing the time for holding the circuit courts in the several judicial circuits in this state.

[Passed January 13, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That the twelfth section of chapter one of the Acts

Acts 1881
amended.

of one thousand eight hundred and eighty-one, entitled "An act fixing the time for holding the circuit courts in the several judicial circuits in this state," be amended and re-enacted so as to read as follows :

Commencement
of terms of cir-
cuit courts in
twelfth circuit.

12. The circuit courts for the several counties of the twelfth judicial circuit shall hereafter commence and be held as follows :

Hampshire
county.

For the county of Hampshire, on the first Tuesday in February, the second Tuesday in May and the third Tuesday in September.

Hardy.

For the county of Hardy, on the second Tuesday in March, the last Tuesday in May and the first Tuesday in October.

Grant.

For the county of Grant, on the fourth Tuesday in March, the first Tuesday in June and the third Tuesday in October.

Pendleton.

For the county of Pendleton, on the second Wednesday in April, the Wednesday after the second Tuesday in June and the first Wednesday in November.

Mineral.

For the county of Mineral, for the year one thousand eight hundred and eighty-two, on the fourth Tuesday in April, the first Tuesday in September and the fourth Tuesday in November ; and for the year one thousand eight hundred and eighty-three and thereafter the second Tuesday in January, the fourth Tuesday in April and the first Tuesday in September.

[Approved January 19, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER III.

AN ACT to amend and re-enact section nine of chapter one of the Acts of one thousand eight hundred and eighty-one, entitled "An act fixing the time for holding the circuit courts in the several judicial circuits in this state."

[Passed January 18, 1882.]

Be it enacted by the Legislature of West Virginia :

Acts 1881
amended.

1. That section nine of chapter one of the acts of the Legislature of one thousand eight hundred and eighty-one, entitled "An act fixing the time for holding the circuit courts in the several judicial circuits in this state," be amended and re-enacted so as to read as follows :

9. The circuit courts for the several counties of the ninth judicial circuit shall hereafter commence and be held as follows: Commencement of terms of circuit courts in ninth circuit.

For the county of Mercer, on the first Monday in March, the third Monday in June and the second Monday in November. Mercer county.

For the county of McDowell, on the Wednesday after the first Monday in April, on the Wednesday after the first Monday in July and on the Wednesday after the first Monday in October. McDowell.

For the county of Wyoming, on the second Monday in April, the second Monday in July and the second Monday in October. Wyoming.

For the county of Boone, on the third Monday in April, the third Monday in July and the third Monday in October. Boone.

For the county of Raleigh, on the fourth Monday in April, the fourth Monday in July and the fourth Monday in October. Raleigh.

2. All acts and parts of acts inconsistent with this act are hereby repealed. Acts repealed.

[Approved January 24, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER IV.

AN ACT appropriating money to be expended in the purchase and distribution of pure bovine vaccine virus amongst the people of this state.

[Passed January 19, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That the sum not exceeding three hundred dollars be, and the same is hereby appropriated out of any money in the treasury not otherwise appropriated, to be expended in the purchase and distribution of pure bovine vaccine virus amongst the people of this state. Appropriation to purchase and distribute vaccine virus.

2. The auditor shall draw his warrant on the treasury in favor of each of the vaccine agents in this state, for one-third of the sum mentioned in the first section or so much thereof as may be necessary on the certificate of such agent, that there is necessity for such expenditure. Duty of auditor.

3. It shall be the duty of the agent of each congressional district, upon the application of the presiding officer of Duty of vaccine agent.

Duty of local
board of health.

the county local board of health of any county therein, to supply such county board, free of charge, for the use of the citizens thereof, a just proportion of the virus obtained under the provisions of this act. It shall be the duty of the local board of health of such county to furnish to any citizen thereof, free of charge, an amount of such virus as will be sufficient to vaccinate himself and family if he have one residing therein.

[Approved January 24, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER V.

AN ACT changing the boundary line of the counties of Greenbrier, Nicholas and Webster, and annexing to Webster county portions of the counties of Greenbrier and Nicholas.

[Passed January 19, 1882]

Be it enacted by the Legislature of West Virginia:

Boundary lines
of Greenbrier,
Nicholas and
Webster
changed.

What portions
of the counties
of Greenbrier
and Nicholas
annexed to
Webster.

1. That so much of the boundary lines of Webster county as are between the mouth of Strouds creek and the present corner of Webster and Randolph counties, on the mountain between Gauley and Williams rivers, near the head of Bannock Shoal run, be changed and established, so as to read as follows: Beginning at the mouth of said Strouds creek, on Gauley river, a corner to the counties of Nicholas and Webster, and running thence a straight line by the way of Hanging rock to the present line between Greenbrier and Pocahontas counties; thence with the present lines of Pocahontas county around to the said corner of Webster and Randolph counties, on the mountain between Gauley and Williams rivers, near the head of Bannock Shoal run aforesaid; and the lines of the said counties of Nicholas and Greenbrier, are hereby changed and established, so as to conform to the changes herein made in the lines of Webster county, and those portions of Greenbrier and Nicholas counties, embraced within the said lines of Webster county as herein changed, and the lines of said county as heretofore constituted, shall hereafter constitute and remain a part of Webster county.

[Approved January 24, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.] -

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER VI.

AN ACT providing for the creation of the independent school district of Bellville, in Wood county.

[Passed January 13, 1832.]

Be it enacted by the Legislature of West Virginia:

1. That the town of Bellville and adjacent territory, designated and known as sub-district number two of Harris district, in the county of Wood, which is bounded as follows: Beginning at Wells' upper line, and running east with said line to the line of C. S. Humphrey; thence south with said line to the line of Edward Humphrey; thence south with said line to the line of J. E. Mayhew; thence south with said line to the line of H. S. Mitchell; thence south with said line to the line of H. N. Crook's line; thence south with said line to the line of B. N. Crooks; thence south with said line to where it strikes the county road; thence with the county road to where it crosses Cove run; thence with Cove run to the Ohio river; thence north on the Ohio river to place of beginning, and to include all the above mentioned farms.
- Independent school district of Bellville created.
- Boundaries thereof.
2. The board of education shall consist of a president and two commissioners, who shall be elected by the voters residing within said independent district, and shall be a corporation by the name of the board of education of the district of Bellville, and by that name may sue and be sued, plead and be impleaded, purchase and hold so much real estate and personal property as may be necessary for the purpose of this act. Without any transfer or conveyance, they shall be deemed the owners of all real and personal property within their said district, which is now owned or held for free school purposes by the board of education of Harris district, and they shall have all the powers, perform all the duties and be subject to all the liabilities, both of the board of education and trustees.
- Board of education; their powers, etc.
3. The board of education shall hold their office for the term of two years, beginning on the first day of September next, after their election and until their successors are elected and qualified according to law, except that the board first elected under this act shall hold their office from the day of their election to the first day of September next succeeding their election. Vacancies in the board shall be filled for the unexpired term by appointment by the board.
- Their term of office.
- Vacancies in board; how filled.
4. The board of education shall have power to establish a graded school in their district, and continue the same for ten months in each year, provided the taxation for such purposes shall not exceed the limit prescribed in the fortieth section of the general school law. No levy shall
- Power of board to establish graded schools.
- Taxation for such purpose limited.

To be submitted to the voters of the district.

be made for the purpose of continuing said graded schools for a longer period than four months in any one year, until the same shall have been submitted to the voters of the district as provided for in the forty-first section of the general school law, and if the proposition for a longer term than four months have a majority of all the voters for and against, then the board shall levy accordingly, and shall continue to make the levy necessary for the same term in every successive year until the length of the annual term of school shall be changed in the same manner as above provided for in case of continuation for a longer term than four months.

Unexpended moneys of Harris district; how disposed of.

5. All school moneys, whether belonging to the teachers or building fund of Harris district, which may be unexpended at the date of the passage of this act, shall be divided between the said district of Harris and the district of Bellville, in proportion to the amount of taxable property in each of said districts, after the creation of the district of Bellville. The latest available assessment for state and county purposes, shall be taken as the basis for such settlement and division. It shall be the duty of the aforesaid board of education to make the financial settlement provided for in this section on or before the first day of June, one thousand eight hundred and eighty-two. The district of Bellville shall be subject to the general school law, except where it is herein otherwise provided.

Basis of settlement.

When settlement to be made, and how.

Vote to establish district; duty of board as to.

Ballots.

Majority vote necessary to establish district.

When provisions of Act to go into effect.

Inspectors and clerks of election; their duties, etc.

Subsequent elections; how held, etc.

6. The board of education of Harris district shall as soon as practicable, submit to the qualified voters residing within the limits of Harris district, at an election to be held after four weeks notice of the same has been given, by posting notices throughout the district, the question for or against an independent school district. Those in favor of the establishment of said district shall vote ballots on which shall be written or printed, "For independent school district," and those opposed to the establishment of said district shall vote ballots on which shall be written or printed, "Against independent school district." and if a majority of those voting shall be in favor of the establishment of an independent school district, the same shall be established with limits and boundaries as hereinbefore described. And the provisions of this act shall go into effect on and from the day succeeding said election. The board of education of the district of Harris, shall appoint the inspectors and clerks of election to hold said election, who shall certify the results of said election to the board within three days from the day of the election. All subsequent elections shall be held, and the result ascertained by the general school law.

E. W. WILSON,
Speaker of the House of Delegates.
A. E. SUMMERS,
President of the Senate.

STATE ON WEST VIRGINIA,
OFFICE OF SECRETARY OF STATE, }
January 25, 1882.

I certify that the foregoing act, having been presented to the governor for his approval, and not having been returned by him to the house of the legislature, in which it originated, within the time prescribed by the constitution of the state, has become a law without his approval.

RANDOLPH STALNAKER, JR.,
Secretary of State.

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER VII.

AN ACT to amend and re-enact section thirteen of chapter one of the acts of one thousand eight hundred and eighty-one, entitled "An act fixing the time for holding the circuit courts in the several judicial circuits in the state.

[Passed January 25, 1882].

Be it enacted by the Legislature of West Virginia :

1. That section thirteen of chapter one of the acts of one thousand eight hundred and eighty-one, be amended and re enacted so as to read as follows : Acts 1881 amended.

13. The circuit courts for the several counties of the thirteenth judicial circuit shall hereafter commence and be held as follows : Commencement of terms of circuit courts in thirteenth circuit.

For the county of Morgan, on the first Tuesday in January, the first Tuesday in April and the second Tuesday in August. Morgan county.

For the county of Jefferson, on the the second Tuesday in February, on the third Tuesday in May and on the third Tuesday in November. Jefferson.

For the county of Berkeley, on the second Tuesday in January, on the second Tuesday in April and on the second Tuesday in October. Berkeley.

2. All acts and parts of acts inconsistent with this act are hereby repealed. Acts repealed.

[Approved February 2, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER VIII.

AN ACT amending and re-enacting chapter eighty-nine of the code of West Virginia.

[Passed January 20, 1882].

Be it enacted by the Legislature of West Virginia:

Code amended; chapter 89. 1. That chapter eighty-nine of the code of West Virginia be, and the same is hereby amended and re-enacted so as to read as follows:

CHAPTER LXXXIX.

Of the Summary Remedy for Unlawful Entry or Detainer, in the Circuit Court.

Unlawful entry and detainer; what proceedings may be had before circuit court to recover possession of land or real estate; by whom and when summons for action of unlawful detainer, etc., may be sued out. Summons; how issued and what must contain. 1. If any forcible or unlawful entry be made upon lands, or if, when the entry is lawful or peaceable, the tenant shall detain the possession of land after his right has expired, without the consent of him who is entitled to the possession, the party so turned out of possession, no matter what right or title he had thereto, or the party against whom such possession is unlawfully detained, may within three years after such forcible or unlawful entry, or such unlawful detainer, sue out of the clerk's office of the circuit court of the county in which the land or some part thereof may be, a summons against the defendant to answer the complaint of the plaintiff, that the defendant is in the possession and unlawfully withholds from the plaintiff the premises in question, (describing the same with convenient certainty); and no other declaration shall be required.

When summons returnable and case heard. Must be served ten days before return day. Proceedings thereon; plea "not guilty." A jury necessary to try issue. Case to have precedence. 2. The summons may be returnable to and the case heard and determined at any term of such circuit court. Such summons shall be served at least ten days before the return day thereof. If the defendant appear, he shall plead to the summons, and his plea shall be "not guilty." Upon this issue or upon the return of the first or any subsequent summons "executed" if the defendant fail to plead, a jury shall be impaneled to try whether he unlawfully withholds the premises in controversy. Such cause shall have precedence for trial over all other civil causes on the docket.

When verdict shall be for plaintiff, what must and must not appear in evidence. Verdict may be for whole or part. 3. If it appear that the plaintiff was forcibly or unlawfully turned out of the possession, or that it was unlawfully detained from him, unless it also appear that the defendant has held or detained the possession for three years before the date of the summons, the verdict shall be for the plaintiff for the said premises, or such part thereof as may be found to have been so held or detained. When part only of the premises is found for the plaintiff, the

verdict shall describe the part so found; in such cases judgment shall be for the plaintiff. If the verdict be for the defendant as to the whole, judgment shall be for him.

When for part, verdict must describe it. Judgment; when for plaintiff and when for defendant. Judgment no bar to action of trespass or ejectment between same parties. Verdict not conclusive in such future action.

4. No such judgment shall bar any action of trespass or ejectment between the same parties, nor shall any such verdict be conclusive, in any such future action, of the facts therein found.

[Approved February 2, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER IX.

AN ACT to amend and re-enact chapter forty of the code of West Virginia.

[Passed January 20, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter forty of the code of West Virginia be, and the same is hereby amended and re-enacted so as to read as follows :

Code amended; chapter 40.

CHAPTER XL.

Collection of County Levies ; By whom the County Levies are to be Collected.

1. The levies laid for county purposes, pursuant to sections twenty-nine and thirty of chapter thirty-nine, shall be collected by the sheriff or other collector of state taxes for the county. But before any collector of the state taxes shall collect the county levies, he shall execute a bond, with good security, conditioned according to law, in such penalty as the county court may prescribe.

Levies for county purposes, etc., to be collected by sheriff or collector of State taxes.

Collector's bond.

When the Collection is to Commence.

2. The collecting officer of every county shall commence his collection of the county levy on the first day of August, yearly, or as soon thereafter as he receives a copy of the assessor's books.

When collection to commence.

3. The several sections of chapter thirty, from the fifth to the seventeenth, both inclusive, shall be applicable to county levies in like manner as if the words "county levies" were inserted therein in place of the word "taxes," and "county levy" in place of "tax."

Certain sections of chapter 30 of Code made applicable to county levies.

Relief Against County Levies Improperly Charged.

Levies improperly charged; how persons may be relieved by application, etc.

When and to whom made.

Must give notice thereof to prosecuting attorney.

His duty.

Court may order error corrected.

Collecting officer, when so ordered, must correct charge, or refund money.

His voucher.

4. If any person think that he is improperly charged with a county levy, or required to pay more than is proper on account of the same, he may, within one year from the date of the order making such levy, apply for relief to the county court of the county; but before such application is acted upon, he must give reasonable notice thereof to the prosecuting attorney, whose duty it shall be to attend to the interest of the county in the matter. Upon such application, the county court shall order the applicant to be exonerated from so much as is improperly charged to or required from him, if not already paid; or if it be paid, they shall order it to be refunded to him. And the collecting officer, upon delivery to him of a copy of such order, certified by the clerk, shall obey the same, and the copy shall be a sufficient voucher to the officer in his settlement for the county levy, for the amount thereby exonerated or ordered to be refunded.

Delinquent Lists; Sale of Delinquent Lands for County Levies.

Delinquent lists to be returned and delinquent lands sold as prescribed in chapters 30 and 40 of Code.

5. The delinquent lists for county levies shall be returned, and delinquent lands sold for county levies, as prescribed in chapters thirty and thirty-one of this code.

Commission for Collecting County Levies.

Commissions for collecting county levies. How allowed.

When county court may prescribe different compensation.

6. Every sheriff or collector shall be allowed a commission of five per cent on the amount of county levies with which he is chargeable, subject to the deduction mentioned in the sixth section of chapter thirty of this code, unless the county court of the county prescribe a different compensation, in which case his commission shall be as prescribed by said court.

[Approved February 2, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER X.

AN ACT to give further time to the Pennsboro and Harrisville Railroad Company to correct the assessment of its property for the year one thousand eight hundred and eighty-one.

[Passed January 30, 1882].

Be it enacted by the Legislature of West Virginia :

1. That time be given to the Pennsboro and Harrisville Railroad Company until the first day of March, one thousand eight hundred and eighty-two, to file a petition with the board of public works, asking for a correction of the assessment of the property of said company for the year one thousand eight hundred and eighty-one.

Further time given to Harrisville railroad company to correct assessment of property.

2. That said board of public works shall have power and authority to correct said assessment, in the same manner as if said petition had been filed before the tenth day of January, one thousand eight hundred and eighty-two.

Board of public works authorized to correct such assessment; how.

[Approved February 7, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER XI.

AN ACT to amend and re-enact section twenty-four of chapter thirty-nine of the code of West Virginia, as amended and re-enacted by chapter five of the acts of one thousand eight hundred and eighty-one, passed February eleven, one thousand eight hundred and eighty-one.

[Passed February 2, 1882].

Be it enacted by the Legislature of West Virginia :

1. That section twenty-four of chapter thirty-nine of the code of West Virginia, as amended and re-enacted by chapter five of the acts of one thousand eight hundred and eighty-one, passed February eleven, one thousand eight hundred and eighty-one, be amended and re-enacted so as to read as follows :

Code amended; section 24 of chapter 39 as amended by Acts of 1881.

24. When the county court of any county deems it desirable for the county, or any district or districts thereof to appropriate money to aid in the construction of a railroad or any other work of internal improvement through, by or near such county, district or districts, they may, by an order specifying the work to which the money is proposed to be appropriated, and the amount of the proposed appropriation, cause a vote to be taken upon the question at the several places of voting in the county, district or districts at the succeeding general election for state and county offi-

Works of internal improvement when and how counties may subscribe to.

Vote to be taken; when and where.

Order directing vote to be published.	cers, or at the school election for school officers, whichever is first held in the county, after such vote is ordered to be taken, or at any special election that the said county court may deem proper and may order for the purpose; but such order must be published throughout the county, district or districts thirty days at least before the poll is taken, as follows: The clerk of the county court shall
Duty of county court clerk as to such order.	cause as many copies of such order to be written or printed as may be necessary, and sign the same. He shall forthwith post one of them in a conspicuous place in his office and deliver the others to the sheriff of the county, who shall forthwith post one of said copies in a conspicuous place at every place of voting in the county, district or districts. For every one posted he shall have a fee of twenty-five cents out of the county treasury. The court shall direct a copy to be published in one or more newspapers, if any are published in said county. The poll shall thereupon be taken and the result ascertained under the regulations proscribed for general school elections for school officers; or, if the said vote is taken at a special election ordered for the purpose, the same shall be held by commissioners specially appointed for the purpose by the county court at the time the said election is ordered. And the result shall be ascertained and certified according to the regulations proscribed by law for ascertaining and certifying the election of school officers. The ballots used in taking the said poll shall be the same as those used in voting for officers at the said general election for state and county officers and school officers, except when the same is taken at a special election, as hereinbefore provided for, and there may be written or printed thereon the words "subscription" or "no subscription," or any other words that will show how the voter intended to vote on the question proposed. If it appear by the said poll that not less than three-fifths of the voters of the county, district or districts, who voted upon the question of the proposed appropriation, are in favor of the same, the county court will then have authority to cause subscription to be made in the name of the county, district or districts to the stock of any company which will undertake the work, to the amount proposed, or any less amount, on such terms as they may deem advisable, and to provide for the payment thereof by county or district taxation or loans. The right to the stock subscribed for in pursuance of this section, or any special act of the legislature heretofore passed, shall be vested in the said county, district or districts, and the county court thereof shall have authority from time to time to appoint a proxy to represent the said stock in meetings and elections to be held by the stockholders of the company. The dividends of such stock shall be collected as the said court may order, and be paid into the county treasury; or be paid and credited to the free school
Duty of sheriff as to posting order.	
Fee for same.	
Order must be published in newspaper, when there is one in county.	
How poll taken and vote ascertained, etc.	
When taken at special election.	
Ballots; kind used.	
What to be written or printed thereon.	
Three-fifths of votes cast necessary.	
Subscription; how made.	
How payment of provided for.	
Stock subscribed for; vested in county, etc.	
How proxy to represent stock appointed.	
How dividends collected and paid.	

funds of the district or districts where the subscription to stock is made by a district or districts.

[Approved February 7, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER XII.

AN ACT amending section one of chapter one hundred and twenty-one of the acts of one thousand eight hundred and seventy-seven, passed February twenty-eight, one thousand eight hundred and seventy-seven, entitled "An act authorizing the formation of corporations for the purpose of constructing booms or dams for the purpose of stopping and securing boats, rafts, logs, masts, staves, ties, spars and other timber in certain counties in this state," as amended and re-enacted by chapter thirty-nine of the acts of one thousand eight hundred and eighty-one, passed March ten, one thousand eight hundred and eighty-one, and approved March twelve, one thousand eight hundred and eighty-one.

[Passed February 9, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That the first section of chapter one hundred and twenty-one of the acts of one thousand eight hundred and seventy-seven, passed February twenty-eight, one thousand eight hundred and seventy seven, entitled "An act authorizing the formation of corporations for the purpose of constructing booms or dams for the purpose of stopping and securing boats, rafts, logs, masts, staves, ties, spars and other timbers in certain counties of this state," as amended and re-enacted by chapter thirty-nine of the acts of one thousand eight hundred and eighty-one, passed March tenth, one thousand eight hundred and eighty-one, be amended and re-enacted so as to read as follows:

1. That any number of persons not less than five, may become an incorporated company for the purpose of constructing any boom or booms with or without piers, dam or dams in the rivers, creeks or other streams within any of the following counties in this state, to-wit: Mineral,

Acts amended; section 1 of chapter 121 of Acts of 1877, as amended by chapter 39 of Acts 1881.

Incorporation of booms and dams authorized.

Within what counties.

Not to be constructed in certain waters.

Pocahontas, Gilmer, Greenbrier, Summers, Raleigh, Fayette, Nicholas, Webster, Lewis, Wetzel, Jackson, Wyoming, Tucker, Preston, McDowell, Randolph, Mercer and Logan, which may be necessary for the purpose of stopping and securing boats, rafts, logs, masts, spars, lumber and other timber. No such boom or dam shall be constructed in any of the rivers, creeks or other streams of the state, which are navigated by steamboats at an ordinary stage of water, above the place where such boom or dam is proposed to be located.

[Approved February 15, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER XIII.

AN ACT to provide for the payment to sheriffs, collectors and treasurers, by districts and independent school districts, the amounts of money due them in certain cases, and to enforce the payment of the same.

[Passed February 6, 1882].

Be it enacted by the Legislature of West Virginia :

How sheriffs, collectors and treasurers paid amounts found due them, on settlement, by certain school districts.

Amount provided for in levy for "building fund" laid by board of education of such district.

To be paid by said board out of proceeds of such levy.

1. When it appears, or has heretofore appeared, from any statement required to be made by a committee acting under authority of an act passed February twenty-eight, one thousand eight hundred and seventy-one, entitled "An act to provide for the settlement of the accounts of certain officers and persons for school moneys in their hands, or under their control," or an act to amend the same, that on such settlement any township, district or independent school district, owes or is indebted to any sheriff, collector or treasurer, it shall be the duty of the board of education of such district or independent school district, or the district now comprising such township, to include in their levy for "building fund" an amount sufficient to pay the same, and out of the proceeds of such levy to pay such sheriff, collector or treasurer the amount due him as aforesaid.

[Approved February 15, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XIV.

AN ACT providing for the relief of James Monroe, late sheriff of Harrison county.

[Passed February 7, 1882].

Be it enacted by the Legislature of West Virginia :

1. That fifty dollars be, and the same is hereby appropriated, payable out of any money in the treasury not otherwise appropriated, to pay James Monroe, late sheriff of Harrison county, and to reimburse him for a reward offered and paid in ——— one thousand eight hundred and seventy-six, for the arrest of Calvin Wilburn and Norman Wilburn, charged with felony, who had escaped from the Harrison county jail. And the auditor is hereby directed to issue his warrant on the treasury therefor, in the mode prescribed by law.

Appropriation to pay James Monroe; for what.

Auditor to pay.

[Approved February 15, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XV.

AN ACT to amend and re-enact section six of chapter one of the acts of one thousand eight hundred and eighty-one, entitled "An act fixing the times for holding the circuit courts in the several judicial circuits of this state," passed January thirty-one, one thousand eight hundred and eighty-one.

[Passed February 8, 1882].

Be it enacted by the Legislature of West Virginia :

1. That section six of chapter one of the acts of one thousand eight hundred and eighty-one, shall be amended and re-enacted so as to read as follows:

Acts 1881 amended.

6. The circuit courts for the several counties of the sixth judicial circuit, shall hereafter commence and be held as follows:

Commencement of terms of circuit court in sixth circuit.

For the county of Jackson, on the first day of March, the first day of August and the first day of November.

Jackson county.

For the county of Roano, on the twenty-fifth day of March, the twenty-fifth day of August and the twenty-fifth day of November.

Roano.

- Clay.** For the county of Clay, on the second Monday in May, the second Monday in September and the second Monday in December.
- Calhoun.** For the county of Calhoun, on the twentieth day of February, the twentieth day of June and the twentieth day of October.
- Gilmer.** For the county of Gilmer, on the fifth day of February, the fifth day of June and the fifth day of October.

[Approved February 15, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER XVI.

AN ACT to amend an act passed February five, one thousand eight hundred and seventy-two, entitled "An act relating to the school district of Wheeling," so as to provide for the establishment, maintenance, support, increase and government of a public library in said district by the board of education thereof.

[Passed February 14, 1882].

Be it enacted by the Legislature of West Virginia:

1. That sections nine, twelve, thirteen, seventeen, twenty-two and twenty-three of an act passed February five, one thousand eight hundred and seventy-two, entitled "An act relating to the school district of Wheeling," be amended and re-enacted so as to read as follows:

Acts 1872 amended; sections 9, 12, 13, 17, 22 and 25.

Incorporation and powers of board.

As to public library.

9. The board of education of the district of Wheeling shall be a body corporate in law, and as such they may purchase, hold, sell or convey real or personal property for the purposes of education within the district; may establish, maintain, support and increase a public library for the use and benefit of the residents of said district and such other persons as the board may by rule prescribe; may receive any gift, grant, donation or devise; may become party to suits and contracts, and do other corporate acts. They shall have the management of and be vested with the title to all real and personal property, except such public library property, for the use of the public schools within the district; and shall manage and dispose of the same as in their opinion will best subserve the interests of the schools. They shall also have the management of and be vested with the title to all real and personal property

they may in any manner acquire for the uses or purposes of such library.

12. It shall be the duty of the board of education, annually in the month of July, to determine as nearly as practicable the amount of money necessary, in addition to all other available funds, for the support, maintenance and increase of such public library, for continuing the schools of the district for a period of not less than nine months, and for all other purposes relating to the schools of the district, such as the repairing and improvement of school premises, and the purchase of sites and the building of school houses, and for the payment of debts previously contracted which may fall due within the year; and said board shall cause the amount to be levied on all the taxable property of the district, as assessed and returned for city taxation; *Provided*, That not more than four mills on the dollar valuation of said taxable property shall be levied in any one year for the purpose of continuing the schools for said period of not less than nine months, and for ordinary repairs and incidental expenses, not more than three mills on the dollar valuation for the purchase of sites, the building of houses and permanent improvements, and not more than three-tenths of a mill on the dollar valuation for the establishment, support, maintenance and increase of such public library. The amount collected under the levy first named shall be known as the "School Fund," that under the levy second named shall be known as the "Building Fund," and that collected under the levy last named shall be known as the "Library Fund." The amount so levied under the provisions of this section shall be collected and disbursed by the same officer by whom the city levies are collected. The amounts thus collected shall severally be certified to by the collecting officer to the clerk of the board of education, and shall be paid out only upon the drafts signed by the clerk and issued by order of the board, specifying upon their face the particular account to which the same is chargeable; nor shall any credit be allowed to the collector in his annual settlement upon any voucher other than such drafts.

13. The collecting officer shall annually, in the month of July, make settlement with the finance committee of the board of education, and account to the said committee for all moneys which shall have come into his hands within the preceding year, or since his last settlement with said committee from or on account of levies made by the board, and for all other moneys which shall have come into his hands for school or public library purposes within such year, or since his last settlement. Such officer shall in such accounting, show from what source and on what account the money has been received by him, and the

Assessment for school and library purposes.

Provided.

School fund, building fund and library fund.

Collection of levy.

How paid out.

Settlement by collecting officer; when and how made.

amounts paid out for school and public library purposes respectively.

Power of board
as to conducting
and managing
library, etc.

17. The board of education shall have power to make all necessary rules and regulations for conducting and managing such public library; and for the government of the schools of the district; for the admission of pupils therein; for the exclusion of children whose attendance would be dangerous to the health or detrimental to the morals or discipline of the schools. They may prescribe a uniform list of text-books for use in the schools of the district and may furnish books and stationery for the use of indigent children in attendance at the schools; they may provide a suitable number of evening schools during the fall and winter months, for the instruction of such youth, over twelve years of age, as are prevented by their daily vocations from attending day schools; they may furnish all necessary apparatus, stationery, registers, text-books and books of reference for the use of teachers; and incur all other expenses necessary to make the system efficient for the purposes for which it was established, and pay for the same from the school funds of the district. The

Fines prescribed
by said board.

said board of education may by ordinance prescribe that any fine not exceeding one hundred dollars, or imprisonment with labor without compensation, at any of the public works or improvements undertaken or to be undertaken by the city of Wheeling, for any period not exceeding one year, or both such fine and imprisonment, shall be inflicted upon any person violating any rule or regulation made by such board for the conduct and management of such library, for the violation of which the board may see fit to prescribe penalties by virtue hereof. Proceedings against any person for a violation of any rule or regulation; for the violation of which such board has ordained a penalty by virtue of the power conferred upon it by this section, shall be similar to proceedings for a violation of an ordinance of said city, and the municipal court of Wheeling, in the exercise of the police jurisdiction thereof, shall have exclusive original jurisdiction of cases for the violation of any such rule or regulation. An appeal shall lie in such cases from the judgment of said court to the circuit court of Ohio county in like manner and subject to same restrictions and regulations as in cases for a violation of an ordinance of said city.

Proceedings for
recovery of
fines, etc.

School and
library property
exempt from
taxation.

22. All school houses, school house sites, and other property for the use of the public schools of the district, and all property real and personal pertaining to such public library, shall be exempt from taxation, and also from distraint or sale on execution, or other process in the nature of an execution.

23. At their first meeting for organization under this

act, and at every such meeting thereafter, the board shall appoint a superintendent of schools for the district, and fix his salary. Said superintendent shall be an officer of the board, and in addition to the duties specified in this act, he shall perform such other appropriate duties with relation to the schools of the district or such public library as the board may prescribe. He shall be liable to removal by the board of education for any palpable violation of law or omission of duty. But he shall not be removed, unless charges shall be preferred to the board by a member thereof, and notice of a hearing, with a copy of the charges, delivered to him, and opportunity be given him to be heard in his defense.

Superintendent.
How appointed;
his duties.

How removed.

2. All acts and parts of acts in so far as in conflict with this act are hereby repealed.

Inconsistent
acts repealed.

[Approved February 10, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER XVII.

AN ACT to pay Adam G. Hamrick, and Currence Gregory for work on the Slavin's Cabin and Summersville turnpike road.

[Passed February 13, 1882].

Be it enacted by the Legislature of West Virginia:

1. That the auditor be, and he is hereby authorized to draw a warrant upon the treasurer in favor of Adam G. Hamrick and Currence Gregory, for the sum of two hundred and fifty-five dollars to pay the balance due for work done by them in the construction of the Slavin's Cabin and Summersville turnpike road, under their contract. The sum hereby appropriated shall be in full of all charges against the state for the construction of the turnpike road herein named.

Appropriation
to pay for work
done on Slavin's,
etc., turnpike.

[Approved February 17, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XVIII.-

AN ACT to amend and re-enact chapter thirty-five of the code of West Virginia, concerning the recovery of claims due the state.

[Passed February 9, 1892].

Be it enacted by the Legislature of West Virginia:

Code; chapter
thirty-five
amended.

1. That chapter thirty-five of the code of West Virginia be and the same is hereby amended and re-enacted so as to read as follows:

CHAPTER XXXV.

Of the Recovery of Claims due the State; Proceedings to Judgment or Decree.

Auditor to
institute pro-
ceedings to
recover claims
due state.

Proceedings at
law may be by
motion or
action; notice.
Must be in cir-
cuit court of
county in
which seat of
government is,
or of county;
when property
or a debt is
attached, where
property found
or debtor
resides.
May be in name
of state in cer-
tain cases.

Against whom
action or motion
at law may be.

Effect of judg-
ment against
personal
representative.

When several
defendants, how
judgment ren-
dered.

When unsatis-
fied judgment
no bar.

May have pri-
ority over other
cases.

1. The auditor shall cause the proper proceedings to be instituted and prosecuted to enforce payment of money due the state.

2. When the proceeding is at law, it may be by motion on thirty days' notice, or by action; and whether at law or in chancery, it shall be in the circuit court of the county in which the seat of government is; or if property or a debt be attached, in the circuit court of the county where such property may be found or the person owing such debt may reside; and it may be in the name of the state, though the liability is created or secured by bond or other instrument, payable to or covenant or contract with any public officer or other person acting on behalf of the state.

3. The action or motion at law may be against any person indebted or liable in any way whatever to the state, his sureties and his and their personal representatives, or any one or more of them. But a judgment against a personal representative shall only bind him to the extent to which he is accountable for assets of the estate which he represents. If several defendants be proceeded against jointly, judgments may be rendered against any one or more of them shown to be liable and the proceeding be dismissed as to the others, or judgments rendered in their favor, or the case continued as to them for service of process or notice or other cause. And an unsatisfied judgment against one or more of several persons jointly liable shall not be a bar to any subsequent proceeding against the others.

4. Courts wherein cases are pending to which the state is a party, may hear them before other cases and expedite the proceeding therein by such rules as to them may seem proper.

Executions and Proceedings Thereupon.

5. In a writ of *feri facias* upon a judgment or decree against any person indebted or liable to the state, or against any surety of his, after the words "we command you that of the," the clerk shall insert the words "goods, chattels and real estate," and conform the subsequent part of such writ thereto. And under any writ, so issued, real estate may be taken and sold. Writ of *feri facias* on such judgments to embrace real estate.
6. An execution in favor of the state from any court, may, if the auditor see fit, be directed to the sheriff or collector of any county, and be served anywhere within the state, by the officer in whose hands it is placed. Execution; how directed and by whom served.
7. Every writ of *feri facias* issued according to the fifth section of this chapter shall be levied first on the goods and chattels. If the officer having such writ find no goods and chattels liable thereto, or not a sufficiency thereof, then he shall levy it on the real estate. On what levied; first, goods and chattels, or if none, on real estate.
8. When a levy is so made upon real estate, the officer making it shall publish notice thereof and of the time and place of sale in a newspaper printed within such county, and if there be no such paper, then said notice shall be published in some newspaper of general circulation in the county, and in either case, once a week for four successive weeks, and also notice shall be posted at the door of the court house of the county in which such real estate shall be, and at such other places as may seem to be expedient, for a like period, and the sale shall take place at the premises or at the door of the court house, as the officer may deem most advisable. Proceedings when real estate is levied upon; notice of sale; when and how published. Must be posted at door of court house; time. Sale to be at premises or door of court house.
9. If the amount of the execution and all the cost and expenses be not sooner paid, the said officer shall proceed on the day mentioned in the notice to sell at public auction the interest of the party against whom the execution issued, in the real estate, or so much thereof as the officer may deem sufficient; and if a part only be sold it shall be laid off in one parcel in such place and manner as the debtor or his agent may direct, or if he give no direction, as the officer may deem best. When and how officer shall proceed to sell real estate. When part only sold, how laid off.
10. The sale shall be upon six months' credit; and if the land be not purchased for the state, the officer shall take bond of the purchaser with sureties for the payment of the purchase money to the state. Every such bond shall mention on what occasion the same was taken and be returned to the office of the court from which the execution issued, and the clerk shall endorse thereon the date of its return. For making such sale, the officer may charge five per cent on the first three hundred dollars and two per cent on the residue of the purchase money, which commission shall be Terms of sale. Bond of purchaser; its contents and how returned. Compensation to officer making sale.

deducted from the purchase money, and the balance credited on the judgment debt. The officer and his sureties shall be liable to the state, if insufficient security be taken on such bond.

Liability of officer for insufficient security.

Deed to purchaser; when made and recitals therein.

Grantor to be officer making sale.

11. So soon as the purchaser shall pay the purchase money, a deed shall be executed at his costs, reciting the execution, the sale and the price, and conveying the land to him. The grantor in such deed may either be the sheriff himself or the deputy or collector who acted in making the sale. The deed of either shall pass to the purchaser all the interest which the party against whom the execution issued had in the land at the date of the judgment or decree.

When deed to be executed by successor to officer making sale, or by commissioners of circuit court.

12. When the officer and his deputy who acted in making the sale shall both have died or removed out of the state before making such deed, or fail or refuse to act, the deed may be executed by any successor of such officer, or by a commissioner appointed by the circuit court of the county for that purpose, which deed shall have the same force and effect as if made by the officer who made the sale.

When purchaser's bond has force of a judgment.

How execution awarded thereon.

Clerk's endorsement on same.

13. When any bond taken under the tenth section of this chapter shall become payable, and be returned to the office of the court from which the execution issued, it shall have the force of a judgment against such of the obligors therein as may then be alive. Execution may be awarded thereon against them, on motion after ten days notice, and the same shall be proceeded under in like manner as an execution issued on such a judgment or decree as is mentioned in the fifth section, save only that the clerk shall endorse that no security is to be taken, and the officer shall govern himself accordingly, and sell for ready money any real estate which he may levy upon under the same.

How judgment obtained against personal representative of obligor.

14. Against the personal representatives of such of the said obligors as may have died before the bond has the force of a judgment against the survivors, judgment may be obtained by action or motion.

Proceedings when sale fails for want of bidders.

When clerk to issue writ of *venditioni exponas*; how and to whom directed.

What writ to recite.

15. When return is made on any execution on behalf of the state, that goods, chattels or real estate remain unsold for want of bidders, or to that effect, the clerk of the court from which such execution issued, shall, when required by the auditor, issue a writ of *venditioni exponas*, directed to the sheriff of any county adjacent to that in which the levy was made, that the auditor may designate; which writ shall recite the execution under which the levy was made, the nature of such levy, and the return that the property remains unsold for the want of bidders, and shall command the sheriff of such adjacent county, if the property remaining unsold be goods and chattels, to go into

the county in which the levy was made and receive the same from the officer that made the levy, and whether the property be goods, chattels or real estate, to sell the same.

16. The officer that made the levy shall deliver the said goods and chattels to the sheriff to whom such writ of *venditioni exponas* may be directed upon such sheriff producing to him the said writ, and executing a receipt for the said goods and chattels. And in case the said officer shall fail to deliver the same, and return be made on such writ to that effect, the court from which it issued upon motion, may give judgment against the said officer and his sureties for the whole sum that the execution amounted to at the time of such failure, with interest thereon from that time.

17. The sheriff to whom such writ of *venditioni exponas* is directed shall sell the goods and chattels in the county where received, if the same can be sold therein, and if not, he shall cause the same to be removed to the court house of his own county, and there sold. The removal shall be at the cost of the party against whom the execution issued, and the sale under the execution, shall be to raise the costs of removal, in addition to the amount which it would otherwise have been necessary to raise.

18. Such sheriff shall also sell the real estate levied upon in the county wherein the levy was made, if it can be done, and if it cannot, he shall make the sale at the court house of his own county; for which sale he may charge such commission as is mentioned in the tenth section of this chapter.

19. In any case in which an officer having an execution on behalf of the state shall decline levying it because of any previous conveyance, execution or incumbrance, a return shall be made setting forth the nature of such conveyance, execution or incumbrance, in whose favor and for what amount, and the office in which the conveyance or incumbrance is recorded, or from which the execution issued.

Limitation.

20. Every statute of limitation, unless otherwise expressly provided, shall apply to the state.

Authority of auditor to compromise claims, etc.

21. The auditor, with the advice of the attorney-general, may adjust and settle, upon just and equitable principles, without regard to strict legal rules, any account or claim, in favor of the state, which may at the time have been standing upon the books of his office more than five years; and, with the like advice, may dismiss any proceeding instituted by him.

Duty of officer making levy, on failure of sale.

Falling in time, how proceeded against.

Duty of sheriff to whom writ of *venditioni exponas* directed; place of sale. Removal of property, if necessary. Cost of removal.

Sale of real estate; by whom and where made. Commissions.

What officer to do when real estate incumbered by incumbrance

Limitation; statutes of to apply to state.

How auditor may adjust claims due state.

Auditor may appoint agent to collect claims.

22. The auditor, with the approval of the governor, may appoint agents to superintend the collection of debts to, or claims of the state, and may authorize them to secure payments thereof by installments or otherwise, and give further credit in consideration of additional security or indemnity satisfactory to him.

Power of auditor to buy and sell lands in certain cases.

When auditor may purchase land in name of state.

23. When land levied on under execution on behalf of the state, will not sell for the amount thereof, the auditor, or such agent, may purchase the said land for the state.

Clerks county court to transmit to auditor list of state lands.

24. The clerks of the county court shall transmit to the auditor a list of all lands in their respective counties belonging to the state, other than such as are waste and *unappropriated*, and including such as are escheated, and set forth in such list all the information which they can obtain in relation to the lands mentioned therein. For each tract or land or lot so mentioned by any clerk of the county court, he shall receive one dollar from the treasury.

Clerk's fees for same.

Auditor to register such lands in book: what to be stated.

25. The auditor shall, in a book kept for the purpose, register all such lands as are required to be embraced in the said lists, describing when, how and of whom they were obtained, their situation, quantity and the title thereto, together with the price paid therefor by the state.

Auditor to sell such lands; terms.

26. The auditor may sell, or appoint an agent to sell, any of the said lands on such terms as the auditor may think best, taking bond with good security of such agent if any money is to come into his hands.

Time, price and terms of sale to be entered by auditor in book.

27. In the book kept under the twenty-fifth section of this chapter, the auditor shall enter the time when any of the lands are disposed of, the price and terms of sale, the names of the agents and purchasers, and the amount paid into the treasury on account of the sale.

Compensation of agents, how determined.

28. For the service rendered by any agent under the twenty-second or any subsequent section of this chapter, the auditor shall recommend such compensation as may seem to him reasonable, not exceeding in any case ten per cent. on the money actually paid into the treasury, and the governor shall authorize the payment of what may be so recommended, or of so much thereof as, in his judgment, may be proper.

How paid.

Deeds by agents of state lands.

29. Any agent selling land under the twenty-sixth section of this chapter shall, when directed, execute a deed, with the written direction of the auditor thereto annexed, conveying to the purchaser all the interest which the state may have in such land; and where such sale is made by the auditor in person, such deed shall also be made by him.

Deed by auditor.

30. The auditor shall biennially report to the legislature his proceedings under the eight preceding sections, setting forth particularly all the agents appointed by him, and their compensation, all debts collected, and property purchased by them, and all arrangements made with public debtors.

Auditor to report proceedings biennially to legislature.

Authority of Auditor to make Sale of Certain Debts.

31. The auditor may with the advice and consent of the attorney general, whenever any claim or account of any kind, against a sheriff or other officer has been due for more than seven years, and the same is for any reason difficult or expensive to collect, certify a transcript of such claim or accounts to the sheriff of the county in which the officer from whom the same is due resided at the time of his indebtedness to the state was incurred and may authorize the said sheriff to sell the same as herein after directed. *Provided*, That any claim or account upon which judgment has been obtained and execution has been returned unsatisfied may be sold after the expiration of five years from the time the said claim or account was due, either in whole or in part as shown by the auditor's books,

When and how auditor may dispose of certain debts due state.

Provided.

32. The sheriff, after having received a transcript of the account which is to be sold, shall give notice by publication in a newspaper published in his county, if there be one, and by posting at the front door of the court house of the county, for at least four weeks prior to the day of sale, that on the first day of the term of the circuit court next thereafter, he will proceed to sell to the highest bidder the claims or accounts mentioned in said notice. Such notice shall show the name of the sheriff or other officer and his sureties, in case there is evidence of his having executed a bond, the year or years for which he was indebted to the state, upon what account such indebtedness exists and the amount shown to be due thereon by the auditor's books, exclusive of interest, as well as the amount appearing to be due, with interest calculated to the day of sale.

How sheriff, acting for auditor, to proceed to sell claims and accounts due state.

Notice of sale; what it must show.

33. The said sheriff to whom such claim or account is certified under the provisions of this act, shall on the first day of the term of the circuit court of his county succeeding the publication of said notice, make sale of said claim or account to the highest bidder, and in case the amount bid therefor be less than one hundred dollars he shall require the payment thereof in cash; and if the amount bid therefor be more than one hundred dollars, he shall require one-third thereof to be paid in cash, and shall receive the notes of the purchaser for the residue in two equal installments, payable respectively in six and twelve months, with legal interest thereon until paid. Such

When and how sale of claims and accounts due state made.

When cash required of purchaser.

When and on what terms credit may be given.

Notes of purchaser; two sureties, certified by state's attorney, required.

Sheriff's return of sale and report thereof.

When report filed, clerk to post notice thereof at front door of court house.

Contents of notice.

Exceptions; when and how filed.

How sale set aside and new sale ordered.

Confirmation of sale.

Clerk to certify report and confirmation to auditor.

Sheriff to transmit money and notes from such sales to auditor.

Auditor's duty when purchaser fails to pay notes when due.

Rights of purchaser of claims and accounts.

State not liable to purchaser for error.

notes shall have the name of at least two persons signed thereto as sureties, whom the prosecuting attorney of the county, by endorsement on the back of said notes shall certify are in his opinion responsible and solvent.

34. Within ten days after making said sale, the sheriff shall return and file in the clerk's office of the circuit court of his county a report showing the name of the officer against whom the claim is, the date of sale, the date and character of the claim sold, the name of the purchaser, the amount for which sold, including cash and notes, and in cases where notes are taken, the names of the securities thereon. Immediately after said report is filed, in the clerk's office as aforesaid, the clerk shall post a notice of that fact at the front door of the court house, and shall state therein that exceptions may be filed to said report with the clerk of the circuit court. If before the first day of the term of the circuit court beginning after the filing of said report, any person shall file exceptions thereto, and the said exceptions shall be accompanied by a bond with two or more good securities, conditioned that if a re-sale be ordered the person who files said exceptions will at the second sale give for the claim or account a sum ten per cent greater than the amount for which it first sold, and will pay all the cost of advertising and making re-sale, then the court may in its discretion set such sale aside and order the sheriff to make another sale, upon such terms as the court may deem proper.

35. In cases where no exceptions are filed to the report, the court shall confirm the sale, and within twenty days after such confirmation the clerk of the court shall certify to the auditor a copy of said report and the order of confirmation.

36. Within thirty days after the confirmation of said report the sheriff shall transmit to the auditor a certificate of deposit for the amount received by him in cash, and also any notes which may have been executed for the balance of purchase money, and in case of the failure of persons who execute such notes to pay the same when due, it shall be the duty of the auditor to proceed to enforce the collection thereof, in the same manner that other claims due the state are recovered.

37. The purchaser of any accounts or claims so sold under the provisions of this act, shall have the same right to recover that the state now has, and shall be substituted to all the rights of the state concerning the same.

But in case there be any error in any account or claim sold under this act, or it shall appear that the officers against whom the claim is, is entitled to credits, which do not appear upon the account or claim, the purchaser shall not be allowed any claim against the state by reason thereof.

38. The sheriff for performing the duties required of him by this chapter, shall be allowed five per cent. on the first one hundred dollars and two per cent. on the residue. The costs of publishing notice in a newspaper, shall be paid out of the proceeds of such sale.

Compensation of sheriff, under this chapter.
How publishing notice paid.

39. In any proceeding had under the provisions of this chapter against sheriffs or collectors and their sureties, or any, or either of them for money due the state, any transfer, assignment or alienation of property, real or personal, or any judgment or decree obtained against or suffered by such sheriff or collector and their sureties or either of them after service upon them, respectively, of summons or notice shall be deemed fraudulent or void as to any judgment that may be thereafter rendered in favor of the state in pursuance of such summons or notice. But this section shall not apply to a *bona fide* purchaser, of any such property, without notice.

Certain transfers, alienations and assignments declared fraudulent and void.

40. Whenever it shall appear to the satisfaction of the auditor that the sureties of a defaulting sheriff, will be compelled to pay the amount of the indebtedness of such sheriff, he may, with the advice and consent of the attorney-general, settle with such sureties, by receiving the amount of the principal, with interest thereon at the rate of six per centum per annum. *Provided*, That the sureties will pay the amount into the treasury before the suit is brought.

How and when auditor may settle with sureties on claims due state.

Proviso.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Inconsistent acts repealed.

[Approved February 17, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XIX.

AN ACT to authorize the auditor to transfer the claim of the state against the Merchants' Bank of Charleston.

[Passed February 9, 1882].

Be it enacted by the Legislature of West Virginia:

1. That the auditor is hereby authorized to transfer and assign without recourse to any person or persons who may be willing to purchase the same, the claim of the state against the Merchants' Bank of Charleston; provided that the said transfer and assignment shall not be made until

Claim of state against Merchants Bank, Charleston Auditor authorized to assign without recourse.
Proviso.

the sum of twenty thousand dollars, as of January one, one thousand eight hundred and eighty-two, is paid for such claim; and provided, also, that the taxed costs paid and incurred by the state in prosecuting said claim against said bank and its sureties are also paid.

[Approved February 17, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER XX.

AN ACT to amend and re-enact chapter fifty-one of the code of West Virginia, concerning notaries public and commissioners out of the state.

[Passed February 14, 1882].

Be it enacted by the Legislature of West Virginia:

1. Chapter fifty one of the code of West Virginia be, and the same is hereby amended and re-enacted so as to read as follows:

Code amended;
chapter 51.

CHAPTER LI.

Notaries Public and Commissioners out of the State; Of the Appointment of Notaries.

1. The notaries now in office shall continue therein until removed in the manner prescribed by law.

Notaries to continue in office, until removed.

Notaries; how appointed and commissioned.

2. The governor shall appoint and commission so many notaries in this state and for such counties as he may deem proper, who shall hold their office respectively during good behavior, but may be removed, or their office vacated pursuant to the third and tenth sections of chapter seven, or the twenty-first and twenty-second sections of chapter ten of this code.

Their Powers.

3. When any oath may lawfully be administered, or affidavit or deposition taken, within any county, it may be done by a notary thereof, unless otherwise expressly provided by law.

May administer oaths and take depositions.

May take acknowledgment of deeds in his county.

4. A notary, under the regulations prescribed by law, may take within his county acknowledgments of deeds and other writings, and the privy examination of married women respecting the same. He shall also be a conserva-

tor of the peace within his county, and as such conservator shall exercise all the powers conferred by law upon justices of the peace.

Shall be conservator of peace, powers as such.

5. The certificate of a notary of this state in the cases specified in the two preceding sections may be under his signature, without his notarial seal being affixed thereto.

When signature of, without seal, sufficient.

6. Notaries shall have authority to demand acceptance of foreign and inland bills of exchange, including checks, and to demand payment thereof; and of negotiable promissory notes, and protest the same for non acceptance or non-payment, as the case may require; and perform such other duties as by the law of nations or commercial usage may be performed by notaries public.

Power to demand acceptance of bills of exchange, etc., and negotiable paper, etc., and protest same. Other duties.

Effects of Protests, etc., as Evidence.

7. The protest in the case of a bill of exchange or negotiable promissory note shall be *prima facie* evidence of what is stated therein (or at the foot or on the back thereof, if signed by the notary), in relation to presentment, dishonor, and notice thereof.

Protest; *prima facie* evidence in certain cases.

Preservation of Notarial Records and Papers.

8. On the death of a notary, or the termination of his office by resignation, removal from office or otherwise, his records and official papers shall be deposited in the office of the clerk of the county court of the county; and copies thereof certified by such clerk shall have the same effect as if certified by the notary.

On death or removal of notary; official papers; how preserved.

9. A notary who for three months after the termination of his office, neglects so to deposit his records and official papers, and the personal representative of a deceased notary, who for three months after his qualification as such representative, neglects so to deposit the records and official papers of the deceased which have come to his hands or control, shall each forfeit a sum not exceeding five hundred dollars.

Failure to deposit records and penalty therefor.

10. Whoever knowingly destroys, defaces, or conceals the records or official papers of a notary, shall forfeit a sum not exceeding one thousand dollars, and be liable in damages to any person injured thereby.

Penalty for destroying, defacing or concealing a notary's papers.

Appointment, &c., Of Commissioners out of the State.

11. The governor shall appoint out of this state and within the United States, so many commissioners, and for such states, territories and districts as to him shall seem proper, who shall hold their offices for four years, unless sooner removed by the governor; and the commissioners now in office shall continue therein until the first day of

Provision for appointment, etc., of commissioners out of this state.

Appointment to be communicated to legislature.

January, one thousand eight hundred and eighty-five, unless sooner removed in the manner prescribed by law. The governor shall within thirty days after the beginning of each regular session of the legislature, communicate to it the name and residence of each person holding office under such appointment, and the same shall be published with the acts of the legislature.

Their Powers.

Oaths administered by commissioners.

12. When any oath may lawfully be administered, or affidavit or deposition taken, within the state, territory or district for which any such commissioner is appointed, to be used in this state, it may be done by such commissioner.

Acknowledgments by them.

13. The said commissioners under the regulations prescribed by law, may take within the states, territories, and districts respectively, for which they are appointed, the acknowledgments of deeds and other writings and the privy examination of married women respecting the same, to be admitted to record in this state.

Their Seals and Certificates.

Seals; commissioners must provide themselves with; what same must show.

14. Every such commissioner shall provide an official seal, in which shall be designated his name and residence, and the words, (either at length or by intelligible abbreviations), "commissioner for West Virginia in" (here insert the name of the state, territory or district for which he is appointed); an impression of which seal, together with his signature, shall be forthwith transmitted to, and filed in the office of the secretary of state.

Certificate; how authenticated.

15. Every certificate of such commissioner shall be authenticated by his signature and official seal.

Fees to be Paid by Notaries and Commissioners to the Secretary of State.

Fees to secretary of state paid by notaries and commissioners.

16. The secretary of state shall be entitled to receive a fee of two dollars and fifty cents from every person appointed notary as aforesaid, and of five dollars from every person appointed commissioner as aforesaid, for making out and transmitting their commissions to them. It shall be the duty of the secretary to forward to every such commissioner a copy of this and the five preceding sections.

Duty of secretary of state as to this act.

Acts Repealed.

Inconsistent acts repealed.

2. All acts and parts of acts coming within the purview of this act and inconsistent therewith are hereby repealed.

[Approved February 17, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XXI.

AN ACT authorizing the auditor to have and use an official seal.

[Passed February 9, 1882].

Be it enacted by the Legislature of West Virginia:

1. That the auditor be authorized to have and use an official seal, which may be affixed to any certificate or other paper executed by him in his official capacity, when such certificate or other paper is intended to be used out of the limits of this state.

Auditor authorized to have and use an official seal, when.

[Approved February 17, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER XXII.

AN ACT to authorize the Ohio Central Railroad Company to construct a railroad bridge across Elk river, at the point where Patrick street in the city of Charleston approaches said river.

[Passed February 10, 1882].

Be it enacted by the Legislature of West Virginia:

1. That the Ohio Central Railroad Company be, and is hereby authorized and empowered to construct a railroad bridge across Elk river, at and opposite the point where Patrick street in the city of Charleston approaches said river; *Provided*, however, that the span of said bridge across the channel of said river shall not be less than two hundred feet in length, and the piers of said span shall stand near the edge of low water on each side of said river; and it shall be authorized to construct a shore span of sufficient length on each side of said channel span, but said bridge in all its spans, shall be at least as high above the surface of the water in said river, as the suspension bridge across said river a short distance below the point at which said railroad bridge is to be built.

Ohio Central railroad company authorized to construct bridge across Elk river. Place where. Proviso.

2. That said Ohio Central Railroad Company shall have the privilege of constructing, if it chooses at any time, as a part of its said bridge, a safe passway for foot passengers, outside of the trusses of its railroad bridge, but it

Passway for foot passengers; privilege to construct as part of bridge. To be outside of trusses.

No charge for foot passengers.

Privilege to close and remove such foot-way.

shall make no charge of any kind for persons walking over said paseway; and if it should construct such foot-way, it shall have the privilege at any time of closing or removing the said footway.

[Approved February 17, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER XXIII.

AN ACT to amend and re-enact section eleven of an act of the legislature of West Virginia, passed January thirty-one, one thousand eight hundred and eighty-one, entitled "An act fixing the time for holding the circuit courts in the several judicial circuits in this state."

[Passed February 13, 1882].

Be it enacted by the Legislature of West Virginia:

Acts 1881 amended.

1. That section eleven of an act of the legislature of West Virginia, passed January thirty-one, one thousand eight hundred and eighty-one, and entitled "An act fixing the time for holding the circuit courts in the several judicial circuits in this state," be amended and re-enacted so as to read as follows:

Commencement of terms of the circuit court in eleventh circuit.

11. The circuit courts for the several counties of the eleventh judicial circuit shall hereafter commence and be held as follows:

Upshur county.

For the county of Upshur, on the second Monday in February, the first Monday in June and the first Monday in October.

Lewis.

For the county of Lewis, on the first Monday in March, the third Monday in June and the third Monday in October.

Webster.

For the county of Webster, on the first day of April, the first day of August, and the first Monday in November.

Nicholas.

For the county of Nicholas, on the Wednesday after the second Monday in April, on the Wednesday after the second Monday in August, and on the Wednesday after the second Monday in November.

Braxton.

For the county of Braxton, on the fourth Monday in April, the fourth Monday in August and the fourth Monday in November.

2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed. Acts repealed.

[Approved February 17, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER XXIV.

AN ACT reviving, amending and re-enacting chapter thirty seven of the code of West Virginia, concerning the liquidation and payment of claims against the state.

[Passed February 14, 1882].

Be it enacted by the Legislature of West Virginia:

1. That chapter thirty-seven of the code of West Virginia be and the same is hereby revived, amended and re-enacted so as to read as follows: Code; chapter 37 of, amended and re-enacted.

CHAPTER XXXVII.

OF THE LIQUIDATION AND PAYMENT OF CLAIMS AGAINST THE STATE—WHERE SUITS AGAINST STATE OFFICERS, &C., TO BE BROUGHT.

Proceedings to Audit Claims.

1. Any person having a pecuniary claim against the state, which the auditor has disallowed in whole or in part, may apply by petition to the circuit court of the county in which the seat of government is, to have such claim audited and adjusted. Claimant to proceed by petition to circuit court of county where seat of government is.

2. The person desiring to file such petition, shall give to the auditor at least ten days' previous notice of his intention to do so, and of the day he will present the same, and it shall be the duty of the auditor to appear at such court and file his answer to said petition, stating his objections to said claim and his reasons for rejecting the same or any part thereof. The case shall be heard without unnecessary delay upon the petition and answer, and the evidence, if any, produced by either party, and it shall be the duty of the attorney general, or in case of his absence, the prosecuting attorney of the county, to appear and defend the interest of the state in the case. And if the claim be disallowed by the court, a fee of ten dollars to the attorney so appearing shall be taxed by the court against the petitioner in the bill of costs. Petitioner to give notice to auditor of his intention. Duty of auditor to file answer; contents of same. Case heard without delay upon petition; answer and evidence. Duty of attorney general or prosecuting attorney to defend. When disallowed, attorney's fee taxed in costs.

Judgment of the court to be certified to auditor. When claim allowed, auditor must report fact to legislature. No payment until appropriation by legislature.

3. The court shall ascertain and enter of record what sum, if any, is due to the petitioner upon the claim mentioned in the petition, and shall certify its decision to the auditor whether the claim, or any part thereof, be allowed or not; and if such claim or any part of it, be allowed, the auditor shall report the same to the legislature at its next session. But no such claim shall be paid until an appropriation shall be made therefor by the legislature.

Where Suits Against State Officers, &c., to be Brought.

Suits against certain state officials or certain governmental corporations to be brought in circuit court of county wherein seat of government located.

4. All suits in which it may be necessary and proper to make any of the following public officers a party defendant as representing the state, to-wit: the governor, attorney general, treasurer or auditor; or in which it may be necessary or proper to make any of the following corporations parties defendants, to-wit: the board of public works or any other public corporation composed of officers of government, of the funds and property of which the state is sole owner, or in which it shall be attempted to enjoin or otherwise suspend or affect any judgment or decree on behalf of the state, obtained in the circuit court of the county in which the seat of government is, or elsewhere, or any execution issued on such judgment or decree, shall be brought and prosecuted in the said circuit court in which the seat of government is.

Limitation.

Limitation; within what time suit must be brought.

Effect of disability.

5. No such petition as is mentioned in the first section of this chapter shall be presented or filed, and no such suit as is mentioned in the next preceding section shall be brought after five years from the time the claim of the petitioner or plaintiff might have been presented or asserted. If, however, the person having such claim was an infant, married woman, insane or imprisoned at the time the same might have been presented, or asserted, such petition may be presented and such suit may be brought within two years after the removal of such disability.

Acts Repealed.

Inconsistent acts repealed.

2. All acts and parts of acts coming within the purview of this act and inconsistent therewith are hereby repealed.

[Approved February 27, 1882].

NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XXV.

AN ACT to amend and re-enact an act passed March the fourth, one thousand eight hundred and seventy-nine, entitled "An act to establish a county court and a board of commissioners for the county of Pendleton, under the thirty-fourth section of the eighth article of the constitution of West Virginia."

[Passed February 14, 1882].

Be it enacted by the Legislature of West Virginia:

1. The act passed March the fourth, one thousand eight hundred and seventy-nine, entitled "An act to establish a county court and a board of commissioners for the county of Pendleton, under the thirty-fourth section of the eighth article of the constitution of West Virginia," is hereby amended and re-enacted so as to read as follows:

Acts 1879 amended; chapter 26.

1. The county of Pendleton shall be laid off into not less than six districts, as nearly equal as may be in territory and population. The present divisions of the said county into districts shall constitute such districts until changed by the county court hereinafter mentioned. At the general election in one thousand eight hundred and eighty-two, and every second year thereafter, there shall be elected in each district by the voters thereof, a commissioner, who shall reside in his district, and hold his office for the term of two years, and until his successor is elected and qualified. The office of commissioner and justice of the peace shall be deemed incompatible. Each commissioner shall receive for his services two dollars and fifty cents per day for every day he shall attend the court, to be paid out of the county treasury. A vacancy in the office of commissioner shall be filled by the county court hereinafter mentioned.

County of Pendleton; how to be laid off in districts. Present districts to continue until ordered changed by court, etc. Provision for election of commissioners. Qualifications and term of office. Office of commissioner incompatible with that of justice. Compensation, and how paid. Vacancy; how filled.

2. The commissioners elected in the several districts shall constitute a tribunal to be known as "the county court of Pendleton county," by which name it may sue and be sued, plead and be impleaded, and contract and be contracted with. Such tribunal shall be in lieu of the county court established by article eight of the constitution as amended, for the transaction of the business required to be performed by the county court created by the said article, and so far as they are not inconsistent herewith, all the provisions of chapter thirty-nine of the code of West Virginia, concerning the county courts, their jurisdiction and powers, and all provisions of law respecting county courts generally, the commissioners composing such courts, and the clerks of such courts, shall be applicable to the tribunal

County court to be constituted of the several commissioners. Its corporate powers. Its jurisdiction. General law as to county courts applicable thereto. Provision as to its clerk.

created by this act and to the commissioners composing the same; and the clerk of the county court of Pendleton county now in office, and his successors, shall be the clerk of the tribunal hereby created. A majority of such commissioners shall be a quorum for the transaction of business.

What number a quorum.

Their first meeting; when held.

3. The first meeting of said tribunal shall be on the twentieth day after the election in one thousand eight hundred and eighty two, or as soon thereafter as a majority of them may assemble for the purpose.

Adoption of system hereby created to be submitted to a vote of people; when.

4. At the general election in one thousand eight hundred and eighty-two, the question of the adoption of the system hereby created shall be submitted to the voters of Pendleton county, voting at such election. Those voting for the said system shall have written or printed on their ballots the words "For modification of the county court," and those voting against it shall have written or printed on their ballots the words "Against modification of the county court."

Ballots; what printed or written thereon.

Election; by whom and how superintended, conducted, etc.

5. Such election at each place of voting shall be superintended, conducted and returned by the same officers and in the same manner as the election for members of the legislature is superintended, conducted and returned, and the result at each place of voting shall be certified and returned to the court now in existence for police and fiscal purposes in Pendleton county. Said court shall convene in special session as provided in chapter three, section twenty-one of the code, and the court shall, in all respects, be governed by the laws in relation to elections by the people, (so far as they are applicable thereto).

Result to be certified to court now in existence.

Duty of court in relation thereto.

If majority of votes cast be favorable, the act to be and remain in full force. If not, to be of no further force, etc.

6. If a majority of the votes cast upon such question are "For the modification of the county court," this act shall be and remain of full force and effect, but if a majority of such votes be not "For the modification of the county court," this act shall be of no further force or effect.

[Approved February 27, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XXVI.

AN ACT to establish the independent school district of Peeltree out of sub-district number one of Union district of Barbour county.

[Passed February 15, 1882].

Be it enacted by the Legislature of West Virginia :

1. That in the event a majority of the votes cast at the election hereinafter provided for be in favor, then the following described territory in the county of Barbour, including the town of Peeltree, shall, after the result of such election is ascertained and declared, be an independent school district, and be known as the independent school district of Peeltree, to-wit: All of the town of Peeltree and the territory adjacent thereto, designated and known as sub-district number one of Union district of Barbour county, as now organized and bounded.

Independent school district of Peeltree established.

2. At a special election to be held in said Union district on the third Tuesday in June, one thousand eight hundred and eighty-two, it shall be the duty of the board of education of said Union district of Barbour county, to submit to the voters residing in said Union district the question of the adoption or rejection of the provisions of this act, and all persons residing in said Union district who are entitled to vote at a general election, and no others shall be entitled to vote on said question. The election shall be by ballot, and those voting in favor of the establishment of such independent district shall have written or printed on their tickets the words, "For independent school district," and those voting against the establishment thereof shall have written or printed on their ballots the words, "Against independent school district." The election shall be superintended, conducted and the result thereof ascertained and declared by the same officers superintending and conducting the last preceding election for county superintendent and other school officers elected on that day; and all the provisions of the election laws in this state, so far as they are applicable, shall be in force and govern such election unless herein otherwise provided. At the said election there shall also be elected by the voters residing in the territory composing said proposed independent school district a board of education for said independent school district, consisting of a president and two commissioners who shall be a corporation by the name of "the board of education of the independent school district of Peeltree," and by that name may sue and be sued, plead and be impleaded, purchase and hold so much real estate and personal property as may be necessary for the purpose of this act, and without any transfer or convey-

Special election provided.

Question submitted; how.

Who may vote.

Ballots; what to contain.

How election conducted, etc.; result declared, etc.

What laws to govern election.

Board of education; election of.

Board to be a corporation.

Powers and duties of board.

Their term of office.	<p>ance they shall be deemed the owners of all real and personal property within the territory aforesaid, now held or owned for free school purposes by the board of education of Peeltree district, and they shall have all the powers, perform all the duties and be subject to all the liabilities both of boards of education and trustees. They shall hold their offices for the term of one year, beginning on the first day of July next after their election, and until their successors are elected and qualified according to law; and in the year one thousand eight hundred and eighty-three, and biennially thereafter; a new board shall be elected at the same time and under the same regulations that county superintendents and other school officers are elected; but nothing herein contained shall be construed to prohibit the re-election and eligibility of any member of such board for two or more terms. Vacancies in the board shall be filled for the unexpired term by appointment by the board. The ballots used by the voters residing within said proposed independent school district shall have written or printed thereon the names of the persons voted for for members of the said board of education.</p>
When new board elected.	
May be re-elected.	
Vacancies; how filled.	
Ballots for members of board; what to have written, etc., thereon.	
General school law to govern district, except, etc.	<p>3. The independent school district of Peeltree herein authorized to be established shall conform to and be governed by the general school law in this state, except where it is otherwise provided by this act.</p>
Unexpended moneys; how disposed of.	<p>4. All school moneys, whether belonging to the teacher's or building fund of Union district, which may be unexpended when the provisions of this act take effect shall be divided between the said Union district and the independent school district of Peeltree in proportion to the amount of taxable property in each of said districts after the creation of the said independent school district of Peeltree. The latest available assessment for state and county purposes shall be taken as the basis of such settlement and division. It shall be the duty of the boards of education of each of said districts, within ninety days after the provisions of this act are adopted, to make the financial settlement provided for in this section. The said board of education of the independent school district of Peeltree shall have power to lay levies in the same manner as provided in the case of boards of education of districts, but if, in the judgment of said board, it will be for the interest of education in such district to do so, they may apply all moneys at their disposal, and which may be levied by them, either entirely to the employment and payment of teachers, and the incidental expenses necessary to carrying on and conducting schools, or entirely to building purposes, or both, but there shall be a school taught in said independent school district for at least six</p>
Basis of settlement.	
When settlement to be made.	
Power of board to lay levies.	
How board may apply money at their disposal.	
How long school to be taught.	

months in each year, and the board of education thereof may provide for a longer period without resorting to a vote of the people residing therein. But the board of education of the independent district hereby created shall not lay a greater levy than fifty cents on the one hundred dollars valuation of the property for school purposes, nor more than forty cents on the like valuation for building purposes, in any one year. Amount of levy limited.

[Approved February 27, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER XXVII.

AN ACT to empower county courts to issue bonds for building court houses, jails and other public buildings.

[Passed February 21, 1882].

Be it enacted by the Legislature of West Virginia :

1. That the county court of every county is hereby empowered, if the necessity arises therefor, to issue bonds for the purpose of building court houses, jails and other public buildings required for county purposes. Said bonds shall draw not more than six per cent. interest, and can be made payable in from five to thirty years; *Provided*, That such indebtedness shall not exceed five per centum on the value of the taxable property in such county, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, nor without at the same time providing for the collection of a direct annual tax sufficient to pay annually the interest on such debt, and the principal thereof within and not exceeding thirty-four years; and provided further, that no debt shall be contracted under this chapter unless all questions connected with the same shall have been first submitted at a general or school election, to a vote of the people of such county and have received three-fifths of all the votes cast for and against the same. County courts empowered to issue bonds for building court houses, etc.
What interest to draw.
Limitation to such indebtedness.
Question to be submitted to a vote of the people.

[Approved February 27, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XXVIII.

AN ACT to amend and re-enact section two of chapter forty-eight of the code of West Virginia.

[Passed February 18, 1882].

Be it enacted by the Legislature of West Virginia :

Code; chapter
48, section 2,
amended.

1. That section two of chapter forty-eight of the code of West Virginia is hereby amended and re-enacted so as to read as follows :

Writing stating
formation of
company, to be
recorded in
clerk's office,
county court.
When officers
may be elected.

2. A writing stating the formation of such company, with the names of the members thereof subscribed thereto, shall be recorded in the office of the clerk of the county court of the county wherein such town or village or the greater part thereof is. After which the members of the company may elect its officers and make regulations (for effecting its object) consistent with the laws of the state and the ordinances of such town or village.

[Approved February 27, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XXIX.

AN ACT to authorize the judge of the fifth judicial circuit to employ short-hand writers in certain cases.

[Passed February 18, 1882].

Be it enacted by the Legislature of West Virginia :

Short-hand
writers; may be
appointed by
judge of fifth
circuit.

His compensa-
tion; how
certified and
paid.

1. The judge of the fifth judicial circuit may, at his discretion, employ short-hand writers to report, under such regulations as the said judge may prescribe, the proceedings had and testimony given during the trial of any cause in said circuit, and may allow them a reasonable compensation for their services and expenses, to be certified by said court to the county court or other tribunal for police and fiscal affairs of the county in which said trial may take place, and paid by such county court or other tribunal for police and fiscal affairs out of the county treasury.

[Approved February 27, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XXX.

AN ACT to amend and re-enact sections nine and ten of chapter one hundred and seventeen of the code of West Virginia, relating to clerks of courts, as amended and re-enacted by chapter seventy-three of the acts of one thousand eight hundred and seventy-five.

[Passed February 20, 1882].

Be it enacted by the Legislature of West Virginia:

1. That sections nine and ten of chapter one hundred and seventeen of the code of West Virginia, amended and re-enacted by chapter seventy-three of the acts of one thousand eight hundred and seventy-five be, and the same are hereby amended and re-enacted so as to read as follows:

Code amended:
sections 9 and 10
of chapter 117,
as amended by
Acts of 1875.

9. The clerk of every circuit court shall keep an execution book, in which he shall enter, in each case wherein an execution has issued, the names of the parties, the time of the judgment, the amount thereof, and a reference to the page of the order book wherein the amount appears, the date of each execution, nature thereof, when returnable, and, if return be made thereon, the nature of such return.

Execution book
kept by clerk,
what entered
therein.

10. The clerk of every court shall have an index to each book he is required to keep, making convenient reference to every order, record, or entry therein. Every execution, and every judgment or decree for money, shall be indexed as well in the name of the person against whom, as in the name of the person in whose favor, the same is. A clerk failing to perform any duty required of him by this section shall forfeit not less than twenty nor more than one hundred dollars.

Index to books,
clerk required
to have for each.

How executions
and judgments
indexed

Penalty for
failure of clerk.

[Approved February 27, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XXXI.

AN ACT providing for the relief of James G. Vanderbilt, late sheriff of Lewis county.

[Passed February 14, 1882].

Be it enacted by the Legislature of West Virginia:

1. That fifty dollars be, and the same is hereby appropriated, payable out of any money in the treasury not

Appropriation
to reimburse
J. G. Vander-
vort.

Auditor to pay.

otherwise appropriated, to pay James G. Vandervort, late sheriff of Lewis county, and to re-imburse him for a reward offered and paid in December, one thousand eight hundred and eighty, for the arrest of one J. M. Brady, who is and was then charged with house-breaking and house-burning in Lewis county. And the auditor is hereby directed to issue his warrant on the treasury therefor, in the mode prescribed by law.

[Approved February 27, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER XXXII.

AN ACT to provide for the re-assessment of the value of all real estate within this state.

[Passed February 28, 1882].

Be it enacted by the Legislature of West Virginia :

Reassessing
commissioners,
by whom and
how appointed;
qualifications
and duties.

1. The auditor shall appoint one commissioner for each assessment district in the several counties of this state, who shall be a resident freeholder of such district, and whose duty it shall be to re-assess the value of all real estate therein.

Bond; commis-
sioner to exe-
cute within
what time,
surety, penalty,
etc.
By whom
approved.
Oath of com-
missioner.

2. Each commissioner so appointed shall within thirty days after he is notified of his appointment, execute a bond with security, in the penalty of three thousand dollars, conditioned for the faithful performance of his duties, to be approved by the county court or the president thereof, or by a circuit judge, and shall take an oath to support the constitution of the United States and the constitution of this state, and that he will faithfully discharge the duties of his office to the best of his skill and judgment. The said bond and oath shall be filed in the office of the clerk of the county court, who shall certify a copy thereof, within ten days after it is so filed, to the auditor and also furnish the auditor the post-office address of the commissioner.

Where bond and
oath filed; copy
certified to
auditor, etc.

Provision to fill
vacancy, etc.,
by auditor.

If the said commissioner so appointed shall fail to qualify and give bond, as herein required, within the time prescribed, or in case he shall die or resign before completing his re-valuation, or the office become otherwise vacant, a successor shall be immediately appointed by the auditor, who shall at once give bond and qualify, and enter upon the duties of his office.

3. The auditor shall as soon as possible, cause to be provided for each commissioner three books similar in form to the assessors' land-book, with such changes as the nature of the work requires, and shall also furnish each commissioner with instructions, describing in detail, the manner in which they are to arrive at proper valuations of the real estate and the manner of making up their books and returns.

Commissioners' books; how, by whom, and what sort furnished.

Instructions furnished by auditor.

4. Each commissioner so appointed and qualified shall on the first day of April, in the year one thousand eight hundred and eighty-two, or as soon thereafter as practicable after receiving the books and instructions to be furnished by the auditor as aforesaid, proceed to examine in person, all the tracts of land and town lots, with the buildings and improvements thereon, within his district, and shall upon examination and in accordance with his said instructions, ascertain and assess the fair cash value thereof, and in such assessment the minerals underlying the surface shall be considered in ascertaining the value of such land, in current money; and when mineral or coal privilege or interest is held by a party or parties, exclusive of the surface, the same shall be assessed separately to such party or parties at its cash market value. To assist him in ascertaining and identifying the said lands and lots, he shall obtain from the clerk of the county court the land-book of the district he is to assess, made for the year one thousand eight hundred and eighty-one; or if no such book be on file for that year, then the next preceding book on file, and carry it with him for reference in making this assessment.

Duties of commissioners enumerated. When to commence the work of assessment. Mode of examination and valuation, etc.

Minerals to be considered.

When assessed separately.

Clerk to furnish commissioners with land book of 1881.

5. In all cases where it is practicable, the commissioner shall exhibit the entry of any lands or town lots found on said book, to the owner of the said lands, or his agent, and ascertain from him if the said entry be correct as to the location, title and quantity, and may require such owner or agent to answer, on oath, questions relative to such lands and the entry thereof as may be pertinent. For this purpose the commissioner shall be authorized to administer said oath. Any person refusing to answer, under oath, questions that may be propounded to him in reference to said assessment, shall be fined not less than twenty dollars nor more than fifty dollars, for every such refusal, to be assessed and recovered, before a justice, as other fines, and paid into the county treasury.

When practicable, entry of lands and lots to be shown owner or agent, etc., who may be required to answer on oath.

Commissioner may administer oaths. Penalty, where person refuses to answer, under oath, commissioner's questions.

6. As soon as the commissioner shall have completed the assessment in his district, he shall make three copies thereof in the books to be furnished him under the provisions of section three of this act, and shall take and subscribe an oath or affirmation to the following effect: "I
—, a commissioner appointed to ascertain and re-assess

After assessment, commissioner to make copies thereof, etc.

His oath.

the value of all real estate in the ——— district of ——— county, (or in the county of ———), do solemnly swear (or affirm) that I have diligently endeavored to ascertain the value of all tracts of land and town lots properly chargeable in my district, and have entered the same in the foregoing book; that I have faithfully, fairly and impartially, and without bias or favor, assessed the same, with the improvements thereon, at a fair cash value; and that in making the said books, I have followed the law and been guided by the instructions furnished me by the auditor for my guidance; so help me God." Which oath may be taken and subscribed before any person authorized to administer oaths, and a copy of the same shall be subjoined to each of said books properly subscribed and certified; two of the said books shall be filed by the commissioner with the clerk of the county court of his county, on or before the first day of October, in the year one thousand and eight hundred and eighty-two, and shall be used by the said clerk as a guide in making up his land books. The other book he shall transmit to the auditor, on or before the first day of October, one thousand eight and eighty-two. In any county in which there are two assessment districts, the county court of such county shall examine said books and see if there is inequality in said assessment as between the districts, and make such order as will correct such inequality.

Before whom taken and subscribed.
Must accompany each book.
Books; with whom and when filed.

When used as a guide.

Provision for equalizing assessments in counties having two districts.

Erroneous assessments; how aggrieved party to proceed to have correction made.

Notice of intention.

Prosecuting attorney to be present at hearing.
When error found, county court to correct same by order.

Copy of order certified to auditor.

Application to have priority.

What order must show.

When excess of taxes paid, how ordered to be refunded.

7. Any person feeling himself aggrieved by the assessment of his real estate, made under the provisions of this act, may, within one year after the filing of a copy of such assessment with the clerk of the county court apply, by himself or his agent, to the said court for redress, first giving reasonable notice in writing of his intention to the prosecuting attorney, and stating in such notice the character of the correction he desires. It shall be the duty of the prosecuting attorney, upon being so notified, to attend to the interests of the state, at the trial of such application. If upon hearing the evidence offered, the county court shall be of opinion that there is error in the assessment complained of, or that the valuation fixed by the commissioner is excessive, the said court shall make such order correcting the said assessment as is just and proper; a copy of such orders shall be made and certified to the auditor by the clerk within twenty days after the entering of the same; such application shall have precedence of all other business before the court, but any order or judgment made upon such application shall show that the prosecuting attorney was present and defended the interest of the state, and in the event it shall be ascertained that the land has been erroneously assessed, and that the owner has paid such taxes, the court shall order that the excess shall be refunded to him, and if not so paid he shall

be relieved from such excess. But no costs shall be taxed for or against the applicant or the state. No costs.

8. For services rendered under this act by the commissioner, he shall be allowed for each day actually and diligently employed, three dollars, to be paid out of the state treasury. But such account shall be verified by the affidavit of the commissioner and presented to the county court of his county, and approved, allowed and certified to the auditor for payment. *Provided*, That the total compensation of such commissioner shall not exceed two hundred and fifty dollars. Any officer who shall fail or refuse to perform any of the duties required of him by this act, or who shall make an improper or unfair valuation of any property, through fear, favor or malice, or shall receive money or other consideration for making an unfair or partial valuation of any property, shall be guilty of a misdemeanor, and upon conviction thereof, be fined not less than one hundred dollars, nor more than five hundred dollars. Compensation of commissioner, amount and how paid. Account; how verified and to whom presented, etc. *Provido*. Penalty for neglect or failure, etc. Made a misdemeanor. Fine and imprisonment.

9. Every commissioner who shall fail to comply with the requirements of this act within the time herein specified, shall forfeit all right to compensation for his services, unless, and until, he shows to the auditor on oath satisfactory reasons for delay. Commissioner failing to comply, etc., to forfeit compensation.

10. The board of public works shall be a board of equalization to correct and equalize the re-assessment so made between the counties and assessment districts, if it shall appear to them that the average value of the real estate in any such county, or district, is either too high or too low. The board shall hear all such evidence as may be presented to them, and shall increase or reduce the average value of the real estate in such county or district, according to the evidence so taken and any other evidence which may come to their knowledge. When they shall have completed their labors they shall report the same to the auditor, who shall certify the same to the clerks of the county courts. Board of public works made a board of equalization. Their powers and duties as such defined. To hear evidence, increase or reduce values, etc. Their report to auditor. His duty as to same.

11. In every county where boards of commissioners have been established in lieu of the county courts for police and fiscal purposes, the said boards shall have the same powers and perform the same duties as are imposed upon the county courts, in carrying out the provisions of this act. When boards of commissioners to act in lieu of county courts.

[Approved March 7, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER XXXIII.

AN ACT amending and re-enacting sections one, six and seven of chapter fifty-seven of the code of West Virginia, as amended and re-enacted by chapter eighty-six of the acts of one thousand eight hundred and seventy-two and seventy-three.

[Passed February 14, 1882].

Be it enacted by the Legislature of West Virginia:

Code amended. 1. That sections one, six and seven of chapter fifty-seven of the code of West Virginia be and the same are hereby amended and re-enacted so as to read as follows:

Property Acquired by a Church Since the Revolution.

Certain conveyances heretofore or hereafter made, legalized. 1. Every conveyance, devise or dedication, which has been made since the the first day of January, one thousand seven hundred and seventy-seven, and every conveyance which shall hereafter be made of land for the use or benefit of any church, religious sect, society, congregation or denomination as a place of worship, or as a burial place, or as a residence for a minister, shall be valid and shall be construed to give the local society or congregation of such church to whom it was so conveyed, devised or dedicated, the control thereof, and the land shall be held for such purpose and no other.

Certain Trustees a Corporation, &c.

Trustees a corporation with power to sue and be sued. 6. The said trustees, whether named in the conveyance, devise or dedication, or appointed by the court as aforesaid, for any of the uses or purposes mentioned in the third section of this chapter, shall be a corporation by the name and style of "The board of trustees of _____ college" (or high school, academy, &c., as the case may be), by which name they may sue and be sued, plead and be impleaded, contract and be contracted with, take and hold real and personal estate for the use of such college (or high school, academy, &c., as the case may be), and have and use a common seal. But in the absence of such seal, the private seal of the president of said board shall be equivalent to such common seal. Said trustees may also in their corporate name do and perform any and all other acts and business pertaining to the trust created by any such conveyance, devise or dedication. Any conveyance, devise or dedication heretofore made to the board of trustees of any church, college, academy, high school or other seminary of learning, or of any of the societies or orders mentioned in the third section of this chapter, shall vest the title to such property in the said trustees individually.

When private seal equivalent to common seal.

Conveyance, devise or dedication to board of trustees valid.

and collectively, and shall be as valid and binding in all respects as if such property had been conveyed to them by their proper names.

How Much Real Estate Trustees May Hold; Suits by and Against Trustees of Churches, &c.

7. Such trustees may take and hold for the purpose mentioned in the first section of this chapter, not exceeding two acres of land in an incorporated city, town or village, and not exceeding sixty acres out of such city, town or village. For any of the purposes mentioned in the third section of this chapter, except for a college, academy, high school or other seminary of learning, such trustees may take and hold not exceeding two acres of land, and such land shall not be held for any other use than as a place of meeting for such society or association and for the education and maintenance of children charitably provided for by them. For the use of a college, academy, high school or any other seminary of learning, such trustees may take and hold real estate without limit. The trustees of any church, religious sect, society, congregation or denomination, holding for the use thereof such property as is mentioned in the first and second sections of this chapter may in their own names sue for and recover any land or other property so held by them, as well as for damages done by any person to any such property, and may be sued in relation thereto; such suit, notwithstanding the death of any of the said trustees or the appointment of others, shall proceed in the names of the trustees by or against whom it was instituted.

How much land trustees may hold.

Colleges and other institutions of learning not limited as to real estate.

When and for what church trustees may sue in their own name.

[Approved February 27, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XXXIV.

AN ACT amending and re-enacting chapter eighteen of the code of West Virginia, concerning the adjutant general, as amended and re-enacted by chapter thirty-seven of the acts of one thousand eight hundred and seventy seven.

[Passed February 18, 1892].

Be it enacted by the Legislature of West Virginia:

1. That chapter eighteen of the code of West Virginia, Code: chapter 18 of, as amended, Acts 1875, chapter 37, amended, be, and the same is hereby amended and re-enacted so as to read as follows:

CHAPTER XVIII.

OF THE APPOINTMENT AND DUTIES OF THE ADJUTANT GENERAL—TO BE EX-OFFICIO QUARTER MASTER GENERAL, STATE LIBRARIAN AND SUPERINTENDENT OF WEIGHTS AND MEASURES.

Appointment and Term of Office of Adjutant General.

Adjutant general; rank of; how appointed. Term of office. 1. There shall be an adjutant general, with the rank of colonel, to be appointed by the governor, whose term of office shall commence and end with that of the governor. But he shall, unless sooner removed, hold his office until his successor is appointed and qualified.

Brevet Rank Of.

His brevet rank. 2. The adjutant general shall have the brevet rank of brigadier general.

To be ex-officio Quartermaster General.

Shall be quarter master ex-officio; duties as such. 3. The adjutant general shall be *ex-officio* quartermaster general, and as such shall do and perform all the duties appertaining to that office.

Where to Keep his Office, &c.; His Removal from Office.

Office; where kept and when may be changed. 4. He shall keep his office at the seat of government; but when the public service requires it, the governor may direct him to remove with his office to any other place within the state.

Execute orders of governor, and keep record thereof. When to report to governor. 5. He shall execute the orders of the governor, when not contrary to law, and keep a record thereof. He shall also report to the governor, within one week after the end of every year, and at all other times when specially required to do so.

His accounts for expenditures; when and how paid. 6. All accounts for expenditures necessary to the discharge of his duties, shall be paid, if there be any appropriation for the purpose, upon his requisition, approved by the governor.

May be removed by governor. Vacancy; how filled for unexpired term. 7. The governor shall have power to remove the adjutant general whenever in his opinion the public interest will in any way be promoted by such removal. Vacancies in the office of adjutant general, arising from whatever cause, shall be filled for the unexpired term.

Special Duties.

Special duties, to be discharged by adjutant general, defined and enumerated. 8. The adjutant general shall discharge the duties required of him by the laws of the United States, that is to say: He shall distribute all orders from the commander-in-chief of the state to the several corps; attend all public reviews when the commander-in-chief of the state

shall review the militia, or any part thereof; obey all orders from him relative to carrying into execution and perfecting the system of military discipline established by the laws of the United States for the militia of the several states; furnish the blank forms of the different returns that may be required, and explain the principles on which they should be made; receive from the several officers of the different corps throughout the state returns of the militia under their command, reporting the actual situation of their arms, accoutrements and ammunition, their delinquencies, and every other thing which relates to the general advancement of good order and discipline; make proper abstracts of the said returns and lay the same annually before the commander-in-chief of the state; and make return of the militia of the state, their arms, accoutrements and ammunition, to the president of the United States, on or before the first Monday in January in each year, according to the directions which may be given from time to time by the secretary of war. The adjutant general shall also prepare general regulations prescribing what returns of the militia and volunteers shall be made, and how the same shall be made, and regulating the powers and duties of the several officers and departments thereof; which regulations, if approved by the governor and not contrary to law, shall be respected and obeyed. He shall examine all pay rolls and claims for pay for military service, and certify the amount, if any, due thereon by the state.

Authorized to prepare certain general regulations relating to militia and volunteers.

Regulations to be approved by governor. Shall examine and certify pay rolls.

As Quartermaster General.

9. The adjutant general, as quartermaster general, subject to the instructions of the governor, shall have charge of the ordnance, arms, accoutrements, ammunition, camp equipage, military apparatus, subsistence and stores belonging to the state; attend to the inspection, proving, safe-keeping, repair and preparation of the same for service; and direct where and in what manner they shall be kept or stored and the transportation and distribution thereof as may be necessary. Whenever the supply of any article necessary for military defence is insufficient, he shall make a report thereof to the governor and attend to procuring the same in such manner as may be authorized by law and ordered by the governor. Whenever any property of the state placed as aforesaid in his charge, which has been issued and not consumed, lost or destroyed, is no longer required for service, it shall be his duty to cause the same to be collected together, inspected and put in proper order and stored in some safe and proper place, to be designated by the governor. He shall have charge, subject to the instructions of the governor, of all captured property. With the advice and under the direction of the governor, he may sell or exchange, from time to time,

Special duties as quartermaster general. To have charge of arms, etc.

What to do when supplies are insufficient.

What to be done with supplies not needed for service.

Captured property.

Power to sell unserviceable articles; how exercised.

such articles belonging to his department as may be found unserviceable or in a state of decay, or which he shall think it for the interest of the state to sell or exchange; but all arms condemned as unsafe, before they are offered for sale, shall be unbreeched or broken so as to prevent their use as fire-arms. The proceeds of such sales shall be paid into the treasury. With the like advice and direction he may cause any of the arms or military apparatus belonging to the state to be altered or improved. He shall cause proper accounts to be kept in his office of all property under his charge, showing what portion thereof is on hand and how the residue has been disposed of. He shall, with the approval of the governor, prescribe proper forms and regulations respecting the matters pertaining to his department and require proper returns thereof to be made to his office; and it shall be his duty to consolidate such returns and make report thereof to the governor. He shall also, as soon as he is commissioned as adjutant general, make requisition upon the ordnance department of the war department of the United States for the immediate delivery to his order of the quota of ordnance, small arms and military equipments now due to the state of West Virginia under the acts of Congress providing for the distribution of arms to the several states of the Union, under the conditions, limitations and proportions provided and contained in such acts of Congress.

Proceeds of sale paid into treasury.

Improvement or alteration of arms, etc. Proper accounts to be kept.

When to make requisitions on United States war department for state's quota.

To be ex-officio State Librarian.

State librarian; adjutant general shall be *ex-officio*; duties as such.

Rules governing library; certain officials to have access thereto and use thereof.

Receipt for books taken out.

What to specify.

What to note when book returned.

How others may use library.

Power of state librarian to appoint assistant.

10. The adjutant general shall be *ex-officio* state librarian, and as such he shall have charge of the library at the seat of government, belonging to the state, and be governed by the following rules in relation thereto:

First. The said library shall at all seasonable times be open to the use of the judges of the supreme court of appeals, circuit courts, state officers and members of the legislature; and no other person than those herein specified shall be permitted to remove any book or paper therefrom from the place where said library is kept.

Second. No book or paper shall be taken from said library until the person authorized to take the same shall sign a receipt therefor in a book to be kept for that purpose, particularly specifying each book or paper received by him and the time it is to be returned.

Third. When any such book or paper is returned, the same shall be noted in the margin of the said receipt.

Fourth. Other persons than those prescribed above may be permitted to use the said library at the place where it is kept.

11. The state librarian shall have power to appoint an assistant librarian whenever he is absent from the seat of government on official duty.

12. Any person who shall remove any book or paper from the said library contrary to law, or who shall fail or refuse to return any book or paper taken therefrom, upon the demand of the librarian, shall be liable for five times the value thereof, recoverable by an action in the name of the state.

Liability persons taking books without authority.

How enforced.

To be ex-officio Superintendent of Weights and Measures.

13. The adjutant general shall be *ex-officio* superintendent of weights and measures and as such shall do and perform all the duties and be subject to all the liabilities prescribed by chapter fifty-nine of this code.

Adjutant general, *ex-officio* superintendent weights and measures. Duties and liabilities.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Inconsistent acts repealed.

[Approved February 27, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER XXXV.

AN ACT to amend and re-enact section five of chapter one of the acts of one thousand eight hundred and eighty-one, entitled "An act fixing the time for holding the circuit courts in the several judicial circuits of this state.

[Passed February 20, 1882].

Be it enacted by the Legislature of West Virginia:

1. That section five of chapter one of the acts of one thousand eight hundred and eighty-one, be amended and re-enacted so as to read as follows:

Act amended.

5. The circuit courts for the several counties of the fifth judicial circuit shall hereafter commence and be held as follows:

Commencement of terms of circuit court in fifth circuit.

For the county of Wood, on the second Monday in February, the second Monday in July and the second Monday in November.

Wood county.

For the county of Pleasants, on the second Monday in March, the second Monday in June and the second Monday in October.

Pleasants.

For the county of Wirt, on the fourth Monday in March, Wirt.

the fourth Monday in June and the fourth Monday in October.

[Approved March 1, 1852].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XXXVI.

AN ACT to amend and re-enact chapter fifteen of the code of West Virginia, concerning the secretary of state and supreme court reports.

[Passed February 20, 1882].

Be it enacted by the Legislature of West Virginia:

Code amended;
chapter 15.

1. That chapter fifteen of the code of West Virginia be, and the same is hereby amended and re-enacted so as to read as follows:

CHAPTER XV.

CONCERNING THE SECRETARY OF STATE AND THE SUPREME COURT REPORTS.

Secretary of State; His Oath of Office.

Secretary of
state; his oath
of office.

1. The secretary of state before he acts as such, shall in addition to the oath prescribed by the first section of chapter nine of this code take an oath to keep secret such matters as he shall be required by the governor to conceal.

His General Duties.

His general
duties.

2. He shall be the keeper of the seals of the state, keep a journal of executive proceedings, arrange and preserve all records and papers belonging to the executive department, be charged with the clerical duties of that department, and render to the governor, in the dispatch of the executive business, such services as he may require.

The West Virginia Reports and Session Acts.

West Virginia
reports.
How many
copies of each
volume to be
printed.
Style of printing
and binding.
By whom copy-
right secured.

3. Whenever the supreme court of appeals directs a volume of the reports of its decisions to be published the reporter shall contract, in the manner prescribed by law, for the printing and binding of six hundred copies thereof, in a style not inferior to Otto's United States reports; and the secretary of state shall secure the copyright of the same for the benefit of the state. The reports shall be styled "West Virginia Reports." The printing and binding of

the reports shall be done under the direction of and in the manner prescribed by the reporter, subject however to the control of the court. The reporter shall prefix to the printed report of each case the dates when the same was submitted and decided. Each volume shall contain the reports of at least eighty cases, if practicable, and shall not contain more than nine hundred pages, exclusive of the index and table of cases reported and cited, each page to be of the size and type of the pages of Otto's United States reports. Proof sheets shall be furnished by the printer to the reporter and to each of the judges, a reasonable time before the type shall be distributed, and such corrections or modifications shall be made by the printer as either the reporter or either of the judges shall suggest. If the said printing and binding be not done in such manner as is required by law, the volume of reports shall not be received by the reporter.

Under whose direction printing and binding done.
What to be prefixed to each case.
What each volume to contain.

Proof sheets to be furnished reporter and judges.

When reporter may reject volume.

4. The secretary of state shall deliver one copy of each volume of the said reports, as soon as practicable to the West Virginia University; one copy to the attorney general; one copy to each judge of the supreme court of appeals and of the circuit courts, and of the municipal court of the city of Wheeling, and transmit two copies to the congressional law library at Washington, District of Columbia; five copies to the Ohio county library, at Wheeling; five copies to the law association of Jefferson, at Charlestown; and five copies to the clerk of the court of appeals, for the use of the supreme court at Charleston; and the copies delivered to the attorney general, and to the judges of the circuit courts, and the judge of the municipal court of the city of Wheeling, shall be the property of the office and shall be turned over to their successors in office. He shall also have power to exchange one copy of each volume of said reports, for a copy of the current volume of the reports of each of the states of the Union.

Distribution of reports; by whom and to whom made.

In what cases to remain property of the office.

Power of secretary of state to make exchanges with other states.

5. With the advice and consent of the governor he shall determine at what price per volume the said reports, before or hereafter published, shall be sold, not to exceed the actual cost thereof. He may from time to time place a reasonable number of copies thereof to be sold on commission in the hands of booksellers, to be selected by him for the purpose, taking from each of them a written agreement, specifying the number of volumes received, the price at which they are to be sold and for what commission; and undertaking when thereto requested by the secretary of state, to account for said books, to return such as may not have been sold, and pay for the balance at the price specified, after deducting the commission for selling. The secretary may himself sell any of the said reports.

Price of reports: how fixed.

How and by whom copies sold on commission.

Agreement with same. Terms thereof.

The Secretary of state may sell reports.

Proceeds paid into treasury.

proceeds of all such sales shall be immediately paid into the treasury.

Session acts; how sold.

6. The secretary may dispose in the same manner of any copies of the session acts he may have for sale.

Authority to Administer Oaths.

Authority of secretary of state to administer oaths.

7. Where any oath may lawfully be taken within the state, it may be administered by the secretary of state, unless otherwise provided by law.

Acts Repealed.

Inconsistent acts repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

[Approved March 1, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XXXVII.

AN ACT to amend and re-enact sections one, seven and sixteen of chapter eighty-five of the code of West Virginia, as amended and re-enacted by chapter one hundred and twenty-two of the acts of one thousand eight hundred and seventy-two and seventy-three.

[Passed February 21, 1882].

Be it enacted by the Legislature of West Virginia :

Code amended; sections 1, 7 and 16, chapter 65, as amended by acts 1872-73.

1. That sections one, seven and sixteen of chapter eighty-five of the code of West Virginia, as amended and re-enacted by chapter one hundred and twenty-two of the acts passed one thousand eight hundred and seventy-two and seventy-three be, and the same are hereby amended and re-enacted so as to read as follows :

Executor; can not exercise powers until he qualifies.

1. A person appointed by a will executor thereof, shall not have the powers of executor until he qualify as such by taking an oath and giving bond before the county court in which the will, or an authenticated copy thereof, is admitted to record, or before the clerk thereof in vacation, except that he may provide for the burial of the testator, pay reasonable funeral expenses and preserve the estate from waste.

Exception; may pay funeral expenses, etc.

7. Where the will directs that an executor shall not give security, it shall not be required of him, unless he be a non-resident of the state, or unless on the application of any person interested, or from the knowledge of the court or clerk admitting the will to probate, it is deemed proper that security ought to be given. No person shall qualify as executor without giving security until the expiration of thirty days after the will is admitted to probate.

Security not to be given when will so directs.

Exceptions.

When no security given, at what time executor to qualify.

16. Of the goods not mentioned in the preceding section, other than such as are exempt by the twenty-seventh section of the forty-first chapter of this code, the personal representative shall, as soon as convenient, sell at public auction such as are likely to be impaired in value by keeping, giving a reasonable credit (except for small sums) and taking bond with good security.

Goods impaired by keeping, except those exempted, must be sold as soon as convenient.

Terms of sale.

[Approved March 1, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XXXVIII.

AN ACT to amend and re-enact section seventeen of chapter eighty-three of the code of West Virginia, relating to the sale of property of minors.

[Passed February 21, 1882].

Be it enacted by the Legislature of West Virginia:

1. That section seventeen of chapter eighty-three of the code of West Virginia, is hereby amended and re-enacted so as to read as follows:

Code amended; section 17 of chapter 83.

17. Whenever a sale is ordered as herein provided, the court shall order such sale to be reported for confirmation, and when it is confirmed, may direct a conveyance with covenant of special warranty to be made by the guardian or a commissioner. Every such conveyance shall be as effectual in law as if the same were made by the minor when of lawful age.

Sale when ordered must be reported for confirmation. When conveyance directed; covenant therein of special warranty. Legal effect of such conveyance.

[Approved March 1, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XXXIX.

AN ACT to amend and re-enact chapter seventeen of the code—manner of receiving and disbursing money at the treasury, and certain duties of the auditor and treasurer.

[Passed February 24, 1882].

Be it enacted by the Legislature of West Virginia:

Code; chapter 17
amended,

1. That chapter seventeen of the Code of West Virginia, be amended and re-enacted so as to read as follows:

CHAPTER XVII.

MANNER OF RECEIVING AND DISBURSING MONEY AT THE TREASURY
AND CERTAIN DUTIES OF THE AUDITOR AND TREASURER.

Paying Money into the Treasury.

1. The board of public works may designate any national bank or banks and any bank or banks chartered pursuant to the laws of this state, with paid up capitals of not less than twenty thousand dollars, as depositories of money belonging to the state, and shall contract with said banks for the payment of interest thereon, at a rate not less than two per cent per annum, for such time as any deposit, or part thereof, may remain in such banks. Before allowing any money to be deposited with them they shall require said depositories to give bond, with good security, to be approved by the board of public works, in a penalty of not less than fifty thousand dollars, payable to the state of West Virginia, conditioned for the prompt payment, whenever lawfully required, of any state money, or part thereof, that may be deposited with them, which bond shall be recorded by the secretary of state in a book kept in his office for the purpose, and a copy of such bond, or the record thereof, certified by said secretary, shall be *prima facie* evidence of the execution and contents of such bond in any suit or legal proceeding. The amount of deposits in any bank shall at no time exceed three-fourths of the amount of the penalty of said bond, and all such bonds shall be examined by the board of public works at least once in every three months, and whenever the bond is deemed insufficient by the board of public works additional bond shall be required. Any depository violating any of the provisions of this act, shall be discontinued as a state depository.
2. All payment shall be "to the credit of the treasury of West Virginia," and the person making a payment shall take a certificate of deposit from the proper officer of some bank, designated as a state depository, and present the
- Depositories of state money; the board of public works to designate banks; requirements, etc.
Provision for interest on deposits.
Bond required of depositories; conditions and penalty of same.
Where bond recorded.
Its effect as evidence.
Deposits to be not more than three-fourths of penalty of bond; board of public works to examine bonds.
Penalty for violating provisions of this act.
Payments; to whom credited; what payor required to do, etc.

same to the auditor, who shall by endorsement thereon, direct upon what account or accounts the treasurer shall receipt for the payment; and if on more than one account, he shall direct what amount is to be credited on each. Upon presentation to him of such certificate the treasurer shall retain and file the same, charging the amount specified therein to the proper bank, and shall deliver to the auditor a receipt, in duplicate, for the amount, stating the amount to be credited on each account according to the direction of the auditor, endorsed on the certificate. The auditor shall endorse on the original receipt as follows: "A duplicate hereof has been filed in the auditor's office," and affix his signature and the proper date of such endorsement, which original receipt he shall then deliver to the person presenting the certificate of deposit, and retain and file the duplicate in his office, and charge the amount thereof to the treasurer's account. And no receipt of the treasurer shall be an acquittance or discharge to any person for any sum of money due this state, unless ordered by the auditor as aforesaid; and any person liable to pay money into the treasury, who shall pay the same otherwise than according to this chapter, shall remain liable for such money, and be subject to the same fine, penalty, forfeiture or damages to which he would have been subject if he had not paid the same.

Provisions where more than one account.

Duty of treasurer as to certificate of deposit.

Duty of auditor; what he must endorse on original receipt, etc.

No receipt of treasurer an acquittance unless endorsed by auditor.

Liability of persons making payments contrary to this act.

3. Each depository of state funds shall once every three months report to the board of public works by its president or cashier, the amount of state funds then on deposit therein, and said report shall be verified by the affidavit of the officer making it; for failure so to report, the board of public works in their discretion, may cause all state funds to be withdrawn from any depository so failing. They shall issue their order to the auditor directing him to draw his warrants on the treasurer for the full amounts of the deposits held by depositories neglecting or refusing to give the security at any time required, or to pay either principal or interest whenever lawfully required. Said order shall also designate the depositories to which said amounts shall be transferred and what amount to each. The board of public works may also thus cause transfers to be made whenever it becomes necessary in order to protect the interest of the state; and if at any time when the legislature is not in session they be of opinion that the safety of the public funds requires that no more money should be paid to the credit of the treasury into any one or more of the depositories specified in this chapter, the governor shall announce the fact by proclamation to be published in some newspaper printed at the seat of government, and after such proclamation is published, it shall not be lawful to pay any sum of money on state account into any depository to which such payment shall

When, to whom and how reports of depositories to be made.

How verified.

Effect of failure to report.

Duty of board of public works where there is such failure.

What order of board shall designate.

Power of board to make transfers of deposits.

Proclamation by governor in such cases, and effect of same.

Auditor to notify sheriffs and collectors thereof by mail.

State money collected to be deposited in district where collected.

Provision where no depository in such district.

be thereby forbidden, and the auditor shall promptly notify all sheriffs and collectors of moneys belonging to the state, by mail, of any such discontinuance, but all such proclamations and orders shall as soon as possible thereafter be submitted to the legislature. The money collected in any senatorial district of this state shall be deposited in some lawful depository of state funds situate therein, if there be such; but if from any cause there be no such depository, or no safe depository therein, then said money shall be deposited or transferred to some lawful depository or depositories in a different district or districts in the state.

What Accounts are to be Kept of the Receipts of the Treasury.

Treasurer to keep accounts with depositories; also general account of receipts and disbursements

What accounts auditor to keep and how kept.

4. The treasurer shall keep in his office separate accounts with each depository, and also a general account of receipts and disbursements for the state, and when money is paid into the treasury, it shall be charged to the proper depository and credited to the said general account. The auditor shall keep in his office separate accounts of the particular heads or sources of revenue, and a general account with the treasurer, beside such individual accounts with officers and persons as may be necessary, and shall charge every sum of money received for the state as aforesaid, to the treasurer's account, and credit it under the particular head of revenue to which it properly belongs, distinguishing especially in distinct accounts the receipts on account of the capital of the school fund, and those on account of the income of said fund subject to annual distribution. It shall be the duty of the auditor on all certificates of deposit of interest on deposits to indicate to the treasurer to receipt for one-half of the amount of such certificate as of interest on state fund, and one-half as interest on general school fund.

Duty of auditor as to certificates of deposit.

Payments from the Treasury.

Claims against state to be examined and certified by auditor before payment.

When auditor may issue warrant on treasurer; what warrant must state.

Duty of treasurer when warrant presented.

5. Every person claiming to receive money from the treasury of the state, shall apply to the auditor for a warrant for the same; and the auditor shall thereupon examine the claim, with the vouchers, certificates and evidence, if any, offered in support thereof; and for so much thereof as he may find to be justly due by the state, if payment thereof be authorized by law, and there be an appropriation not exhausted or expired, out of which it is properly payable, he shall issue his warrant on the treasurer, specifying to whom and on what account the money mentioned therein is to be paid, and to what appropriation the same is to be charged. On the presentation of such warrant to the treasurer, he shall ascertain whether the same has been drawn in pursuance of an appropriation made by law, and if he find it to be so, he shall in that case, but not otherwise, endorse his check upon said

warrant, directed to some depository, which check shall be payable to the order of the person who is to receive the money therein specified. All claims required by law to be allowed by any court and payable out of the state treasury, shall have the seal of the court allowing or authorizing the payment of the same, affixed by the clerk of such court to his certificate of its allowance; and no such claim shall be audited and paid by the auditor, unless the seal of such court be thereto attached as aforesaid. No tax or fee shall be charged by the clerk for fixing his seal to the certificate referred to in this act.

How check drawn.

Seal of court to be affixed on claims certified by same.

No tax or fee for seal.

6. The treasurer shall draw no check on any depository unless there be money enough therein to the credit of the treasury to pay such check. And no depository holding money to the credit of the treasury shall pay out the same, or any part thereof, except upon a check of the treasurer endorsed on a warrant of the auditor authorizing such check.

Treasurer not allowed to overdraw.

When depository required to pay.

7. When appropriation has been made by law subject to the order or payable on the requisition of a particular officer, board, or person, the order or requisition in writing of such officer, board or person shall be sufficient authority to the auditor to issue his warrant for the same or any part thereof; *Provided*, The appropriation has not expired, and the amount thereof shall not be exceeded.

What sufficient authority to auditor to issue warrant.

Proviso.

8. Every appropriation or so much thereof as may remain undrawn at the end of three years after the passage of the act by which such appropriation was made, shall be deemed to have expired and no warrant shall thereafter be issued upon it.

Limitation; within what time warrants must issue on appropriation.

9. No claim shall be allowed by the auditor after five years from the time when it might by law have been presented for payment. No petition shall be received in either branch of the legislature claiming a sum of money, or praying the settlement of unliquidated accounts, unless it be accompanied with a certificate of disallowance by the auditor, or by the officer, board, or person whose order or requisition was necessary to authorize payment thereof, stating the reason why it was rejected. Nor shall a petition be presented to the legislature for the payment of any claim against the state which might have been asserted under the provisions of chapter thirty-seven of the code, unless it be accompanied by a copy of the record of the proceedings of the proper court upon such claim.

No claim allowed by auditor after five years, etc. When petitions against state not to be received by legislature.

What must accompany petition in certain cases.

10. The auditor may administer oaths in relation to any claim presented to him in his official character.

Auditor empowered to administer oaths.

Accounts to be Kept of Appropriations and Disbursements.

11. The auditor and treasurer shall each keep in books to be used for that purpose exclusively, an account of

Books and accounts to be kept by auditor and treasurer

When compared and corrected.

every appropriation made by law, and of the several sums drawn thereon, so that the said books may show at all times the balance undrawn on each appropriation. The accounts so kept shall be compared every quarter year, and the errors, if any, be corrected.

What treasurer to do when he issues check on depository.

12. When the treasurer issues his check on a depository, he shall credit the same to the account of such depository, and charge it to the general account of receipts and disbursements mentioned in the fifth section of this chapter. The auditor shall keep accounts of the particular heads of expenditures, and when he issues his warrant on the treasurer shall credit the treasurer's account therewith and charge the same under the particular head of expenditure to which it properly belongs, distinguishing especially the disbursements on account of the capital and annual income of the school fund, as before directed in relation to the receipts belonging to the said fund.

What auditor to do when he issues warrant.

When general account of treasurer kept by auditor to be compared with that of receipts and disbursements of treasurer; how errors corrected, etc.

13. At the end of every quarter of the year, the general account of the treasurer kept on the books of the auditor's office shall be compared with the general account of receipts and disbursements kept by the treasurer, and the errors, if there be any in either, corrected, the receipts and disbursements of the quarter be adjusted and ascertained, and a balance be struck showing the amount then in the treasury, which balance shall be carried forward in the books of both offices to the account for the next quarter.

When accounts with depositories to be settled, and how balances struck.

14. The treasurer shall cause his account with each depository to be settled at the end of every quarter of the year, and the balance in such depository to the credit of the treasury to be carried forward to the account of the next quarter. The state treasurer shall in his semi-annual report of money on deposit in each depository, show the rate of interest, and the amount and character of security, including the penalty of the bond and the names of the securities given by each depository. He shall also, at least once in every two months, report to said board the amount of state funds in each depository, so far as appears by the papers and records in his office.

What treasurer's semi-annual report to show.

How often he must report amount of state funds and to whom.

Individual Accounts with the State.

Individual accounts with state to be kept in auditor's office; duty of auditor as to same.

15. There shall be kept in the auditor's office all necessary and proper accounts of persons having pecuniary transactions with the state, and especially the auditor shall audit, adjust and settle the accounts of all persons employed in the collection of any part of the public revenue including the school fund, and keep proper accounts for that purpose.

Annual Report of the Auditor.

16. The annual report of the auditor shall be furnished to the governor within one week after the end of the fiscal year. It shall contain a statement of the receipts and disbursements, under the proper general heads, during the preceding fiscal year, and show the balance in the treasury at the beginning and end of that year. It shall also contain an estimate of the revenue and expenditures for the current year, with similar statements and estimates respecting the school fund. It shall show the indebtedness of the state, and the balances standing at the end of the year to the credit of the several unexpired appropriations, specifying in each case the date when the appropriation was made. The report shall be accompanied with such remarks as may serve to explain the amounts of receipts and disbursements, and the balances and estimates reported. In it the auditor shall point out any defects which may occur to him in the revenue laws, and suggest the proper remedies, and if, in his opinion, the future revenue be likely to prove insufficient, he shall recommend plans for increasing the revenue and suggest such new subjects of taxation, or such additional taxes on the old as he may deem proper.

When auditor's annual report to be furnished to governor. What it must contain; facts.

Suggestions.

Office Hours; Absence of the Auditor or Treasurer.

17. The hours for transacting business in the offices of the auditor and treasurer shall be from eight o'clock in the morning until three o'clock in the afternoon, between the first day of April and the first day of November, and from nine in the morning until three in the afternoon during the remainder of the year.

Office hours of auditor and treasurer fixed.

18. When it is necessary for either of the said officers to be absent, the other shall be informed thereof. During such absence the duties of the officer so absent may be performed by the clerk in his office, or by the chief clerk, if there be more than one. But if such absence be for more than a day at a any one time, the governor may appoint a proper person to discharge the duties of such officer during his absence. In either case the absent officer and his sureties shall be liable for any malconduct or neglect of the clerk or person so acting in his place.

When absent less than one day, by whom duties performed.

Provision, when absent more than one day.

Liability in both cases.

Fiscal Year.

19. The fiscal year shall commence on the first day of October and end on the thirtieth day of September ensuing.

When fiscal year to commence and end.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act and inconsistent therewith, are hereby repealed.

Inconsistent acts repealed.

[Approved March 1, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XL.

AN ACT amending and re-enacting chapter thirty-eight of the code of West Virginia.

[Passed February 24, 1882.]

Be it enacted by the Legislature of West Virginia :

Code; chapter 80 of amended. 1. That chapter thirty-eight of the code of West Virginia be, and the same is hereby amended and re-enacted so as to read as follows :

CHAPTER XXXVIII.

NEW COUNTIES AND CHANGES IN COUNTY LINES.

Notice of Application for New County.

Application to Legislature for new county; notice thereof must be published in newspaper.

Also posted at front door of court-houses of counties concerned.

When newspaper will not publish notice, provision made for same.

1. When it is intended to apply to the legislature for the passage of an act to create a new county, a notice of such intention shall be published at least once in each week for four successive weeks in some newspaper published in the county or counties from which any portion of such new county is proposed to be taken, and if none be published in any such county, then such notice shall be published in some newspaper of general circulation in such county, and posted at the front door of the court house of each of the counties out of which the new county is proposed to be formed, for at least thirty days before the application for the survey and the taking of the census hereinafter mentioned. If no such newspaper will publish such notice, it shall be posted at the front door of the court-house of each of such counties at least four weeks before such application for a survey and census is to be made and taken.

Survey to be Made and Census Taken.

Order of survey; how, when and by whom made.

Direction to surveyor; what to be surveyed; number of square miles to be ascertained.

Court to appoint competent census taker.

Population to be ascertained.

2. The county court of each of the counties out of which the new county is proposed to be formed, at its first session after the notice mentioned in the preceding section has been published or posted and published, (as the case may be), as required by said section, shall order a survey of the whole county, and of that portion thereof proposed to be included in the new county to be made by the surveyor of such county, if there be one, and if not by some other competent surveyor, in order to ascertain the number of square miles in the county, as well as in that portion thereof proposed to be included in such new county. Said court shall also appoint some one or more competent person or persons to take a census of the population of the said county and of that part thereof proposed to be included in such new county, in order to ascertain whether or not there will remain in such county, a population of six thousand after the creation of such new county. And no such new county shall be created until it be shown by such survey and cen-

sus that it contains at least four hundred square miles of territory, and has at least six thousand population; and that no county from which any part thereof is proposed to be taken is reduced thereby to less than four hundred square miles of territory, or to less than six thousand population, and that a majority of the qualified voters residing within the lines of the proposed new county, voting on the question, voted in favor of such new county. And no part of the territory of any county shall be included in any new county unless the territory thereof exceeds four hundred square miles, and the population thereof exceeds six thousand. All the expenses attending the publication of the notices, the surveying and the taking of the census, as hereinbefore required, shall be paid by the parties applying for such new county.

New county must contain at least 400 square miles of territory and 6,000 population. No old county must be reduced below 400 square miles of territory and 6,000 population. What vote necessary.

Expenses paid by the applicants.

3. It shall be the duty of the surveyor so directed or appointed to make such survey, and of the person or persons so appointed to take the census as soon as their fees are paid or secured to be paid in a manner satisfactory to them, to proceed in the shortest time practicable, to make said survey and take said census and make report thereof to the county court by which they were appointed; and the surveyor shall return and file with his report two fair plats and certificates of the survey made by him, showing the meets and bounds of the county and the number of square miles of territory contained therein, and the number of square miles contained within that portion thereof proposed to be included in the new county, and the meets and bounds thereof. The return of such survey and census shall be noted in the records of the court, and said reports shall be filed and preserved by the clerk of such court in his office. If it appear by such surveys and census that there is within the limits of the proposed new county, at least four hundred square miles of territory, and at least six thousand population, and that no county is thereby reduced below four hundred square miles of territory or below six thousand population, and that no part of any county having a population of not more than six thousand, or a territory of not more than four hundred square miles, is included within such proposed new county, the county court of each of the counties from which such new county is proposed to be taken shall order a vote of the qualified voters of such county within the lines of such proposed new county to be taken on a day named for the purpose, which shall not be less than twenty nor more than thirty days from the date of such order, at each place of voting within the lines of said proposed new county, or if there be no place of voting therein, at such place or places therein as the court may direct, of which time and place a notice shall be posted by the sheriff of each of such counties at each place of voting therein as provided by said or-

Duty of surveyor and census taker.

Report to be made to county court; plats to accompany surveyor's report.

How return of survey and census to be noted and preserved.

Vote on question; when and by whom ordered.

Qualification of voters, and time and places of voting.

Notice of election to be posted by sheriff of each county concerned.

der, at least fifteen days before said election. The court shall at the same time appoint commissioners of election for each of such places of voting, and all the laws relating to a general election shall, as far as applicable, govern and control the holding of such election, at the several places of voting, the ascertaining of the result thereof at each of said places and the returns thereof, and declaring the general result of such election at all the places of voting in each of said counties: The ballots used at said election shall have written or printed on them the words "For new county," or "Against new county," as the voters may choose. And it shall be the duty of the clerks of the county court of each of such counties to deliver to any person who may demand the same, and pay or tender his legal fees therefor, copies of such surveys, census and declaration of the result of such election in his county, duly certified by him to be true copies. The fees for such copies shall be the same as are allowed by law for other copying done by such clerk.

Commissioners of election; how appointed. shall at the same time appoint commissioners of election for each of such places of voting, and all the laws relating to a general election shall, as far as applicable, govern and control the holding of such election, at the several places of voting, the ascertaining of the result thereof at each of said places and the returns thereof, and declaring the general result of such election at all the places of voting in each of said counties: The ballots used at said election shall have written or printed on them the words "For new county," or "Against new county," as the voters may choose. And it shall be the duty of the clerks of the county court of each of such counties to deliver to any person who may demand the same, and pay or tender his legal fees therefor, copies of such surveys, census and declaration of the result of such election in his county, duly certified by him to be true copies. The fees for such copies shall be the same as are allowed by law for other copying done by such clerk.

General election laws to govern election. shall at the same time appoint commissioners of election for each of such places of voting, and all the laws relating to a general election shall, as far as applicable, govern and control the holding of such election, at the several places of voting, the ascertaining of the result thereof at each of said places and the returns thereof, and declaring the general result of such election at all the places of voting in each of said counties: The ballots used at said election shall have written or printed on them the words "For new county," or "Against new county," as the voters may choose. And it shall be the duty of the clerks of the county court of each of such counties to deliver to any person who may demand the same, and pay or tender his legal fees therefor, copies of such surveys, census and declaration of the result of such election in his county, duly certified by him to be true copies. The fees for such copies shall be the same as are allowed by law for other copying done by such clerk.

How result ascertained and declared. shall at the same time appoint commissioners of election for each of such places of voting, and all the laws relating to a general election shall, as far as applicable, govern and control the holding of such election, at the several places of voting, the ascertaining of the result thereof at each of said places and the returns thereof, and declaring the general result of such election at all the places of voting in each of said counties: The ballots used at said election shall have written or printed on them the words "For new county," or "Against new county," as the voters may choose. And it shall be the duty of the clerks of the county court of each of such counties to deliver to any person who may demand the same, and pay or tender his legal fees therefor, copies of such surveys, census and declaration of the result of such election in his county, duly certified by him to be true copies. The fees for such copies shall be the same as are allowed by law for other copying done by such clerk.

Ballots used; what written or printed on same. shall at the same time appoint commissioners of election for each of such places of voting, and all the laws relating to a general election shall, as far as applicable, govern and control the holding of such election, at the several places of voting, the ascertaining of the result thereof at each of said places and the returns thereof, and declaring the general result of such election at all the places of voting in each of said counties: The ballots used at said election shall have written or printed on them the words "For new county," or "Against new county," as the voters may choose. And it shall be the duty of the clerks of the county court of each of such counties to deliver to any person who may demand the same, and pay or tender his legal fees therefor, copies of such surveys, census and declaration of the result of such election in his county, duly certified by him to be true copies. The fees for such copies shall be the same as are allowed by law for other copying done by such clerk.

Clerks of county court to furnish copies of survey, census and declaration of election results to any persons paying for same. shall at the same time appoint commissioners of election for each of such places of voting, and all the laws relating to a general election shall, as far as applicable, govern and control the holding of such election, at the several places of voting, the ascertaining of the result thereof at each of said places and the returns thereof, and declaring the general result of such election at all the places of voting in each of said counties: The ballots used at said election shall have written or printed on them the words "For new county," or "Against new county," as the voters may choose. And it shall be the duty of the clerks of the county court of each of such counties to deliver to any person who may demand the same, and pay or tender his legal fees therefor, copies of such surveys, census and declaration of the result of such election in his county, duly certified by him to be true copies. The fees for such copies shall be the same as are allowed by law for other copying done by such clerk.

Their fees. shall at the same time appoint commissioners of election for each of such places of voting, and all the laws relating to a general election shall, as far as applicable, govern and control the holding of such election, at the several places of voting, the ascertaining of the result thereof at each of said places and the returns thereof, and declaring the general result of such election at all the places of voting in each of said counties: The ballots used at said election shall have written or printed on them the words "For new county," or "Against new county," as the voters may choose. And it shall be the duty of the clerks of the county court of each of such counties to deliver to any person who may demand the same, and pay or tender his legal fees therefor, copies of such surveys, census and declaration of the result of such election in his county, duly certified by him to be true copies. The fees for such copies shall be the same as are allowed by law for other copying done by such clerk.

Papers to be Filed with Application to Legislature, &c.

4. Every application to the legislature for the formation of a new county, must be accompanied by duly certified copies of the survey, census and order of the county court, declaring the result of such election as aforesaid, together with satisfactory evidence that all the provisions of this chapter have been fully complied with.

Copies of survey, census and order of court to accompany application to legislature. Every application to the legislature for the formation of a new county, must be accompanied by duly certified copies of the survey, census and order of the county court, declaring the result of such election as aforesaid, together with satisfactory evidence that all the provisions of this chapter have been fully complied with.

Notice of Application to Change a County Line.

5. When it is proposed to change a county line, a notice thereof shall be published in some newspaper printed in the county from which any territory is proposed to be taken, if one be printed therein, once in each week for four successive weeks before the survey of the proposed change will be asked for, or if no such paper be printed therein, or all the papers printed therein refuse to publish the same, such notice shall be posted at the front door of the court house of such county at least four weeks before such survey is asked for. At any time after such notice has been posted, or published as aforesaid, the county court of the county, a part of whose territory is proposed to be attached to another county, shall, on application of any person interested, and at his expense, cause a survey of the proposed change of line to be made by the surveyor of the county or by some competent surveyor appointed for the purpose. The surveyor so appointed, or directed, to make such survey shall, as soon as his fees therefor are paid or secured to be paid to his satisfaction, proceed to make such survey and return a plat and report thereof to said court, and the clerk thereof shall file and preserve the same in his office; and shall, as provided in the next preceding section, make

Change of county line; how notice of application published. When it is proposed to change a county line, a notice thereof shall be published in some newspaper printed in the county from which any territory is proposed to be taken, if one be printed therein, once in each week for four successive weeks before the survey of the proposed change will be asked for, or if no such paper be printed therein, or all the papers printed therein refuse to publish the same, such notice shall be posted at the front door of the court house of such county at least four weeks before such survey is asked for. At any time after such notice has been posted, or published as aforesaid, the county court of the county, a part of whose territory is proposed to be attached to another county, shall, on application of any person interested, and at his expense, cause a survey of the proposed change of line to be made by the surveyor of the county or by some competent surveyor appointed for the purpose. The surveyor so appointed, or directed, to make such survey shall, as soon as his fees therefor are paid or secured to be paid to his satisfaction, proceed to make such survey and return a plat and report thereof to said court, and the clerk thereof shall file and preserve the same in his office; and shall, as provided in the next preceding section, make

How survey ordered; at whose expense made. When it is proposed to change a county line, a notice thereof shall be published in some newspaper printed in the county from which any territory is proposed to be taken, if one be printed therein, once in each week for four successive weeks before the survey of the proposed change will be asked for, or if no such paper be printed therein, or all the papers printed therein refuse to publish the same, such notice shall be posted at the front door of the court house of such county at least four weeks before such survey is asked for. At any time after such notice has been posted, or published as aforesaid, the county court of the county, a part of whose territory is proposed to be attached to another county, shall, on application of any person interested, and at his expense, cause a survey of the proposed change of line to be made by the surveyor of the county or by some competent surveyor appointed for the purpose. The surveyor so appointed, or directed, to make such survey shall, as soon as his fees therefor are paid or secured to be paid to his satisfaction, proceed to make such survey and return a plat and report thereof to said court, and the clerk thereof shall file and preserve the same in his office; and shall, as provided in the next preceding section, make

When surveyor proceeds to make survey, and make a return of same to county court. To be filed by clerk. When it is proposed to change a county line, a notice thereof shall be published in some newspaper printed in the county from which any territory is proposed to be taken, if one be printed therein, once in each week for four successive weeks before the survey of the proposed change will be asked for, or if no such paper be printed therein, or all the papers printed therein refuse to publish the same, such notice shall be posted at the front door of the court house of such county at least four weeks before such survey is asked for. At any time after such notice has been posted, or published as aforesaid, the county court of the county, a part of whose territory is proposed to be attached to another county, shall, on application of any person interested, and at his expense, cause a survey of the proposed change of line to be made by the surveyor of the county or by some competent surveyor appointed for the purpose. The surveyor so appointed, or directed, to make such survey shall, as soon as his fees therefor are paid or secured to be paid to his satisfaction, proceed to make such survey and return a plat and report thereof to said court, and the clerk thereof shall file and preserve the same in his office; and shall, as provided in the next preceding section, make

out and deliver to any person who may demand the same, a certified copy thereof. Every application to the legislature for the change of a county line shall be accompanied by a duly certified copy of such plat and report. If the county court of such county refuse to order such survey to be made, or if the surveyor appointed by such court to make such survey fail or refuse to do so, then and in that event the county court of the county to which such territory is proposed to be added, shall order the survey to be made, and appoint a surveyor to make the same; and the surveyor so appointed shall make and report such survey to the county court of his county, as hereinbefore required.

What must accompany application to legislature.

When county court of one county refuses to order survey, or surveyor fails or refuses, how survey may be ordered.

6. If the proposed new county be created with the boundaries specified in the plat and certificate of survey mentioned in the third section of this chapter, a copy of such plat and certificate, showing the courses and distances of the boundary line of such new county, and the streams and other natural objects or points referred to in the act creating the same, shall be filed in the office of the secretary of state, and a similar copy in the office of the clerk of the county court of such new county. But if said new county be created with different boundaries than those so specified, the lines thereof, so far as they differ from those originally run as aforesaid, shall be run and marked by the surveyor of such new county and the surveyors of the counties out of which the same may be formed. They shall make a report of their proceedings to the secretary of state, and also to the clerk of the county court of each of said counties, accompanied by a plat similar in all respects to the one hereinbefore provided for. Such surveying shall be done at the expense of said new county.

When new county created, copy of plat and certificate mentioned in section 3 to be filed in office of secretary of state.

A similar copy to be filed in clerk's office of new county. When different lines are established from those originally reported, how run and marked. Report of surveyors; how and to whom made.

Expense of survey.

Survey of Lands Entered in a New County before its Formation.

7. Within three months after the creation of such new county, the surveyors of the counties out of which the same is formed, shall make out attested copies of all entries for lands in such new county remaining to be surveyed, and shall, on the application of the surveyor of the new county, deliver the same with the warrants on which the entries were founded, to such surveyor, upon his paying fifty cents for every such attested copy. Any surveyor failing to comply with this section shall forfeit one hundred and fifty dollars.

Surveyors of counties, from which new county is formed, to make out copies of entries of land remaining to be surveyed. Disposition of same. Their fees. Penalty for failure to comply.

Powers of Courts and Officers of Counties from Which a New County is Formed.

8. The courts which, at the time of the passage of the act creating a new county, had jurisdiction over the counties from which it is formed, and the justices, sheriffs and

Jurisdiction of courts of old counties to continue until

court of new county established; similar provision for county officials.

When creation of new county not to vacate certain offices.

Pending suits; how disposed of.

When case may be removed to circuit court.

Taxes and levies; by whom collected and to whom paid.

Processes and precepts.

other officers of those counties, shall until a court is held for the new county, continue to have and exercise all the jurisdiction, power and authority which they had at the time of the passage of such act. The creation of a new county shall not vacate the office of any justice, constable, or other officer of any district which is included in whole or in part in the new county, provided such justice, constable, or other district officer resides within the limits of such new county.

9. The courts first mentioned in the preceding section may, after the time of holding a court for the new county, continue to exercise jurisdiction over all cases pending in the said courts at that time; or the court wherein any case is so pending, of which a court of the new county would have had jurisdiction, if brought after the said time, may remove such case to the circuit court of the new county.

10. All taxes and levies assessed or laid by the assessor or county court of any county from which the new county is formed, before the time of holding a court for such new county, and all militia fines and officers' fees in the hands of any sheriff or other officer at that time, shall be collected, accounted for, and paid, and all process and precepts delivered to such sheriff or other officer before that time, shall be executed, returned and satisfied in like manner; and such sheriff or other officer shall have the like powers and liabilities in relation thereto, as if such act had not passed.

[Approved March 1, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XLI.

AN ACT to amend and re-enact chapter thirty-six of the code of West Virginia, concerning the mode of recovering fines.

[Passed February 24, 1882.]

Be it enacted by the Legislature of West Virginia:

Code amended. 1. That chapter thirty-six of the code of West Virginia, is hereby amended and re-enacted so as to read as follows:

CHAPTER XXXVI.

CONCERNING THE MODE OF RECOVERING FINES.

When Fines Accrue to the State.

1. When a statute imposes a fine, (which word is intended to include every pecuniary penalty or forfeiture), it shall be to the state for the support of free schools, unless it is otherwise expressly provided, or would be manifestly inconsistent with the intention of the legislature.

Fines; how word defined; to go to the support of free schools, unless otherwise provided.

2. Although a law may allow an informer or person prosecuting to have part of a fine, the whole thereof shall go to the state for the support of free schools, unless the name of such informer or prosecutor be endorsed on or written at the foot of the presentment at the time it is made, or of the indictment before it is presented to the grand jury, or of the writ issued in the action, or the warrant, or the notice of the motion, before service of such writ, warrant or notice.

Informer not to have part of fine unless name endorsed on indictment, presentment, writ or notice, at time proceedings instituted.

Of the Form of Proceeding; Before what Court or Justice; Trial by Jury.

3. Where fine and imprisonment, or fine and any punishment is imposed by law, the proceeding shall be by indictment or presentment in the circuit court of the county wherein the offense was committed, unless otherwise specially provided.

Fines coupled with imprisonment. Proceedings to recover; must be by indictment or presentment in circuit court, unless otherwise provided.

4. Where a fine alone is imposed, if it be in a case mentioned in section two hundred and nineteen of chapter fifty of this code, it may be recovered upon warrant of a justice having jurisdiction; and whether so mentioned or not, it may be recovered by presentment or indictment in the circuit court of the county wherein the offense was committed.

Fine alone, recoverable by warrant of a justice in certain cases.

5. The proceedings in all cases shall be in the name of the state, unless otherwise specially provided. If before a justice, the proceedings shall be according to sections two hundred and nineteen to two hundred and thirty inclusive, of chapter fifty of this code.

Proceedings to be in name of state. How conducted when before justice.

6. Except where the fine is limited by law to an amount not exceeding five dollars, and imprisonment cannot be lawfully inflicted, the defendant, if the case be in a justice's court, may demand as of right a trial by jury. If a jury be impaneled in such case and find the defendant guilty, they shall ascertain the amount of the fine unless it is fixed by law.

When trial by jury may be demanded.

The verdict.

Remission of Fines.

7. Fines may be remitted by the governor, subject to the

When and how remitted by governor. By auditor in certain cases.

provisions of the twenty-second and twenty-third sections of chapter fourteen of this code, and by the auditor in the case specified in the thirteenth section of chapter thirty-three of this code, and subject to the provisions of that section.

Court cannot remit except for contempt, and then must be at same term fine imposed.

8. No court shall remit any fine except for a contempt, which the court during the same term may either remit wholly or in part. This section shall not impair the judicial power of the court to set aside a verdict or judgment, or to grant a new trial.

Duty of Prosecuting Attorney.

Duty of prosecuting attorney as to recovery of fines.

9. It shall be the duty of the prosecuting attorney of every county to institute and prosecute in the circuit court of his county proper proceedings for the recovery of all fines imposed by law, where the cases are cognizable in such court. He shall superintend the issuing of executions on judgments for fines rendered by such court, and cause all delinquencies in relation to the service or return of such executions to be duly prosecuted. If judgment be rendered by the circuit court for a fine, whether with or without imprisonment, a docket fee of ten dollars for the prosecuting attorney shall be taxed in the costs against the offender.

His fees.

Executions on Judgments of the Circuit Courts for Fines.

When circuit court may issue *capias pro fine* on judgment for fine. When judge may issue the same. When clerk, on order of prosecuting attorney, may issue same. Defendant may be imprisoned till fine and costs are paid.

10. On a judgment for a fine rendered by a circuit court, the court may order a *capias pro fine* to be issued at any time during the term at which such judgment was rendered, and after the adjournment of such term such writ may be issued by the order of the judge of such court. If such writ be not so ordered, it may be issued by the clerk upon the order of the prosecuting attorney at any time after the adjournment of the court. And whether the judgment be for fine and imprisonment, or for a fine without imprisonment, the court may, at any time during the said term, order that the defendant against whom such judgment was rendered be confined in jail until the fine and costs are paid, in addition to the term of imprisonment, if any, fixed by the judgment. *Provided*, That such additional confinement shall not be for a longer period than sixty days.

Not to exceed sixty days.

When court or judge thereof may release defendant from imprisonment. Prosecuting attorney must have notice of application. Writ of *feri facias* may issue on judgment for fines.

11. Whenever a person is in jail under a *capias pro fine*, or for the mere non-payment of the fine and costs for which he is liable as aforesaid, the court, or the judge thereof in vacation, may order him to be released without payment of the fine and costs if it appear proper to do so; but the prosecuting attorney must first have notice of such application; and notwithstanding anything contained in this or the preceding section, a writ of *feri facias* may be

issued on any judgment for a fine in the form and with the effect prescribed by the fifth and subsequent sections of chapter thirty-five of this code. Form and effect of same.

12. On every judgment for a fine rendered by a circuit court, if no special order be made by the court or judge, the clerk of the court shall issue a writ of *feri facias* immediately after the term at which such judgment was rendered. And unless paid in court, a payment to any person other than the officer who holds the execution shall not discharge the judgment. When clerk must issue *feri facias* on judgment for fines. Payment must be in court or to officer holding execution.

List of Fines to Be Returned to the Auditor.

13. The clerk of every circuit court shall, within the thirty days succeeding the first day of July in every year, render under oath to the auditor a list of the fines imposed in his court during the year ending on the said first day of July, excepting those cases in which on the said first day of July executions had been issued and were not returnable before that day, and fines which do not go to the State either wholly or in part. Cases in which executions had been issued before the commencement of the said year, but were returnable within the said year, shall likewise be included. When and how clerk of circuit court must return list of fines to the auditor.

14. In such list there shall be stated the amount of each fine, the date of the judgment therefor and whom against; whether it has been paid to the sheriff or collector in court, or whether an execution has issued therefor; what execution has issued, and if not issued, why not; to what officer it has been delivered; when returnable; whether returned or not, and what return is made thereon. If the execution be returned satisfied either wholly or in part, a copy of the return shall be certified, including the name of the officer by whom made. Any fine imposed by the court under the provisions of this chapter, may be paid to the sheriff in open court, and the clerk shall note such payment on the record. What list must contain.

15. There shall be subjoined to the list a statement of every fine paid into court as well as those for which an execution returnable before the commencement of the year ending on the said first day of July may have been returned with effect, either wholly or in part during the said year. A copy of the return on every such execution shall be certified, and likewise a statement of the proceeds of any insolvent's estate surrendered for a fine, whereof a return may have been made during the said year, with the name of the sheriff making such return. When fine may be paid to sheriff in open court. With list to auditor must be statement of every fine paid into court and of such as recovered, in whole or in part, by execution. Copy of return on execution must be certified. Statement of proceeds of insolvent's estate surrendered for fine; how made.

16. For the services of the clerk under the three preceding sections, his fee shall be one dollar upon every such fine, which fee shall be taxed in the bill of costs. Clerk's fees. To be taxed on bill of costs.

Penalty for clerk's failure to transmit list to auditor.

Prosecuting attorney may be removed from office for compromising or suppressing indictment or presentment without court's consent.

17. If any clerk shall fail to transmit the list to the auditor within the time and in the manner prescribed, or in case there be nothing of which he can make a return, if he shall fail to certify the fact to the auditor, such clerk for every such failure, (unless he shall show good cause therefor,) shall forfeit one hundred dollars. And if any prosecuting attorney shall compromise or suppress any indictment or presentment without the consent of the court entered of record, he shall be deemed guilty of malfeasance in office, and may be removed therefrom in the mode prescribed by law.

Payment of Fines into the Treasury.

How auditor to charge fines against sheriff or other collecting officer.

18. Upon the receipt of the list aforesaid, the auditor shall charge the fines mentioned therein as follows: He shall debit the sheriff or other collecting officer with all fines which he has received, including such as have been paid to him in court, and also with the amount of any which an execution shall have been returnable on or before the first day of July, and not returned.

Sheriff or other collecting officer made liable for amount so charged; how and when he must account for and pay same.

19. Such sheriff or other officer shall thereupon be liable for the money so charged to him, and shall account for and pay it at the time, in the manner, under the penalties and with the commissions prescribed as to money received by the said officers respectively, under the thirtieth and thirty-third chapters of this code, except that no commissions shall be allowed on such payment. But in case it shall appear by the return of any execution mentioned in the eighteenth section that the same has not been collected in whole or in part, the auditor shall credit the officer with the amount uncollected.

When auditor to credit such officer with amount uncollected.

When sheriff or collecting officer entitled to have money refunded him.
How paid.

20. If any sheriff, or other officer shall pay any amount so charged to him, and it shall afterwards appear by the return on the execution therefor that nothing was received thereon, the auditor may thereupon issue a warrant on the treasury to refund the money so paid.

Limitation.

Prosecutions by warrant to recover fines must be commenced within one year after cause arose. Exception.

21. No prosecution by warrant for the recovery of a fine shall be commenced, unless it be done within one year after there was cause therefor, except in cases where a different limitation is prescribed by law."

Acts Repealed.

Inconsistent acts repealed.

2. All acts and parts of acts coming within the purview of this act and inconsistent therewith are hereby repealed.

[Approved March 1, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XLII.

AN ACT to amend and re-enact chapter seven of the code of West Virginia, concerning certain general provisions respecting officers.

[Passed February 24, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter seven of the code of West Virginia be, and the same is hereby amended and re-enacted so as to read as follows : Code amended.

CHAPTER VII.

CERTAIN GENERAL PROVISIONS RESPECTING OFFICERS.

The term of office.

1. The terms of officers, not elected or appointed to fill a vacancy, shall begin respectively as follows: That of the governor, secretary of state, state superintendent of free schools, treasurer, auditor and attorney-general, on the fourth day of March next after their election; that of a member of the legislature, on the first day of November next after his election; that of the judges of the supreme court of appeals, the judges of the several circuits, the county commissioners, prosecuting attorneys, surveyors of lands, assessors, sheriffs, clerks of the circuit courts, clerks of the county courts, justices of the peace and constables, on the first day of January next after their election. When an officer is elected or appointed to fill a vacancy, his term shall be as prescribed by the first section of the fourth chapter of this code.

General provisions respecting officers. Their terms of office. Governor and other state officers. When to begin. Members of legislature. Judges of supreme court and circuits. County commissioners, prosecuting attorney, etc. When elected or appointed to fill a vacancy.

2. The term of every officer shall continue (unless the office be vacated by death, resignation, removal from office or otherwise), until his successor is elected or appointed and qualified.

How long to continue.

Residence, &c.

3. The governor, secretary of state, state superintendent of free schools, auditor, and treasurer, shall reside at the seat of government during their term of office, and keep there the public records, books and papers pertaining to their respective offices. Every judge of a circuit court shall, during his continuance in office, reside in the circuit for which he was elected. Every county and district officer, except the prosecuting attorney, shall, during his continuance in office, reside in the county or district for which he was elected. And the removal of any such officer from the state, circuit, county or district for which he was elected, shall vacate his office.

Their residence; governor, etc., to reside at seat of government. Duties as to public records, etc. Judge circuit court to reside in his circuit. County and district officers, except prosecuting attorney, in their counties and districts. Removal of residence; effect thereof.

Certain Disqualifications to Hold Office.

Certain disqualifications to hold office, prescribed and enumerated.

4. No person convicted of treason, felony or bribery in an election, before any court in or out of this state, shall, while such conviction remains unreversed, be elected or appointed to any office under the laws of this state; and, if any person while holding such office, be so convicted, the office shall be thereby vacated.

Farming out offices prohibited, and penalty therefor prescribed.

5. If any person holding, or expecting to hold any office under the laws of this state, sell the same, or let it to farm, either in whole or part, or contract to do so, such person and the person who may buy, take to farm, or contract to do so, shall be thereby disabled from holding the said office.

Duel; fighting one in or out of state disqualifies principals, seconds, etc., from holding office, etc.

6. Any citizen of this state who shall either in or out of the state, fight a duel with deadly weapons, or send or accept a challenge so to do, or who shall act as a second, or knowingly aid or assist in such duel, shall ever thereafter be incapable of holding any office of honor, trust or profit in this state. Every person who may knowingly have been the bearer of such challenge or acceptance, or otherwise engaged or concerned in any duel actually fought, may be required, in any prosecution against any person but himself for having fought, or aided or abetted in such duel, to testify as a witness; but any statement made by him as such witness shall not be used in any prosecution against himself.

Bearers of challenge, etc., required to give evidence in certain prosecutions.

Such evidence not to be used against himself.

Removal from Office of County and District Officers.

For what, county or district officer may be removed. By whom such removal made.

7. Any county or district officer may be removed from office for official misconduct, incompetence, habitual drunkenness, neglect of duty or gross immorality. Such removal, in case of the clerk of the circuit court, prosecuting attorney, sheriff, surveyor of lands and county commissioners, shall be made by the circuit court of the county; and in case of the clerk of the county court, county superintendent of free schools, assessor, justice of the peace and constable, by the county court of the county. The charges against any such officer shall be reduced to writing and entered of record by the court, and a summons shall thereupon be issued by the clerk of such court, containing a copy of the charges, and requiring the officer named therein to appear and answer the same on a day to be named therein, which summons may be served in the same manner as a summons commencing an action may be served, and the service must be made at least five days before the return day thereof. And the court may, in its discretion, suspend any such officer from the discharge of the duties of his office, and place the records, papers and property of his office during such suspension, in the possession of some other officer or person.

When by circuit court. When by county court.

Charges against such officer; how proceeded with. Summons shall issue. How summons served and at what time.

When court may suspend. In case of suspension, what disposition of official records, etc.

Removal of State Officers from Office.

8. The secretary of state, auditor, treasurer, attorney general and state superintendent of free schools, for any of the causes mentioned in the next preceeding section, may be removed from office by the legislature, a majority of the members elected to each house concurring in the removal. But the officer to be proceeded against must first have reasonable notice of the charges alleged against him, and of the time they will be investigated; and an opportunity to make his defense in person or by counsel, before the legislature or any committee appointed to investigate said charges.

Removal of state officers; when and how may be made.

May be made by legislature; a majority of members elected to concur. Proceedings therein.

9. Any such officer as is mentioned in the next preceding section may, for any of the causes mentioned in the seventh section of this chapter, be removed from office during the recess of the legislature by the governor; but in such case, unless the officer so removed be the secretary of state, the governor shall communicate to the legislature immediately after the beginning of its next session the fact of the removal and the cause thereof; and if the legislature by joint resolution disapprove of the removal, the officer removed shall be thereby re-instated in his office.

Power of governor to suspend when legislature not in session.

When governor to communicate fact to legislature. Proceedings of legislature thereon.

General Rule in Relation to Removals.

10. In cases where there is not a different provision made by law, any person appointed to an office may be removed therefrom by the person or persons having the power of appointment for any of the causes mentioned in the seventh section of this chapter. And where the power of appointment is in one person, on the recommendation or with the consent of another or others, the power of removal shall be exercised in like manner. But officers who are appointed by the governor by and with the advice and consent of the senate, may, during the recess of the legislature, be removed by the governor for incompetency, neglect of duty, gross immorality, habitual drunkenness, or malfeasance in office; and he shall in such case communicate to the senate immediately after the beginning of its next session, the fact of the removal and the cause thereof; and if the senate, by resolution, disapprove of the removal, the officer removed shall be thereby re-instated in his office. *Provided, nevertheless,* that any officer of the state, or any officer of any of the public institutions of the State, may be impeached for any of the causes mentioned in section nine of article four of the constitution, and if convicted thereof, may be removed from office and disqualified to hold any office of honor, trust or profit under the state.

General rule provided for removals from office.

Person appointing to have power to remove, etc.

Rule where officers appointed by governor, with advice and consent of senate.

Duty of governor with respect thereto.

Senate disapproving re-instates officer.

Proviso.

Not to prevent impeachment in certain cases.

Deputies.

Deputy clerk of court; how and by whom appointed.

Deputies of sheriff, surveyor and assessor.

To take same oaths as principal and may discharge same duties
Default of deputy deemed breach of principal's bond.
When sheriff may appoint deputy with consent of circuit court.

How deputies removed from office.

On death of principal, deputy in certain cases to continue to discharge duties in his name.
In such case, default of deputy, breach of principal's bond.
When personal representative of deceased principal may remove deputy and appoint another.

Securities of deceased principal may require new bond of personal representative.
Manner and effect of same.

What code provisions applicable thereto.

Officers *de facto*; when acts of valid.

11. The clerk of any court may, with the consent of such court, or the clerk of the supreme court of appeals or of a circuit court may, with the consent of the judge or the judges thereof in vacation, appoint any person his deputy. A sheriff, surveyor of lands or assessor may, with the consent of the county court, appoint any person his deputy. Such consent shall in every case be entered of record. Every deputy so appointed shall take the same oaths his principal is required to take, and may, during his continuance in office, discharge and perform any of the official duties of his principal; and any default or misfeasance in office of such deputy shall be deemed a breach of the condition of the official bond of his principal. And when in the opinion of the circuit court the public interests require it, a sheriff may, with the consent of the said circuit court, appoint any person his deputy.

12. Such deputy may be removed from office by his principal, or by the court, judge or judges, with whose consent he was appointed.

13. If a sheriff, surveyor of lands or assessor, or the clerk of any court, die during his term of office, his deputies in office at the time of his death may continue to discharge the duties of the office in the name of the deceased principal until his successor is elected or appointed and qualified as prescribed in the fourth chapter of this code. And any default or misfeasance in office of any such deputy shall be deemed a breach of the condition of the official bond of the principal, notwithstanding his death; but the personal representative of the deceased principal shall have the same right to remove any deputy from office and to appoint another that the principal would have had if alive.

14. The securities of any such deceased principal, or any of them, may require a new or additional bond to be given by the personal representative of such deceased principal, in the same manner and with like effect as if such new or additional bond had been required to be given by such principal in his life-time; and all the provisions of chapter ten of this code in relation to such new or additional bond shall be applicable to proceedings under this section.

Acts of Officers de facto Valid.

15. All judgments given and all acts done by any person, by authority or color of any office, or the deputation thereof, under the restored government of Virginia or of this state, before his removal therefrom, shall be valid, though it may afterwards be decided or adjudged that he

was not lawfully elected or appointed or was disqualified to hold the office, or that the same had been forfeited or vacated.

Credentials of County and District Officers.

16. The credentials of county and district officers shall consist of the certificate of the county court mentioned in the twenty-second section of the third chapter of this code.

Credentials; what said to consist of in case of county and district officers.

Credentials of Representatives in Congress and Presidential Electors.

17. The governor shall, if demanded, give a certificate under his hand and the great seal of the state, to every person elected a representative in the congress of the United States, or an elector for president and vice president of the United States, which certificates respectively, shall be to the following effect:

Credentials of representatives to congress and presidential electors; certificate by governor.

STATE OF WEST VIRGINIA, TO-WIT:

I, _____, governor of the said state, pursuant to the act of the legislature thereof in such case made and provided, do hereby certify that A. B., of the county of _____, was duly chosen on the — day of —, a representative in the congress of the United States, for the — congressional district of this state, composed of the counties of _____, for the term commencing on the fourth day of March next (or for the unexpired term ending on the third day of March, —, as the case may be).

Form of same, for representative to congress.

Given under my hand and the great seal of the said state of West Virginia, this — day of —.

STATE OF WEST VIRGINIA, TO-WIT:

I, _____, governor of the said state, pursuant to the act of the legislature thereof in such case made and provided, do hereby certify that A. B., of the county of _____, (and so on, stating the full name of every person elected and the county in which he resides), were duly appointed by this state at an election held therein on the — day of —, electors of president and vice president of the United States.

Form of certificate to presidential electors.

Given under my hand and the great seal of the said state of West Virginia, this — day of —.

Credentials of Senators of the United States.

18. Where a Senator is chosen by the legislature to represent this state in the senate of the United States, the clerk of the house of delegates shall give information of the same to the governor, who shall cause a credential to be made out to the following effect:

United States senators; credentials thereof.

STATE OF WEST VIRGINIA, TO-WIT:

The legislature of this state having, on the — day of —, Form of same.

in pursuance of the constitution of the United States, chosen A. B., of the county of ———, a senator from this state for six years, beginning on the fourth day of March, in the year —, (or for such time as may be assigned to him according to the said constitution, or to fill the vacancy which has happened by the death, resignation or otherwise of C. D.)

I, ———, governor of the state of West Virginia, do hereby certify the same to the senate of the United States.

Given under my hand and the great seal of the said state, this — day of —.

Governor to sign, affix the great seal of the state and deliver to senator chosen.

The governor shall accordingly sign the said credential and cause the great seal of the state to be affixed thereto, and deliver the same to the senator so chosen.

Vacancy in state's representation in United States senate; how filled during recess of legislature. Governor to appoint.

19. When a vacancy shall happen during the recess of the legislature in the representation from this state in the senate of the United States, and the executive shall make a temporary appointment to fill such vacancy, the governor shall cause a credential, under his hand and the great seal of this state to be delivered to the person so appointed, to the following effect :

Form of credentials.

STATE OF WEST VIRGINIA, TO-WIT :

A. B., who was according to the constitution of the United States, a senator from this state for the term ending on the third day of March, in the year —, having died, (resigned or otherwise, as the case may be), during the recess of the legislature, I, ———, governor of the State of West Virginia, do by virtue of the said constitution appoint C. D., of the county of ———, a senator from this state in the senate of the United States, until the next meeting of the legislature.

Given under my hand and the great seal of the state, this the — day of —.

Commissions of the Judges, Attorney General and Militia Officers.

Commissions; of judges and attorney general. Of militia officers.

20. The judges and attorney general shall be commissioned by the governor; officers of the militia shall be commissioned according to the twenty-first and twenty-third chapters of this code.

No Tax or Fees for State Seal.

No fee or tax for state seal in certain cases.

21. When the seal of the state is affixed to any certificate, credential or commission of a public officer, no tax or fee shall be charged therefor.

Office Property.

Office property; what declared to be such.

22. All acts of the legislature, codes, forms, reports, blank books, dockets and other property of whatever kind

furnished to any officer by authority of law, are declared to be the property of the office, and shall be delivered by the retiring officer to his successor within ten days after the latter shall have entered upon the duties of his office.

Within what time to be delivered to successor.

23. If the predecessor of any officer fail to comply with any of the requirements of the preceding section, it shall be the duty of such officer to notify the prosecuting attorney of the county of such failure, who shall at the next term of the circuit court of the county place the official bond of such delinquent party in suit, and unless it appear that such failure was through no fault of the party complained of, there shall be a recovery on his official bond of fifty dollars and the costs of the suit, including an attorney's fee of ten dollars. The penalty recovered in such suit, shall be paid into the general school fund of the state.

Proceedings when predecessor fails to comply.
Successor's duty to notify prosecuting attorney, etc.
His duty in relation thereto.
Recovery of penalty.
Attorney's fee.
How penalty recovered disposed of.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Inconsistent acts repealed.

[Approved March 1, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER XLIII.

AN ACT for the relief of Hugh Evans, late sheriff of Taylor county.

[Passed February 25, 1882.]

WHEREAS, The Baltimore and Ohio Railroad company was charged on the assessor's land book for the county of Taylor, for the years one thousand eight hundred and seventy-one, one thousand eight hundred and seventy-two and one thousand eight hundred and seventy-three, with certain lands and lots of the assessed value of twenty-six thousand eight hundred and eight dollars; and,

Preamble.

WHEREAS, The state, school and public building tax on said lands and lots so assessed and charged for each of said years amounted to the sum of ninety-three dollars and eighty-five cents, making in the aggregate for said years one thousand eight hundred and seventy-one, one thousand eight hundred and seventy-two and one thousand

and eight hundred and seventy-three the sum of two hundred and eight-one dollars and fifty-five cents; and,

WHEREAS, The taxes so assessed were charged against Hugh Evans, then sheriff of Taylor county, by the auditor, and have been paid by him into the treasury; and,

WHEREAS, The said Hugh Evans, by reason of an injunction granted by the United States circuit court for the district of West Virginia, was restrained from the collection of the taxes aforesaid; and,

WHEREAS, The county court of Taylor county, in its settlement and compromise with said railroad company, released and relieved said company from any tax on said lands and lots, for the reason that they were included in the general valuation of said railroad property apportioned to said county of Taylor, as returned to the auditor under chapter twenty-nine of the code; therefore,

Be it enacted by the Legislature of West Virginia:

1. That the auditor be, and is hereby directed, to credit the account of the said Hugh Evans, late sheriff of Taylor county, on the books of his office with the said sum of two hundred and eighty-one dollars and fifty-five cents; and if he has settled his accounts as such sheriff in said auditor's office, then the auditor is directed to issue his warrant upon the treasury in favor of said Hugh Evans for the said sum of two hundred and eighty-one dollars and fifty-five cents, payable out of any money in the treasury not otherwise appropriated.

Act for relief of
Hugh Evans.

Duty of auditor.

[Approved March 1, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XLIV.

AN ACT to create the independent free school district of Jane Lew out of sub-district number two, of Hacker's creek district, Lewis county.

[Passed February 25, 1882].

Be it enacted by the Legislature of West Virginia:

1. That in the event a majority of the votes cast at the election, hereinafter provided for, be in favor thereof, the following described territory in the county of Lewis, including the village of Jane Lew, shall, after the result of

Independent
school district of
Jane Lew
created; how.

such election is ascertained and declared, be an independent free school district and be known as "the independent free school district of Jane Lew," to-wit: All of the village of Jane Lew and the territory adjacent thereto, designated and known as sub-district number two, of Hacker's creek district of Lewis county, as now organized, and bounded and described as follows: Beginning at the county line of Harrison and Lewis counties, below the Joseph Bassel house; thence along said county line to the county road leading across the John Flesher bill; thence with said road to the top of the said bill; thence to a well below the residence of David Boilan; thence to the mouth of Jesse Hughes' run; thence to the Weston and Fairmont turnpike, including the Straley farm; thence to the Clarksburg, Weston and Glenville Railroad and Transportation Company, so as to include the Jane McWhorter farm; thence to the head of Broad run; thence to the beginning.

Boundary.

2. It shall be the duty of the board of education of said Hacker's Creek district of Lewis county, at the general election for county officers for said county, to be held for the year 1882, to submit to the qualified voters of said Hacker's Creek district the question of the adoption or rejection of the provisions of this act, and all persons residing in said Hacker's Creek district entitled to vote at such election, and no others, shall be entitled to vote on such question. The election shall be by ballot, and those voting in favor of the establishment of such independent free school district shall have printed or written on their ballots the words: "For independent free school district," and those voting against the establishment thereof shall have printed or written on their ballots the words: "Against independent free school district." The said election shall be superintended, conducted and the result thereof ascertained and declared by the same officers superintending and conducting the said general election for county officers, elected on that day, and all the provisions of the election laws in this state, so far as they are applicable, shall be in force and govern such election, unless herein otherwise provided. At the said election there shall also be elected by the voters residing in said territory a board of education for said independent free school district, consisting of a president and two commissioners, who shall be a corporation by the name of the "board of education of the independent free school district of Jane Lew," and by that name may sue and be sued, plead and be impleaded, purchase and hold as much real estate and personal property as may be necessary for the purpose of this act, and without any transfer or conveyance they shall be deemed the owners of all real estate and personal property within the territory aforesaid now held or owned for free school purposes by the board of education of Hacker's Creek district,

Duty of board of education of Hackers Creek district at general election.

Who may vote.

Ballots; what to have written or printed thereon.

How and by whom election conducted, etc., and result ascertained, etc.

What laws to apply.

Board of education; election of.

To be a corporation.

Powers and duties of board.

For what time to hold their offices.	and they shall have all the powers, perform all the duties and be subject to all the liabilities, both of boards of education and trustees. They shall hold their offices for the term of eight months, beginning on the first day of November next after their election and until their successors are elected and qualified according to law; and in the year one thousand eight hundred and eighty-three, at the election for county superintendent of free schools and other school officers, and biennially thereafter, a new board shall be elected, who shall hold their offices for the term of two years, beginning on the first day of July next after their election and until their successors are elected and qualified according to law; but nothing herein contained shall be construed to prohibit the re-election and eligibility of any member of such board for two or more terms. Vacancies in the board shall be filled for the unexpired term by appointment by the board.
When new board elected.	
For what term.	
May be re-elected.	
Vacancies in board, how filled.	
What law to govern districts, except, etc.	3. The independent free school district of Jane Lew, herein authorized to be created and established, shall conform to and be governed by the general school law in this state, except where it is otherwise provided by this act.
Financial settlement.	4. All school moneys, whether belonging to the teachers' or building fund, of Hacker's Creek district, which may be unexpended when the provisions of this act take effect, shall be divided between the said Hacker's Creek district and the independent free school district of Jane Lew, in proportion to the amount of taxable property in each of said districts, after the creation of the said independent free school district of Jane Lew. The latest available assessment for state and county purposes shall be taken as the basis of such settlement and division. It shall be the duty of the boards of education of each of said districts, within ninety days after the provisions of this act are adopted, to make the financial settlement provided for in this section. The said board of education of the independent free school district of Jane Lew shall have power to lay levies in the same manner as provided in the case of boards of education of districts, but if, in the judgment of said board, it will be advantageous to the interest of education in such district to do so, they may apply all moneys at their disposal, and which may be levied by them, either entirely to the employment and payment of teachers and the incidental expenses necessary to carrying on and conducting schools, including fuel and other things necessary for such schools, or entirely to building purposes, or partly for either; but there shall be a school taught in said district for at least six months in each year, and the board of education may provide for a longer period, without resorting to a vote of the people residing therein. But the board of education of the independent free school district hereby created shall not lay a greater levy than fifty cents
Basis of such settlement.	
When settlement to be made, and by whom.	
Power of board to lay levies.	
How such levies may be applied by board.	
Schools; for what time to be taught.	
Limit to levy.	

on the one hundred dollars valuation of the property for school purposes, nor more than forty cents on the like valuation for building purposes in any one year.

[Approved March 1, 1882].

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XLV.

AN ACT to incorporate the city of Benwood, in the county of Marshall.

[Passed February 25, 1882].

Be it enacted by the Legislature of West Virginia :

1. The inhabitants of that part of the county of Marshall, within the limits hereinafter stated, shall be and are hereby created a city corporate and body politic, by the name of "The city of Benwood," and as such, shall have perpetual succession and a common seal, and as such, may sue and be sued, plead and be impleaded, contract and be contracted with, and purchase, lease, own and hold real and personal property necessary for the purposes of said corporation.

The city of
Benwood
incorporated.

Corporate
powers.

2. The corporate limits of said city shall be as follows: Beginning at a stake on the riverbank at the termination of Hildroth's lower line; thence north five degrees, fifty-six poles to a stake; thence north one degree east one hundred and twelve poles to a stake; thence north ten degrees east fifty-five poles to a stake; thence north eleven and three-fourths degrees east forty-one and four-tenths poles to a stake; thence north sixteen and three-fourths degrees east sixty-one and four tenths poles to a stake; thence north ten and one-half degrees east twenty poles to a stake; thence north twenty degrees east one hundred and twenty-four and one-half poles to a stake; thence north ten degrees east thirteen poles; thence north seventeen and one-half degrees east one hundred poles to a stake; thence north fifteen and one-half degrees east sixty poles to corner stone of county line; thence with county line south eighty-five degrees east sixty-eight poles to a stake on hill side; thence south twenty-eight degrees west one hundred and forty poles to the abutment of turnpike bridge; thence south twenty-one degrees west twenty-two poles to a stake; thence south one and one-half degrees east forty poles to a stake on top of hill; thence

Corporate
limits.

south thirty-seven degrees west thirty poles to a stake; thence south twenty-seven and one-half degrees west forty-three poles to a stake; thence south fourteen degrees west seventeen poles to a stake; thence south ten degrees east thirty-four and one-half poles to a white oak, thence south three and one-half degrees west thirty-five poles to a stake; thence south eight degrees east twelve poles to a stake; thence south three degrees west fifty-five and one-half poles to a stake; thence south two degrees east seventy-three poles to a red oak; thence south eleven and one-half degrees east twenty-four poles to a stake; thence south two and one-half degrees west twenty-five and one-half poles; thence south twenty-four degrees east thirty-four and one-fourth poles to a stake; thence south eleven degrees east thirty-eight poles to a stake; thence south thirty and one-half degrees east fifty-one and one-half poles; thence north eighty-five degrees west one hundred and eighty poles to the beginning, containing three hundred and sixty-five acres, fifty-seven poles.

Municipal authorities. Mayor, recorder and five councilmen.

Corporate powers to be exercised by council. How and by whom officers elected. Terms of office.

3. The municipal authorities of said city, shall be a mayor, recorder and five councilmen, who must be citizens and residents of said city, and who together shall constitute a common council. All the corporate powers of said city shall be exercised by said council or under their authority, except where otherwise provided. These officers shall be elected by the male citizens who have been residents of said city for one year prior to the election hereinafter provided, and who are entitled by law to vote, and shall hold their offices for one year, and until their successors are elected and qualified according to law.

First election; when held and under whose supervision.

Proclamation of time and place; by whom made and how posted.

Certificates of election. Failure to hold election on day specified; how provided for.

Subsequent elections held annually; time and place.

Contested elections; by whom heard and decided.

4. The first election under this act for the offices above provided shall be held within sixty days after this act takes effect, under the supervision of the justice of the peace of the district of Union, residing within the limits heretofore stated, and two qualified voters by him selected, who shall make proclamation of the time and place thereof, and post the same in at least four of the most public places in said city for four weeks next preceding such election. The person so conducting said election shall grant a certificate of election to the persons elected. If from any cause said election shall not be held at the time designated by said proclamation, the same may be held on any subsequent day upon ten days' notice thereof, given as above provided, by any three of the qualified voters of said city. After the first election of officers in said city they shall be elected on every first Tuesday in April annually at such places in said city and under such supervision, rules and regulations as the council may prescribe not inconsistent with the laws regulating elections. All contested elections shall be heard and decided by the council, and whenever two or more persons shall receive an equal number of

votes for the same office, the person under whose supervision the election is held shall decide by lot which of them shall be returned as elected, and shall make their return accordingly, and when a vacancy shall occur in the office of mayor, recorder, or in the council, by reason of ineligibility, failure to qualify, or otherwise, such vacancy shall be filled by appointment by the council from among the citizens of the city who are eligible.

Ties settled by lot.

Vacancies: how filled.

5. There shall be a sorgeant, treasurer, assessor, health officer and superintendent of streets, roads and alleys of said city appointed by the council thereof, and hold their office during the pleasure of said council. The duties of recorder, treasurer and assessor may be discharged by the same person or otherwise as the council may from time to time determine. The said officers shall perform the duties respectively as herein prescribed or as may be required by council.

What city officers appointed by council.

Term of office.

When duties of several offices may be discharged by same person.

6. The mayor, recorder and councilmen and all other officers of said city shall each, before entering upon the duties of his office, and within ten days after their election or appointment, take the oath prescribed by law for all officers of this state, and to faithfully and impartially discharge the duties of their respective offices. The mayor, recorder, assessor and superintendent of roads, streets and alleys may be required by the council to give bond for the faithful discharge of their duties. The treasurer, recorder, assessor and superintendent of streets may each receive such compensation as may be prescribed by the council.

Oaths of office.

Bonds required.

Compensation.

7. The council shall meet and organize immediately after the members shall have qualified, and shall make such rules and ordinances to regulate the time of meeting, which shall be at least once in every two weeks, and shall make such other lawful rules of business and proceedings as it may deem proper. The council shall be presided over at its meetings by the mayor, or in his absence by the recorder, or in the absence of both by one of the councilmen selected by a majority of the council present. A majority of the council is necessary for and shall be a quorum for the transaction of business. The mayor and recorder shall have votes as members of the council, and in case of a tie the presiding officer shall have the casting vote. The council, through the recorder, shall keep an accurate record of its proceedings, which at each meeting shall be read, corrected, if erroneous, and signed by the presiding officer. Upon the call of any member the ayes and noes on any question shall be taken and recorded.

Council; when to meet and organize.

To appoint time for regular meetings, make rules, etc. The mayor to preside over meetings of council. His absence provided for. Quorum.

Mayor and recorder to vote.

Casting vote.

Journal of council.

Ayes and noes.

8. The powers and duties of the council of the said city shall be as proscribed in sections twenty-eight, twenty-nine, thirty-two, thirty-three and thirty-four of chapter forty-seven of the code, except as herein provided, and said coun-

Powers and duties of council.

As to certain sums chargeable on city, and levy to meet same.

Levy; how and upon what ordered.

Proviso limiting rate of taxation.

How rate may be increased.

Assessor; his duties.

His powers.

Dogs and their owners to be listed.

Lien for taxes; on what property and from what time

How lien enforced.

Priority of lien. Railroads and manufacturing corporations; council inhibited from interfering with rights and property of same. Railroad company heretofore organized to have right to locate, etc., through streets.

Condemnation of real estate for city purposes provided for.

Certain exceptions made.

cil shall at its first meeting or as soon thereafter as practicable, and annually thereafter, cause to be made up and entered upon its journal an accurate estimate of all sums which are or may become lawfully chargeable on said city, and which ought to be paid within one year and it shall order a city levy necessary to pay the same, but said city and its authorities is forever prohibited from incurring any debts or liabilities or from borrowing money. The levy so ordered shall be a capitation tax upon all male citizens over twenty-one years of age, and upon all dogs, and upon all real and personal property within said city subject to state and county taxes. *Provided*, That the tax so levied upon property for all purposes shall not exceed fifty cents on every one hundred dollars of the value thereof, any provision of any other law to the contrary notwithstanding, and shall not be increased unless by a vote of four-fifths of the legal voters of said city and a legislative enactment. It shall be the duty of the assessor to make an assessment of the property within the said city subject to taxation substantially in the manner and form in which assessments are made by the assessor of the county, and return the same to the council on or before the first day of July in each year, but said assessment shall not exceed the valuation for county purposes, and for this purpose he shall have all the powers conferred by law on county assessors. He shall list the number of dogs in the city, and the names of the owners, which list shall be returned to the council. There shall be a lien on real and personal estate within said corporation for the city taxes assessed thereon from the commencement of the year for which they are assessed, and for all other assessments, fines and penalties assessed or imposed upon the owners thereof by the authorities of said city from the time the same are assessed or imposed, which lien may be enforced by the council in the same manner as the lien for taxes for county purposes is now enforced, and shall have priority over all other liens except liens for state and county taxes. The council or other authorities of said city shall not have power or authority to interfere with the property or rights within said city, of any railroad or manufacturing corporation, nor to interfere with the location or construction through said city of the railroad of any railroad company heretofore organized, and any such railroad company shall have the right, if necessary, to locate and construct its railroad through the streets of said city. The condemnation of real estate for roads, streets, alleys, drains and gutters in said corporation shall be as prescribed in chapter forty-two of the code of West Virginia, except as herein provided. But the realty of any such corporation as is mentioned in this section shall not be condemned for any such purpose, nor shall such corporation be compelled to curb or pave any sidewalks, footways, crosswalks, drains or gutters, or to

pay the expense of such curving or paving. So long as the city shall keep in good repair its streets, alleys, walks and gutters, the legal residents thereof shall not be required to work on the roads or pay any tax for the opening or repair of any roads outside of the corporate limits of said city.

Conditions on which residents privileged from working roads, etc.

9. The mayor shall be the chief executive officer of the city. He shall take care that the orders, by-laws, ordinances, acts and resolutions of the council are faithfully executed. He shall be *ex officio* a justice and conservator of the peace within the said city, with all the powers, duties and responsibilities thereof. He shall have control of the police of the city, and may appoint special police officers by and with the consent of the council. It shall be his duty to see that the peace and good order of said city are preserved, and that the persons and property therein are protected, and to this end he may cause the arrest and detention of all riotous and disorderly persons in said city before issuing his warrant therefor. He shall have power to issue executions for all fines, penalties and costs imposed by him, or he may require the immediate payment therefor, and in default of such payment he may commit the party in default to the jail of the county, or to any place of imprisonment in said city prescribed by said council, until the fine or penalty and costs shall be paid; but the term of imprisonment in such case shall not exceed thirty days; or the council may by ordinance require the liquidation of such fine, penalty and costs by work on the streets, roads and alleys of said city, or otherwise, as the council may prescribe. The mayor shall from time to time recommend to the council such measures as he may deem needful for the welfare of the city. The compensation of the mayor shall be the same allowed justices of the peace, and he shall have no other or further compensation. The expense of maintaining any person committed to the county jail shall be paid by the city.

Mayor; his duties, privileges and powers.

His compensation.

Prisoners; expense of to be paid by city.

10. Before entering upon the duties of their offices the sergeant shall execute a bond in the sum of not less than two thousand dollars, and the treasurer shall execute a bond of not less than three thousand dollars, payable to said city with securities satisfactory to the council. The sergeant's bond shall be conditioned for the true and faithful performance of the duties of his office, and for the collecting, accounting for and payment of all taxes, fines, penalties, assessments and other moneys which shall come into his hands, or which it shall be his duty to collect, at such times and conditions as are required by this act, or as the said council may order. The treasurer's bond shall be conditioned for the faithful performance of the duties of his office, and that he will pay over and account for all moneys that shall come into his hands as treasurer when

Sergeant and treasurer; penalty of their bonds.

Condition of sergeant's bond.

Condition of treasurer's bond.

Moneys of city; to whom paid

over and how
disbursed.

and as he shall be thereto required by the council. All moneys belonging to the city shall be paid over to the treasurer, and no such money shall be paid out by him unless ordered and appropriated by the council, upon certificate signed by the presiding officer of the council and countersigned by the recorder.

Sergeant's
duties as to
taxes, fines,
etc.; when and
to whom
account rendered
of
uncollected.
Affidavit to
accompany
account.
Liability for
default.
Compensation.

11. It shall be the duty of the sergeant of said city, at least once in every six months, or as often as required by the council, to render account of all taxes, fines, penalties, assessments, and other claims in his hands for collection, to which list he shall make affidavit that it is correct, and that he has used due diligence for and in the collection of the same, and for any default he shall be liable therefor on his bond, recoverable as hereinafter provided.

He shall receive for his services in the collection of taxes and assessments a commission of five *per centum* on the amount collected; but any person owing such taxes or assessments may pay the same to the treasurer and take his receipt therefor. It shall be the duty of the city sergeant to collect the city taxes, fines, levies and assessments, and in case the same are not paid within sixty days after they are placed in his hands for collection, he may distrain and sell therefor, in like manner as a sheriff may distrain and sell for state taxes, and he shall have in all other respects the same power as a sheriff to enforce the payment and collection thereof, and he shall have all the powers, rights and privileges within the corporate limits of said city in regard to the arrest of persons, the collection of claims and the execution and return of process that can be legally exercised by a constable of a district, and he shall be entitled to the same compensation therefor; and he and his securities shall be liable to all the fines, penalties and forfeitures that a constable is legally liable to for any failure or dereliction in office, which shall be recoverable in the same manner and in the same courts as the same are now or may be recovered against a constable.

When person
may pay such
taxes, etc., to
treasurer.

Collection of
taxes, etc.; by
whom made and
within what
time, etc.

Sergeant's
power to make
arrests, etc.

Compensation
therefor.

His liability.

In what courts
recoverable.

Proceedings
against sergeant
for failing to
collect, etc.

May be by
motion.
When in cir-
cuit court and
when before
justice.

Notice; ten days
required.

Proceedings
against treasurer
for failing,
etc.

12. If the sergeant shall fail to collect, account for or pay over to the treasurer all the taxes, fines, penalties, assessments and other moneys belonging to the said city collected by him, or placed in his hands for collection, it shall be lawful for the said city to recover the same, by motion, in the corporate name of the city in the circuit court of Marshall county, or, where the same does not exceed three hundred dollars before a justice of the district in which said city is situated, against the said sergeant and his sureties, or any or either of them, or his or their executors or administrators, on giving ten days' notice of such motion. And in case the treasurer shall fail to account for and pay over all or any part of the moneys that shall come into his hands belonging to the city, when required by the council, it shall be lawful for the council to

recover the same in like manner and upon the like notice from the treasurer and his securities, or either of them, or his or their personal representatives, as is provided in relation to the sergeant.

13. It shall be the duty of the superintendent of streets, roads and alleys to superintend the opening, construction and repair of the streets, roads, alleys, sidewalks, crossways, footways, drains and gutters within said city, and to put and keep the same in good repair, and to carry into execution all the orders, resolutions and ordinances of the council in relation thereto; and for this purpose he shall have all the rights, powers and privileges, and perform all the duties by law conferred upon and required of surveyors of roads, and shall be subject to the same penalties and liabilities imposed by law upon such surveyors for any neglect of his duty, and subject to such responsibilities as may be proscribed by council not otherwise provided for.

Superintendent of streets, etc.; his duties, privileges and powers.

Penalties and liabilities.

14. This act of incorporation shall not be amended or enlarged unless the consent of four fifths of the legal voters of said city first had and obtained at a municipal election, and a legislative enactment.

Amended or enlarged; how act of incorporation may be.

[Approved March 1, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER XLVI.

AN ACT to amend and re-enact section one of chapter one hundred and thirty-nine of the acts of one thousand eight hundred and sixty-nine, entitled "An act creating an independent school district within the town of Philippi."

[Passed February 25, 1882.]

Be it enacted by the Legislature of West Virginia:

1. Section one of an act creating a school district within the town of Philippi is hereby amended and re-enacted so as to read as follows:

Section 1 of act relating to school district of Philippi amended.

1. The town of Philippi and suburbs contained within the following boundaries, to-wit: Beginning at the outside southern line of Isaiah Wilson's home farm, on the Val-

Boundary of district enlarged.

ley river; thence with his said line to the bend of the river road; thence with the division line of D. F. Byers and Polings, to the top of the hill; thence with the outside line of said Byers, so as to include his lands, to a line of lands claimed by T. A. Hoffman; thence with the outside line of said Hoffman's lands, so as to include the same, to the Beverly and Fairmont pike; thence up said pike so as to include the lands formerly owned by Daniel Flint and the lands owned by I. H. Striekler; thence to Samuel Woods' line; thence with said Woods' line to W. P. Keyes' lines; thence with said Keyes' lines, so as to include all his home farm, to lands of S. H. Morrall; thence with said Morrall's outside lines, so as to include his lands, to the Valley river; thence with said river to the line dividing the lands of D. H. Smith and T. A. Bradford and J. P. Thompson; thence with said division line, so as to include the lands of said Bradford and Thompson, to the said Beverly and Fairmont pike; thence with said pike to the cross-road leading from said pike to the Philippi and Clarksburg pike; thence with said cross-road to said last named pike; thence to and with the Buckhannon road to the line dividing the lands of Rufus Anglin and Solomon Jarvis' heirs; thence with the outside line of said Jarvis lands, so as to include the same, to the Valley river; thence to the beginning, shall constitute one school district. And the board of education thereof shall consist of a president and two commissioners, who shall be elected by the resident voters of the district, and shall have all the powers of boards of education and of trustees of common schools within the same. The election for said board shall be held at the same time and place and by the same officers as the borough election for the town of Philippi for the year one thousand eight hundred and eighty-two, whose term of office shall expire on the thirtieth day of June, one thousand eight hundred and eighty three. Every subsequent election shall be held at the same time and place and by the same officers of the election of common school officers elected on that day; and the term of office of said board shall be the same as members of boards of education. *Provided*, That before this amended section shall take effect, it shall be submitted to the qualified voters of the district from which the territory is proposed to be taken, at the election last mentioned to decide upon the adoption or rejection of the same. The tickets voted at said election shall have written or printed on them "for adoption," or "for rejection;" and if a majority of the votes cast upon that question shall be in favor of adoption, then this section as amended shall have full force; otherwise it shall have no effect.

Board of
education.

Their powers.

When board
elected.

Subsequent
elections.

Proviso as to
when amended
section to take
effect.

Acts Repealed.

2. All acts and parts of acts inconsistent with this act Acts repealed. are hereby repealed.

[Approved March 1, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER XLVII.

AN ACT to amend and re-enact section nine of chapter seventy-nine of the code of West Virginia.

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That section nine of chapter seventy-nine of the code of West Virginia, be amended and re-enacted so as to read Code; section 9 of chapter 79 of, amended. as follows:

9. A justice of the county in which such mine is, before whom complaint of such refusal is made, may issue a summons to such owner, tenant, occupant or agent to answer such complaint. On the return of the summons executed, and proof that the complainant has right of entry, and that it has been refused without sufficient cause, the justice shall designate an early and convenient time for such entry to be made, and issue his warrant commanding the sheriff of the county to attend and prevent obstructions and impediments to such entry, exploration and survey. The costs of such summons, and a fee of three dollars to the sheriff executing the warrant, shall be paid by the person whose refusal caused the complaint. But if the justice dismiss the complaint the costs shall be paid by the party making it. Survey of mine; proceedings before justice to compel entry for such purpose by coterminal owners of lands. Who to pay costs, etc.

[Approved March 1, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XLVIII.

AN ACT to amend and re-enact sections one, four and eight of chapter one hundred and fourteen of the code, as amended and re-enacted by chapter nine of the acts of one thousand eight hundred and seventy-two and seventy-three.

[Passed February 27, 1832.]

Be it enacted by the Legislature of West Virginia :

Code amended; sections 1, 4 and 8 of chapter 114 of, as amended by Acts 1872-3.

1. That sections one, four and eight of chapter one hundred and fourteen of the code, as amended and re-enacted by chapter nine of the acts of one thousand eight hundred and seventy-two and seventy-three be amended and re-enacted so as to read as follows :

Jurisdiction of courts and justices where water course between counties. Concurrent in certain cases.

Where water bounds state.

1. When any river or water-course lies between any counties in this state, the circuit and county courts and justices for the counties on each side respectively shall have concurrent jurisdiction over so much thereof as is opposite to said counties. And the circuit and county courts and justices for counties lying on the waters bounding the state shall have jurisdiction respectively over such waters opposite said counties, so far as the jurisdiction of this state extends.

Proceedings of court; how drawn up, read and signed.

4. The proceedings of every court shall be entered in a book and read in open court by the clerk of the court. The proceedings of each day shall be drawn up at large and read the next day, immediately after the court is opened, and after being read, and corrected where it is necessary, shall be signed by the judge or presiding officer before the transaction of any other business, except those of the last day of the term and of the day on which the court may adjourn to a future day, as prescribed in chapter one hundred and twelve of this code, which shall be drawn up and read, corrected where it is necessary, and signed by the said judge or officer on the same day.

On last day of term; how provided for.

8. No such place of session for a circuit or a county court shall be without the limits of the county in which it is to be held; and when such place is appointed because of the destruction of the building in which the supreme court of appeals was held, the new place of session shall be within the same town with the old.

Place of session for circuit and county courts not to be outside of county for which held. Place for holding court of appeals when building destroyed.

[Approved March 1, 1832.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XLIX.

AN ACT to amend and re-enact chapter seventy-six of the code of West Virginia, concerning the release of liens.

[Passed February 27, 1882.]

Be it enacted by the Legislature of West Virginia :

1. Chapter seventy-six of the code of West Virginia is hereby amended and re-enacted so as to read as follows : Code amended;
chapter 76 of.

CHAPTER LXXXVI.

RELEASE OF LIENS.

How Liens May be Released.

1. Any person entitled to the benefit of any lien on any estate, real or personal, or to the money secured thereby, whether the lien was created by conveyance, judgment, decrees, *lis pendens*, notice of attachment or otherwise, may release such lien by a writing signed by him and acknowledged before a clerk of a county court or other person authorized to take acknowledgments of deeds, and admitted to record in the proper county. Such writing shall be known as a release, and shall be deemed sufficient, if it describe the lien to be released by any words that will identify and show an intent to discharge the same. Lien; how
person entitled
to may release
same by
writing, etc.
Writing to be
signed,
acknowledged
and recorded.
To be known as
a release; when
deemed suffi-
cient.

2. Releases and their acknowledgment may be in form or effect as follows: Forms of
releases and
their acknowl-
edgment.

I. In case of a mortgage or deed of trust: "I, A— B—, hereby release a mortgage (or deed of trust), made by C— D— to me (or to E— F—, my trustee, or to ———, and assigned to me), dated the — day of —, and recorded in the office of the clerk of the county court of ——— county, West Virginia, in deed book —, page —. (to be signed) A— B—. Acknowledged before the subscriber, this — day of —; (to be signed) G— H—, justice, (or clerk of the county court, notary public, etc., as the case may be)." In case of mort-
gage or deed of
trust.

II. In case of a lien for purchase money, reserved by conveyance: "I, A— B—, hereby release the right reserved to me in a conveyance executed by me (or myself and wife), to C— D—, dated the — day of —, (etc., as in the preceding form)." In case of lien
for purchase
money reserved
by conveyance.

III. In case of a judgment or decree: "I, A— B—, hereby release a judgment, (or decree) in my favor, (or in favor of J— K—, which has been assigned to me; or, in favor of J— K— for my use), against C— D—, for (stating the amount), with interest and costs, rendered by In case of
judgment or
decree.

Assignment of liens; what necessary thereto; must be acknowledged. When recorded with release.

When personal representative, committee, etc., may sign and acknowledge release.

In what office release presented for record.

To take effect from time so presented.

Index of releases, etc.; duty of county court clerk in respect thereto. When and how clerk to note fact of release, etc., on lien, record or docket.

Where party refuses to execute proper release; circuit court may direct county clerk to do so.

Proceedings by motion after notice.

Costs.

Construction of this chapter; not to authorize discharge of lien in certain cases, nor to affect validity of certain writings.

Proceedings of clerk when execution in certain cases returned satisfied.

(stating the court by which or the justice by whom it was rendered, and the term or date at which it was rendered to be signed and acknowledged as above)." Every assignment of any such lien must be acknowledged by the assignor in the same manner as a release of a lien is acknowledged; and when such lien is released by the assignor thereof, such assignment must be recorded with the release.

3. In case of the death, insanity, or infancy of the person entitled to the lien, the release may be signed and acknowledged by the personal representative, committee, or guardian of such person, as the case may be.

4. When the release has been so signed and acknowledged, it may be presented for record to the clerk in whose office the lien thereby intended to be released is recorded or docketed, and from and after the time the same is so left for record (which time the clerk shall endorse thereon), the said lien shall be discharged and extinguished, and the estate, of whatever kind, bound or affected thereby, shall be deemed to be vested in the former owner or those claiming under him, as if such lien had never existed.

5. The clerk of the county court shall record and properly index all releases under this chapter, and deeds of release admitted to record in his office, in a well-bound book to be kept exclusively for the purpose, and when any release or deed of release is recorded, he shall note the fact on the margin of the record or docket of the lien discharged thereby, with a reference to the book and page where the same is recorded.

6. In case of the refusal of the party holding such lien to execute a release upon request of the party entitled thereto, the circuit court having jurisdiction may on motion, after reasonable notice to the party so refusing, and if no good cause be shown against it, direct the clerk of the county court to execute such release, and it shall thereupon have the effect of releases executed under the first section. The proceedings shall be at the cost of the party so refusing.

7. Nothing in this chapter contained shall be construed to authorize the discharge of any lien contrary to the provisions of the instrument under which the lienor claims, or to impair or effect the validity of any deed of release or other writing discharging any lien in this chapter mentioned, either heretofore or hereafter created or made.

8. When an execution issued upon a judgment or decree, which has been entered in the judgment lien docket in the office of the clerk of the county court, is returned satisfied, the clerk to whose office such return is made, shall certify the same to the clerk of the county court, and such return

shall be entered by the said clerk in the margin of the docket of such judgment or decree. Any officer failing in his duty under this section shall be fined twenty-five dollars, and he and the sureties in his official bond shall be liable to any party injured for all damages caused by such failure.

Penalty for failure: fine and liability for damages.

[Approved March 1, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER L.

AN ACT amending and re-enacting section eight of chapter seventy-four of the code of West Virginia.

[Passed February 27, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That section eight of chapter seventy-four of the code of West Virginia, be amended and re-enacted so as to read as follows:

Code amended.

8. Where two or more writings embracing the same property, are admitted to record in the same county on the same day, if the previous sections do not provide for the case, that which was first admitted to record shall have priority in respect to the property in such county.

When two deeds on same property are recorded same day; which has priority.

[Approved March 1, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LI.

AN ACT to amend and re-enact sections eleven and twelve of chapter one hundred and twenty-seven of the code of West Virginia, as amended and re-enacted by chapter one hundred and thirty-seven of the acts of one thousand eight hundred and seventy-two and seventy-three.

[Passed February 27, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That sections eleven and twelve of chapter one hun-

Code amended; sections 11 and 12 of chapter 127 as amended by Acts 1872-3.

dred and twenty-seven of the code of West Virginia, amended and re-enacted by chapter one hundred and thirty-seven of the acts of our thousand eight hundred and seventy-two and seventy-three, be, and the same are hereby amended and re-enacted so as to read as follows:

When and how circuit court may reinstate causes and set aside non-suits.

11. Any circuit court may, on motion, reinstate on the trial docket of the court any case dismissed, and set aside any non-suit that may be entered by reason of the non-appearance of the plaintiff, within three terms after the order of dismissal may have been made, or order of non-suit entered.

After order reinstating cause or setting aside non-suit, cause to be proceeded with regularly.

12. All causes in which orders of dismissal have been made, or orders of non-suit entered, which orders have been set aside and causes reinstated, shall remain upon the docket, and be proceeded with in the same manner as if the order had never been made; *Provided*, That no such cause shall be brought to trial, or proceeded in, until the defendant therein shall have had at least thirty days personal notice in writing, or if he be a non-resident, by the publication of such notice once in each week for four successive weeks, in some newspaper designated by the court, that said cause has been re-instated on the docket.

Proviso.

Notice; either personal or by order of publication required.

[Approved March 1, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LII.

AN ACT in relation to the government of the city of Wheeling.

[Passed February 27, 1882.]

Be it enacted by the Legislature of West Virginia:

Wheeling city charter amended. Providing for election by council of three water commissioners and three members board of public works.

1. That there shall be elected by the council of the city of Wheeling, in joint session, a quorum of each branch being present, at their first meeting after this act takes effect, or as soon thereafter as practicable, and thereafter at their first meeting after every regular charter election, or as soon thereafter as practicable, in like joint session, three water commissioners and three members of the board of public works; those elected at the first meeting after the next regular charter election to hold their respective offices for the term of two years, and the terms of office of those elected at the first meeting after this act takes effect to terminate with the first meeting of council

Term of office.

after the next regular charter election, but all of said officers shall continue in office till their successors are elected and qualified.

2. The city water board, composed of the water commissioners, shall have under rules and regulations to be adopted by the board, and reported to and approved by council, the control, supervision and management of the water works and running of the same, of the reservoir and pipes, repairs, improvement and additions thereto, of the supply of water to the consumers, for such compensation as may be fixed by such rules and regulations. shall collect the revenues from water rents and otherwise from water or the works, and disburse the same, and shall employ and discharge at their discretion a superintendent and such other officers and employes as may be necessary; such officers and the salaries to be paid them to be approved and confirmed by council. But the present superintendent of the water works shall continue in office, at his present salary, until the first meeting of the city council after the next regular charter election, but he shall make out of his said salary the same payments to subordinate employes as at present, and during the remainder of his term of office shall be subject to the general supervision, control and direction of, and shall report to, the water board in the discharge of his duties as heretofore prescribed.

City water board; to have control, etc., of water works.

Compensation of commissioners.

Power to collect revenues and disburse same.

How salaries paid.

Present sup't to continue in office until, etc.; his duties under this act.

3. That the board of public works under rules and regulations to be adopted by them, and approved and confirmed by the council, shall have the management of and contract for the improvement, cleansing, care and repairs of the sewers, streets and alleys of the city, and employ and discharge at their discretion a city engineer, and such other officers and employes as may be necessary, prescribe their duties and have the control and supervision thereof; shall supervise the execution of such contracts and the disbursement of all moneys for or upon the sewers, streets and alleys; such officers and the salaries to be paid them, to be approved and confirmed by council. But the present street commissioner and city surveyor shall continue in office until the first meeting of council after the next regular charter election, at their present rates of compensation, and shall be subject to the general supervision, control and direction of, and shall report to, the board during the remainder of their terms of office, in the discharge of their duties, as heretofore prescribed.

Board of public works to manage, etc., streets and alleys.

City engineer and other officers; how appointed and their duties defined.

Board to supervise contracts and disburse moneys. Salaries.

Present street commissioner and surveyor to continue in office until, etc. Their duties under this act.

4. At the expiration of the term of two years for which the present trustees of the gas works of the city of Wheeling were elected, the council of the city in like joint session shall elect three officers, to be called trustees of the gas works, who shall hold their office for the term of two years, or until their successors are elected and qualified.

Trustees of gas works; how appointed.

Term of office.

- Their duties.** 5. The said trustees shall have, under rules and regulations to be adopted by them and approved by council, control, supervision and management of the gas works, pipes, and connections, of all necessary repairs, of the purchase of all necessary materials, of the supply of gas to consumers, of the collection of the revenues arising from the works and from gas supplied, of the disbursements of the same, and shall employ and discharge at their discretion, a superintendent and such other officers and employes as may be necessary; such officers and the salaries to be paid them to be approved and confirmed by council, and shall, under such rules and regulations, prescribe the duties and have the supervision and direction of all such officers and employes.
- Collection and disbursement of revenues.**
- Superintendent and other officers; how appointed and paid.**
- Council to have supervision over rules and regulations.** 6. Council may at any time amend, modify or annul any of said rules or regulations.
- Salary of board of public works, water commissioners and gas trustees.** 7. The said members of the board of public works, commissioners and trustees shall each receive for his services a salary of one hundred dollars per year.
- Bonds to be given by them.** 8. Council shall require and take from such of the officers created and provided for by this act, and employes mentioned or referred to therein, as they shall deem proper, such bonds, obligations, or other writing, payable to the city, as they shall consider necessary or proper, conditioned for the faithful performance of their official duties.
- Their oath.** 9. The oath prescribed by section five of article four of the constitution of the state of West Virginia, shall be taken by all officers created or provided for by this act, before entering on their official duties.
- Reports to be made by them to council.** 10. Said boards and trustees shall once in every three months, or oftener if so required by council, report to council a full statement of their receipts and disbursements made by them during the three months next preceding such report, or since their last report, or longer.
- Council may pass ordinances not inconsistent, etc.** 11. Such ordinances may be passed from time to time by council, not inconsistent with this act, in reference to the matters and things committed to the charge of such boards and trustees, and with reference to said boards and trustees as may be necessary or expedient.
- Members of council ineligible for election as trustees, commissioners or members of board.** 12. No member of the city council shall hereafter be eligible for election or appointment as a trustee, commissioner or member of the board of public works, and if any such trustee, commissioner or member of the board of public works shall hereafter become a member of the city council his office as such trustee, commissioner or member of the board of public works shall be thereby vacated.

13. No member of said boards, nor any such trustee or officers appointed by, and no person employed by said boards or trustees shall be interested, directly or indirectly, in any contract, bargain, sale or agreement by or to said boards or trustees, or any of them, other than for his own wages as an employe, under a penalty of a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment, with labor without compensation at any of the public works or improvements undertaken or to be undertaken by said city, for any period not exceeding one year, or by both such fine and imprisonment, at the discretion of the judge of the municipal court of Wheeling or of the jury in the appellate court. Any violation of this section shall be punished by a prosecution in the same manner as for violation of a city ordinance before the municipal court of Wheeling, on the police side thereof, but no jury shall be allowed in the trial for such violation. An appeal shall lie in such cases as in case of a violation of a city ordinance, and on conviction the office or employment of the offender shall be forfeited and be thereby vacated, and he shall be forever ineligible for such office and for employment by such boards or trustees.

Members of board, etc., not to be interested in contracts, etc.

Penalty; fine and imprisonment.

By whom imposed.

Prosecutions under this act; how and where conducted.

No jury allowed Appeals. Effect of conviction.

Acts Repealed.

2. All acts and parts of acts inconsistent with this act are hereby repealed.

Inconsistent acts repealed.

[Approved March 1, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER LIII.

AN ACT to amend and re-enact sections three, four, seven, eight, nine and thirteen of chapter eighty-two of the code of West Virginia, as amended and re-enacted by chapter one hundred and fifty nine of the acts of one thousand eight hundred and seventy-two and seventy-three.

[Passed February 27, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That sections three, four, seven, eight, nine and thirteen of chapter eighty-two of the code of West Virginia, as amended and re-enacted by chapter one hundred and fifty-nine of the acts of one thousand eight hundred and seventy-two and seventy-three, be amended and re-enacted so as to read as follows :

Code amended; sections 3, 4, 7, 8, 9 and 13 of chapter 82.

When county court may appoint guardian for minor.

3. The county court of any county in which any minor resides, or if he be a resident out of the state in which he has any estate, may appoint a guardian for him, unless he have a guardian appointed as aforesaid by his father or mother.

When minor under 14, court to appoint; when over, may himself select one; how done.

4. If the minor be under the age of fourteen years, the county court may appoint his guardian; if he is above that age he may in the presence of the court, or in writing acknowledged before any officer authorized to take the acknowledgment of a deed, nominate his own guardian, who if approved by the court, shall be appointed accordingly, and if the guardian nominated by such minor shall not be appointed by the court, or if the minor shall reside without the state, or if, after being summoned, he shall neglect to nominate a suitable person, the court may appoint the guardian in the same manner as if the minor was under the age of fourteen years.

Duty of court on failure of minor to nominate.

Duties of guardian; bond to be given; to have custody of ward, etc.

7. Every guardian who shall be appointed as aforesaid, and give bond when it is required, shall have the custody of his ward, and the possession, care and management of his estate, real and personal, and out of the proceeds of such estate shall provide for his maintenance and education, but the father of the minor, if living, and in the case of his death, the mother, if fit for the trust, shall be entitled to the custody of the person of the minor, and to the care of his education. And unless the guardian shall sooner die, be removed or resign his trust, (and the court that appointed him may allow him to resign) he shall continue in office until the minor shall attain the age of twenty-one years, notwithstanding the minor may marry before that time, or, in the case of a testamentary guardianship, until the termination of the period limited therefor. At the expiration of his trust, he shall deliver and pay all the estate and money in his hands or with which he is chargeable, to those entitled thereto, and no married woman shall be appointed a guardian, and the marriage of a female guardian shall terminate her guardianship.

When father or mother to have custody of minor's person, and care of his education.

How long guardian to continue in office.

Testamentary guardian
What guardian to do when trust expires.
No married woman to be guardian; when marriage terminates trust.

No disbursements where will or deed does not authorize same.

Exceptions enumerated.

When ward too young to be bound out, etc.

When made for his education or maintenance.

In such cases, guardian must apply to circuit court by petition.

8. No disbursements shall be allowed to any guardian, where the deed or will under which the estate is derived does not authorize it, except in the following cases:

First. When the ward is of such tender years or infirm health that he cannot be bound out as an apprentice, or no suitable person will take him as such; or

Secondly. When (although old enough to be bound out as an apprentice) it is deemed best for the ward that the principal of his personal estate, or a portion thereof should be applied towards his education or maintenance. But the guardian shall, before thus applying any part of said principal, file his petition before the circuit court of the county in which he was appointed, for permission thus

to apply the whole or a portion of said principal, in which petition he shall state the facts relied on by him to induce the court to grant the prayer of the petition. The court shall appoint a guardian *ad litem* for the ward, who shall answer the said petition. Depositions shall be taken upon notice to said guardian *ad litem* to sustain the allegations of said petition, and the said guardian *ad litem* may take counter depositions. Upon the hearing of the case the court may grant or refuse the petition as to it may seem judicious and proper. No credit shall be allowed the guardian in the settlement of his accounts for expenditures for his ward under this section, except for such amount as the said court shall have first authorized to be expended of the principal of his personal estate, as hereinafter provided.

What petition must state.

Guardian *ad litem* to answer petition.

Evidence necessary.

Hearing of petition; court may grant or refuse.

What credits not allowed guardian on settlement.

9. When any such disbursements shall be so allowed, the court may, if necessary, order the sale of such portions of the personal estate of the ward as may be necessary to pay the balance of expenditures over and above the income of his estate, but neither the ward personally, nor his real estate, shall be liable for such disbursements.

When disbursements ordered, how fund provided for out of ward's personal estate.

13. The circuit courts in chancery may hear and determine all matters between guardians and their wards, require settlements of the guardianship accounts, remove any guardian for neglect or breach of trust, and appoint, or order another to be appointed in his stead, and make any orders for the custody and tuition of an infant, and the management and preservation of his estate.

Chancery jurisdiction of circuit courts over matters between guardian and ward; may remove or appoint guardian, etc.

[Approved March 6, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LIV.

AN ACT to amend and re-enact chapter eighty of the code of West Virginia, as amended and re-enacted by chapter one hundred and fifty of the acts of one thousand eight hundred and seventy-two and seventy-three, and by chapter fifty-two of the acts of one thousand eight hundred and seventy-five.

Title.

[Passed February 28, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter eighty of the code of West Virginia, as amended and re-enacted by chapter one hundred and fifty

Code amended; chapter 50 as amended by Acts 1872-3 chapter 150, and Acts 1875 chapter 52.

of the acts of one thousand eight hundred and seventy-two and seventy-three, and by chapter fifty-two of the acts of one thousand eight hundred and seventy-five, be amended and re-enacted so as to read as follows:

CHAPTER LXXX.

Of the Maintenance of Illegitimate Children.

Bastards; proceedings against accused father.
Duty of justice.
Recognizance required of accused.
When proceedings may be had by married woman.

1. Any unmarried woman may go before a justice of the county in which she has resided for the preceding year, and accuse any person of being the father of a bastard child of which she has been delivered. The said justice shall examine her under oath, and reduce her examination to writing and sign it. On such examination, unless the child be three years old or upwards, the justice shall issue a warrant, directed to the sheriff of, or a constable in any county where the accused may be, requiring him to be apprehended and taken before a justice of the county in which he may be found; and it shall be the duty of such justice to require the accused to enter into a recognizance, with one or more good securities, in a sum not less than three hundred dollars, nor more than five hundred dollars, conditioned for his appearance at the next term of the circuit court of the county in which such warrant issued, to answer said charge, and to abide by and perform the order of the court in relation thereto. If a married woman live separate and apart from her husband for the space of one year or more, and shall not at any time during such separation cohabit with her said husband she may, if she be delivered of a child at any time after the said one year, and while such separation continues, accuse any person, other than her husband, of being the father of such child, in like manner, and the same proceedings shall thereupon be had, as if she were an unmarried woman.

Recognizance to continue in force if case continued. Exception thereto.

2. Should the court continue the case at the first or any subsequent term, the recognizance shall continue in force until the final judgment, unless the accused, if a new recognizance be required, shall give the same or be committed to jail.

Proceedings may be in name of woman or of county court.

3. After such accusation shall have been made, proceedings thereupon may be had in the name of the woman or, if the court so order, in the name of the county court.

Plea, and proceedings thereon.
What required of accused when found guilty.

4. If the accused appear and plead not guilty, the issue shall be tried by a jury, if not waived by the parties, and if he be found guilty, the court shall order him to pay to the county court for the maintenance of the child, such sums as it may deem proper for each year, until such time as the court may appoint, unless it sooner die; and shall order the father to give a bond in such penalty and with such sureties as it may deem sufficient for the performance

of said order; and shall order him to jail until such bond be given in the court or filed in the clerk's office with sufficient sureties, to be approved by the court or clerk, or the woman and the said county court consent to his discharge, or until he be discharged by an order of the circuit court or county court, the court being satisfied that the prisoner cannot pay the judgment of the court or give the bond required, or he be otherwise legally discharged; and if found not guilty by the jury he shall be discharged, and shall recover his costs against the party in whose name the proceedings are had.

Must give bond or go to jail.

How and when released from jail.

When found not guilty, discharged, and entitled to costs.

5. As often as the condition of such bond is broken, a motion may be made before the circuit court of the county and judgment may be given in the name of the county court, against the said father and his sureties, and against his and their personal representatives, for the money due, with lawful interest thereon from the time or times when the same ought to have been paid.

Proceedings when conditions of bond are broken.

6. The prosecuting attorney for the county shall appear on behalf of the woman or of the county court in every case under this chapter, and if judgment be given against the father, there shall be included in the costs a fee of ten dollars to said attorney.

Duty of prosecuting attorney.

His fee.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Inconsistent acts repealed.

[Approved March 6, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER LV.

AN ACT amending and re-enacting chapter forty-nine of the code of West Virginia.

[Passed February 28, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter forty-nine of the code of West Virginia, be and the same is hereby amended and re-enacted so as to read as follows:

Code amended; as chapter 49.

CHAPTER XLIX.

CERTAIN REGULATIONS RESPECTING MAGISTERIAL DISTRICTS.

Collection of District Taxes.

1. The sheriff of every county, except where it is

District taxes; by whom collected.

otherwise provided by law, shall be the collector of all district taxes levied for the use of the school fund; the building fund; for the opening, constructing and repair of roads and bridges, or for any other district purpose. He shall commence the collection of the taxes mentioned in this section at the same time he commences the collection of the state and county taxes, and the several sections of chapter thirty of this code, from the fifth to the seventeenth, both inclusive, shall be applicable to district levies in like manner as they would be if the words "district levies" were inserted therein in place of the word "taxes," and "district levy" in place of the word "tax."

When collection commences.

What sections of code, chapter 30, applicable.

Relief Against District Levy Improperly Assessed.

Improper assessments and payments. Proceedings to obtain relief therefor.

Notice to be given to prosecuting attorney, who must attend, etc. Order of county court in such cases.

A copy given to collecting officer.

His duty in relation thereto, and effect of order as voucher

2. If any person think that he is improperly assessed with a district levy, or required to pay more than is proper on account of the same, he may within one year from the date of the order making the levy of such tax, apply for relief to the county court of the county, but before such application is acted on, he must give reasonable notice thereof to the prosecuting attorney, whose duty it shall be to attend to the interest of the district in the matter. Upon such application, the county court shall order the applicant to be exonerated from so much as is improperly charged to or required from him if not already paid; or if it be paid, they shall order it to be refunded to him. And the collecting officer, upon delivery to him of a copy of such order, certified by the clerk of the county court, shall obey the same, and the copy shall be a sufficient voucher to the officer in his settlement for the district levy, for the amount thereby exonerated or ordered to be refunded.

Delinquent Lists—Sale of Delinquent Lands for District Levies.

Delinquent lists for district levy; to be returned and real estate sold. Form of lists of delinquent lands.

3. The delinquent lists for district levies shall be returned and real estate sold therefor as hereinafter provided. Such lists of delinquent lands shall be in form or in substance as follows: "List of real estate in the district of ——— in the county of ——— delinquent for the non-payment of school, road, and district taxes thereon for the year ———;"

Name of Person.	Estate Held.	Quantity of Land.	Description and location of Land.	Distance and bearing from court house.	School Tax.	Building Tax.	Road Tax.	Special District Tax.	Why returned delinquent.

The delinquent list of personal property shall be in form or in substance as follows: Form of delinquent list of personal property.

"List of personal property in the district of _____, in the county of _____, delinquent for the non-payment of district taxes thereon for the year ____."

Name of Person.	Total value of personal property charged.	School Tax.	Building Tax.	Road Tax.	Special District Tax.	Why returned delinquent.

The said lists shall be verified as proscribed by section eighteen of chapter thirty of this code, and shall be presented to the county court of the county at or before the session thereof at which the county levy is laid, and the same shall be examined, corrected and certified by said court as provided in section twenty-one of said chapter thirty, except that the delinquent list of personal property shall be certified to the secretary of the board of education of the district instead of the auditor. The amount of the delinquent lists of real estate allowed by the court shall also be certified by the clerk of said court to the secretary of said board of education. Lists; how verified, and to whom and when presented. By whom and how examined, corrected, etc. Exception as to delinquent list of personal property. Amount of lists of real estate certified to secretary of district board of education.

Duty of Auditor as to Delinquent Lists.

4. It shall be the duty of the auditor in the month of July or August, one thousand eight hundred and eighty-three, and in one of these months every two years thereafter, to cause to be delivered to the sheriff or collector of taxes for every county, two lists of the real estate in each Auditor's duties as to delinquent lists.

Must deliver two copies thereof to sheriff or collector of every county.

Statement accompanying same. Fifteen per cent damages added to original.

Sheriff's or collector's duties in relation thereto. How to advertise and sell real estate. Chapter 30 of Code applicable to such sales.

Lien on real estate for taxes: character of same.

Rate of interest upon levies; from what date.

Delinquent list of personal property; how disposed of.

How collected, and accounted for by sheriff.

When placed in hands of constable, etc.

Commissions for collecting; what deductions subject to.

district in such county returned delinquent for the non-payment of district levies, as provided in the preceding section, and on which the said levies and interest, or any part thereof remain unpaid, with a statement of the amount due for taxes and interest on each tract or lot mentioned in said list, up to the first day of September following, with fifteen per cent damages on the amount due, added thereto.

Duty of Sheriff or Collector on Receipt of such Lists.

5. Upon receiving the lists mentioned in the preceding section, the sheriff or collector shall proceed to advertise and sell the real estate mentioned therein, as provided in chapter thirty-one of the code in relation to sales for state and county taxes. And all the provisions of said chapter in relation to such sales are applicable to sales for district levies.

Lien for Taxes on Real Estate, from What Time.

6. There shall be a lien on all real estate for the district levies assessed thereon from the time of the assessment in such year, and interest upon such levies at the rate of six per cent per annum from the twentieth day of January in the year following that in which the assessment is made, until payment.

Delinquent List of Personal Property, How Disposed of, &c.

7. A copy of the list of personal property returned delinquent for the non-payment of district levies may be placed by the secretary of the board of education in the hands of the sheriff for collection, to be collected and accounted for by him in the same manner as for levies originally placed in his hands for collection. And he may collect such levies by distress or otherwise, at any time after they are so placed in his hands, and the sixth section of chapter thirty shall not apply to said collection. Or he may place such list in the hands of a constable for collection, and such constable shall have all the powers of a sheriff for the collection of the taxes mentioned in said list.

Commission for Collecting District Levies.

8. Every sheriff shall be allowed a commission of five per cent. on the amount of district levies with which he is chargeable, subject to the deduction mentioned in the sixth section of chapter thirty of this code.

Special Tax for Repair of Building Belonging to District— When and How Authorized and Laid.

9. Where any building erected or purchased by any township for the use of the people thereof remains undis-

posed of, the same shall be and remain the property of the people of the magisterial district in which it is situated, and may be used and occupied by them in such manner and for such purposes as they may from time to time, in a district meeting called by at least twenty voters for the purpose, determine. At any such meeting an executive committee may be appointed to take charge of the said house and to do and perform such duties in relation thereto as the meeting may determine. If at any such meeting it be desired to levy a tax on the property in said district subject to taxation therein, to put or keep in repair any such house, the meeting may adopt a resolution to that effect, specifying the amount of tax on each one hundred dollars of value of the property to be taxed they desire to have levied, and upon the presentation of such resolution to the county court of the county, in which such district is, said court shall make an order submitting the question of such levy to the qualified voters of the district at an election to be held for the purpose, on a day named in the order, not less than twenty nor more than thirty days from the date thereof, at each of the places of voting in said district, of which fifteen days previous notice shall be given by advertisement posted at each place of voting and at three or more other public places in said district. The ballots used at said election shall have written or printed on them the words "for levy" or "against levy," as the voter shall choose. The court shall also appoint the requisite number of commissioners of election for the purpose of taking the said vote, and the said election shall be held and conducted, and the result thereof at each place of voting be ascertained, certified and returned in the same manner as if it were an election for district officers. The county court shall at its first session after the return of the said election, ascertain and declare the result thereof, and if a majority of all the votes cast on the question be in favor of such levy the said court shall proceed to levy the same on all the property in said district subject to taxation for state purposes. Said taxes shall be collected and accounted for by the same officers, and in the same manner as other district taxes are collected and accounted for under this chapter; and shall be paid out by such officer upon the orders of the executive committee hereinbefore provided for.

Buildings erected for public to remain property of public. How used and occupied; for what purpose, etc., and how same determined. Executive committee to take charge of; how appointed and duties of. Repairs; how provided for by levy.

County court to submit question of levy to qualified voters of district. Election; when and how held.

Notice thereof.

Ballots; what to have printed or written on.

Court to appoint commissioners of election; their duties.

Result; how ascertained, certified and returned, etc.

Court to declare result.

Majority of votes cast necessary for levy. How levy made.

How taxes therefor collected and accounted for.

By whom and how paid out.

[Approved March 6, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LVI.

AN ACT amending and re-enacting chapter seventy of the code of West Virginia, as amended by chapter forty-eight of the acts of one thousand eight hundred and seventy-two.

[Passed February 28, 1882.]

Be it enacted by the Legislature of West Virginia:

Code amended;
chapter 70.

1. That chapter seventy of the code of West Virginia be and the same is hereby amended and re-enacted so as to read as follows:

CHAPTER LXX.

Of the Capacity of Aliens to Take, Hold and Dispose of Property.

Alien; when
and how he
may hold real
estate.

1. Any alien, not an enemy, may take and hold, by inheritance or purchase, real estate within this state, as if he were a citizen of the state.

His power to
convey or
devise same.
On death, same
shall descend
to his heirs.
Who may take
thereunder.

2. Any such alien may convey or devise any real estate held by him, and if he die intestate it shall descend to his heirs at law; and any such alien, devisee or heir, whether a citizen or an alien, may take under such alienation, devise or descent.

[Approved March 6, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LVII.

AN ACT to revive, amend and re-enact chapter one hundred and twenty-nine of the code of West Virginia, as amended and re-enacted by chapter one hundred and thirty-eight of the acts of one thousand eight hundred and seventy-two and seventy-three, and by chapter thirty-four of the acts of one thousand eight hundred and eighty-one.

[Passed February 28, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter one hundred and twenty-nine of the code of West Virginia, as amended and re-enacted by

chapter one hundred and thirty-eight of the acts of one thousand eight hundred and seventy-two and seventy-three, and by chapter thirty-four of the acts of one thousand eight hundred and eighty-one, be revived, amended and re-enacted so as to read as follows:

CHAPTER CXXIX.

Appointment of Commissioners in Chancery, and Proceedings on Accounts Referred to Them.

1. Each circuit court and every court of limited jurisdiction now existing or which may hereafter be established for any incorporated city, town or village, may from time to time appoint not more than four commissioners in chancery, or for stating accounts, who shall be removable at its pleasure, with power to take depositions and to swear and examine witnesses and to certify their testimony. The judge of any court empowered to appoint commissioners in chancery, or for stating accounts, may in vacation appoint such commissioners with as much effect as if appointed by the court, and they shall have the like powers.

Commissioners in chancery; by what courts appointed; their number.

Their power to take depositions etc.

Judge may appoint in vacation.

2. Every such commissioner, before proceeding to act, shall take an oath faithfully and impartially to discharge his duties.

Oath prescribed.

3. Accounts to be taken in any case shall be referred to a commissioner so appointed to be named in the decree or order, unless the parties interested agree that they be referred to some other person. In case all the commissioners of a court, appointed under section one of this chapter, are by reason of interest or otherwise incapacitated to act, and the parties interested fail to agree on a person to whom the reference may be made, the court may direct a reference to some other person. Every commissioner shall examine and report upon such accounts and matters as may be referred to him by any court, and such report may be recommitted to said commissioner, or to any other, for other and final reports.

Accounts taken in suits, unless parties agree otherwise, must be referred to commissioners when all commissioners incapacitated, court may make special appointment.

Duty of commissioners.

4. The court ordering an account to be taken may direct that notice of the time and place of taking the same be published once a week for four successive weeks in some newspaper published in the county; and if none be so published, then in some newspaper having a general circulation in the county, and by posting a copy of the same at the front door of the court-house of said county, at least twenty days before the taking of the accounts; or the court may dispense with the publication, and require the notice to be posted at the front door of the court-house of said county, and at least four other public places in said county twenty days before the time set for taking the account; such publication and posting, or such posting alone, shall be equivalent to personal service on the parties or any of them.

Notice of taking account; how given, etc.

When publication dispensed with.

In vacation, judge may order account, after process served and before case docketed.

5. The Judge of a circuit court, or of a court of limited jurisdiction for any incorporated city, town or village, may, in vacation, or in term time, though the case be not upon the court docket make an order in any cause pending in his court at any time after process has been duly served on the defendants or such of them as may appear to be interested in the subject matter upon which the commissioner is to report, or at any time after such defendants have entered their appearance in said cause, referring the same to a commissioner for the purpose of stating any proper account or reporting upon any matter which it is proper there should be a commissioner's report in said cause. But no such order of reference shall be made in any cause until reasonable notice in writing has been served upon the opposite party or his attorney, of the time and place of making said motion.

Notice in writing required.

Commissioner may submit doubtful points to court or judge.

6. A commissioner who doubts as to any point which arises before him, in taking an account to be returned to any court, may in writing submit the point to such court, or the Judge thereof, who may instruct him thereon.

Commissioners' proceedings; may be adjourned from day to day until report completed. Report retained in office ten days subject to inspection and exception.

7. A commissioner may adjourn his proceedings from time to time, after the day to which notice was given (without any new notice), until his report is completed; and when it is completed, unless it is otherwise ordered by the court, or agreed by the parties, he shall retain it ten days for their examination. Any party without being at the expense of taking a copy, may inspect the report and file exceptions thereto; and the commissioner shall, with his report, return the exceptions, and such remarks thereon as he may deem pertinent, and the evidence relating thereto. But any party may except to such report at the first term of the court to which it is returned, or by leave of court after said term. In an exception it shall be sufficient to state the item or part of the report to which objection is made; but the court may, nevertheless, if good cause therefor appear, require the exception to be made more specific, or the grounds thereof to be stated therein, and may overrule or disregard such exception if the requisition be not complied with.

What exception to state; when must be specific.

Report; what returned with and how made out.

8. With his report the commissioner shall return the decrees, orders and notices under which he acted. He shall not copy in his account or report any paper; and if there has been a previous account, he shall not copy it into his report, but, taking it as the basis of his, correct the errors and supply the defects thereof by an additional statement. Everything improperly copied into a commissioner's account shall be expunged at his costs, on the application of either party; and if on account of his negligence or misconduct a report be recommitted, he shall bear the costs occasioned thereby. He shall immediately after the ad-

Improper matter or negligence; costs of correcting paid by commissioner.

journalment of each term of the court, proceed to take all accounts referred to him by any order or decree of the court, and all adjournments and postponements of the taking of any account shall be for good cause. to be shown by the affidavit of the party making the application, which shall be filed with the papers in the cause and if the commissioner unreasonably delays his report, he shall receive no compensation for the same.

Time of making report.

Where unreasonable delay, no pay.

9. A cause may be heard upon a commissioner's report at any time after it is returned, and the court may, for good cause shown by any party interested, hear a cause on a commissioner's report returned after the commencement of the term of court, at which such hearing is desired to be had, but the court in this latter case may require the party desiring the hearing to give reasonable notice to the opposite party or to his attorney.

Cause heard upon report any time after return of same.

When notice of hearing required.

10. At law in any case in which it may be deemed necessary, the court may direct any such commissioner or other competent person, either before or at the time of trial to take and state an account between the parties, which account when thus stated shall be deemed *prima facie* correct, and may be given in evidence to the court or jury trying the case and the commissioner, or other person shall be allowed for such services the same fees that would be allowed a commissioner for similar services, to be taxed in the bill of costs.

In cases at law, commissioner to state accounts when directed either before or at trial.

Effect of same as evidence.

His compensation; what and how taxed.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Inconsistent acts repealed.

[Approved March 6, 1882.]

NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LVIII.

AN ACT to amend and re-enact sections eight, twenty-six, thirty-one, thirty-two, thirty-seven and thirty-eight of chapter sixty-three of the code of West Virginia, as amended and re-enacted by chapter one hundred and sixty-one, of the acts of one thousand eight hundred and seventy-two and seventy-three.

[Passed February 28, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That sections eight, twenty-six, thirty-one, thirty-

Code amended; sections 8, 26, 31, 32, 37 and 38, chapter 63, as amended by acts of 1872-3. two, thirty-seven and thirty-eight of chapter sixty-three of the code of West Virginia, as amended and re-enacted by chapter one hundred and sixty-one of the acts of one thousand eight hundred and seventy-two and seventy-three, be amended and re-enacted so as to read as follows:

Marrriages between colored persons legalized.

Where colored persons cohabiting, etc., prior to Feb. 28, 1866 to be regarded married.

Rights and privileges.

Children made legitimate.

Copies to be filed, etc. in auditor's office. Duty of auditor in relation thereto.

Physician or surgeon to make record in book of deaths.

To give copy of record to assessor.

Duty of justice or coroner to keep record of deaths where inquests held.

8. All marriages heretofore celebrated between colored persons under license issued by any recorder or clerk of a county court in this state, and all marriages between such persons, whether under such license or not, if the same were consummated in good faith on the part of the persons so married, and such persons were living together as husband and wife on the twenty-eighth day of February, one thousand eight hundred and sixty-six, shall be deemed valid. Where colored persons prior to the twenty-eighth day of February, one thousand eight hundred and sixty-six, had undertaken and agreed to occupy the relation to each other of husband and wife, and were cohabiting as such at that time, whether the rites of marriage shall have been solemnized between them or not, shall be deemed husband and wife and be entitled to the rights and privileges, and subject to the duties and obligations of that relation; in like manner as if they had been duly married by law; and all their children shall be deemed legitimate, whether born before or after the said twenty-eighth day of February, one thousand eight hundred and sixty-six; and where the parties have ceased to cohabit before the said date, in consequence of the death of the woman, or from any other cause, all the children of the woman recognized by the man to be his shall be deemed legitimate.

26. Such copies shall be filed and preserved in the auditor's office, and from them the auditor shall prepare an abstract annually of marriages, births and deaths, in each county, and make a report upon said registration once in every period of two years, to be laid before the legislature.

Duty of Physicians, Justices and Coroners.

31. Every physician or surgeon shall, in a book to be kept by him, make a record at once of the death of every person dying in this state, upon whom he has attended at the time of such death, setting out, as far as practicable the circumstances herein required to be recorded by an assessor respecting deaths. He shall give an assessor, whenever called on by him for that purpose, annually, a copy of such record, as far as the same relates to deaths in such assessor's district. And every justice or coroner shall keep a like record of the deaths in relation to which inquests are taken by him, and give a copy thereof to any assessor whenever called on by him for that purpose, annually, as far as the same relates to deaths in such assessor's

district. For any neglect or failure to perform any duty required of him by this section, a physician, surgeon, justice or coroner shall forfeit twenty dollars. Penalty for failure, etc.

32. The assessor shall make such entries or corrections in his record of deaths as may be supplied or warranted by the copies so to be furnished to him by physicians, surgeons, coroners and justices, noting the source of information. Correction of death records by assessor.

37. If any clerk, physician, surgeon, assessor, coroner or any minister or person celebrating a marriage, or clerk or keeper of the records of any religious society, shall in any book, register or record which such officer or person is by this chapter required to keep or make, or in any copy or certificate which by this chapter he is required to make or give, knowingly make any false, erroneous or fraudulent entry, record, registration, or written statement, he shall for every such offense, forfeit not less than one hundred nor more than five hundred dollars. Penalty for false, erroneous, etc., record or register.

38. If any person, upon whose information or statement any record or registration may lawfully be made under this chapter, shall knowingly give any false information, or make a false statement to be used for the purpose of making any such record or registration, he shall forfeit not less than fifty nor more than three hundred dollars for every such offense. For false information.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent with the provisions thereof, are hereby repealed. Inconsistent acts repealed.

[Approved March 6, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LIX.

AN ACT to amend and re-enact chapter fifty-nine of the code, in relation to weights and measures.

[Passed February 28, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter fifty-nine of the code of West Virginia be, and the same is hereby amended and re-enacted so as to read as follows: Code amended; chapter 59.

CHAPTER LIX.

Of Weights and Measures.

- Weights, measures and balances of state as provided for by congress, to be kept in room for purpose.**
- To be public standards.**
- Salary of sup't of weights and measures.**
- Governor and sup't to contract for suitable weights, etc.**
- How same to be made of cast iron, etc. How and where delivered by contractor. To be paid for on order of governor.**
- How counties are furnished with same.**
- Number designated and paid for by county court.**
- What weights, measures and balances county court to keep constantly on hand.**
- Described and enumerated.**
- Said measures, etc. to be verified and sealed by sup't.**
1. That the weights, measures and balances received by this state, under a resolution of congress approved the fourteenth day of June, one thousand eight hundred and thirty-six, and an act of congress approved the seventh day of July, eighteen hundred and thirty eight, shall be kept in the capitol, in a room to be assigned by the governor, and fitted up for the purpose under his direction. They shall be public standards of weights and measures in this state.
 2. The superintendent of weights and measures, shall receive for his services such salary as may be prescribed by law.
 3. The governor and superintendent of weights and measures are authorized, and they are hereby directed, to contract for and have manufactured a sufficient number of sets of balances, weights and measures, the measures to be made of cast iron, brass or composition, as will be necessary to supply each county within this state. The said balances, weights and measures shall be delivered by the contractor at the office of the superintendent as they may be required, and shall be paid for on the order of the governor, out of any moneys in the treasury not otherwise appropriated.
 4. Upon the application of the county court of any county, the governor or superintendent of weights and measures, shall furnish said county with such balances, weights and measures, as the said county court shall designate, but before receiving the same, the said court shall pay into the public treasury the amount paid by the state for the same.
 5. The county court of each county shall constantly keep for the use and at the charge of such court, the following weights, measures and balances, conformable to the said standards and sealed by the superintendent, that is to say: Of dry measure, one-half bushel, one peck, one-half peck; of wine measure, one gallon, one-half gallon, one quart, one pint, one-half pint, one gill; one set of brass weights to four pounds, computed at sixteen ounces to the pound with suitable scales and steel beam; one set of iron weights from one pound to fifty pounds; of long measure, one yard and a set of Troy weights from the lowest denomination to eight ounces; all of said measures, weights and balances shall be verified by the superintendent and sealed by him in a durable manner according to their true weight, capacity and length.

6. The weights, measures and balances provided for each county shall be kept in such places and by such person as may be designated by the county court of such county, and such person shall be the sealer of weights and measures for the county.

By whom and at what place kept.
Person keeping to be sealer of weights, etc.

7. Once in every ten years from the time at which they are first sealed, the said sealers of weights and measures shall cause them to be tried and proved by the said public standard, under the direction of the superintendent, and sealed by him anew, and if any such sealer shall fail to do so, he shall forfeit one hundred dollars.

To be tried by public standard every ten years. Sup't to direct and sealer to seal anew. Penalty for failing.

8. Every sealer of weights and measures shall at least once in every year, advertise in some convenient newspaper or put up notifications in different parts of the county of the times and places when and where he will attend, for the purpose of trying and proving such balances, weights and measures as may be brought to him for that purpose. Those which may be found or can be made to agree with the standards shall be sealed by him accordingly, and he shall deface and destroy all such as do not and cannot be made to agree therewith.

Duty of sealer before making such trial; shall advertise, etc.

What weights, etc., he must seal, and what deface and destroy.

9. The said sealer for each county shall, once in every year, go to the mills, stores or shops of every person within his county, who uses balances, steelyards, platform balances, weights or measures, for the purpose of buying or selling, and who has failed for three years to bring or send them in at the time and places notified by him, and also to all hay scales, cattle scales and platform balances kept for the public use, and there try and prove such scales, balances, steelyard, weights or measures, and seal or deface and destroy them, as may be proper, in the cases mentioned in this section. The sealer of weights and measures shall for such services have double the amount of his regular fees. Keepers of scales for weighing live stock and other ponderous articles, shall have constantly on hand a sealed weight of not less than fifty pounds, for the purpose of testing the correctness of such scales, whenever required by any person desiring to use the same for the purpose aforesaid. Any person violating this section shall be deemed guilty of a misdemeanor, and fined not exceeding fifty dollars.

Sealer must visit certain mills, stores, etc., in his county, where balances, etc., are used. His duties in relation thereto.

Compensation for this special work double the regular fees. Duty of the keepers of stock scales, etc.

Penalty for violating.

10. Each sealer of weights and measures shall have ten cents for any weight, or measure, or scale, beam and balance, and twenty cents for each steelyard, and beams and poises thereof tried, proved and sealed, or defaced and destroyed by him, to be paid by the owners thereof respectively, for whom the service is rendered.

Fees of sealer.

To be paid by owners.

11. The seals and other things necessary to enable them to perform their duty, shall be procured by the sealers, and the costs thereof shall be a charge on their respective counties.

How seals and other things necessary to be furnished sealer

Any person may require sealer to test weights, etc.
But must pay for same.

12. A person may at any time call upon the sealer of his county to try and prove the weights and measures of such persons, he paying therefor the regular fees, or double the fees if the service be rendered at his own house, store or shop.

Penalty on sup't or sealer for failing, etc.

13. If the superintendent, or any sealer of weights and measures shall fail to perform any duty imposed on him he shall forfeit twenty dollars for each offense.

Penalty for selling or offering to sell unsealed weights, etc.

14. If any person in a county in which the weights, measures and balances have been provided as required in section five of this chapter, shall sell or offer to sell any commodity, buy, or keep for buying and selling, any scales, balances, steel-yards, weights or measures not sealed according to law, he shall forfeit for each offense a sum not exceeding ten dollars.

How often bank to have their weights tested, etc.
By whom.

15. Once in every five years the director of each bank shall have the weights used in such bank tried, proved and sealed, either by the superintendent or a sealer of weights and measures.

Tender by bank of gold weighed with unsealed weights not legal
What payer to, or receiver from bank may require.

16. No tender by any bank in this state of gold weighed with weights not so sealed shall be legal. The payer to, or receiver from, any such bank of gold may require that it shall be weighed in each scale, and the mean weight resulting therefrom shall be deemed the true weight.

Standard Weight.

Standard weight of certain articles enumerated and fixed.

17. The standard weight of the articles hereinafter named shall be as follows: Of bituminous coal, eighty pounds per bushel; of wheat, beans, potatoes or cloverseed, sixty pounds per bushel, of rye, corn or flaxseed, fifty-six pounds per bushel; of barley, forty-eight pounds per bushel; of oats, thirty-two pounds per bushel; of buck-wheat, fifty-two pounds per bushel; of timothy seed, forty-five pounds per bushel; of dried peaches, thirty-three pounds per bushel; of dried apples, twenty-five pounds per bushel.

[Approved March 6, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LX.

AN ACT amending and re-enacting section six, seven, nine and eleven of chapter sixty-four of the code of West Virginia.

[Passed February 28, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That sections six, seven, nine and eleven of chapter sixty-four of the code of West Virginia, be amended and re-enacted so as to read as follows: Code amended; sections 6, 7, 9 and 11 of chapter 64.

6. A divorce from bed and board may be decreed for cruel or inhuman treatment, reasonable apprehension of bodily hurt, abandonment, desertion, or where either party after marriage becomes a habitual drunkard. A charge of prostitution made by the husband against the wife falsely, shall be deemed cruel treatment, within the meaning of this section. Divorce from bed and board; for what decreed.

7. The circuit court on the chancery side thereof shall have jurisdiction of suits for annulling or affirming marriages, or for divorces. No such suit shall be maintainable unless the parties, or one of them, shall have resided in the state one year next preceding the time of bringing such suit. The suit shall be brought in the county in which the parties last cohabited, or (at the option of the plaintiff) in the county in which the defendant resides, if a resident of this state; but if not, then in the county in which the plaintiff resides. Such suit may be brought and prosecuted by the wife in her own name, without a next friend, and a decree may be rendered in the case upon the publication of the summons and statement as provided in chapter one hundred and twenty-four of this code. Circuit court to have jurisdiction of suits for divorce, etc. What residence in state necessary to maintain suit. In what county suit brought. Wife may prosecute in her own name.

9. The court in term, or the judge in vacation, may at any time pending the suit, make any order that may be proper to compel the man to pay any sum necessary for the maintenance of the woman, and to enable her to carry on the suit, or to prevent him from imposing any restraint on her personal liberty, or to provide for the custody and maintenance of the minor children of the parties, during the pendency of the suit, or to preserve the estate of the man, so that it be forthcoming to meet any decree which may be made in the suit, or to compel him to give security to abide such decree, or to compel the man to deliver to the woman any of her separate estate which may be in his possession or control or to prevent him from interfering with her separate estate. What orders court or judge may make, pending suit to protect interests of the parties or of their children, etc.

11. Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce, whether from the bond of

Upon decreeing dissolution of marriage or divorce, court may make such decree as to maintenance, custody of children, etc., as to it may seem proper. Power of court over parties, etc., after divorce granted. matrimony or from bed and board, the court may make such further decree as it shall deem expedient, concerning the estate and maintenance of the parties, or either of them, and the care, custody and maintenance of the minor children, and may determine with which of the parents the children, or any of them, may remain; and the court may, from time to time afterwards, on the petition of either of the parties, revise and alter such decree concerning the care, custody and maintenance of the children, and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require, and whether the divorce be granted or not, if the parties are living separate and apart from each other, the court may make such order or decree, concerning the care, custody and maintenance of the minor children, or any of them, and may determine with which of the parents, the children, or either or any of them may remain, as to the court may seem proper, and the benefit of the child or children may require.

Power of court, where parties living separate and apart, as to the minor children.

[Approved March 6, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXI.

AN ACT to amend and re-enact sections eight, ten, eleven, twelve and thirteen of chapter eighty-one of the code of West Virginia as amended and re-enacted by chapter one hundred and forty-three of the acts of one thousand eight hundred and seventy-two and seventy-three.

[Passed February 28, 1882.]

Be it enacted by the Legislature of West Virginia.

Code amended; sections 8, 10, 11, 12 and 13 of chapter 81 as amended by acts of 1872-3.

1. That sections eight, ten, eleven, twelve and thirteen of chapter eighty-one of the code of West Virginia, as amended and re-enacted by chapter one hundred and forty three of the acts of one thousand eight hundred and seven two and seventy-three be amended and re-enacted so as to read as follows:

Money to be paid by the master, when and to whom.

8. The money which the master is to pay for any year except the last, shall, at the end of the year for which it is payable, be paid to the father of the minor, or to the mother, or part to each, as the court may direct, or it may be reserved to be paid to the apprentice at the end of his term, with interest. Such directions may be changed from

time to time on the motion of the county court or of the father, mother or apprentice, on proof of notice of such motion having been given to the adverse party.

How directions for payment may be changed

10. Any money to be paid under either of the two preceding sections may be recovered from those liable therefor, on the motion of those entitled thereto, or by suit. Any such motion may be in the circuit court of the county in which the bond of the master is filed.

Proceedings to recover money. By motion or suit. In what court.

Controversies Between Masters and Apprentices.

11. Such circuit court, during the term of apprenticeship, may receive the complaint of such apprentice, or any person in his behalf, against the master for undeserved or excessive correction, want of instruction, insufficient allowance of food, raiment or lodging, or non-payment of what was directed to be paid; the complaint of a master against his apprentice for desertion or other misconduct, and after reasonable notice of the complaint to the party against whom it is made, may determine the same in a summary way, making such order as the case may require.

Court to determine complaints of apprentice or master, after reasonable notice.

How determined.

12. No apprentice shall live out of the county in which the order binding him is made, without leave of the county court of the said county. Whenever such leave is given, a copy of the order giving it shall be forthwith filed in the office of the clerk of the county court of the county in which the residence is to be, and thereafter the circuit court of that county may hear and determine any complaint against the said master or apprentice as might have been done by the circuit court of the county from which he was so removed. If, without such leave, an apprentice be removed by his master or with his master's knowledge, out of the first mentioned county, and remain thereout more than one month, the obligation of the apprentice to serve such master shall be only during the pleasure of the apprentice.

Apprentice to live in county where bound. Court may order otherwise. Where such order filed.

Circuit court of county where residence is to be, to determine complaints.

Effect of removal of apprentice without leave.

13. If any apprentice who was bound as such beyond the limits of this state, be brought or come within the same, the circuit court of the county in which he may be, may hear and determine in a summary way, any complaint of him or his master and make such order in the matter as may be right.

What court hears complaints when apprentice is bound beyond the limits of this state, and returns. How heard and determined.

[Approved March 6, 1882]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXII.

AN ACT to amend and re-enact sections one, three, four, six, eight, nine and ten of chapter twenty-three of the acts of one thousand eight hundred and eighty-one.

[Passed March 1, 1882.]

Be it enacted by the Legislature of West Virginia :

Acts 1881 amended; sections 1, 3, 4, 6, 8, 9 and 10 of chapter 23.

Assessor to list dogs annually.
Dogs described and distinguished.

Watch dog of widow not to be listed in certain cases
Evidence of ownership.

List; by whom and to whom etc., returned.

How dog tax collected and accounted for.

Duty of court to furnish sheriff with list of owners, etc.

Sheriff's commissions.

Proviso.

Moneys collected; to be in charge of sheriff. To constitute a fund to remunerate owners of sheep, in certain cases.

Proviso.

1. That sections one, three, four, six, eight, nine and ten of chapter twenty-three of the acts of one thousand eight hundred and eighty-one, be amended and re-enacted so as to read as follows:

1. That it shall be the duty of every assessor, annually, to list all dogs over four weeks old owned or kept within his district, particularly noting the number owned or kept about any one house, giving such description of each as he can conveniently obtain, distinguishing between males and females. And for this purpose he may examine on oath any person found in his district. But the watch dog of a widow, who is a house-keeper and the head of a family, shall not be listed as aforesaid. The fact that any dog is kept or allowed to remain about any house shall be deemed sufficient evidence to authorize the assessor to return the person inhabiting said house as the owner of such dog. Such list shall be returned by the assessor to the clerk of the county court of his county, on or before the time fixed for laying the county levy in each year.

3. The taxes imposed upon the dogs of any county, shall be collected and accounted for by the sheriff of such county, as county levies are collected and accounted for, and to that end it shall be the duty of the court, in convenient time, to cause a list to be delivered to such sheriff, containing the names of all persons charged with a dog tax, and the amount assessed against each. For collecting, accounting for and paying out the dog tax, the sheriff shall be allowed the like commissions as is allowed for collecting and accounting for the county levies; *Provided, however,* That for so much thereof as he receives from the constables upon the lists provided for in the next section, he shall, for accounting for and paying out the same be allowed one-half commission. The sheriff shall have charge of all the moneys accruing from the tax upon dogs, or from fines imposed under this act, collected within his county; and the same shall constitute a fund for remunerating the inhabitants thereof for any loss they may sustain by injury done to their sheep by dogs within their county; *Provided,* That the county court of any county may in its discretion, appropriate the fund, or any part thereof, arising under this act, in any other way, that it

may deem for the best interests of the citizens of the county.

4. The court shall cause a list of all persons failing to pay the dog tax assessed against them, and by the sheriff returned delinquent for non-payment of dog tax, to be delivered to the constables of the districts in which they reside with the number of dogs listed to each, and the amount of tax assessed severally against each; and it shall be the duty of such constable upon receiving such list, forthwith to search out and kill every dog in respect to the tax on which the owner shall be delinquent, (where there is more than one constable in the district, the court shall designate which shall act,) and any person who shall conceal a dog for the purpose of evading the provisions of this section shall pay a fine of five dollars. But no dog shall be killed by virtue of this section, whose owner shall pay to the constable the tax in respect to which he is so delinquent; and it shall be the duty of such constable, before killing any dog by virtue of this section to notify the owner of such delinquency and of the amount of tax he is required to pay. Each constable receiving such list shall make due return to his county court, at such time as the court shall direct, of the manner in which he has discharged his duties respecting the same, and shall pay over to the sheriff any taxes or fines collected by him, taking duplicate receipts therefor; one of which he shall file with the clerk of the county court, who shall charge the sheriff with the amount of the same. Each constable shall be liable for the tax assessed upon every dog enumerated in such list of which he shall fail to return a satisfactory account to the court. The constables shall be allowed by their respective courts a just compensation for services required of and performed by them under this act, to be paid out of such dog tax, and they and their sureties shall be liable on their official bonds, upon motion in the circuit court of their respective counties, for any money received by them which they may be liable to pay by virtue of this act.

Persons failing to pay dog taxes; court to make out and furnish constables lists of. What lists to contain.

Duty of constable upon receiving list; to kill dogs, &c.

Penalty for concealing dog.

When dog not to be killed.

Owner to be notified.

Constable to report proceedings to county court. What report to contain. Constable to pay money to sheriff.

What constable liable for.

Their compensation. How paid.

Their liabilities.

6. At the end of every year, or at such times as the county court may direct, the sheriff shall report to the court the amount of money in his hands, arising from the tax on dogs, and from fines imposed under this act, and for which he is accountable; the county court shall then, out of said fund, provide for the payment of the expenses of assessing, levying and collecting said tax, and shall at the same time, or as soon thereafter as practicable audit the claims reported under section five of this act, and allow each claim in full, or so much thereof as the court may deem just and right; and after auditing such claims as should be paid out of said fund, if the fund be sufficient to pay the whole thereof, shall give orders thereon to the

Sheriff to report at end of each year amount on hand.

How county court to dispose of same.

To audit claims against fund, and how paid.

persons entitled thereto, to be paid by the sheriff out of said fund. But if it shall appear that there is not sufficient funds in the hands of the sheriff to pay the amount of claims audited, the court shall give such orders as will divide the fund *pro rata* amongst those entitled thereto.

Dogs made property in meaning of criminal law. Construction.

8. All dogs on which taxes are paid are hereby deemed property in the meaning of the criminal law. But this chapter shall not be construed as repealing or in any manner modifying chapter thirty-two of the acts of 1875.

Penalty for concealing dogs.

How fines recovered and paid.

Proviso.

9. If any person shall conceal his dog, or send him from house to house, or to any place for the purpose of avoiding the tax, he shall pay a fine of five dollars. All fines imposed by this act shall be recovered by suit in the name of the state before a justice, as debts of like amount are by law recoverable, to be paid into the county treasury to the credit of the fund above mentioned; *Provided*, that no costs of such proceedings shall be paid out of the county treasury.

Act not to apply to certain counties, unless first approved by people thereof.

10. But this act shall not take effect or be of force in any of the following named counties, to-wit: Harrison, Greenbrier, Kanawha, Wayne, Barbour, Boone, Logan, Lincoln, Putnam, Lewis, Marshall, Mason, Monroe, Wetzel, Webster, Monongalia, McDowell, Wyoming, Mercer, Gilmer, Braxton, Fayette, Nicholas, Pendleton, Pocahontas, Preston, Tucker, Hampshire, Mineral, Raleigh, Clay, Upshur, Calhoun, Wirt, Doddridge and Hardy, until the same be adopted by a vote of the people of such county in the manner provided for in the next section.

[Approved March 6, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER LXIII.

AN ACT to amend and re-enact chapter one hundred and eight of the code of West Virginia, concerning awards.

[Passed March 2, 1882.]

Be it enacted by the Legislature of West Virginia :

Code amended; chapter 108 as amended by acts of 1877.

1. That chapter one hundred and eight of the code of West Virginia, as amended by chapter eighty-four of the acts of one thousand eight hundred and seventy-seven, be amended and re-enacted so as to read as follows :

CHAPTER CVIII.

Of Awards.

1. Persons desiring to end any controversy, whether there be a suit pending therefor or not, may submit the same to arbitration, and agree that such submission may be entered of record in any court. Upon proof of such agreement out of court, or by consent of the parties given in court, in person or by council, it shall be entered in the proceedings of such court; and thereupon a rule shall be made, that the parties shall submit to the award which shall be made in pursuance of such agreement. And when a pending cause is submitted to arbitration, the defendant may make any defense to the plaintiff's claim or demand, that he could make under any proper plea filed in court, whether such plea has been filed or not, by giving to the plaintiff reasonable notice in writing of the nature and character of his defense; and in a suit for any debt he may at the trial before the arbitrators, prove and have allowed against such debt, any payment or set-off, whether before that time pleaded or not, or whether an account of set-off has before that time been filed or not, which he may plead or file before the arbitrators in such manner as to give the plaintiff notice of its nature, but not otherwise. Although the claim of the plaintiff be jointly against several persons and the set-off is of a debt, not to all, but only to a part of them, this section shall extend to such set off, if it appear that the persons against whom such claim is, stand in the relation of principal and surety, and the person entitled to the set-off is the principal. And when the defendant is allowed to file and prove an account of set-off to the plaintiff's demand, the plaintiff shall be allowed to file and prove an account of counter set-off, and make such other defense as he might have made had an original action been brought upon such set-off; and upon the trial the arbitrators shall ascertain the true state of indebtedness between the parties, and the award shall be rendered accordingly.
2. No such submission, entered or agreed to be entered, of record, in any court, shall be revocable by any party to such submission, without the leave of such court; and such court may, from time to time, enlarge the term within which an award is required to be made.
3. Upon the return of any such award, made under such an agreement, (whether any previous record of the submission or a rule thereupon has been made or not), it shall be entered up as the judgment or decree of the court, unless good cause be shown against it at the first term after the parties have been summoned to show cause against it. And the court shall make to such arbitrators such reasonable allowance for their services as it may deem proper,

Suits and controversies submitted to arbitration. Proceedings therein.

The defence, same as in court without formality of pleading.

Set-offs; may be proved and allowed.

Must be pleaded or filed so as to give notice to plaintiff.

What set-offs may be allowed in certain cases.

Plaintiff may plead counter-set-offs.

What arbitrators to ascertain and award.

Submission not revocable without leave of court.

Court may enlarge its order.

How and when award entered as judgment of court.

Allowance to arbitrators, how paid.

to be taxed in the costs of the suit or proceeding, when no provision is made for the pay of the arbitrators in the arbitration agreement, or to be otherwise paid as the court may direct.

When award may be set aside.

4. No such award shall be set aside, except for errors apparent on its face, unless it appears to have been procured by corruption or other undue means, or by mistake, or that there was partiality or misbehavior in the arbitrators, or any of them. But this section shall not be construed to take away the power of courts of equity over

Not to interfere with powers of courts of equity over awards.

awards.

Personal representative, guardian, etc., may petition court for permission to submit cases to arbitration.

5. Any personal representative of a decedent, guardian of an infant, committee of an insane person, or trustee, may file his petition in the circuit court of the county in which he qualified or was appointed, asking permission from such court to submit to arbitration any suit or matter of controversy touching the estate or property of such decedent, infant, insane person, or in respect to which he is trustee. In which petition shall be stated the facts upon which the petitioner seeks the permission of the court; the court may in its discretion grant or refuse the prayer of the petition. If the petition is filed in good faith, and the petition is granted by the court, an order showing that permission to arbitrate was granted shall be entered on the chancery order book of the court, and the award made

What petition to state.

When petition granted what order entered by court.

in any such case shall be binding upon all the parties in interest, and shall be entered as the judgment of the court in the same manner as other submissions and awards are entered, unless set aside by the court. If the petition is filed in good faith and there was no fault or neglect on the part of the fiduciary, he shall not be responsible for any loss sustained by an award adverse to the interests of his ward, insane person or beneficiary under any such trust.

Effect of award in such cases.

When fiduciary not personally responsible.

Acts Repealed.

Inconsistent acts repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent with its provisions, are hereby repealed.

[Approved March 6, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXIV.

AN ACT to amend and re-enact chapter seventy-five of the code of West Virginia.

[Passed February 28, 1882.]

Be it enacted by the Legislature of West Virginia:

1. Chapter seventy-five of the code of West Virginia is hereby amended and re-enacted so as to read as follows: Code amended; chapter 75.

CHAPTER LXXV.

LIEN FOR PURCHASE MONEY, AND LIEN OF MECHANICS, LABORERS AND OTHERS.

Liens for Purchase Money to be Reserved by Deed.

1. If any person convey any real estate and the purchase money, or any part thereof, remain unpaid at the time of the conveyance, he shall not thereby have a lien for such unpaid purchase money, unless such lien is expressly reserved on the face of the conveyance. Mechanic's lien; who must be expressly reserved in deed.

Lien of Mechanics and Others.

2. Every mechanic, builder, artizan, workman, laborer, or other person who shall do or perform any work or labor upon or furnish any material in the erection or construction of a house or other building or land, or in altering or repairing any house or other building or its appurtenances, by virtue of any contract with the owner thereof or his agents; or any person who in pursuance of an agreement with any such contractor, shall, in conformity with the terms of the contract with such owners or agents, do or perform any labor or work or furnish any material in the erection or construction of a house or other building in this state, shall have a lien for the value of such labor and material upon such house or other building, and its appurtenances, and also upon the lots of land upon which the same is situated. But the aggregate of all liens, authorized by this chapter to be created for labor performed and material furnished in building, altering or repairing a house or other building and its appurtenances, shall not exceed the price stipulated in the contract with such owner to be paid therefor. And such owner shall not be obliged to pay for or on account of such house, building or appurtenances, any greater sum or amount than the price so stipulated and agreed to be paid therefor in and by such contract. And such lien shall have priority over any lien created by deed or otherwise, on such house or other building and appurtenances and the lots on which the same are erected, Mechanic's lien; who entitled thereto. What such lien to be for, and upon what property. Aggregate of liens not to exceed original price stipulated for in contract. Owner not bound to pay more than price stipulated. Priority of such liens over liens created after labor performed, etc.

subsequently to the time when such labor shall have been performed and material furnished. But there shall be no priority of liens as between the parties claiming under the provisions of this section.

No priority between like claimants.

Within what time lien discharged, if not duly asserted.

How asserted.

What to be filed by claimant with clerk.

Statement must be sworn to.

Duty of clerk in respect to such liens.

Must keep a "mechanic's lien record," and index thereof.

What same to contain.

His fees.

How person employed by contractor may obtain lien.

Must give notice in writing to owner, character of notice.

Aggregate of liens so acquired not to exceed amount due employer; exception thereto when notice given owner, etc.

Form of employer's notice to owner.

3. Such lien shall be discharged, unless the person desiring to avail himself thereof within sixty days from the time he ceases to labor on or furnish material for such building and appurtenances, file with the clerk of the county court of the county in which the house or other building is situated a just and true account of the amount due him, after allowing all credits, together with a description of the property intended to be covered by the lien, sufficiently accurate for identification, with the name of the owner or owners of the property, if known, which account shall be sworn to by the person claiming the lien, or some person in his behalf.

4. It shall be the duty of the clerk of the county court of the county to enter every such account in a book by him to be kept for that purpose, to be called "the mechanics lien record," which shall be properly indexed, and in which he shall state the names of the parties, the amount and character of the claim, and when filed, and the description of the property to be charged by said lien, for which service he shall receive fifty cents, to be paid by the person claiming the lien.

5. No person employed to do work or furnish materials for the construction of any such house or building, or any part thereof, by another who may have contracted with the owner thereof, to construct or erect the same, or any part thereof, shall have any lien on such house or building, unless such person shall, within thirty days after the term of his employment has expired, or after the delivery of materials furnished, give notice in writing to the owner of such house or building, of the amount of his demand, and that he claims the benefit of the lien created by virtue of this chapter; nor shall the aggregate of the liens in favor of all such persons exceed the amount due to the person employing them from the owner, at the time such notice is given, except as to such of the persons aforesaid as may, before doing any work, or furnishing any materials, have given the owner notice in writing that if they are not paid by the person employing them, they will look to the owner for payment. Such last mentioned notice may be in the following form, or to the like effect:

"To _____:

You are notified that I have been employed by _____ to do work, (or furnish materials, as the case may be), for the construction of a house, (or other building, as the case may be), which the said _____ has contracted to construct for you, and unless I am paid by said _____ for

such work, (or materials), I shall look to you for payment for the same. _____.”

Notwithstanding anything in the first section contained, there shall be a lien upon such house or other building, and the lots of land upon which the same is situated in favor of such person as may have given both notices mentioned in this section, in addition to having filed his accounts as provided in the third section of this chapter, for the amount remaining due him, or so much thereof as does not exceed his proportional share of the aggregate of the amount due from the owner at the time the notice was given, before doing work or furnishing materials, and the amounts which after such time became due from him.

Effect of notices and filing of accounts by employes; how liens thereby created.

6. When the owner fails to perform his part of the contract, and by reason thereof the other party, without his own default, is prevented from completely performing his part, he shall be entitled to a reasonable compensation for as much as he has performed, in proportion to the price stipulated for the whole.

What compensation allowed when owner fails to perform his part of contract.

7. Every workman, laborer, or other person who shall do or perform any work or labor, by virtue of any contract for any incorporated company doing business in this state, shall have a lien for the value of such work or labor upon all the real estate and personal property of said company, and such lien shall have priority over any lien created by deed or otherwise on such real estate or personal property, subsequent to the time when the said labor was performed, but there shall be no priority of lien as between the parties claiming under the provisions of this section. *Provided*, That no lien shall be created under this section for labor performed more than nine months before such lien was recorded.

Incorporated companies; how liens acquired for work done same. Amount of lien; and what property liable thereto. Its priority over certain other liens. Exception as to like claimants. Proviso. Limitation.

8. Such lien shall be discharged, unless the person desiring to avail himself thereof, within sixty days from the time he ceases to work or labor for such incorporated company, shall file with the clerk of the county court of the county in which such work or labor was performed, or in which the principle office, works, real estate or personal property of such incorporated company is situated, a just and true account of the amount due him after allowing all credits; which accounts shall be sworn to by the person claiming them, or by some one in his behalf.

When lien discharged unless account duly filed. Account to be sworn to.

9. The clerk of the county court, to whom such account is presented, shall record the same in the mechanics' lien record, for which service he shall receive fifty cents, to be paid by the person claiming the lien.

Clerk to record account in "mechanics" lien record. His fee.

10. Any person having a lien under or by virtue of this chapter may enforce the same by filing a bill in chancery in the circuit court of the county in which

How liens under this chapter enforced.

Parties thereto. his account is filed as aforesaid, in which he shall make all other persons having liens thereon under this chapter parties, and any other person acquiring such lien before a decree shall be pronounced in said suit may, at his request, be made a defendant therein and recover his claim in the same manner as if he had been made a defendant at the commencement of the suit. Should the party bringing the suit from any cause fail to establish his claim, the suit shall not for that cause be dismissed, but it may be prosecuted by any other party thereto having such lien, in the same manner as if it had been commenced by him.

When party bringing suit fails to establish claim, other parties having claims may continue suit.

Limitation; when suit to enforce lien must be commenced.

Suit once commenced to inure to benefit of others having like liens.

Sale; when court may order, to satisfy lien. What property ordered sold.

When personal decree, in addition to order of sale.

Its effect, and how enforced.

Discharge of liens; may be effected by full payment.

By whom and where discharge entered, or release executed and recorded.

In what cases citizens of state to have liens on domestic steamers, etc., for work and labor done, etc.

How same enforced; in what courts.

11. Unless a suit to enforce a lien is commenced within six months after the person desiring to avail himself thereof shall have filed his account in the clerk's office, as hereinbefore provided, such lien shall be discharged; but a suit commenced by any person having such lien shall for the purpose of preserving the same, inure to the benefit of all other persons having a lien under this chapter on the same property.

12. If the lien is established in favor of any of the creditors whose claims are presented in such suit, the court shall order a sale of the property on which the lien is established, or so much thereof as may be sufficient to satisfy such claims in like manner as in other suits in chancery, and the court may, in addition, give a personal decree in favor of such creditors for the amount of their claims against any party as to whom they may be established; such decree to have the effect of, and to be enforced as other decrees for money.

13. When a debt secured by such lien is fully paid at any time after such creditor shall have filed his account in the office of the clerk of the county court, such creditor shall cause the clerk to enter a discharge of such lien in the margin of the book in which such account is entered and immediately opposite thereto, or shall execute a release thereof, which may be recorded in the book in which the account is entered.

Lien on Domestic Steamers.

14. The citizens of this state shall have a lien upon all domestic steamboats, steamers and vessels, propelled wholly or in part by steam, which ply upon the navigable waters of this state, and which are registered in this state, for all work and labor done upon said vessels, and for all materials, goods, wares and merchandise furnished said vessels; said lien to be enforced by appropriate remedy in courts having jurisdiction of the subject matter.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed. Inconsistent acts repealed.

[Approved March 7, 1852.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXV.

AN ACT to amend and re-enact sections ten, fifteen, nineteen, twenty-two and twenty-three of chapter ninety-three of the code of West Virginia, as amended and re-enacted by chapter one hundred and ninety-five of the acts of one thousand eight hundred and seventy-two and seventy-three.

[Passed February 23, 1852.]

Be it enacted by the Legislature of West Virginia:

1 That sections ten, fifteen, nineteen, twenty-two and twenty-three of chapter ninety-three of the code of West Virginia, as amended and re-enacted by chapter one hundred and ninety-five of the acts of one thousand eight hundred and seventy-two and seventy-three, be amended and re-enacted so as to read as follows: Code; certain sections of chapter 93 of, as amended by acts 1872-3, amended and re-enacted.

10. Rent may be distrained for within one year after the time it becomes due, and not afterwards, whether the lease be ended or not. The distress shall be made by any sheriff or constable of the county wherein the premises yielding the rent or some part thereof may be or the goods liable to distress may be found, under a warrant from a justice founded upon the affidavit of the person claiming the rent, or his agent, that the amount of money or other thing to be distrained for, (to be specified in the affidavit) as he verily believes is justly due to the claimant for rent, reserved upon contract from the person of whom it is claimed. Rent; when and how distress for may be made.

15. Where goods are distrained or attached for rent reserved in a share of the crops, or in anything other than money, the claimant of the rent, having given the tenant ten days notice, or if he be out of the county, having set up the notice in some conspicuous place on the premises, may apply to the court or justice to which the attachment is returnable, to fix the value of such rent. Upon such application, the court or justice having ascer- Distress where rent is payable otherwise than in money; proceedings thereon.

tained the value, either by its own judgment, or if either party require it, by the verdict of a jury, impaneled without the formality of pleading, shall order the goods distrained or attached to be sold to pay the amount so ascertained.

Right of re-entry, etc. Proceedings by owner, etc., to be restored to possession.

When and how such owner may have or continue an injunction, etc.

19. If the owner of such lands, or any person having right or claim thereto, shall within the time aforesaid, file his bill for relief in the circuit court of the county wherein the lands are situated he shall not have or continue any injunction against the proceedings at law, on the ejectment, unless he shall, within thirty days next after a full and perfect answer filed by the plaintiff in ejectment, bring into court or deposit in some bank within the state to the credit of the cause, such money, as the plaintiff in ejectment shall, in his answer, swear to be due and in arrear over and above all just allowances, and also the costs taxed in the suit, there to remain till the hearing of the cause, or to be paid out to the said plaintiff on good security, subject to the decree of the court.

Proceedings in case of actual re-entry. Written act of such re entry to be returned, recorded, and certificate thereof published, etc.

How published.

Duty of clerk.

Effect of written act of re-entry when recorded, etc.

Fee of clerk for recording, etc.

22. Where actual re-entry shall be made, the party by or for whom the same shall be made shall return a written act of re-entry, sworn to by the sheriff or other officer acting therein, to the clerk of the county court of the county wherein the lands or tenements shall be, who shall record the same in the deed book, and shall deliver to the party making the re-entry a certificate setting forth the substance of such written act, and that the same had been left in his office to be recorded, which certificate shall be published at least once a week, for two months successively, in some newspaper published in or nearest to such county; which publication shall be proved by affidavit to the satisfaction of the said clerk, who shall note the fact on the margin of the deed book against the record of the act of re-entry, in the words, "Publication made and proved according to law. A—B—, clerk," and shall return the original act of re-entry to the party, entitled thereto. Said written act of re-entry, when recorded, and the record thereof, or a duly certified copy from such record, shall be evidence, in all cases, of the facts therein set forth.

23. The clerk shall be paid for recording, granting certificate, and noting publication, as aforesaid, one dollar and fifty cents.

[Approved March 15, 1881.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXVI.

AN ACT to amend and re-enact chapter one hundred and forty-two of the code of West Virginia, as amended and re-enacted by chapter one hundred and one of the acts of one thousand eight hundred and seventy-two and seventy-three.

[Passed February 28, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter one hundred and forty-two of the code of West Virginia, as amended and re-enacted by chapter one hundred and one of the acts of one thousand eight hundred and seventy-two and seventy-three, be and the same is hereby amended and re-enacted so as to read as follows:

Code; chapter 142 of, as amended, etc., by acts 1872-3, amended and re-enacted.

CHAPTER CXLII.

OF FORTHCOMING BONDS.

1. The sheriff or other officer levying a writ of *fiery facias* or distress warrant, may take from the debtor, a bond with sufficient security, payable to the creditor, in a penalty not more than double the true value of the property levied upon as ascertained and fixed by himself, reciting the service of such writ or warrant, describing the property, specifying its true value, with condition that the property shall be forthcoming at the day and place of sale. Upon the giving of the bond, as herein provided, the property so levied upon shall be permitted to remain in the possession of the debtor, at his risk.

Sheriff may take bond on levying execution, etc. Penalty, and to whom payable. What to be recited, etc., in such bond.

Conditions of bond. Effect of giving such bond.

2. If the property levied upon, as aforesaid be not sufficient to pay the plaintiff's debt, interest and costs, and the fees and commissions of the officer, the execution or warrant, while in force, may be levied upon other property, if any be found, or a new execution may be sued out, upon the return of the former, for the residue of the debt, interest and costs. But such execution shall not be levied upon the property mentioned in the bond, without the consent of the persons liable therein.

Execution may be levied on other property; when.

New execution; when to issue, etc. Not to be on property mentioned in bond, without, etc.

3. If the property, or any of it, mentioned in the bond be not delivered as therein provided, the officer, unless payment be made of the amount due on the execution or warrant, including his fees and commissions, shall forthwith return the said bond to the clerk's office from which the

Bond to be returned to clerk's office; when.

- execution issued, or if it be a distress warrant, to the clerk's office of the circuit court of the county in which such warrant was issued. The clerk shall endorse on the bond the date of its return; and against such of the persons who signed the same as may be alive when it is so returned, it shall have the force of a judgment. But no execution shall issue thereon under this section.
- Clerk to endorse date of return.**
- To have force of judgment against whom. No execution to issue.**
- Liability of person signing bond.**
- Recovery thereon by obligee, etc.**
- Remedy against defendant in judgment, etc.**
- Defense in action or motion on bond taken on distress warrant.**
- Remedy of obligee if undertaking be quashed.**
- Upon what execution bond not to be given.**
- What to be endorsed by clerk on such execution.**
4. The persons signing said forfeited bond shall be liable for the true value of the property therein mentioned, and not delivered as aforesaid, with interest on such value from the date of the bond and costs incurred in proceedings upon the bond. And the obligee in such bond, or his assignee or personal representative, may recover said sum and interest, or so much thereof as may be necessary to satisfy his demand against the defendant in the execution or warrant with costs, by action or motion against the persons signing said bond. And in case the said obligee fail for any cause, to recover a judgment on said bond, or to collect the amount specified in any such judgment, or any part thereof, he may proceed against the defendant in the original judgment for the amount remaining unpaid, in the same manner as if such bond had not been given.
5. In an action or motion on such bond when it is taken under a distress warrant, the defendants may make defense on the ground that the distress was for rent not due in whole or in part, or was otherwise illegal.
6. If any such bond be at any time quashed, the obligee, besides his remedy against the officer, may have such execution on his judgment, or issue such distress warrant, as would have been lawful if such bond had not been taken.
7. No bond for the delivery of property shall be taken on an execution on a forthcoming bond, nor on an execution on a judgment against a sheriff or other officer, or a deputy of such sheriff, for money received by any such officer or deputy, by virtue of his office, or against any such officer or his personal representative in favor of a surety of such officer, or against such deputy of any such officer, or his surety or personal representative, in favor of his principal or the personal representative of such principal, for money paid or a judgment rendered for a default in office; nor on an execution against an overseer of the poor, or his personal representative, or justice or constable for money received by him as such; nor on any other execution on which the clerk is required by law to endorse that "no security is to be taken."
8. On every execution on which such bond is prohibited from being given, the endorsement "no security is to be taken" shall be made by the clerk.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed. Acts repealed.

[Approved March 15, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER LXVII.

AN ACT to amend and re-enact sections six, eleven, seventeen, eighteen, twenty-one, thirty-five, thirty-eight and fifty-two of chapter fifty-eight of the code of West Virginia; and sections three and seven of said chapter, as amended and re-enacted by chapter one hundred and two of the acts of one thousand eight hundred and seventy-one, and as further amended and re-enacted by chapter sixty-seven of the acts of one thousand eight hundred and seventy-two and seventy-three; and sections fourteen and fifteen of said chapter, as amended and re-enacted by chapter sixty-seven of the acts of one thousand eight hundred and seventy-two and seventy-three; and section twenty-seven of said chapter, as amended and re-enacted by chapter eighty-seven of the acts of one thousand eight hundred and seventy-five, concerning insane persons; and to repeal sections ten, thirty, forty-five, forty-seven and forty-eight of said chapter fifty-eight of the code of West Virginia, and chapter fourteen of the acts of one thousand eight hundred and seventy-one.

[Passed March 2, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That sections six, eleven, seventeen, eighteen, twenty-one, thirty-five, thirty-eight and fifty-two of chapter fifty-eight of the code of West Virginia; and sections three and seven of said chapter, as amended and re-enacted by chapter one hundred and two of the acts of one thousand Code amended; sections 6, 11, 17, 18, 21, 35, 38 and 52 of chapter 58, and sections 3 and 7 of *id.* as amended and re-enacted by

acts of 1871,
etc., amended
and re-enacted.

eight hundred and seventy-one, and as further amended and re-enacted by chapter sixty-seven of the acts of one thousand eight hundred and seventy-two and seventy-three; and sections fourteen and fifteen of said chapter, as amended and re-enacted by chapter sixty-seven of the acts of one thousand eight hundred and seventy-two and seventy-three; and section twenty-seven of said chapter, as amended and re-enacted by chapter eighty-seven of the acts of one thousand eight hundred and seventy-five, concerning insane persons, be amended and re-enacted so as to read as follows:

Board of directors; to consist of nine members.
How appointed.

Terms of office of first nine to expire Feb. 1, 1883.

How their successors appointed.
To be divided into three classes.

Terms of office of the several classes.

Vacancies; by whom filled.

Not more than one director in each class to be selected from Lewis, and not more than one director from any other county.
Quorum.

President of board; when and how appointed.

3. The board of directors shall be composed of nine members. The governor shall nominate and by and with the advice and consent of the senate appoint said directors, whose term shall expire on the first day of February, one thousand eight hundred and eighty-three, and in the month of January, one thousand eight hundred and eighty-three the governor shall nominate, and by and with the advice and consent of the senate, appoint nine directors for said hospital, but said directors shall be divided into three classes, equal in number. The terms of office of the directors so appointed in the month of January, one thousand eight hundred and eighty-three, shall commence on the first day of February, one thousand eight hundred and eighty-three, and the terms of those in the first class shall be two years, those in the second class four years and those in the third class six years. In the month of January, in the year one thousand eight hundred and eighty-five, and every second year thereafter, the governor shall nominate and by and with the advice and consent of the senate, appoint three directors instead of the class whose terms expire in such year, and the terms of such three directors shall commence on the first day of February, in the year of their appointment, and continue six years. The governor may in like manner fill any vacancies that may occur in the board, and any one appointed a director by him during the recess of the senate, shall be a director until the next session of the senate thereafter. Not more than one director in each class shall be appointed from the county of Lewis, and not more than one director in the board shall be appointed from any other county. Unless otherwise provided by law, a majority of the board shall constitute a quorum, but the board may in its discretion designate business of a nature by it to be specified, which may be transacted by a stated number of directors less than a quorum.

6. The board of directors shall biennially choose one of their body to be president, and in his absence shall choose a president *pro tempore*.

7. A superintendent and as many assistants as may be

necessary (who shall be physicians) and other officers, shall be appointed by the board, and shall receive such compensation as the board may prescribe. The board may also appoint an executive committee, and may authorize the superintendent to employ as many nurses and attendants as may be necessary, and also discharge them, or any of them, and employ others, but the board shall fix their compensation. Any one or more of the directors, together with the superintendent, shall constitute an examining board, and may examine persons brought to the asylum as lunatics, and order those found to be such to be received.

Sup't and assistants. How appointed; their compensation. Executive committee. Board may authorize employment of nurses, etc. Examining board; how constituted. Its duties

11. Any justice who shall suspect any person in his county to be a lunatic, shall issue his warrant ordering such person to be brought before him. He shall enquire whether such person be a lunatic, and for that purpose summon a physician and any other witnesses. In addition to any other questions, he may propound as many of the following as may be applicable to the case: 1. What is the patient's age and where born? 2. Is he married? If so, how many children has he? 3. What are his habits and occupation? 4. How long since indications of insanity appeared? 5. What were they? 6. Does the disease appear to increase? 7. Are there periodical exacerbations? Any lucid intervals, and of what duration? 8. Is his derangement evinced on one or on several subjects? What are they? 9. What is the supposed cause of his disease? 10. What change is there in his bodily condition since the attack? 11. Has there been a former attack? When, and of what duration? 12. Has he shown any disposition to commit violence to himself or others? 13. Whether any and what restraint has been imposed on him? 14. If any, what connections of his have been insane? Were his parents or grand-parents blood relations? If so, in what degree? 15. Has he any bodily disease from suppression of evacuations, eruptions, sores, injuries, or the like, and what is its history? What curative means have been pursued, and their effects, and especially if depleting remedies, and to what extent, have been used?

Proceedings of justice when person suspected of lunacy. The inquiry.

Questions to be propounded.

14. The sheriff, or other officer to whom such order of the justice is directed, shall immediately ascertain, by written enquiry of the superintendent of the hospital, whether there is a vacancy therein; and further ascertain whether the said superintendent will remove said lunatic to the hospital. Until it is ascertained that there is a vacancy, and until the said superintendent shall remove the lunatic, the patient shall be kept in the jail of the county. Whenever a lunatic is removed from jail on bond before the superintendent shall send for him, it shall be the duty of the sheriff to notify the superintendent without delay, and when the friends of any patient remove on bond any patient from the hospital, such removal and return to the

Duty of sheriff; must write to sup't of hospital, etc.

Patient to be kept in jail until he can be removed to asylum. Duty of sheriff when lunatic removed from jail on bond, etc.

hospital, if the patient is returned, shall be at the expense of such friends.

Sup't to have patient moved to hospital.

Allowance therefor.

15. The superintendent shall, without delay, cause the lunatic to be removed to the hospital, but no other or greater allowance shall be made therefor than the actual expenses, to be paid out of the fund for transporting patients.

When hospital officials refuse to receive patient, because not a lunatic; their duty in relation thereto.

When they refuse for any other cause; duty of officer in custody of patient.

When lunatic a non-resident.

Proceedings of the asylum board or court, in such case. Disposition to be made of the lunatic.

Expenses.

How paid. Duty of governor; what steps he may take to protect interests of the state in such cases.

What to be done by justice, etc., where lunatic's residence is unknown.

Idiot; when received at hospital, to be sent back by board, etc.

Costs in such cases.

When patient restored to sanity.

17. If they refuse to receive the patient because in their opinion he is not a lunatic, they shall so certify in writing to the officer in whose custody he may be, and such officer shall convey him back to the county in which he was examined and there discharge him, and if they refuse to receive the patient for any other cause, such officer shall convey him back to the county in which he was examined and confine him in the jail thereof until he be lawfully discharged or removed therefrom.

18. If it appear to the justice that the person examined by him is a lunatic, and a non-resident of the state, he shall be committed to jail; and if any non resident be received into the hospital under such order, or be committed to jail, the board in one case, and the court in whose jail he may have been committed in the other, shall as soon as practicable, cause him to be returned to his friends, or to the proper authorities of the state from which he came, and the expenses necessarily incurred in effecting such removal, including a compensation to the person making such removal, and one guard when necessary, of one dollar each per day, for each day actually employed in making such removal, shall be paid out of the state treasury on the warrant of the auditor. The governor may take such steps as he may deem proper to obtain from the state of which said lunatic is a resident such expenditures as may be made by the state under this act. But if the justice cannot ascertain of what state a lunatic is a resident, and shall so certify, the lunatic may be received into the hospital if there be room therein, to be kept until information is received as to his residence.

21. If any idiot be sent to or received in the hospital, the board shall order him to be removed to the county whence he came, and delivered to his committee, if he have one, or if not, to the county court or a county commissioner, who shall give a receipt for him. The costs of such removal shall be paid out of his estate, if sufficient, but if not, shall be provided for by the said county court at the charge of their county.

27. When any other person confined in the hospital or in jail as a lunatic shall be restored to sanity, the examining board, if such person be in the hospital, and the circuit or county court of the county in which he is confined, if

be in jail, shall, upon examination of such person, discharge him from custody and give him a certificate thereof.

35. The allowance to the jailer for the maintenance and care of a lunatic, shall be fixed by the court in whose jail he is confined, but shall not exceed sixty cents a day. No more shall be allowed for his clothing than thirty dollars a year. No such allowance shall be audited and paid, unless it appear in the certificate of it, that the jailer proved to the court that immediately after the commitment of the lunatic, and at least once in every two months thereafter, application was made to the board of directors of the hospital for admission, and that such application was refused for want of room, or that such applications were not continued because the admission of the lunatic had been refused for some other cause, than the want of room, and it further appears in such certificate that the jailer complied in due time with the provisions of section thirty-one of this chapter.

38. If a person residing in this state, not so found, be suspected to be insane, the circuit court of the county of which such person is an inhabitant shall, on the application of any party interested, and after five days notice to the person so suspected, proceed to examine into his state of mind, and being satisfied that he is insane, shall appoint a committee for him.

52. The compensation of the justices, physicians and witnesses employed in the examination of a person charged with being a lunatic shall be such as may be prescribed by the county court of the county in which the examination is had, and be paid out of the county treasury.

Acts Repealed.

2. Sections ten, thirty, forty-five, forty seven and forty-eight of chapter fifty-eight of the code of West Virginia and chapter fourteen of the acts of one thousand eight hundred and seventy-one, are hereby repealed.

[Approved March 15, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXVIII.

AN ACT to amend and re-enact chapter eighty-seven of the code of West Virginia, concerning fiduciaries generally.

[Passed March 3, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter eighty-seven of the code of West Vir-

Code amended; chapter 87 of. ginia is hereby amended and re-enacted so as to read as follows:

CHAPTER LXXXVII.

OF FURTHER SECURITY FROM FIDUCIARIES; THE SETTLEMENT OF THEIR ACCOUNTS; AND PAYMENT OF WHAT THEY OWE.

Clerk to Keep List of Fiduciaries.

What record or list of fiduciaries to be kept by clerk of circuit court.

By clerk of county court.

List or record; what shown therein.

When authority revoked; clerk to enter record thereof.

Penalty for clerk's failing to make proper entry, etc., within proper time.

Clerk to examine whether fiduciary has given bond required. His duty when no bond given or bond insufficient.

Inventory of estate; by whom, to whom and within what time return thereof made.

Of what same to consist.

1. The clerk of every circuit court shall, in a book provided for the purpose, keep a record of any personal representative, guardian, curator, or committee heretofore authorized to act as such under orders of his court; and the clerk of the county court of each county shall keep a like record as to those heretofore or hereafter authorized to act by such court or clerk, and as to those heretofore authorized to act by any recorder of such county. Such record shall show in separate columns: *First*, the name of every such fiduciary; *second*, the name of the decedent for whose estate he is representative; *third*, the name of the living person for whom he is guardian, curator or committee; *fourth*, the penalty of his bond; *fifth*, the names of his sureties; and *sixth*, the date of the order conferring his authority. If, afterwards, such authority be revoked, the clerk or recorder, as the case may be, shall enter in another column the date of the order of revocation. Any clerk failing to make such entry, as to any fiduciary, within ten days after the order conferring or revoking the authority, as the case may be, or to index the same within the like time, in the name of the decedent or person represented by such fiduciary, shall, for every such failure forfeit twenty dollars. The clerk at the time of making such entry as to any fiduciary, shall examine whether he has given such bond as the law requires, and if it appear that he has given no bond, or that his bond is insufficient, shall make report thereof to his next court.

Inventories and Accounts of Sales.

2. Every personal representative, guardian, curator or committee shall, within four months after the date of the order conferring his authority, or shall, if his authority was granted before this chapter as amended takes effect, and he shall not before have made the return then required by law, within four months after this chapter takes effect, return to the said clerk an inventory of all the personal and real estate which has come to his possession or knowledge, or which is under his management or subject to his authority in his fiduciary character; and shall, within four months after any other such estate shall come to his possession or knowledge, return to the said clerk a further inventory thereof. If he shall fail to make the return herein first required, or the clerk shall have reason

to believe that he has failed to make the further return herein required, the clerk shall notify the commissioner of accounts hereinafter mentioned thereof, and said commissioner shall summon said fiduciary to make the return as to which he appears to be delinquent; and if such return be not made within thirty days after the date of service of the summons, the commissioner, if he be of opinion that such fiduciary is delinquent as to the return of any inventory required by law, shall report the fact to the circuit court of the county as soon as possible. The circuit court shall immediately summon such fiduciary to appear on a day to be fixed by the court, and may compel his attendance by rule and attachment. Such fiduciary upon appearing shall, unless excused for sufficient reason, be fined by the court not less than fifty nor more than five hundred dollars, and be ordered by the court to make such return, within a time to be specified by the court, and if he fail to comply with such order he shall be deemed guilty of contempt of court, and be dealt with accordingly. An appraisalment made according to the eighty-fifth chapter of this code shall be considered an inventory of such estate as is therein mentioned, if it be signed by the personal representative.

Proceedings when fiduciary fails to make return of inventory. Duty of clerk in relation thereto. Of commissioner of accounts.

When report of failure made to circuit court.

Proceedings of court thereon.

Penalty imposed for such failure, etc.

When an appraisalment considered as an inventory.

3. Every such fiduciary shall, within four months after selling any property as such, return to the said clerk an account of such sales. And when sale of any property is made under any deed of trust otherwise than under a decree, there shall, within six months after the sale, be returned by the trustee to the clerk of the court wherein the said deed may have been first recorded, an inventory of the property sold and an account of the sales. Any trustee failing to comply with this section shall forfeit his commissions on such sales.

Sales by fiduciaries; return of, to be made to clerk within four months. When sale under deed of trust; to whom and when trustee to make return of inventory and sale. Penalty for failure.

4. Every inventory and account of sales returned under the preceding sections shall be recorded by the clerk to whom the return is made.

Recordation of inventories and accounts of sale

Liability of Fiduciary for Debts Lost or Improperly Paid.

5. If any fiduciary mentioned in this chapter, shall, by his negligence or improper conduct, lose any debt or other money, he shall be charged with the principal of what is so lost and interest thereon in like manner as if he had received such principal. And if any personal representative, guardian, curator or committee shall pay any debt, the recovery of which could be prevented by reason of illegality of consideration, or lapse of time, or by any other fact within his knowledge, no credit shall be given him therefor.

Debts lost or improperly paid; liability of fiduciaries therefor.

Commissioner of Accounts ; Fiduciary to Render Account.

Commissioner of accounts; by whom appointed.

His duties as to fiduciaries.

His powers.

When disqualified or unable to act, how another appointed in his stead.

What and when fiduciary to make exhibit before said commissioner of accounts.

What statement trustee to make to same.

Commissioner's duty in relation thereto.

For failure therein; how and by whom proceeded against. Penalty.

When fiduciary to receive no compensation.

6. Each county court shall appoint some person who shall be known as the commissioner of accounts. The clerk of the county court in each county in which there exists a separate tribunal for police and fiscal purposes, created under article eight, section thirty-four, of the constitution of one thousand eight hundred and seventy-two, shall likewise appoint some person who shall be known as the commissioner of accounts. The said commissioner of accounts shall have a general supervision over all fiduciaries qualified in his county, and shall make all *ex parte* settlements of the accounts of said fiduciaries. He shall have power to take depositions and to swear and examine witnesses and certify their testimony. When from any cause the commissioner of accounts is disqualified or unable to act as to any account or accounts before him for settlement, the court or clerk may appoint some other person to act in his stead with reference to such account or accounts, and such person as to them shall have the powers and compensation, and discharge the duties of the commissioner of accounts. A statement of all the money which any personal representative, guardian, curator or committee shall have received or become chargeable with or have disbursed, within one year from the date of the order conferring his authority or within any succeeding year together with the vouchers for such disbursements shall, within six months after the end of every such year, be exhibited by him before the commissioner of accounts in the county wherein the order was made conferring his authority; and a statement of all the money which any trustee acting under a trust created hereafter to secure the payment of debts or to indemnify a surety, shall have received or become chargeable with or have disbursed within a year from the date of receiving any money under the provisions of such trust or within any succeeding year, together with vouchers for such disbursements, shall be laid by him before the commissioner of accounts of the county wherein the instrument creating the trust was first recorded; and the said commissioner shall state, settle and report to the court or clerk appointing him, an account of the transactions of any such fiduciary, as provided by law. If any such fiduciary fail to make such exhibit, the clerk of the county court, the commissioner of accounts and the circuit court, shall proceed against him in like manner, and the court shall impose the same penalty as is herein provided in cases where fiduciaries fail to return inventories of their respective estates.

7. Any such fiduciary who shall wholly fail to lay before such commissioner of accounts a statement of receipts for any year within six months after its expiration, shall have no compensation whatever for his services during the said

year; and though a statement be laid before the commissioner, yet if such fiduciary be found chargeable for that year, with any money not embraced in the said statement, he shall have no commission on such money unless allowed by the court. This section shall not apply to a case in which, within six months after the end of any one year, such fiduciary shall have given to the parties entitled to the money received in such year a statement of the said money, and actually settled therefor with them; nor to a case in which within the said six months after the end of any one year a fiduciary shall have laid a statement of his receipts within such year before a commissioner, who may in a pending suit, have been ordered to settle his account. When any fiduciary account is settled in a suit, it shall be the duty of the clerk of the court in which said suit is, as soon as may be after a final decree has been entered therein, to certify to the clerk of the court wherein such fiduciary qualified, that the account of such fiduciary has been settled in such suit, giving the style of the suit and the date of the final decree rendered in such suit. The clerk receiving such certificate shall record the same in the same book in which the reports of commissioners upon accounts settled by them are recorded.

When compensation partial.

Cases in which this section not applicable.

Duty of clerk when fiduciary account settled in a suit.

To whom and what he is to certify.

By whom certificate recorded and in what book.

8. When any fiduciary shall have so failed to lay before such commissioner of accounts a statement of his receipts for any year, a commissioner before whom the said statement might have been laid, shall, upon request made to him, within ten years from the commencement of such year, by any person who is interested as creditor, legatee, distributee or otherwise, or who appears as next friend of an infant so interested, issue a summons directed to the sheriff or other officer of any county, requiring him to summon such fiduciary to lay before the commissioner a statement of his receipts and disbursements, accompanied by his vouchers for such year, and for the time which may have since elapsed. If the same be not, within one month after the service of such summons, laid before the commissioner who issued it, he shall, on being requested so to do, report the fact to the circuit court of his county, which shall proceed against such fiduciary in like manner and impose the same penalty as is herein provided in cases where fiduciaries fail to return inventories of their respective estates.

Failure of fiduciary to make proper settlements, provided for.

When and upon whose application summons to issue.

What summons to require.

Commissioner's duty when fiduciary disregards summons.

Proceedings against fiduciary, etc.

Bond of Fiduciary to be Reported on by Commissioner; When Fiduciary to Give New Bond or His Powers Revoked.

9. When any personal representative, guardian, curator or committee, except a sheriff or other officer, shall have laid such statement before a commissioner of accounts, he shall examine whether said fiduciary has given bond as the law requires, and whether it is in a penalty and with

When commissioner of accounts to ascertain sufficiency of a fiduciary's bond.

Duty of commissioner when fiduciary reported incapable, etc., to make an examination, etc.

Result; to whom reported

When court may require new bond, etc.

Reasonable notice required to be given to fiduciary.

Effect of order upon former acts of fiduciary

Such bond to relate back to time of qualification, etc.

Sureties of former bond discharged by new bond, exception.

Further force and effect of new bond.

After such order, etc.,

sureties sufficient. The commissioner of accounts of the county in which the order was made conferring on said fiduciary his authority, shall at any time before such statement is laid before a commissioner, upon the application of any person who is interested or appears as next friend of an infant interested, after reasonable notice to such fiduciary, examine into any of the said matters, or inquire whether by reason of the incapacity, misconduct, or removal of any fiduciary, or for any other cause, it is improper to permit the estate of the decedent, ward or other person to remain under his control. The result of every such examination and inquiry shall be reported by him to the court by which he is appointed.

10. The court under whose orders any such fiduciary derives his authority, when it appears proper on such report of the clerk or a commissioner, or on evidence adduced by a surety or the representative of a surety for such fiduciary, or by any other person interested, may at any time, whether such fiduciary shall or shall not have before given any bond, or whether he shall have given one with or without sureties, order him to give before such court a new bond within a prescribed reasonable time, in such penalty, and with or without sureties, as may appear proper, and may if such order be not complied with, or whenever from any cause it appears proper, revoke and annul his powers. But no such order shall be made, unless reasonable notice appear to have been given to such fiduciary by the commissioner who made such report, or by the service of a rule or otherwise. And no such order of revocation shall invalidate any previous act of such fiduciary.

11. Every bond executed with sureties under either of the two preceding sections shall, without any express provision therein to that effect, relate back to the time of the qualification of the fiduciary and bind the obligors therein for the faithful discharge of the duties of his office or trust from that time, as effectually as if it had been then executed; and the sureties in the former bond and their representatives shall, upon the execution of such new bond, be forthwith discharged, except as to any matter for which a suit may be then pending on the former bond against any such sureties or their representatives, in which case such suit may be prosecuted to judgment or decree; but as to every such matter the new bond shall, without any express provisions therein to that effect, bind the obligors therein to indemnify the sureties in the former bond against all loss or damage in consequence of executing the former bond.

12. After the date of any order revoking and annulling the powers of any fiduciary, the court in which he qualified

shall exercise such jurisdiction either by appointing an administrator *de bonis non*, or a new guardian, or otherwise, as it could have exercised if the said fiduciary had died at that date.

court may appoint a new fiduciary.

Commissioner's Duty as to Accounts Before Him; His Report and Exceptions Thereto.

13. Any commissioner who has for settlement the accounts of a personal representative of a decedent shall, when requested to do so by such representative, or any creditor, legatee or distributee of the decedent, who shall advance an amount sufficient to pay for the publication hereinafter required, appoint a time and place for receiving proof of debts or demands against the said decedent or his estate, and before the said time publish a notice of such time and place once in each week for six successive weeks in some newspaper published in the county, or if there be none such then in some newspaper of general circulation therein, and post copies of such notice at the front door of the court house of the county, and if the decedent was a resident of the state, at five of the most public places in the county where he resided at the time of his death, at least six weeks before the time appointed for receiving proof as aforesaid.

When and how commissioner of accounts required to take proof of debts, etc., against decedent's estate.

Must publish notice of time and place. How.

14. The commissioner may adjourn from time to time for receiving such proof, and shall within one year from the time first appointed for receiving such proof, make out an account of all such debts or demands as may appear to him to be sufficiently proved, stating separately those of each class.

Commissioner to make out his account of debts proven, etc., within one year.

15. Every commissioner of accounts shall once a week for two successive weeks preceding each term of the county court of his county advertise in some newspaper published in his county, (if there be one which will publish such advertisement for the compensation hereinafter provided), a list of the fiduciaries whose accounts are at the date of such list before him for settlement, although they may have been mentioned in one or more lists previously published and posted by him, stating the names of such fiduciaries, the nature of their accounts, whether as personal representative, guardian, curator, committee or trustee, and the names of their decedents, or of the persons for whom they are guardians, curators, or committees, or under whose deed or other instrument of trust they are acting. The said commissioners shall also on the first day of such term of the county court post a duplicate of said list at the front door of the court house of his county. No account of any fiduciary shall be completed by any commissioner until it shall have been mentioned in such list, nor for ten days after the first day of such term of the county

Duty of commissioner to publish lists of fiduciaries, etc.

What such advertisement to contain.

Duplicate list to be posted at front door court house.

Penalty for commissioner's failure to publish and post. Advertisement; how paid for.

court. Any commissioner of accounts who fails to publish and post such list shall be fined twenty dollars. The advertisements provided for in this section shall be paid for at a price not exceeding fifty cents for each fiduciary named in the list, out of the funds in his hands as such fiduciary.

What time embraced in settlements made by commissioner.

16. When a commissioner has before him for settlement the account of a fiduciary for any year, if there be any time prior to such year for which the fiduciary has not settled, the settlement shall be also for such time. Any person who is interested or appears as next friend for another interested in any such account may, before the commissioner, insist upon or object to anything which could be insisted upon or objected to by him, or for such other, before a commissioner acting under an order of a court of chancery for the settlement thereof made in a suit to which he or such other was a party.

Objection; by whom made.

Fiduciary's expenses and compensation; what commissioner to allow him.

17. The commissioner in stating and settling the account shall allow the fiduciary any reasonable expenses incurred by him as such; and also, except in cases in which it is otherwise provided, a reasonable compensation in the form of a commission on receipts or otherwise.

Matters specially stated, to be reported with account, etc.

18. Every account stated under this chapter shall be reported with any matters specially stated, deemed pertinent by the commissioner, or which may be required by any person interested to be so stated.

Commissioner's report; how long to remain in his office open to inspection and exception.

19. Such report shall remain in the commissioner's office for ten days after it is completed, during which time any person interested may inspect the same and file exceptions thereto.

When and where filed.

20. The commissioner shall file the report in the office of the court by which he is appointed, as soon as practicable after the expiration of the said ten days; and with his report shall return the said exceptions, with such remarks as he may see fit to make, and such of the vouchers or evidence before him as any person interested may desire him to return, or as he may deem proper.

What must accompany report.

Orders of Court on Report; The Transfer of Property in Hands of Fiduciary.

Proceedings of court in relation to commissioner's report.

21. The court at its first term after the report may have been filed in the office of its clerk, shall examine the same with such exceptions thereto as may be filed at any time before such examination. It shall correct any errors which may appear on the exceptions, and any appearing on the face of the account, whether excepted to or not; and to this end may recommit the report to the commissioner of accounts as often as it sees cause, or it may con-

Power to correct errors, recommit report or confirm same.

firm it in whole or in a qualified manner. The clerk shall, in a book kept for the purpose, record every report which may be so confirmed, and at the foot of it the order of confirmation. Any voucher or other evidence remaining with the commissioner at the time of such confirmation, and not wanting for any further matter of inquiry before him, shall be returned by him to the party who filed the same.

Clerk's duty as to recording report.

Vouchers; when commissioner may return to party.

22. The report, to the extent to which it may be so confirmed, shall be taken to be correct, except so far as the same may in a suit in proper time, be surcharged or falsified.

How far report, when confirmed, to be taken as correct.

23. When it appears by a report made as aforesaid, or a special report of the commissioner of accounts, that money is in the hands of any such fiduciary, the court before which the report so comes may order the same to be invested or loaned out, or make such other order respecting the same as may seem to it proper.

Investments; when court may direct fiduciary to make, etc.

24. When any securities for money loaned or invested shall be standing in the name of any fiduciary who shall have died, or whose power shall have been revoked, and such fiduciary, or his personal representative, shall not have transferred such securities to his successor, the county court of the county in which such fiduciary shall have qualified, upon the petition of such successor, or of any other person interested, may direct such securities to be transferred to such successor, and may direct the dividends, interest or proceeds of the said securities to be received or paid in such manner as the said court shall think proper.

When securities, etc., may be transferred by county court to successor of fiduciary.

25. When a court shall have confirmed, either in whole or in a qualified manner, a report of the accounts of any guardian, curator, committee or trustee as aforesaid, such court may order payment of what shall appear due on such accounts, to such persons as would be entitled to recover the same by suit in equity.

On confirmation of report, court to order payments found due.

26. When a court shall have so confirmed a report of the accounts of any personal representative, and of the debts and demands against his decedent's estate, it shall order to be applied to the payment of such debts and demands, so much of the estate in the hands of such representative and to such creditors as shall appear proper, reserving, when it seems to the court reasonable to do so, to meet a claim of a surety for the decedent or any other contingent claim against the estate, the proof of which has to be deferred, or to meet any other claim not finally passed upon, such sum as may be deemed sufficient to pay it, or a proportion thereof equal to what is ordered to be paid to other creditors of the same class, should the payment of it, or of such portion afterwards appear proper.

When and how court may direct estate in hands of personal representative to be applied to debts.

Deferred or contingent claims provided for.

When deferred payment allowed, how court to order its payment.

27. Upon any such claim being allowed, subsequent to any dividend, there shall be ordered to be paid out of the estate remaining in the hands of the representative, or under the control of the court, (without regarding any debts of superior dignity, for which there may have been no such reservation), the amount of such claim, or a proportion thereof, equal to what shall have been paid to other creditors of the same class, if there be enough remaining to pay the same or such proportion, but the former dividend shall not be disturbed.

Surplus remaining after a dividend, etc.; how divided among creditors.

28. When at the time of any dividend the whole assets are not distributed, or where further assets afterwards come to the hands of the personal representative, if after paying such proportion as is mentioned in the preceding section, or any claim allowed subsequent to such dividend, there remain a surplus, it shall be divided among all the creditors who shall have proved debts and demands against the decedent's estate in the order and proportion in which they may be entitled.

When legacies paid or distributions made by personal representative.

May require refunding bond of legatee or distributee.

Where such bond filed and recorded.

When personal representative not to be held liable for sums paid on legacies, etc.

When creditor may bring suit and recover on refunding bond of legatee or distributee.

29. A personal representative shall not be compelled to pay any legacy given by the will, or make distribution of the estate of his decedent, until after a year from the date of the order conferring authority on the first executor or administrator of such decedent; and except where it is otherwise specially provided, he shall not then be compelled to make such payment or distribution until the legatee or distributee shall give him a bond, executed by himself or some other person, with sufficient security, conditioned to refund a due proportion of any debts or demands which may afterwards appear against the decedent, and of the costs attending their recovery. Such bond shall be filed in the clerk's office of the court which may have decreed such payment or distribution or in which the accounts of such representative may be recorded, and shall be recorded by such clerk in the record of bonds mentioned in section nineteen of chapter ten of this code.

30. If any personal representative shall pay any legacy given by the will or distribute any of the estate of his decedent, and there be filed in the said clerk's office a proper refunding bond for what is so paid or distributed, with a security therein sufficient at the time of taking it, such personal representative shall not, on account of what is so paid, or distributed, be personally liable for any debt or demand against the decedent, whether it be of record or not, unless within one year from his qualification or before such payment or distribution, he shall have had notice of such debt or demand. But if any creditor of the decedent thereafter establish his debt or demand by judgment or decree therefor, or by its being allowed in a commissioner's report which is confirmed, a suit may be maintained on

such refunding bond in the name of the obligee or his personal representative, for the benefit of such creditor, and a recovery shall be had thereon to the same extent that would have been had if the said obligee or his personal representative had satisfied such debt or demand.

31. When a report of the accounts of any personal representative, and of the demands and debts against his decedent's estate, shall have been filed in the office of a court under this chapter, the said court, after two years from the qualification of such personal representative may, on the motion of a legatee or distributee of his decedent, make an order for the creditors of such decedent to show cause on some day to be named in the order, against the payment and delivery of the estate of the decedent to his legatees or distributees, copies of which order shall be posted and published in the same manner and for the same time as is provided in section thirteen of this chapter, with respect to the notice for the time and place for proof of debts. On or after the day named in the order, the court may order the payment and delivery to the legatees or distributees of the whole, or a part of the money and other estate, not before distributed, with or without a refunding bond, as the court may prescribe. But every legatee or distributee, to whom any such delivery or payment is made and his representatives, may, in a suit brought against him, within five years afterwards, be adjudged to refund a due proportion of any debts or demands appearing against the decedent, and of the costs attending their recovery.

When and how court to make order for creditors to show cause against payment of legacies, etc.

On whose motion.

Copies of such order to be posted and published

When court may direct distribution and payment of legacies.

But distributee and legatee may be held personally bound for five years.

32. If any order made by the county court, under sections twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty-one of this chapter, be not complied with, any person interested may bring a suit in chancery in the circuit court of the county wherein such order was made, to compel compliance therewith. In such suit such order shall be taken as *prima facie* correct, and there shall be a decree according to said order, except so far as it may appear upon proper pleadings and proofs to be erroneous. If any fiduciary make any payment in accordance with such order of the county court more than three months after such order was made, and before suit shall have been commenced under this section, such payment shall not be disturbed, nor shall such fiduciary be in any wise liable with respect thereto.

Proceedings, where there is non-compliance with certain sections of this chapter, to enforce compliance with order therein directed

Order *prima facie* evidence.

When fiduciary may avoid liability with respect to order.

33. All cases and proceedings with respect to fiduciaries pending in the circuit court, when this chapter as amended takes effect, shall proceed therein to a final determination, and be governed by the law as it was on the day before this chapter takes effect.

What cases and proceedings not affected by this chapter.

In certain counties, where separate tribunals for police, etc., exist, county clerk empowered to discharge certain duties imposed upon county court.

34. In each county in which there exists a separate tribunal for police and fiscal purposes, created under article eight, section thirty-four of the constitution of one thousand eight hundred and seventy-two, the clerk of the county court shall have the powers and discharge the duties which by this chapter are vested in and imposed upon the county court.

Acts Repealed.

Repeal of inconsistent acts.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

[Approved March 15, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXIX.

AN ACT to amend and re-enact chapter eighty-six of the code of West Virginia.

[Passed March 3, 1882.]

Be it enacted by the Legislature of West Virginia:

Code amended; chapter 86.

1. Chapter eighty-six of the code of West Virginia is hereby amended and re-enacted so as to read as follows:

CHAPTER LXXXVI.

Duties of Personal Representatives as to Real Estate; and the Liability of such Estate for Decedent's Debts.

When real estate devised to be sold, the sale of same in certain cases to be made by executors who qualify. If none qualify, etc., then sale to be made by adm'r c. t. a.

1. Real estate devised to be sold shall, if no person other than the executors be appointed for the purpose, be sold and conveyed, and rents and profits of any real estate which executors are authorized by the will to receive, shall be received by the executors who qualify, or the survivor of them. If none qualify, or those qualifying die, or are removed before the trust is executed, or completed, the administrator with the will annexed, shall sell or convey the lands so devised, to be sold, and receive the proceeds of sale, or the rents and profits aforesaid, as an executor might have done.

Duty of executor or adm'r to pay money arising from real estate to persons entitled thereto.

2. It shall be one of the duties of an executor or administrator, by virtue of his office, and as such embraced by his official bond, faithfully to pay the rents and profits, or proceeds of sale, of real estate which may lawfully come

to his hands or to the hands of any person for him to such persons as are entitled thereto.

3. All real estate of any person who may hereafter die, as to which he may die intestate, or which, though he die testate, shall not by his will be charged with or devised subject to the payment of his debts, or which may remain after satisfying the debts with which it may be so charged, or subject to which it may be so devised, shall be assets for the payment of the decedent's debts and all lawful demands against his estate, in the order in which the personal estate of a decedent is directed to be applied.

Real estate; assets for payment of decedent's debts.

Order in which real assets to be paid.

4. Such assets, so far as they may be in the hands of the personal representative of the decedent, may be administered by the court in whose clerk's office there is or may be filed a report of the accounts of such representative, and of the debts and demands against the decedent's estate, or they may in any case, be administered by a court of equity.

By what court such assets may be administered

5. Any heir or devisee who shall sell and convey any real estate which by this chapter is made assets, shall be liable to those entitled to be paid out of the said assets, for the value thereof with interest; in such case the estate conveyed shall not be liable, if at the time of the conveyance the purchaser shall have no notice of the fraudulent intent on the part of the grantor, and no suit shall have been commenced for the administration of the said assets, nor any report have been filed as aforesaid of the debts and demands of those entitled.

Liability of heir or devisee for disposing of decedent's real estate, in certain cases. When real estate, itself, not liable in such cases.

6. An heir or devisee may be sued in equity by any creditor to whom a debt is due, for which the estate descended or devised is liable, or for which the said heir or devisee is liable in respect to such estate; and he shall not be liable to an action at law for any matter for which there may be any redress by such suit in equity.

Suits against heir or devisee; when creditors may sue in equity. When heir or devisee not liable at law.

7. When the personal estate of a decedent is insufficient for the payment of his debts, his executor or administrator may commence and prosecute a suit in equity to subject his real estate to the payment thereof, as provided in this chapter. The widow, heirs and devisees, if any, and all the known creditors of the decedent, shall be made defendants in such suit. If such suit be not brought within six months after the qualification of such executor or administrator, any creditor of such decedent, whether he has obtained a judgment at law for his claims or not, may institute and prosecute such suit on behalf of himself and the other creditors of such decedent, in which the personal representative, widow, heirs and devisees, if any, of the decedent shall be made defendants. In every suit under this section any one claiming to be a creditor of the de-

When personal estate not sufficient for payment of debts; suit in equity to subject real estate, may be brought by executor, etc. Parties defendant. When such suit may be brought by creditor.

Defendants thereto. Terms upon which any creditor may be made party.

Presentation of claim, and effect thereof.

How evidence taken, and claim rejected or allowed.

Decree for distribution of proceeds of real estate. Notice to creditors; how published.

cedent, whether he may have been made a party thereto or not, or whether he may have been served with process therein or not, may present his claim, and upon such presentation shall be deemed to have been made a party to the suit and to have been served with process therein. And evidence respecting such claim may be taken, and the same may be allowed and paid, in whole or in part, or rejected in the same manner and with the same effect, as if such claimant had been originally made a party and served with process.

8. No decree for the distribution of the proceeds of the real estate of such deceased person among his creditors shall be made until a notice to such creditors to present and prove their claims shall have been published and posted as hereafter provided, which notice shall be in the following form or to the same effect:

Notice to Creditors.

"To the Creditors of A— B—, deceased.

In pursuance of a decree of the ——— court of the county of ———, made in a cause therein pending, to subject the real estate of the said A— B—, to the payment of his debts, you are required to present your claims against the estate of the said A— B—, for adjudication to C— D—, commissioner, at his office in the said county, on or before the ——— day of ———.

Witness E— F—, clerk of said court, this — day of ———.

E.— F—, *Clerk.*"

Notice to be published in newspaper, etc.

Court to designate newspaper. Where notice to be posted, etc.

When and how decree for distribution made.

Distributees.

When decree a bar to claims of creditors.

Such notice shall be published once in each week, for six successive weeks in some newspaper published in the county, or if there be none such, then in some newspaper of general circulation therein. Such newspaper in either case to be designated by the court. And copies of such notice shall be posted at the front door of the court house of said county, and if the decedent was a resident of the state at the time of his death at five of the most public places in the county where he resided at the time of his death, at least six weeks before the making of such decree. The court may direct such other notice to be given as it may deem proper.

9. When such suit shall be fully matured for hearing and the provisions of the preceding section shall have been fully complied with, the court may decree a distribution of the proceeds of such real estate among such of the creditors of the deceased as shall have shown themselves entitled thereto; which decree, so made, shall be a bar to the claim of any creditor of the deceased who has failed to present the same to the commissioner as required by the said notice, except that if a surplus remain after such

distribution, the creditor so failing may share in the same upon proving his claim at any time before a final decree is made in such suit. But if he fail to present his claim for adjudication before such final decree, he shall be forever barred of all right to participate in the proceeds of such real estate, so far as the other creditors of the said deceased are concerned.

Exception as to surplus, when claim proven.

Effect of failure to present claim before final decree.

10. After the commencement of any such suit as aforesaid, if any creditor of the said deceased commence another suit, either at law or in equity, upon a claim against him or his estate, no costs shall be recovered in such last mentioned suit.

When costs shall not be recovered in subsequent suits.

11. This chapter shall not affect any lien, by judgment or otherwise, acquired in the lifetime of the decedent.

This chapter not to affect lien acquired in life time of decedent.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Inconsistent acts repealed.

[Approved March 15, 1882.]

NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER LXX.

AN ACT amending and re-enacting sections one, two, three, four, five and six, of chapter ninety-one of the code of West Virginia.

[Passed March 3, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That sections one, two, three, four, five and six, of chapter ninety-one of the code of West Virginia be and the same are hereby amended and re-enacted so as to read as follows:

Code amended; sections 1, 2, 3, 4, 5 and 6 of chapter 91.

How Value of Improvements is Assessed and Paid.

1. Any defendant against whom a decree or judgment shall be rendered for land, where no assessment of damages has been made under the preceding chapter may, at any time before the execution of the decree or judgment, present a petition to the court rendering such decree or judgment, stating that he or those under whom he claims, while holding the premises under a title believed by him or them to be good, have made permanent improvements

Compensation for permanent improvements. Where judgment or decree for land is rendered against defendant, he may file petition for relief. What petition to state.

Relief prayed for.
Order of court thereupon.
Judgment may be suspended and jury impanelled to fix value of improvements.

How jury to arrive at value.
What estimated against defendant.

What in his favor.

Limitation of defendant's liability for annual value, etc.

Under what circumstances jury to estimate value of improvements in favor of defendant.

What jury may do when value of improvements exceed that allowed plaintiff for annual value of premises, etc.

Verdict of jury.

Judgment or decree.

thereon, and praying that he may be allowed for the same the fair and reasonable value thereof; and thereupon the court, if satisfied of the probable truth of the allegation, shall suspend the execution of the judgment or decree, and empanel a jury to fix and assess the value of the improvements (if any,) so made by the defendant.

2. The jury, in fixing and assessing such value shall estimate against the defendant the annual value of such part of the premises (if any,) as was improved and in a state fit and prepared for cultivation, at the time he took possession thereof, and shall credit him with the value of all improvements made thereon; but no charge shall be made against the tenant for the use of any improvements made upon the land by him, or for the use of any part of the land cleared by him.

3. The defendant shall not be liable for such annual value for any period longer than five years before the action or suit was brought.

4. If the jury be satisfied that the defendant, or those under whom he claims, made on the premises, at a time when there was reason to believe the title good under which he or they were holding the said premises, permanent and valuable improvements, they shall estimate in his favor, the value of such improvements as were so made before notice in writing of the title under which the plaintiff claims, as they are at the time such valuation is made.

5. If the sum allowed by the jury for the improvements exceed that allowed to the plaintiff for the annual value of the premises under section two of this chapter, the jury may then estimate against the defendant such annual value for the time he has used and occupied the same before the said five years.

6. After setting off the amount allowed the plaintiff (if any) against the amount allowed to the defendant for improvements (if any), the jury shall find a verdict for the plaintiff or defendant, as the case may be, and judgment or decree shall be entered therefor according to the verdict.

[Approved March 15, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER LXXI.

AN ACT amending and re-enacting chapter one hundred and twenty-five of the code of West Virginia.

[Passed March 6, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter one hundred and twenty-five of the code of West Virginia be and the same is hereby amended and re-enacted so as to read as follows :

Code amended;
chapter 125.

CHAPTER CXXV.

RULES AND PLEADINGS.

General Provisions as to Rules.

1. In the clerk's office of every circuit court, except where a different provision is made by law, rules shall be held on the first Monday of every month, except when a term of the circuit court happens to commence on the first Monday in a month, or either of the two following days, or on the preceding Tuesday, Wednesday, Thursday, Friday or Saturday, the rules which otherwise would have been held for the said month on the first Monday, shall be held on last Monday in the next preceding month. The rules may continue three days; but when in any case such continuance would interfere with the terms of the court for which the rules are held, they shall not continue in such case beyond the day preceding the commencement of the term of such court.

When rules are held, and how long.

2. Where rules are held on the last Monday in a month, as provided in the preceding section, they shall be entered in the rule docket and endorsed on the declaration or bill as if taken on the first Monday in the month to which they relate.

Where rules held on last Monday in a month; how entered and endorsed.

Rule Docket.

3. There shall be a docket of the cases at rules, wherein the rules shall be entered; and the books in which rules and orders are entered, in chancery cases, shall be separate from those in which rules and orders are entered in other cases.

Rule docket; chancery cases to be entered in a separate book from others.

4. When there is no clerk to take a rule in a case, it shall stand continued until the next rule day after there is a clerk.

What done when there is no clerk to take a rule.

5. The rules may be to declare, plead, reply, rejoin or for other proceedings; they shall be given from month to month.

What rules may be for.

When the Suit Will Abate or Be Dismissed.

When defendant may have rule against plaintiff to file declaration or bill.
When plaintiff non-suited.

What he must pay defendant.

6. A defendant may appear at the rule day at which the process against him is returnable, or if it be returnable in term, at the first rule day after the return day, and if the declaration or bill be not then filed, may give a rule for the plaintiff to file the same. If the plaintiff fail to do this at the succeeding rule day, or shall, at any time after the defendant's appearance, fail to prosecute his suit, he shall be non-suited, and pay to the defendant, besides his cost, five dollars.

In what cases clerk to enter suit dismissed.

7. If three months elapse after the process is returned executed as to any one or more of the defendants, without the declaration or bill being filed, the clerk shall enter the suit dismissed, although none of the defendants may have appeared.

When clerk to return a defendant a non-resident.

Duty of court in such cases.

8. When a summons to answer an action or bill is against a defendant whom the officer (receiving it) knows not to reside in his county, or to reside out of the state, he shall, unless he find him in his county on or before the return day, return him a non-resident; whereupon, if the court from which such process issued have jurisdiction of the case only on the ground of such defendant's residence in such county, the action or suit shall abate as to him; and if he be returned a non-resident of the state, and the court have jurisdiction of the case only on the ground that the cause of action arose in the county, the action or suit shall abate as to him.

Of the Declaration.

When action shall not abate for want of form in declaration.

What may be omitted in declaration for trespasses.

9. No action shall abate for want of form, where the declaration sets forth sufficient matter of substance for the court to proceed upon the merits of the case.

10. In actions of trespass, general averments that the defendant committed other wrongs, and that the acts charged were done with force and arms against the peace, may be omitted; and the plaintiff may prove all that he could have done if such averments had been inserted in the declaration.

When account to be filed and declaration in assumpsit.

Effect of failure.

11. In every action of assumpsit the plaintiff shall file with his declaration an account stating distinctly the several items of his claim, unless it be plainly described in the declaration, and if he fail to do so, he shall not be permitted to prove any item not stated in such account, on the trial of the case.

Amended Declaration or Bill—Supplemental Bill and Bill of Revivor.

12. The plaintiff may of right amend his declaration or

bill at any time before the appearance of the defendant, or after such appearance if substantial justice will be promoted thereby. But if such amendment be made after the appearance of the defendant, the court may impose such terms upon the plaintiff as to a continuance of the cause, and the payment of the costs of such continuance, as it may deem just. The plaintiff may also at any time before or after the appearance of the defendant, in the vacation of the court wherein the suit is pending, file in the clerk's office, with the other papers in the cause, an amended declaration or bill, supplemental bill, or bill of revivor; whereupon the clerk shall issue a summons against the defendant, requiring him to plead to, or answer such amended declaration or bill. But if the court shall be of opinion that the same was improperly filed, it shall dismiss such declaration or bill at the costs of the plaintiff.

Amendment of declaration or bill; when same may be made.

Duty of clerk where amendment filed in vacation.

Guardian Ad Litem to Infant or Insane Defendant.

13. The proceedings in a suit, wherein an infant or insane person is a party, shall not be stayed because of such infancy or insanity, but the court in which the suit is pending, or the clerk thereof at rules, may appoint a guardian *ad litem* to any infant or insane defendant, whether such defendant shall have been served with process or not, and after such appointment no process need be served on such infant or insane person. The court may compel the person so appointed to act, or appoint another in his stead; but the person so appointed shall not be liable for costs, and shall be allowed his reasonable charges, which the party on whose motion he was appointed shall pay.

When court or clerk to appoint a guardian *ad litem*.

May be compelled to act.

Matter of Abatement.

14. No plea in abatement for a misnomer shall be allowed in any action; but in a case wherein, but for this section, a misnomer would have been pleadable in abatement, the declaration and summons may, on the motion of either party, and on the affidavit of the right name, be amended by inserting the same therein.

Misnomer; not to be pleaded in abatement. How corrected.

15. In other cases, a defendant on whom the process summoning him to answer appears to have been served, shall not take advantage of any defect in the writ, or return, or any variance in the writ from the declaration, unless the same be pleaded in abatement. And in every such case the court may permit the plaintiff to amend the writ or declaration so as to correct the variance, and permit the return to be amended, upon such terms as to it shall seem just.

Defects in writ, and variance between writ and declaration to be pleaded in abatement.

Where not done court may direct amendment.

16. Where the declaration or bill shows on its face proper matter for the jurisdiction of the court, no exception for the want of such jurisdiction shall be allowed, unless it be

No exception to jurisdiction in certain cases, unless taken by plea in abatement.

When such plea not received. taken by plea in abatement; and the plea shall not be received after the defendant has pleaded in bar, or answered to the declaration or bill, nor after a rule to plead, or a conditional judgment or decree *nisi*.

What plea in abatement for non-joinder, etc., must state.

17. No plea in abatement, for the non-joinder of any person as a co-defendant, shall be allowed in any action, unless it be stated in the plea that such person is a resident of the state, and unless the place of residence of such person be stated with convenient certainty in an affidavit verifying the plea.

When issue in certain pleas of abatement for non-joinder must be found against defendant pleading same.

18. If a defendant plead in abatement that any other person ought to be jointly sued, and at the trial of an issue joined on such plea, it appear that the action could not, by reason of chapter ninety-eight, or chapter one hundred and four of this code, be maintained against such other persons, or any of them, such issue shall be found against the defendant so pleading.

When, after such plea, plaintiff may amend declaration without proceeding to trial upon issue.

19. After such plea in abatement, the plaintiff, without proceeding to trial upon an issue thereon, may amend his declaration, and make the persons named in such plea as joint contractors, defendants in the case with the original defendants, and cause process to be served upon the new defendants; and, if it appear by the subsequent pleadings in the action, or at the trial thereof, that all of the original defendants are liable, but that one or more of the other persons named in such plea are not liable; the plaintiff shall be entitled to judgment, or to verdict and judgment, as the case may be, against the defendants who appear liable; and such as are not liable shall have judgment, and recover costs as against the plaintiff, who shall be allowed the same as costs against the defendants who so pleaded.

Effect of amendment in certain cases upon the judgment.

General Rules as to Pleas and Subsequent Pleadings.

Pleadings generally. What defendant may plead. When plea of *non est factum* precludes inconsistent pleas. Special pleas and replications.

20. The defendant in any action or suit may plead as many several matters, whether of law or fact, as he shall think necessary, except that if he plead the plea of *non est factum* he shall not, without leave of the court, be permitted to plead any other plea inconsistent therewith. To any special plea, pleaded by a defendant, the plaintiff may plead as many special replications as he may deem necessary.

Pleas in abatement and in bar at same time.

21. The defendant may plead in abatement and in bar at the same time, but the issue on the plea in abatement shall be first tried. And if such issue be found against the defendant, he may, nevertheless, make any other defense he may have to the action.

Issue.

What plea, replication, etc., need not allege.

22. In a plea, replication, or subsequent pleading, intended to be pleaded in bar, or in the maintenance of the action, it shall not be necessary to use any allegation of

actionem non or *precludi non*, or to the like effect, or any prayer of judgment.

23. No party shall be prejudiced by omitting a protestation in any pleading. Omission of protestation not to prejudice pleadings.

24. All special traverses, or traverses with an inducement of affirmative matter, shall conclude to the country. But this regulation shall not preclude the opposite party from pleading over to the inducement when the traverse is immaterial. How special traverses, etc., to conclude. Effect.

25. When the plaintiff takes issue on the defendant's pleading, or traverses the same, or demurs, so that the defendant is not let in to allege any new matter, the plaintiff may proceed as if there were a *similiter* or joinder in demurrer. When plaintiff may proceed as if there was a *similiter* or joinder in demurrer.

Particulars as to Pleas and Demurrers.

26. No formal defense shall be required in a plea; it may commence as follows: "The defendant says that." Formality dispensed with. How plea may commence.

27. It shall not be necessary to state in a second or other plea, that it is pleaded by leave of the court, or according to the form of the statute, or to that effect. What need not be stated in second or other plea.

28. The form of a demurrer or joinder in demurrer shall be: "The defendant (or plaintiff) says that the declaration (or plea, etc.) is not (or is) sufficient in law." Form of demurrer or joinder in demurrer.

29. On a demurrer (unless it be to a plea in abatement) the court shall not regard any defect or imperfection in the declaration or pleadings, whether it has heretofore been deemed mispleading or insufficient pleading or not, unless there be omitted something so essential to the action or defense that judgment according to law and the very right of the cause cannot be given. No demurrer shall be sustained because of the omission in any pleading of the words, "this he is ready to verify," or, "this he is ready to verify by the record," or, "as appears by the record;" but the opposite party may be excused from replying, demurring or otherwise answering to any pleading which ought to have, but has not, such words therein, until they be inserted. If nothing be alleged by the demurrant in support of his demurrer the court, if it overrule the same, shall state that fact in the order; and if final judgment be obtained in the cause by the party whose pleading is demurred to, the same shall not be reversed by reason of any defect in the pleading so demurred to. Demurrer; what court not to regard as defects or imperfections. Not to be sustained because of certain omissions.

30. A plaintiff in equity may have any plea or demurrer set down to be argued. If the same be overruled, no other plea or demurrer shall afterwards be received, but there shall be a rule upon the defendant to answer the What order of court in certain cases to state. Effect thereof. Pleas and demurrers in equity; rules as to same.

bill; and if he fail to appear and answer the bill on the day specified in the order, the plaintiff shall be entitled to a decree against him for the relief prayed for therein.

Issue upon a plea in equity may be tried by jury.

31. A plaintiff in equity may take issue upon a plea, and have such issue tried by a jury.

General Rules as to Immaterial Allegations.

Immaterial allegations in declaration, etc., not necessary to set forth.

32. It shall not be necessary in any declaration or other pleading to set forth the place in which any contract was made, or act done, unless when, from the nature of the case, the place is material or traversable, and then the allegation may be as to a deed, note, or other writing bearing date at any place, that it was made at such place, or as to any other act, according to the fact, without averring or suggesting that it was at or in the county in which the action is brought, unless it was in fact therein.

What averments unnecessary. When profert not required, but oyer may be had.

33. It shall not be necessary in any action to aver that the cause of action arose or that the matter is within the jurisdiction of the court, or to make profert of any deed, letters testamentary, or commission of administration; but a defendant may have oyer in like manner as if profert were made.

When certain allegations may be omitted.

34. All allegations which are not traversable, and which the party could not be required to prove, may be omitted, unless when they are required for the right understanding of allegations that are material.

General Rules as to Pleadings and Proceedings in Equity.

Pleadings and proceedings in equity. Answer; what defendant may allege therein.

35. The defendant in a suit in equity may, in his answer, allege any new matter constituting a claim for affirmative relief in such suit against the plaintiff or any defendant therein, in the same manner and with like effect as if the same had been alleged in a cross-bill filed by him therein; and in such case, if the plaintiff or defendant against whom such relief is claimed desire to controvert the relief prayed for in the answer, he shall file a special reply in writing, denying such allegations of the said answer as he does not admit to be true, and stating any facts constituting a defense thereto. But in case a defendant allege new matter in his answer upon which he relies for and prays affirmative relief, such defendant shall not file a cross-bill in the same cause except upon condition of striking from his answer all such matter and prayer for affirmative relief as are contained in such cross-bill.

How same may be replied to.

When new matter alleged in answer may prevent defendant from filing cross bill.

When allegations, etc., to be taken as true.

36. Every material allegation of the bill not controverted by an answer, and every material allegation of new matter in the answer constituting a claim for affirmative relief not controverted by a special reply in writing, shall

for the purposes of the suit, be taken as true, and no proof thereof shall be required.

Form of Bill.

37. The plaintiff's bill may be in form or in substance as follows:

"The bill of complaint of A— B— (state the names of all the plaintiffs) against C— D— (state the names of all the defendants, if known, and if not, designate them as the 'unknown parties,' or 'unknown heirs,' etc., as the case may be), filed in the circuit court of _____ county. The plaintiff complains and says that (here state all the facts constituting a claim to relief.) The said plaintiff therefore prays that (here state the particular relief desired.) He also asks such other and general relief as the court may see fit to grant.

Bill of complaint; form thereof.

A— B—, Plaintiff."

Every person designated in the caption of such bill as a defendant shall be a defendant therein, without a prayer that he be made such, and shall be required to answer the bill in the same manner and to the same extent as if he were therein called upon to do so.

Defendants; who regarded as such. May be required to answer.

Of the Verification of Pleadings.

38. If the plaintiff desire the defendant to answer the bill on oath, he must verify his bill by affidavit, and if the bill be so verified, the defendant must in like manner verify his answer. But if the bill be not verified, the defendant need not verify his answer, and if he does so it shall not be entitled to any more weight in the cause than if it had not been verified. In case the defendant verify his answer, alleging new matter constituting a claim for affirmative relief, the plaintiff must verify his special reply thereto. A general replication to an answer claiming affirmative relief shall not apply to so much of said answer as states facts constituting a claim to such relief.

When plaintiff must verify his bill by affidavit. When defendant need not verify answer.

Rule when affirmative relief is prayed for.

39. No plea in abatement or plea of *non est factum* shall be received unless it be verified by affidavit.

Pleas in abatement and of *non est factum* must be verified by affidavit.

40. Where a declaration or other pleading alleges that any person made, endorsed, assigned or accepted any writing, no proof of the handwriting of such person shall be required, unless the fact be denied by an affidavit with the plea which puts it in issue.

When no proof of hand writing required unless denied by affidavit.

41. Where plaintiffs or defendants sue or are sued as partners, and their names are set forth in the declaration or bill, or where a plaintiff or defendant sues or is sued as a corporation, it shall not be necessary to prove the fact of such partnership or the existence of such corporation, unless the pleading which puts the matter in issue be verified, or there be an affidavit filed therewith denying such

When no proof of partnership or existence of corporation required, unless same be denied by plea and affidavit.

Form of such plea.

partnership or the existence of such corporation. A plea putting in issue the existence of a corporation shall be sufficient if it be in form or effect as follows:

"And the said defendant for plea says, that the plaintiff (or defendant, as the case may be,) is not a corporation as in the plaintiff's declaration is alleged."

Form of Verification of Pleading.

Verification of pleading; form of certificate thereof.

42. The verification of any pleading, and the certificate thereof, may be in form or effect as follows:

"State of West Virginia, ——— county, to-wit:

A— B—, the plaintiff (or defendant, as the case may be), named in the foregoing bill, (or answer, replication, or plea, as the case may be), being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information he believes them to be true.

A— B—, *plaintiff or defendant.*

Taken, sworn to, and subscribed before me this — day of ——. C— B—, *clerk*, (or other officers swearing him)."

What sufficient where party is fiduciary. What bill of injunction, or answer thereto, when sworn to by other than plaintiff or defendant, must show.

If the party required to verify a pleading be an administrator or other fiduciary, it shall be sufficient if he swear that he believes the plea or other pleading to be true. A bill of injunction to be sworn to by any person other than the plaintiff, or answer to a bill of injunction to be sworn to by a person other than the defendant making the answer, must be so drawn as to show which of the allegations therein contained are made on information and belief, and the verification thereof must be in form or effect as follows:

"State of West Virginia, ——— county, to-wit:

A— B—, being duly sworn says, that he is the agent (or attorney, &c., as the case may be,) of the plaintiff named in the foregoing bill, or of the defendant named in the foregoing answer, and that he knows the contents thereof; that the facts and allegations therein contained are true, except such as are therein stated upon information and belief, and that as to such allegations he believes them to be true.

C— D—, *agent (or attorney)."*

Form of verification in such case.

Judgment or Decree by Confession.

Judgment or decree by confession.

43. In any suit a defendant may, in the vacation of the court, confess a judgment or decree in the clerk's office, for so much principal and interest as the plaintiff may be willing to accept a judgment or decree for. The same shall be entered of record by the clerk in the order book, and be as final and as valid as if entered in court on the

the day of such confession, except merely that the court shall have such control over it as is given by section sixty of this chapter.

Judgment or Decree in the Office by Default.

44. If a defendant who appears fail to plead, answer or demur to the declaration or bill, a rule may be given him to plead. If he fail to appear at the rule day at which the process against him is returned executed, or when it is returnable to a term, at the first rule day after it is so returned, the plaintiff, if he has filed his declaration or bill, may have a conditional judgment or decree *nisi* as to such defendant. No service of such decree *nisi* or conditional judgment shall be necessary. But at the next rule day after the same is entered, if the defendant continue in default, or at the expiration of any rule upon him with which he fails to comply, if the case be in equity, the bill shall be entered as taken for confessed as to him, and if it be at law, judgment shall be entered against him, with an order for the damages to be enquired into, when such enquiry is proper

Office judgment, etc. Proceedings in relation thereto.

Conditional. Service not necessary.

How and when such judgment or decree entered.

Enquiry as to damages.

45. There need be no such enquiry in an action for debt upon any bond or other writing for the payment of money, or against the drawer or endorsers of a bill of exchange or negotiable note, or in an action of debt or *scire facias* upon a judgment or recognizance.

When no such enquiry needed.

How Office Judgment is Set Aside, or Becomes Final; its Effect.

46. Every judgment entered in the clerk's office in a case wherein there is no order for an enquiry of damages, and every non-suit or dismissal entered therein, shall, if not previously set aside, become a final judgment of the last day of the next succeeding term of the court wherein the action is pending. If the action in which such judgment is entered be one for the recovery of money arising out of contract and the plaintiff has filed with his declaration (which in all such cases he may do) an affidavit stating that there is, as he verily believes, due and unpaid from the defendant to him upon the demand or demands stated in the declaration, including principal and interest, after deducting all payments, credits and sets-off made by the defendant, and to which he is entitled, a sum certain to be named in the affidavit. No plea shall be filed in the case either at rules or in court, unless the defendant shall file with the plea his affidavit that there is not, as he verily believes, any sum due from him to the plaintiff upon the demand or demands stated in the plaintiff's declaration, or stating a sum certain less than that stated in the affidavit of the plaintiff, which, as he verily believes, is all that is due from him to the plaintiff upon the demand or de-

How office judgment set aside or becomes final.

When defendant must file plea with affidavit to prevent such judgment &c., from becoming final.

Effect of his failure in such case to file plea with affidavit.

Effect when so filed.

Effect when plaintiff fails to file affidavit with declaration in certain cases.

Where there is an enquiry of damages and plaintiff has filed affidavit, etc.

Oath to be taken by jury on trial for enquiry of damages.

Effect of plaintiff's affidavit as evidence.

How and when defendant may have office judgment set aside.

When issue tried or continued.

Right of plaintiff to have attachment against defendant to answer interrogatories, etc.

mands stated in the plaintiff's declaration. If such plea and affidavit be not filed judgment shall be entered for the plaintiff by the court for the sum stated in his affidavit, with interest thereon from the date of the affidavit till paid. And if such plea and affidavit be filed by the defendant and it be admitted in such affidavit that any such sum is due from the defendant to the plaintiff, judgment may be taken by the plaintiff for the sum so admitted to be due, with interest thereon from the date of the plaintiff's affidavit till paid, and the case tried as to the residue. If the plaintiff has not filed such affidavit with his declaration, and the office judgment in the case be not set aside, the judgment shall not be entered by the court until the plaintiff files such affidavit or proves his case in open court, and the judgment in either case shall be entered as heretofore provided for. If the case be one arising out of contract in which there is an order for an enquiry of damages, and the plaintiff has filed with his declaration the affidavit hereinbefore mentioned, no plea shall be filed in the case either at rules or in court, unless the defendant shall file therewith the affidavit hereinbefore required to set aside an office judgment in which no order for an enquiry of damages had been made. When a jury is impaneled to execute an order for an enquiry of damages their oath shall be that they will well and truly find the amount, if any, which the plaintiff is entitled to recover in the action, and a true verdict render according to the evidence. And the affidavit of the plaintiff hereinbefore mentioned shall be legal evidence on such enquiry.

47. If a defendant against whom a judgment is entered in the office, whether an order for an enquiry of damages has been made therein or not, shall, before the end of the term at which it becomes final, appear and plead to issue, and shall, in the cases mentioned in the next preceding section in which an affidavit is required, file such affidavit with his plea, the judgment shall be set aside, but if the judgment has been entered up in court or the order for an enquiry of damages has been executed, it shall not be set aside without good cause be shown therefor. Any such issue may be tried at the same term, unless the defendant show by affidavit, filed with the papers, good cause for a continuance. But the plaintiff shall have the right to cross-examine the defendant upon the matters contained in such affidavit.

Proceeding by Attachment After Bill Taken for Confessed.

48. Although a bill be taken for confessed as to any defendant, the plaintiff may have an attachment against him, or an order for him to be brought in to answer interrogatories. No plea or demurrer shall be received

after such attachment, unless by order of court, upon motion.

49. If a defendant, after process of contempt, put in an answer which is adjudged insufficient, the plaintiff may go on with the subsequent process of contempt, as if no answer had been filed, or, at the option of the plaintiff, if the bill be verified, the court may thereupon render such decree in the case as may be just.

Proceedings where insufficient answer is a process of contempt.

When a Suit in Equity may be Set for Hearing.

50. A plaintiff in equity may, at or after the rule day at which the bill is taken for confessed as to any defendant, or at which his answer is filed, have the cause set for hearing as to such defendant; and it may be so set for hearing on the answer, or upon a general replication thereto, as the plaintiff may prefer. If two months elapse after the answer of a defendant is filed, without the case being so set and without exceptions being filed to his answer, he may have the case set for hearing as to himself.

When plaintiff may have suit in equity set for hearing.

When defendant.

51. If a suit in equity be set for hearing as to any defendant, it shall be heard as to him, unless his interests be so connected with those of other defendants in the suit, that it would be improper to decide upon their interests separately. And though there be such connection, a defendant as to whom the case has been set for hearing may have an order upon the plaintiff to use due diligence to mature the cause for hearing as to the other defendants, and, unless it be so matured within such time as the court may deem reasonable, shall be entitled to a hearing or dismissal of it as to him.

When suit may be heard as to any defendant.

When defendant may require diligence of plaintiff in maturing case.

Where a Case is Ready Only as to Part of the Defendants.

52. Where, in an action or suit against two or more defendants, the process is served upon part of them, the plaintiff may proceed to judgment as to any so served, and either discontinue it as to the others, or from time to time, as the process is served as to such others, proceed to judgment as to them until judgments be obtained against all.

Proceedings when case is ready only as to part of defendants.

General Provisions.

53. At any time before final decree a defendant may file his answer, but a cause shall not be sent to the rules or continued, because an answer is filed in it, unless good cause be shown by affidavit, filed with the papers therefor.

Defendant may file answer at any time before final decree.

54. When a plaintiff in equity files exceptions to an answer, the exceptions shall at once be set for argument.

Exceptions when set for argument.

55. When exceptions to an answer have been sustained, if the defendant put in a second answer, which is adjudged insufficient, he may be examined upon interrogatories and committed until he answers them.

Interrogatories, when defendant may be forced to answer.

When plea
may be
rejected.

56. When a plea is offered in any action or suit, which is not sufficient in law to constitute a defense therein, the plaintiff may object to the filing thereof on that ground, and the same shall be rejected. But if the court overrule the objection and allow the plea to be filed, the plaintiff may take issue thereon without losing the benefit of the objection, and may, on an appeal from a judgment rendered in the case in favor of the defendant, avail himself of the error committed in allowing such plea to be filed, without excepting to the decision of the court thereon.

Proceedings
where court
over-rules ob-
jections to plea.

How case de-
cided where
new matter al-
leged by
defendant.

57. When a defendant in equity in his answer alleges new matter constituting a claim to affirmative relief, the case shall be decided upon the same principles, and the same relief shall be decreed in the case, as if a cross-bill had been filed to obtain such relief.

New parties;
when necessary
to make.

58. Whenever in any case a complete determination of the controversy cannot be had without the presence of other parties, the court may cause them to be made parties to the action or suit by amendment.

Effect of
defendant's
denials.

59. When a defendant in equity shall in his answer deny any material allegation of the bill, the effect of such denial shall only be to put the plaintiff on satisfactory proof of the truth of such allegation, and any evidence which satisfies the court or jury of the truth thereof shall be sufficient to establish the same.

Control of a Court Over Proceedings in the Office.

Proceedings in
the office under
control of court.

60. The court shall have control over all proceedings in the office, during the preceding vacation. It may reinstate any cause discontinued during such vacation, set aside any of the proceedings or correct any mistake therein, and make such order concerning the same as may be just.

Pleadings, &c., in Actions on Policies of Insurance.

Form of a de-
claration on a
policy of insur-
ance.

61. A declaration or count on a policy of insurance, whether the policy be under seal or not, may be in effect as follows:

"A — B — complains of C — D —, who has been summoned to answer this: for that the defendant, by virtue of the policy of insurance herewith filed, (or a copy of which is herewith filed), owes, (here state the amount claimed under the policy), to the plaintiff for loss in respect to the property (or subject) insured by said policy, caused by (here insert the cause of loss in general terms, for example: by fire, by the damages of navigation or otherwise, according to the fact), on or about the — day of —, in the year —, at (or near to —, stating the place at or near to which the loss occurred.)"

If the declaration or count be on a life policy, then it

shall be sufficient to follow the above form in effect down to and including the word "plaintiff," and add thereto in effect as follows: Same on a life policy.

"Because of the death of E. F., whose life was insured by said policy, and who died on or about the — day of —, in the year —, at (or near to, stating the place where his death occurred), —," or, if the fact be so, the plaintiff may state in the declaration or count that the time or place where the loss or death occurred is unknown to him, giving in general terms such information as may be in his power in respect thereto. Saving clause. Nothing contained in this section shall render insufficient in law any declaration or count which would be sufficient if this section had not been passed.

62. If good cause therefore be shown or appear, the court or judge in vacation may order the plaintiff to file a more particular statement, in any respect, of the nature of his claim, or the facts expected to be proved at the trial, and may stay the action until a reasonable time after such order is complied with; and such statement must be made under the oath of the plaintiff, his officer, agent or attorney-at-law, to the effect that the affiant believes the same will be supported by evidence at the trial. Particulars; when court may require plaintiff to file bill of. But no such order shall be made if it appear that there has been unreasonable delay on the part of the defendant in applying therefor. Must be under oath.

63. In like manner, if good cause therefor appear, and there be no unreasonable delay on the part of the plaintiff in applying for such order, the court or judge in vacation may order the defendant to file a more particular statement, in any respect of the nature of his defense, or the facts expected to be proved at the trial, which statement shall be made under the oath of the defendant, his officer, agent or attorney-at-law, to the effect that the affiant believes the same will be supported by evidence at the trial. When court or judge may require same of defendant.

64. To any declaration or count on a policy of insurance whether the same be in the form prescribed by the sixty-first section of this chapter or not, and whether the action be covenant, debt or *assumpsit*, the defendant may plead that he is not liable to the plaintiff as in said declaration is alleged. What defendant may plead to declaration, etc., on insurance policy. But if in any action on a policy of insurance, the defense be that the action cannot be maintained because of the failure to perform or comply with, or violation of any clause, condition or warranty in, upon or annexed to the policy, or contained in or upon any paper which is made by reference a part of the policy, the defendant must file a statement in writing specifying, by reference thereto, or otherwise, the particular clause, condition or warranty in respect to which such failure or violation is claimed to have occurred, and such statement must be verified by the oath of the defendant, his officer, agent When statement required to accompany plea; character of same. Must be under oath.

or attorney-at-law, to the effect that the affiant believes the matter of defense therein stated will be supported by evidence at the trial.

How issue on such plea joined. When plaintiff required to file statement, etc.

65. Upon the plea mentioned in the next preceding section, the plaintiff may join issue without other pleading. But if the plaintiff intends to rely upon any matter in waiver, estoppel or in confession and evidence of any matter which may have been stated by the defendant as aforesaid, the plaintiff must file a statement in writing, specifying in general terms the matter on which he intends so to rely; and such statement must be verified by the oath of the plaintiff, his agent or attorney-at-law, to the effect the affiant believes the matter of reply therein stated will be supported by evidence at the trial.

By whom verified.

Proceedings when no such statements are filed.

66. If either party to such action fail to file any statement required of him by the four preceding sections of this chapter or by the other party pursuant to any of the provisions of the said sections, or if the statement be adjudged insufficient in whole or in part, the court, as justice may require, may grant further time for filing the same, or permit the statement filed to be amended, or may, at the trial, exclude the evidence offered by the party in default as to any matter which he has so failed to state or has insufficiently stated. But no statement which, in the particulars required by or under the said sections to be stated or referred to therein, is sufficient to notify the adverse party in effect of the nature of the claim or defense intended to be set up against him, shall be adjudged insufficient.

When statement sufficient.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

[Approved March 15, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXXII.

AN ACT to amend and re-enact chapter one hundred and seven of the code of West Virginia, concerning conflicting claims to property levied on, or in possession of a third party.

[Passed March 6, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter one hundred and seven of the code of

West Virginia be, and the same is hereby amended and re enacted so as to read as follows : Code; chapter 107 of, amended.

CHAPTER CVII.

OF CONFLICTING CLAIMS TO PROPERTY LEVIED ON, OR IN POSSESSION OF A THIRD PARTY.

1. A defendant in an action brought against him for the recovery of money, which he does not wish to defend, but which money is claimed by a third person, or for the recovery of the possession of personal property to which he makes no claim, but which is claimed by a third person, may file his affidavit stating the facts in relation thereto, and that he does not collude with such third party, but is ready to pay the money claimed, or deliver the property to the owner thereof; as the court may direct, the court may thereupon, make an order requiring such third party to appear and state the nature of his claim, and maintain or relinquish the same, and in the meantime stay the proceedings in such action. If such third party on being served with a copy of such order, shall not appear, the court may, on proof of the plaintiff's right, render judgment for him, and declare such third party to be forever barred of any claim in respect of the subject-matter, either against the plaintiff, or the original defendant, or his personal representative. If such third party, on being so served, shall appear, the court shall allow him to make himself defendant in the action, and, either in said action or otherwise, cause such issue or issues to be tried as it may prescribe, and may direct which party shall be considered the plaintiff in the issues; and shall give judgment upon the verdict rendered, or, if a jury be waived by the parties interested, shall determine their claims in a summary way. The court may also make such order for the disposition of the money or property which is the subject matter of the action, pending the same, as to it may seem proper.

If defendant disclaims interest in subject matter of suit, how right of third party tried, etc.
An affidavit of defendant in such case; what to contain.
Order of court as to third party, etc.
If third party fail to appear; what then.
If third party appear; what then.
What order court may make as to disposition of money, etc., in controversy.

*Indemnifying Bond—When it May be Required, &c. **

2. If any officer levy or is required to levy an execution or a warrant of distress on property, and a doubt shall arise whether the said property is liable to such levy, he may give to the plaintiff, his agent, or attorney at law, notice that an indemnifying bond is required in the case. Bond may thereupon be given by any person, with good security, payable to the officer, in a penalty equal to double the value of the property, conditioned to indemnify him against all damages which he may sustain in consequence of the seizure or sale of said property, and to any claimant of said property all damages which he may sustain in consequence of such seizure or sale; and also to warrant and

When officer may require indemnifying bond, and how.
Who may give such bond; condition of, etc.

defend, to any purchaser of the property, such estate or interest therein as is sold.

Effect of not giving such bond.

Its effect when given and returned to clerk's office.

Proviso.

3. If such bond be not given within a reasonable time after such notice, the officer may refuse to levy on such property, or restore it to the person from whose possession it was taken, as the case may be. If it be given, where there has been no levy, within a reasonable time, or after a levy, before the property is so restored, it shall be returned within twenty days to the clerk's office of the circuit court of the county in which such property may be and the claimant or purchaser of such property shall, after such bond is so returned, be barred of any action against the officer levying thereon, provided the security therein be good at the time of taking it.

Suspending Bond, &c.

Suspending bond, and proceedings thereon.

Suits on, etc.

4. But the sale of any such property shall be suspended at the instance of any claimant thereof who shall deliver to the officer bond, with good security, in a penalty equal to double the value thereof, payable to said officer, conditioned to pay to all persons who may be injured by suspending the sale thereof, until the claim thereto can be adjusted, such damages as they may sustain by such suspension. Upon any such bond as is mentioned in this or the preceding section, suit may be prosecuted in the name of the officer, for the benefit of the claimant, creditor, purchaser, or other person injured, and such damages recovered in said suit as a jury may assess. The same may be prosecuted, and execution had, in the name of such officer when he is dead, in like manner as if he were alive.

Conflicting Claims to Property Levied on; How Tried.

Claim of third party to property levied on, etc.; how tried and determined.

5. When the property of the value of more than fifty dollars is taken under a warrant of distress, or when property of any value is taken under an execution issued by the clerk of a court, and any person, other than the party against whom the process issued, claims such property, or the proceeds or value thereof, the circuit court of the county in which the property is taken, or the judge thereof in vacation, upon the application of the officer, where no indemnifying bond has been given, or if one has been given, on the application of the person who claims such property and has given such suspending bond as is mentioned in the next preceding section, may cause to appear before such court, as well the party issuing such process, as the party making such claim; and such court may exercise, for the decision of their rights, all or any of the powers and authority prescribed in the first section of this chapter.

6. Such court, on the application of the party issuing

said process, may cause to appear before it the party making such claim, and may exercise the like powers and authority. In such case as is mentioned in this or the preceding section, the court, where no bond is given for the forthcoming of the property, or the judge thereof in vacation, may, before a decision of the rights of the parties, make an order for the sale of the property, or any part thereof, on such terms as the court or judge may deem advisable, and for the proper application of the proceeds according to the said rights. In any case before mentioned in this chapter, the court may make all such rules and orders, and enter such judgment as to costs and all other matters, as may be just and proper.

Power of court in cases under preceding section.

Forthcoming Bond; Sale of Property Which is Indemnified, &c.

7. The sheriff or other officer levying a writ of *feri facias* or distress warrant on property, the sale of which is suspended under this chapter at the instance of a claimant thereof, may, if such claimant desire the property to remain in such possession as it was immediately before the levy, and if the case be one in which a bond for the forthcoming of the property is not prohibited from being taken from the debtor by the seventh section of chapter one hundred and forty-two of this code, take from the claimant a bond, with sufficient surety, payable to the creditor, with such recital as is required in a bond taken from the debtor and with condition that the property shall be forthcoming at such day and place of sale as may be thereafter lawfully appointed, whereupon, such property may be permitted to remain at the risk of such claimant in such possession as it was immediately before the levy; and the provisions of the said chapter shall apply to such a bond in like manner as to a bond taken from the debtor.

How and when bond may be taken for property, the sale of which has been suspended.

8. When property, the sale of which is indemnified, sells for more than enough to satisfy the execution or distress warrant under which it is taken, the surplus shall be paid by the officer into the court to the office whereof the indemnifying bond is required to be returned, or as such court may direct. The said court may make such order for the disposition thereof, either temporarily until the question as to the title of the property sold is determined, or absolutely, as in respect to the rights of those interested may seem to it proper.

When Property, sale of which is indemnified, sells for more than claim, how surplus to be paid and the disposition thereof.

[Approved March 15, 1882]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage,

CHAPTER LXXIII.

AN ACT to amend and re-enact chapter one hundred and twenty-three of the code of West Virginia.

[Passed March 6, 1882.]

Be it enacted by the Legislature of West Virginia:

Code; chapter 123 of, amended. 1. Chapter one hundred and twenty-three of the code of West Virginia, is hereby amended and re-enacted so as to read as follows:

CHAPTER CXXIII.

Of the County in which Proceedings are Commenced.

Where actions at law and suits in equity may be brought. 1. Any action at law or suit in equity, except as otherwise specially provided, may hereafter be brought in the circuit court of any county.

May be brought where any of defendants reside; exception as to actions of ejectment, etc. *First.* Wherein any of the defendants may reside, except that an action of ejectment or unlawful detainer must be brought in the county wherein the land sought to be recovered or some part thereof is; or,

If a corporation be defendant; where brought. *Secondly.* If a corporation be a defendant, wherein its principal office is, or wherein its mayor, president, or other chief officer resides, or if its principal office be not in this state, and its mayor, president or other chief officer do not reside therein, wherein it does business; or,

If to recover lands, where brought. *Thirdly.* If it be to recover land, or subject it to a debt, wherein such land or any part thereof may be; or

If against non-resident; where brought. *Fourthly.* If it be against a non-resident of this state, wherein he may be found, or may have estate or debts due him; or

If on behalf of state, where brought. *Fifthly.* If it be on behalf of the state, in the name of the attorney-general or otherwise, wherein the seat of government is; or

If judge be interested, etc.; where brought. *Sixthly.* If a judge of a circuit court be interested in a case which, but for such interest, would be proper for the jurisdiction of his court, the action or suit may be brought in any county in an adjoining circuit.

In what county action may be brought. 2. An action may be brought in any county wherein the cause of action, or any part thereof, arose, although none of the defendants may reside therein.

Mandamus, prohibition and quo warranto; jurisdiction of writs of. 3. Jurisdiction of writs of *mandamus*, *prohibition quo warranto* and *certiorari*, (except such as may be issued from the supreme court of appeals, or a judge thereof in vacation), shall be in the circuit court of the county in which the record or proceeding is to which the writ relates. Any

such writ may be awarded either by the circuit court or (in vacation) by the judge thereof.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed. Acts repealed.

[Approved March 15, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXXIV.

AN ACT to amend and re-enact chapter one hundred and twenty-one of the code of West Virginia, concerning notices and motions.

[Passed March 6, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter one hundred and twenty-one of the code of West Virginia concerning notices and motions, is hereby amended and re-enacted so as to read as follows : Code; chapter 121 of, amended.

CHAPTER CXXI.

Notices and Motions.

1. A notice, no particular mode of serving which is prescribed, may be served by delivering a copy thereof in writing to the party in person; or, if he be not found by delivering such copy at his usual place of abode to his wife or to any other person found there who is a member of his family, and above the age of sixteen years, and giving information of the purport of such copy to the person to whom it is delivered; or if neither his wife nor any such other person be found there, and he be not found, by leaving such copy posted at the front door of said place of abode. Any sheriff or constable, thereto required, shall serve a notice within his county, and make return of the manner and time of service; for a failure so to do he shall forfeit twenty dollars. Such return, or a similar return by any other person who verifies it by affidavit, shall be evidence of the manner and time of service. Mode of serving notice, and evidence thereof.

2. Any such notice to a person not residing in this state, may be served by the publication thereof once a week for four successive weeks, in a newspaper printed in this state. Service of notices on non-residents; how.

When notice to take depositions may be served on attorney.

Proviso as to time when served.

Court to decide upon sufficiency of such notice.

Judgment, etc., for money on motion; what notice required.

Remedy by motion on certain bonds given by officers

Money due on contract; when it may be recovered by motion; upon what notice.

When such notice must be returned to clerk's office.

No discontinuance for failure to enter order of continuance.

Against whom such motion may be made, and judgment given.

May be made from time to time, etc.

3. Whenever any party on whom a notice to take a deposition should be served is not a resident of this state, the service of such notice on the counsel of such party shall have the like effect as if it were served upon the party, provided the time between the service of notice and taking the deposition be sufficient for conveying by ordinary course of mail a letter from the place of service to the place of residence of the party, and a reply from that place back to the place of service, and then for the counsel to attend at the place of taking the deposition. In all cases when notice is served on counsel as aforesaid, the court, upon exception being taken, may determine whether under all the circumstances the notice has been served in reasonable time, and admit or reject the deposition accordingly.

4. In any case wherein there may be judgment or decree for money on motion, such motion shall be after ten days' notice, unless some other time be specified in the section giving such motion.

5. In the case of any bond taken by an officer, or given by a sheriff or constable, and returned to or filed in the office of the clerk of the county court of the county, the circuit court of the county may, on motion of any person, give judgment for so much money as he is entitled, by virtue of such bond, to recover by action.

6. Any person entitled to recover money by action on any contract may, on motion before any court which would have jurisdiction in an action, otherwise than under the second section of the one hundred and twenty-third chapter of this code, obtain judgment for such money after thirty days' notice, which notice shall be returned to the clerk's office of such court twenty days before the motion is heard. A motion under this section, which is docketed under the first section of chapter one hundred and thirty-one of this code, shall not be discontinued by reason of no order of continuance being entered in it from one day to another, or from term to term.

7. A person entitled to obtain judgment for money on motion may, as to any person liable for such money, move severally against each, or jointly against all, or jointly against any intermediate number, and may also move severally against the personal representative of any decedent who in his lifetime was liable alone or jointly with others; and when notice of his motion is not served on all of those to whom it is directed, judgment may nevertheless be given against so many of those liable as shall appear to have been served with the notice. Such motions may be made from time to time until there is judgment against every person liable, or his personal representative. Defense to

such motions may be made in the same manner and to the same extent as in actions at law. Defenses to such motions.

8. On a motion when an issue of fact is joined, and either party desires it, or when in the opinion of the court it is proper, a jury shall be impaneled. Issue of fact, joined on motion; when tried by jury.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed. Acts repealed.

[Approved March 15, 1832.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXXV.

AN ACT amending and re-enacting section thirty of chapter forty-three of the code of West Virginia, as amended and re-enacted by chapter fourteen of the acts of one thousand eight hundred and eighty-one.

[Passed March 7, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That section thirty of chapter forty-three of the code of West Virginia, as amended and re-enacted by chapter fourteen of the acts of one thousand eight hundred and eighty-one, be and the same is hereby amended and re-enacted so as to read as follows: Code; section 30 of chapter 43 of, as amended by acts 1881, amended and re-enacted.

30. The county court of a county may, upon petition, direct any county road, other than a turnpike, or any other road transferred by the state to any county or counties, or landing therein, to be discontinued; but notice of every such petition must, three weeks at least before it is acted upon, be posted at the front door of the court house, and at three public places in every district in which any part of the said road or landing may be. Upon such petition, after notice given as aforesaid, the county court shall appoint two or more viewers, or a committee of their own body, to view such road or landing and report in writing whether, in their opinion, any, and if any, what inconvenience would result from discontinuing the same. Upon such report and other evidence, if any, the court may discontinue the road or landing; taking care in every case of County roads, etc.; how discontinued; exception. Notice of petition in such cases. Viewers or committee in such cases. Their report, etc.

Post road not to be discontinued, until, etc
County court not prevented from altering any turnpike, etc., transferred by state; in what particular.

When former location discontinued, and to what extent.
Notice.

an established post road not to discontinue the same until another has been established. But this section shall not be construed so as to prevent any county court from altering any such turnpike or other road so transferred by the state as aforesaid, as provided for in section thirty-five of this chapter, whenever it becomes necessary to do so in order to place such turnpike or other road on better ground or grade than the existing location, and when such alteration is made, and the said turnpike or other road, as so altered, is completed and put in good order and condition, the former location thereof, to the extent of such alteration, shall be discontinued without any such notice as is herein required as to the discontinuance of an entire county road in any county other than such turnpike or other road so transferred as aforesaid.

[Approved March 15, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER LXXVI.

AN ACT to amend and re-enact section four of chapter twenty-five of the code of West Virginia.

[Passed March 9, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That section four of chapter twenty-five of the code of West Virginia, be amended and re-enacted so as to read as follows :

Code; section 4 of chapter 25 of, amended.

Military force or guard for jail; when and how organized, etc.

Also, to arrest and detain, etc., person charged or convicted of any offense, etc.

4. On the application of the sheriff, jailer, or prosecuting attorney of any county, the judge of the circuit court of such county or the county court thereof may authorize and direct the sheriff to contract with and organize a military force or guard to protect the jail of such county, or to arrest or detain in safe-keeping any person charged or convicted of any offence, or confined in such jail, or to enforce, or protect and defend the proper officer in executing, any process, judgment, decree, or order of any court or magistrate. Such application and the authority and direction consequent thereto shall be in writing, and if the direction be given by the judge, shall be certified by him to the clerk of the county court and recorded in the order book thereof. The authority and direction may be given with such restrictions as the judge, or court giving it shall deem reasonable, and may specify the number of men be-

yond which the said force, or guard shall not extend. The ^{How paid.} expenses to be incurred shall be paid by the county court of the county.

[Approved March 15, 1852.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXXVII.

AN ACT to amend and re-enact sections three, four, six and seven of chapter ninety-nine of the code of West Virginia, concerning bills, notes and other writings.

[Passed March 11, 1852.]

Be it enacted by the Legislature of West Virginia:

1. That sections three, four, six and seven of chapter ^{Code; certain} ninety-nine of the code of West Virginia, concerning bills, ^{sections of} notes and other writings be amended and re-enacted so as ^{chapter 99 of,} to read as follows: ^{amended.}

3. A bill or note which becomes due on a Sunday shall ^{When bill or} be payable, and may be protested, on the preceding day; ^{Note to be pre-} and a bill or note which becomes due on a Christmas day, ^{sented and} or the first day of January, or the twenty-second day of ^{protested.} February, or the fourth day of July, or a day of national thanksgiving, shall be payable, and may be protested, on the preceding day, or if that be Sunday, then on the preceding Saturday; and a bill or note which becomes due on a day after a Sunday which is a Christmas day, or the first day of January, or the twenty-second day of February, or the fourth day of July, shall be payable, and may be protested, on the preceding Saturday.

4. When a bill or note is protested, either under the ^{When notice of} preceding section or otherwise, on the day preceding any ^{dishonor given.} Sunday, Christmas day, first day of January, twenty-second day of February, fourth day of July, or a day of national thanksgiving, notice of the dishonor thereof need not be given until the first day afterwards which is not Sunday, Christmas day, or the first day of January, twenty-second day of February, fourth day of July, or a day of national thanksgiving, and is not the day after a Sunday which is a Christmas day, or the first day of January, or the twenty-second day of February, or the fourth day of July.

When bill may be presented or forwarded for presentment to acceptor for honor or referee.

6. If the day following that on which such bill shall become due shall happen to be a Sunday, or Christmas day, or the first day of January, or the twenty-second day of February, or the fourth day of July, or a day of national thanksgiving then it shall not be necessary to present it or forward it for presentment for payment to such acceptor for honor or referee, until the first day afterwards which is not Sunday, or Christmas day or the first day of January, twenty-second day of February, fourth day of July, or a day of national thanksgiving, and is not the day after a Sunday, which is a Christmas day, or the first day of January, or the twenty-second day of February or the fourth day of July.

When notes, etc., deemed negotiable.

7. Every promissory note, or check for money, payable in this state at a particular bank, or at a particular office thereof for discount and deposit, or at the place of business of a savings institution, or savings bank, and every inland bill of exchange payable in this state, shall be deemed negotiable, and may, upon being dishonored for non-acceptance or non-payment, be protested, and the protest be in such case evidence of dishonor in like manner as in the case of a foreign bill of exchange; and every instrument which is made payable at a day subsequent to its date, and is otherwise in the form of a check, shall be deemed a bill of exchange. There shall be no grace on a bill of exchange payable at sight.

What instrument deemed a bill of exchange. No grace on bill of exchange, when.

[Approved March 15, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXXVIII.

AN ACT amending and re-enacting sections ten, eleven, twelve, thirteen, fourteen, sixteen, twenty and twenty-eight of chapter one hundred and thirty-three of the code of West Virginia.

[Passed March 11, 1882.]

Be it enacted by the Legislature of West Virginia :

Code: certain sections of chapter 133 of. amended.

1. That sections ten, eleven, twelve, thirteen, fourteen, sixteen, twenty and twenty-eight of chapter one hundred and thirty-three of the code of West Virginia, be, and the same are hereby amended and re-enacted so as to read as follows :

Injunction Bond.

10. An injunction, (except in the case of any personal representative, or other person from whom, in the opinion of the court or judge, awarding the same, it may be improper to require bond), shall not take effect until bond be given in such penalty as the court or judge awarding it may direct, with condition to pay the judgment or decree (proceedings on which are enjoined), and all such costs as may be awarded against the party obtaining the injunction, and also such damages as shall be incurred or sustained by the person enjoined in case the injunction be dissolved, and with a further condition, if a forthcoming bond has been given under said judgment or decree, to indemnify and save harmless the sureties in said forthcoming bond and their representatives, against all loss or damages in consequence of said suretyship; or if the injunction be not to proceedings on a judgment or decree, with such condition as the said court or judge may prescribe. The bond shall be given before the clerk of the court in which such judgment or decree is, and in other cases before the clerk of the court in which the suit is wherein the injunction is awarded. If the bond be not given before the summons is issued, the clerk shall endorse thereon that the injunction is not to take effect until the bond is given, and the clerk who afterwards takes the bond shall endorse that it is given.

Injunction, except, etc., not to take effect until bond be given.

Penalty of such bond. Conditions of such bond.

Before whom such bond given.

Endorsement by clerk on summons.

11. Any surety in such forthcoming bond or his personal representative, may move for and obtain an order for other or additional security, in like manner as a defendant in the injunction may do.

Surety in forthcoming bond may move for, etc., additional security; how.

Order of Dissolution—Damages Thereon.

12. When an injunction to stay proceedings on a judgment or decree for money is dissolved, wholly or in part, there shall be decreed to the party having such judgment or decree, damages, in lieu of interest, at the rate of ten per centum per annum from the time the injunction took effect, until such dissolution thereof, on the amount of principal, interest and costs due on the judgment or decree, proceedings on which are enjoined, and if a forthcoming bond has been taken in the case, the amount on which such damages shall be paid, shall be the sum due on such bond. And in all cases the court or judge dissolving the injunction, shall ascertain and enter in the decree of dissolution the amount of principal, interest, damages and costs, including officer's fees and commissions due on the judgment or decree, at the date of the dissolution of the injunction, and shall award execution therefor against the defendant in the judgment or decree, proceedings on which were enjoined, or their personal representatives, with inter-

Dissolution of injunction; damages on.

What court or judge to ascertain, etc., and award execution for.

If forthcoming bond has been given and forfeited; liability of sureties in such cases.

Injunction may be dissolved in vacation; how and when.

Dismissal of bill; when.

Clerks of circuit courts to furnish statements of moneys to credit of suits; when. What such statements to show.

Penalty for failure.

Receivers; their powers over stocks and securities.

est thereon from that day till paid, and the costs incurred by the defendant in the injunction, in defending the same. And if a forthcoming bond has been given in the case, and the same has been or shall be forfeited, the sureties therein shall be liable for the costs incurred by the defendant in the injunction, as aforesaid, and, to the extent of their liability on said forthcoming bond, for whatever sum remains unpaid on the execution so awarded. Any such injunction may be dissolved in vacation, by the judge of the circuit court of the county in which the same is pending; but the opposite party must have reasonable notice in writing of the time and place at which such motion will be made.

Dismissal of Bill.

13. Where an injunction is wholly dissolved, the bill shall be dismissed with costs, unless sufficient cause be shown against such dismissal.

Clerks to Furnish Statements of Moneys to Credit of Suits.

14. It shall be the duty of the clerk of each circuit court to report to such court, at the first term thereof after the first day of July in each year, a statement, which shall show in separate columns, the name of the suit or other proceeding in which any money has been heretofore paid into court, or into bank or other place of deposit, or to any person specially appointed to receive the same under any judgment, order or decree of such court, and which money remains undischarged, in whole or in part, at the date of such report; the date of such judgment, order or decree; the date of such payment; the amount so paid and remaining undischarged; the person by whom it was paid; the person by whom, or the bank or other depository into which the payment was made; if such money, or any part thereof, has been loaned out, or remains on deposit, or in the hands of the receiver; and if loaned out, the date of the order authorizing the loan; the date of the loan; the person to whom it was made, and who then holds it; if security has been given therefor, the nature of the security; and where secured by bond or other obligation, the penalty thereof, and the names of the principal obligor and his sureties. For every failure of such clerk to comply with the provisions of this section, he shall be guilty of a contempt of court and fined by the court fifty dollars.

Receiver's Powers Over Stocks and Securities.

16. The certificates of stock or other security in which, under the special orders of the court, such instruments may be made, shall be taken in the name of the general receiver as such, and be kept by him, unless otherwise specially ordered; and he shall have the power to sell,

transfer or collect the same, when ordered by the court to do so, but not otherwise; and in case of his death, resignation or removal, his successor, or any person specially appointed by the court for that purpose, shall have like power.

Receiver's Bond.

20. He shall, at the time of his appointment, and at least once in every two years thereafter, give bond with good security, to be approved by the court, in such penalty as the court shall prescribe, but sufficient, at least, to cover the probable amount which may come to his hands as such receiver during the ensuing two years, with condition as is required by section six of chapter ten of this code.

Bond of receiver; when given.
By whom approved; penalty, etc.
Condition of bond.

When Special Receiver May Be Appointed.

28. A court of equity may in any proper case pending therein, in which the property of a corporation, firm or person is involved, and there is danger of the loss or misappropriation of the same or a material part thereof, appoint a special receiver of such property or of the rents, issues and profits thereof, or both, who shall give bond with good security to be approved by the court, or by the clerk thereof, for the faithful performance of his trust and for paying over and accounting for, according to law, all such moneys as may come into his hands by virtue of his appointment. But no such receiver shall be appointed of any real estate, or of the rents, issues or profits thereof until reasonable notice of the application therefor has been given to the owner or tenant thereof. A judge of such court in vacation may appoint such receiver of any such property, except real estate and the rents, issues and profits thereof.

Special receiver; when court may appoint.

His bond; by whom approved; condition of.

Notice given before such appointment.

Judge may appoint such receiver in vacation, except, etc.

[Approved March 15, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXXIX.

AN ACT to amend and re-enact chapter one hundred and fifty-six of the code of West Virginia.

[Passed March 13, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter one hundred and fifty-six of the code of West Virginia be amended and re-enacted so as to read as follows:

Code; chapter, 56 of, amended.

CHAPTER CLVI.

Arrest, Commitment and Bail.

Process of
arrest; who may
issue, and
when.

1. A judge of a circuit court, in vacation, as well as in term time, or a justice, may issue process for the apprehension of a person charged with an offense.

Proceedings of
judge or justice
on criminal
complaint.

2. On complaint to any such officer of a criminal offense, he shall examine, on oath, the complainant and any other witnesses, and if he see good reason to believe that an offense has been committed, shall issue his warrant reciting the accusation, and requiring the person accused to be arrested and brought before a justice of the county; and in the same warrant may require the officer to whom it is directed to summon such witnesses as shall be therein named to appear and give evidence on the examination.

Proceedings
where accused
escapes out of
county, etc.,
after warrant
issued, etc.

3. If a person charged with an offense shall, after or at the time the warrant is issued for his apprehension, escape from or be out of the county in which the offense is alleged to have been committed, the officer to whom the warrant is directed may pursue and apprehend him anywhere in the state, or a justice of a county other than that in which it was issued, on being satisfied of the genuineness thereof, shall endorse thereon his name and official character, and such endorsement shall operate as a direction of the warrant to an officer of such justice's county.

Before whom
offender
brought by
officer making
arrest, unless,
etc.

4. An officer arresting a person under a warrant for an offense shall bring such person before, and return such warrant to, a justice of the county in which the warrant issued; unless such person be let to bail as hereinafter mentioned, or it be otherwise provided.

Proceedings
where warrant
is issued in
county other
than that in
which offender
ought to be
tried; duty of
justice and
officer.

5. Where the warrant is issued in a county other than that in which the charge ought to be tried, the justice before whom the accused is brought shall, by warrant, commit him to an officer that he may, and such officer shall, carry him to the county in which the trial should be, and shall there take him before, and return such warrant to, a justice thereof.

Bail; powers of
justice to let to.

6. A justice may let to bail a person who is charged with, but not convicted of an offense not punishable with death. If the offense be punishable by confinement in the penitentiary, he shall not admit such person to bail in a less sum than five hundred dollars. But a justice shall not admit any person to bail if bail has been previously refused to such person by any court or judge; nor shall any person confined in jail by an order of commitment, in which the amount of bail he is to give is specified, or where an order has been made by a court or judge fixing the bail such person is to give, be admitted to bail by a justice in a less sum than is specified in such order. But a circuit

Not to bail in
case where bail
has been pre-
viously refused.

When an order
has been made
fixing amount
of bail, etc.,
justice not to
bail for less sum

court, or a judge thereof in vacation, may, for good cause shown, admit any person to bail before conviction, and may by order direct the clerk of the circuit court of the county in which the offense is charged to have been committed, to take the bond with good security in such a sum as the court or judge may fix in said order.

Court or judge may bail person before conviction; when and how.

7. A person charged with an offense not punishable with death or confinement in the penitentiary, and who is to be taken to another county for examination or trial, shall, if he request it in the county wherein he is arrested, be brought before a justice thereof. In such, or in any case of a person charged with an offense not so punishable, if he desire it, a court, judge, or justice, before whom he is brought, may, without trial or examination let him to bail upon taking a recognizance for his appearance before the court having cognizance of the case; the fact of taking which shall be certified by the court or officer taking it, upon the warrant under which such person was arrested; and the warrant and recognizance shall be returned forthwith to the clerk of the court before which the accused is to appear; to which court the judge or justice who issued such warrant shall recognize, or cause to be summoned, such witnesses as he thinks proper.

When and in what case defendant arrested in another county may be bailed by that county. Proceedings in such case.

8. In all cases in which recognizance, at the suit of this state, have heretofore been, or shall be entered into, it shall be the duty of the clerk of the court in which, or in the clerk's office of which any recognizance may be filed, to deliver to the bail, on his applying therefor, a bail piece in substance as follows, viz: "A— B—, of the county of —, is delivered to bail unto C— D—, of the county of —, at the suit of the state of West Virginia. Given under my hand this — day of —, in the year —," and the person to whom such bail piece is so delivered, or his agent, may, at any time while his liability as bail continues, arrest the person so delivered to bail, and commit him to the jail of the county in which such recognizance is filed as aforesaid.

Bail piece to be delivered to bail by clerk, etc.

Form of.

The bail, or his agent may arrest accused and commit him to jail.

9. A justice may adjourn an examination or trial pending before him, not exceeding ten days at one time, without the consent of the accused, and to any place in the county. In such case, if the accused be charged with an offense punishable with death, he shall be committed to jail, otherwise he may be recognized for his appearance at the time appointed for such further examination or trial, or for want of bail be committed to jail.

Adjournment of examination by justice.

Commitment, etc., of accused pending examination.

10. If the person so recognized do not appear at the time so appointed, the justice shall certify the recognizance and fact of such default to the circuit court at its next term, and like proceedings shall be had thereon as on breach of a recognizance for appearance before such court.

If accused fail to appear; what then.

Proceedings where accused is committed for further examination.

11. If the accused is committed, it shall be by an order of the justice, stating that he is committed for further examination on a day specified in the order; and on that day he may be brought before the justice by his verbal order to the officer by whom he was committed, or by a written order to a different person.

Examination of witnesses for and against accused.

12. The justice before whom any person is brought for an offense, shall, as soon as may be, in the presence of such person, examine on oath the witnesses for and against him, and he may be assisted by counsel.

While witness is under examination, other witnesses may be excluded, etc.

13. While a witness is under examination all other witnesses may, by order of the justice, be excluded from the place of examination and kept separate from each other.

Testimony of witnesses may be reduced to writing; when.

14. When the justice deems it proper, or the accused shall desire it, the testimony of the witnesses shall be reduced to writing and signed by them respectively.

When accused to be discharged; when committed or bailed.

15. The justice shall discharge the accused if he consider that there is not sufficient cause for charging him with the offense; and he shall commit him to jail, if he consider that there is such cause, or let him to bail under the sixth section. He shall require recognizance, with or without sureties, as he deems proper, from all material witnesses against the accused, and also for him if he desire it.

Recognizance of witnesses.

What such commitment or recognizance to be for.

16. When a justice so considers that there is sufficient cause for charging the accused with the offense, unless it be a case wherein it is otherwise specially provided, the commitment shall be for trial, and the recognizance be for the appearance in the circuit court on some day of a term then being held, or on the first day of the next term thereof. The justice shall return to the clerk of such court, as soon as may be, a certificate of the nature of the offense showing whether the accused was committed or bailed therefor; and the clerk, as soon as may be, shall inform the prosecuting attorney in said court of such certificate.

What justice in such case to certify to clerk of court.

Duty of clerk as to such certificate.

Examination and recognizance to be certified to clerk of circuit court; by whom and when.
How compelled.

17. Every examination and recognizance taken under this chapter shall, by the judge or justice taking it, be certified to the clerk of the circuit court, on or before the day on which the party charged is to appear in such court. If he fail, he may be compelled to do so by attachment as for contempt.

Justice may associate another justice with him.

18. A justice to whom complaint is made, or before whom a prisoner is brought, may associate with himself one or more justices of the county, and they may together execute the powers and duties before mentioned.

When and to whom order discharging recognizance,

19. Every order discharging a recognizance shall be filed with the clerk before the day of the court on which the party was to appear; and an order superseding a com-

mittment shall be delivered to the jailer, who shall forth with discharge the witnesses (if any) and the accused; and judgment shall be entered in the said court against him for the costs of the prosecution which have not already been paid.

etc., to be returned, etc.
Judgment for costs

20. No recognizance shall be quashed, or in any manner affected or impaired, by reason of any informality therein, if it sufficiently appear therefrom what was intended thereby.

Recognizance not affected by informality; when.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Acts repealed.

[Approved March 15, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

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CHAPTER LXXX.

• AN ACT to amend and re-enact section fourteen of chapter eighteen of the acts of one thousand eight hundred and eighty-one.

[Passed March 9, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That section fourteen of chapter eighteen of the acts of one thousand eight hundred and eighty-one, be amended and re-enacted so as to read as follows :

Acts 1881; section 14 of chapter 18 of amended.

14. As to each tract, the commissioners, after viewing the same, and hearing any proper evidence which is offered, shall ascertain what will be a just compensation to the person entitled thereto for so much thereof as is proposed to be taken, and for damage to the residue of the tract, beyond the peculiar benefits to be derived in respect to such residue from the work to be constructed, or the purpose to which the land to be taken is to be appropriated, and make report to the following effect : "We, the commissioners appointed by the circuit court of — county, by an order made on the — day of —, on the application of —, respectfully report, that having been first duly sworn, we have viewed the real estate owned by —, mentioned in the said application, and are of opinion that — will be a just compensation for so much of the said real estate as is proposed to be taken by the said applicant; that is to say : (here describe the part to be taken,

Taking land without the owner's consent for purposes of public utility. Report of commissioners in such case; what to be ascertained.

Form of report.

Proviso as to private property taken for construction of railroad. For what damages not to be ascertained in such case. Railroad company to construct and maintain farm crossings, cattle guards and fences; when Railroad not to be used until such fences, etc., are built and constructed.

so as to identify the same with reasonable certainty, which description may be by reference to a plat annexed to the report, or in any manner that would be sufficient in a conveyance); as well as for damages to the residue of the said real estate beyond the peculiar benefits which will be derived in respect to such residue from the work to be constructed (or from the purpose to which the part to be taken by said applicant is to be appropriated.) Given under our hands this — day of —." *Provided*, That if the private property is proposed to be taken by a company incorporated for the construction of a railroad, that no damages shall be ascertained for the construction of farm crossings, fences, or cattle guards, or for keeping the same in repair. And in all cases when the property taken under this chapter is by a railroad company, and is land which has been cleared and fenced, the said railroad company shall construct and forever maintain suitable farm crossings, cattle guards and fences on both sides of the land thus taken; and no such railroad shall be used for the transportation of freight and passengers until such fences, farm crossings, and cattle guards are built and constructed.

[Approved March 17, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER LXXXI.

AN ACT to amend and re-enact sections four and five of chapter nineteen of the code of West Virginia.

[Passed March 8, 1882.]

Be it enacted by the Legislature of West Virginia:

Code amended; sections 4 and 5 of chapter 19 of.

Military duty; what persons exempt from ordinary.

1. That sections four and five of chapter nineteen of the code of West Virginia, be amended and re-enacted so as to read as follows:

4. The following persons shall be exempt from the performance of the ordinary duties of militiamen, but shall be liable to be drafted, and, on the order of the governor, to be detailed for drill and active service in time of public danger or invasion, to-wit: Millers necessarily and personally employed in any grist mill; ferrymen in like manner employed at any ferry established by law; the general agent and storekeeper of the penitentiary and his clerks; the officers and members of all fire companies which are

furnished with fire engines or other proper implements for the extinguishment of fires, and keep the same in serviceable condition; the officers of the several banks and branches, and of national banking associations; school commissioners and teachers, and ministers of the gospel and county superintendents of free schools; the crier of the supreme court of appeals during the sitting thereof; every commissioned officer of the militia, who may resign his commission after serving seven years successively; and every officer or member of a uniformed and armed volunteer company who shall have served in one or more such companies for three successive years.

5. Every assessor shall in the first year of his term, and if the governor so direct, in any year thereafter, as soon as possible after the first day of January, make out a full and complete list of all male persons between the ages of eighteen and forty-five residing in his assessment district. There shall be a separate list for each company district, or so much thereof as is included in the assessment district; and if there be no company districts established, then for each magisterial district included in the assessment district. In the said lists, he shall place in separate columns those who are not citizens, citizens who claim to be exempt from all militia duty, those who claim to be exempt from ordinary military duty, and those who are liable to military duty, having reference to the first day of January in the year for which the list is made. He shall, before he returns the said lists, arrange the names in each column in alphabetical order. He shall file the said lists in the office of the clerk of the county court, by whom they shall be carefully preserved for public inspection, and shall transmit a duplicate thereof to the adjutant general, with his affidavit that the same contain, as near as he was able to ascertain, a full and correct list of all male persons between the ages of eighteen and forty-five residing in his assessment district. For every person properly so listed by him, the assessor shall be entitled to receive from the state treasury three cents, to be paid on the requisition of the adjutant general, out of any appropriation for the purpose made by law. Any assessor who shall fail to perform in any respect the duty required of him by this section, or who shall knowingly make an improper entry on any such list, or knowingly omit to enter thereon any name that ought to be so entered, shall forfeit not less than five nor more than one hundred dollars for every such offense.

Enrollment of militia; how, when and by whom made.

Assessor's fee for persons so enrolled.

Forfeiture by assessor for failure, etc.

[Approved March 17, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXXXII.

AN ACT to amend and re-enact section three of chapter twenty of the code of West Virginia.

[Passed March 8, 1882.]

Be it enacted by the Legislature of West Virginia :

Code amended;
section 3 of
chapter 20 of.

1. That section three of chapter twenty of the code of West Virginia, be amended and re-enacted so as to read as follows :

Second division
of militia; of
what brigades
composed.
Brigades; of
what counties
composed.

3. The second division shall be composed of the fifth, sixth, seventh and eighth brigades, to-wit : Lewis, Upshur, Gilmer, Calhoun, Braxton and Barbour shall compose the fifth brigade; Monroe, Greenbrier, Pocahontas, Fayette, Summers, Clay and Nicholas the sixth ; Kanawha, Mason, Cabell, Lincoln, Wayne, Jackson, Roane and Putnam the seventh ; and Logan, Boone, Wyoming, McDowell, Mercer and Raleigh the eighth.

[Approved March 17, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXXXIII.

AN ACT to amend and re-enact chapter one hundred and sixteen of the code of West Virginia, concerning juries generally.

[Passed March 6, 1882.]

Be it enacted by the Legislature of West Virginia :

Code amended;
chapter 116 of.

1. Chapter one hundred and sixteen of the code of West Virginia, concerning juries generally is hereby amended and re-enacted so as to read as follows :

CHAPTER CXVI.

OF JURIES GENERALLY.

Who Liable to Serve and who Exempt as Jurors.

Who liable to
serve as jurors.

1. All male persons who are twenty-one years of age, and not over sixty, and who are citizens of this state, shall be liable to serve as jurors, except as hereinafter provided,

2. The governor of the state, practicing attorneys and

physicians, officers of any court, all telegraph operators actually engaged as such in any office in this state, and all persons mentioned in the second and fourth sections of chapter nineteen of this code as exempted from military duty, (except school commissioners, persons exempted under the second section of chapter nineteen of this code, by reason of having relatives dependent upon them for support, or in the military service of the United States, or of this state, officers of the militia, who resign their commissions after serving seven years successively, and officers and members of a uniformed and armed volunteer company, who shall have served three years), shall be exempted from serving on juries.

Who exempt from serving on juries.

Juries—How Organized and Summoned.

3. The county court of each county shall, at the levy term thereof, annually, and at any other time when required by the circuit court of such county, prepare a list of such inhabitants of the county, not exempted as aforesaid, as they shall think well qualified to serve as jurors, being persons of sound judgment and free from legal exception, which list shall include at least twenty persons for every thousand inhabitants in such county, but in no case shall such list include a less number than one hundred persons. But the name of no person shall be put on such list who may have requested the court, or any member thereof, by himself or another person, to have his name placed on such list.

List of juries; when and how prepared by county court.

Who not to be put on such list.

4. The list so prepared shall be delivered to the clerk of the said county court, or other court or tribunal adopted in lieu of a county court, to be by him safely kept, subject only to the inspection of the circuit or county court, or of the clerk of the circuit court, or a justice of the peace, as hereinafter prescribed, and the circuit or county court may strike from such list the name of any person who has been convicted of any scandalous offense, or been guilty of any gross immorality.

To whom such list to be delivered.

Who may inspect such list.

Who court may strike from such list.

5. At the time such list is made out, the county court shall also cause all the names upon the same to be fairly written, each on a separate paper or ballot, and shall fold or roll up the ballots so as to resemble each other as nearly as may be, and so that the name written thereon shall not be visible on the outside, and shall deposit the ballots in a secure box, to be prepared for the purpose, which shall be safely kept by the clerk, and shall be opened only by the order of the county court, or as hereinafter prescribed.

Court must cause all names upon list to be fairly written, each on a separate ballot. How ballots to be folded. Ballots to be deposited in box; box to be kept by clerk. On whose order, only, to be opened.

6. All jurors required for the trial of cases in any circuit court, including cases of felony, shall be selected by drawing ballots from the said box in the manner prescribed.

How juries for trial of cases to be selected.

ed in this chapter, and the persons whose names are written on the ballots so drawn shall be returned to serve as jurors.

Circuit court or judge may dispense with jury for one of regular terms; when and how.
No *venire facias* to issue in such case.

Clerk to issue *venire facias* for thirty jurors unless judge prescribe a different number. What such writ to require.

Duty of court if, in its opinion, a lesser number than thirty will suffice.

And thereafter, etc., no greater number shall be summoned, etc.

Summons for clerk of county court or justice to draw ballots, etc.; when.

Writ and summons to be delivered to sheriff, etc., to serve; on whom. Duty of such clerk or justice so summoned.

Clerk of circuit court to draw jurors if clerk of county court or justice fail to attend, etc.

7. The circuit court of any county by order entered of record, or the judge of any such court in vacation, by written order to the clerk of such court, at least twenty days before the term, may dispense with a jury for one of the regular terms, and in such case no *venire facias* shall be issued, and no jury summoned for such term until it is ordered by the court or the judge thereof in vacation. The clerk of every circuit court shall, at least thirty days before any term of such court at which a jury may be wanted, issue a writ of *venire facias* for thirty jurors, unless the court shall order a greater or less number, in which event the writ shall issue for such other number. Such writ shall require the attendance of the jurors on the first day of the court, or on such other day thereof as the court or judge may order. If, in the opinion of any court, a lesser number of jurors than thirty will usually suffice for the convenient dispatch of the business thereof, it shall be the duty of such court to enter such opinion of record, expressing therein the number of jurors proper to be summoned; and thereafter, until otherwise directed, the *venire facias* shall not require a greater number to be summoned to attend such court.

8. At the same time the clerk shall issue a summons in the name of the state, requiring the clerk of the county court to attend at the clerk's office of the county court of such county on a day named in such summons, which shall not be less than twenty days before such term, for the purpose of drawing the ballots for the number of jurors mentioned in said writ. If the clerk of the county court be also clerk of the circuit court, the summons shall require a justice of the peace to attend for such purpose.

9. The writ of *venire facias* and summons shall be delivered to the sheriff, or other officer, who shall serve the summons on the clerk of the county court, or a justice of the peace, as the case may be; and it shall be the duty of such clerk or justice of the peace to attend on the day designated in the summons at the clerk's office of the county court of the county, and in the presence of the clerk of the circuit court to cause the proper number of jurors to be drawn from the box, and a list thereof to be delivered to the officer serving the summons.

10. If the clerk of the county court or justice fail to attend as required by said summons, such jurors shall be drawn by the clerk of the circuit court, whose duty it shall be to place the list thereof in the hands of the sheriff or other officer. And it shall be the duty of such officer, at least three days before the time when the jurors are re-

quired to attend, to summons each person who is drawn, to attend the sitting of the court at the time and place mentioned in the writ, and make a due return thereof, and of the summons aforesaid, to such court at the opening thereof.

Sheriff to summons jurors, etc.

11. When jurors are to be drawn as aforesaid the ballots in the jury box shall be shaken and mixed together, and the clerk of the county court, or justice, or, in case of the failure of both to attend, the clerk of the circuit court shall openly draw therefrom as many ballots (without inspecting the names written on any until the proper number is drawn), as shall be equal to the number of jurors required; and if any person whose name is so drawn is unable by reason of sickness, absence from home, or other cause to attend as a juror, his name shall, at the conclusion of such draft, be returned into the box; or if he is exempted by law, or his name has been struck from the jury list, the ballot shall be destroyed, and another shall be drawn in its stead.

How clerk or justice to proceed to draw ballots for juror.

What done if person drawn is unable to attend, etc., or is exempted.

12. When any person is drawn and returned to serve as aforesaid, the clerk of the county court, or justice, or in his absence, the clerk of the circuit court shall cause to be endorsed on the ballot containing his name the word "drawn," and shall cause it to be placed in another box to be kept for the purpose in the custody of the clerk of the county court, and only opened as hereinafter prescribed, and the date of the draft shall be entered on the list of jurors opposite the name of the person so drawn.

Endorsement on ballot containing name of person drawn and returned to serve. Where such ballots placed, etc.

13. When all the ballots in the jury box have been destroyed or placed in the box for the ballots marked "drawn," except such as contain the names of those who, for the reasons aforesaid, are unable to attend, the last mentioned box shall be opened in the presence of the officers attending to draw jurors, and the ballots therein replaced in the jury box, from which drafts shall thereafter again be made in the manner herein prescribed.

Replacing ballots in jury box for future drafts; when and how.

14. Nothing contained in the preceding sections shall prevent any court in term time from requiring other jurors to be drawn in like manner, or requiring other jurors, whether so drawn or not, to be summoned whenever it shall be found necessary for the convenient dispatch of business, in which case the jurors so summoned shall be required to attend on such days as the court shall direct.

Power of court in term time to require other jurors to be drawn, etc., or to be summoned.

15. If any person duly summoned to attend as a juror in any court shall neglect to attend, without any sufficient excuse, he shall pay a fine not exceeding twenty dollars, which shall be imposed by the court.

Penalty on juror for failing to attend.

16. Any court, when not incompatible with the proper dispatch of its business, shall have power to discharge per-

Power of court to discharge, etc., jurors.

sons summoned as jurors therein, or dispense with their attendance on any day of its sitting.

Qualification and Disqualification of Juror; When Excepted to.

When juror to be examined by court as to his qualification, etc.

Four peremptory challenges.

What persons not incompetent as jurors in certain cases.

Provide where municipal corporation is a party, etc.; in such case jurors may be summoned who are not tax payers, etc. In such cases requiring issuing of *venire facias*, how drawn.

Powers of courts of limited jurisdiction to require summoning, etc., in such cases, of jurors who are not citizens of corporation.

Who may summon such jurors.

Exception to juror: when to be taken.

What irregularities are not sufficient to set aside verdict; unless, etc.

17. Either party in any action or suit may, and the court shall, on motion of such party, examine on oath any person who is called as a juror therein to know whether he is a qualified juror, or is related to either party; or has any interest in the cause, or is sensible of any bias or prejudice therein; and the party objecting to the juror may introduce any other competent evidence in support of the objection; and if it shall appear to the court that such person is not a qualified juror, or does not stand indifferent in the cause, another shall be called and placed in his stead for the trial of that cause. And in every case the plaintiff and defendant may each challenge four jurors peremptorily. In any suit or proceeding in which a county, district, school district, or municipal corporation is interested, or is a party, no person shall be incompetent as a juror because he is an inhabitant or a tax-payer of such county, district, school district, or municipal corporation; *Provided, however*, That in any case where a municipal corporation is interested, or is a party, the court upon motion of either party to the suit, made either on the first day of the term of the court, or at any other time, not less than five days before the day set for the trial, may order jurors to be summoned, none of whom are citizens or tax-payers of such municipal corporation; and if it be under circumstances requiring the issuing of a *venire facias*, the officers charged with the duty of drawing the names from the box shall draw the number required, exclusive of those who are known to be citizens or tax-payers of such municipal corporation. Any court of limited jurisdiction heretofore established, or that may be hereafter established within any incorporated city, town or village, shall have power in any such suit or proceeding, to require the summoning and attendance of jurors from the county who are not citizens of the municipal corporation. Either the sheriff of the county or the officer of such court who is authorized to execute its writs in other cases, may summon such jurors.

18. No exception shall be allowed against a juror after he is sworn upon the jury, on account of his age or other legal disability, unless by leave of court.

19. No irregularity in any writ of *venire facias*, or in the drawing, summoning, or impaneling of jurors, shall 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 swearing of the jury.

Officers Fined for Neglect of Duty.

20. When by neglect of any of the duties required in this chapter to be performed by any of the officers or persons herein mentioned, the jurors to be returned shall not be duly drawn and summoned to attend the court, any person guilty of such neglect shall pay a fine not exceeding twenty dollars, to be imposed by the court.

Penalty on officer for neglect as to summoning and drawing jurors.

Special Juries.

21. Any court may allow a special jury in any civil case to be formed in the following manner, viz: The court shall direct the sheriff to form a panel of twenty qualified jurors, whom he shall summon and who are free from just cause of exception, from which sixteen shall be chosen by lot; the parties thereupon beginning with the plaintiff's attorney, shall alternately strike off one, until the number be reduced to twelve; which number shall complete the jury for the trial of the case.

Court may allow special jury in any case. How such jury formed, summoned, etc.

Pay of Jurors.

22. Every person who shall serve upon a grand jury shall be entitled to receive one dollar and fifty cents for each day he may so serve, and the same mileage allowed to witnesses, to be paid out of the county treasury; but he shall not in any case, receive more than six dollars, exclusive of mileage, for services rendered at one term of the court.

Pay of grand jurors.

Amount limited for one term.

* 23. Any person summoned as aforesaid by virtue of a *venire facias*, or otherwise, and actually attending upon the court, or attending at the court house at the time summoned, whether he be called to serve on a jury or not, shall for each day he so attends, be entitled to receive one dollar and fifty cents, and the same mileage allowed to witnesses, to be paid out of the county treasury; provided, that for any day that any person shall be sworn to serve on a case of felony, he shall for that day be paid two dollars out of the state treasury; that for each day on which he shall not actually attend at the court house he shall receive nothing, and that mileage shall be allowed but once during the term. There shall be taxed in the costs against any person against whom a judgment on the verdict of a jury may be rendered in a case of misdemeanor, and against any person against whom judgment on the verdict of a jury may be rendered in a civil action, and against any person on whose motion the verdict of a jury is set aside and a new trial granted, six dollars for jury costs, which, when collected from the party shall be paid into the county treasury. All moneys so received by the clerk shall be forthwith paid by him to the sheriff, and the clerk and his sureties shall be liable therefor on his official

Pay and mileage of petit jurors.

In cases of felony. For what days not to receive pay. Mileage allowed but once. Jury fee to be taxed in costs; in what cases, and how much.

Where paid when collected.

Moneys so received by clerk to be paid to sheriff.

What clerk of circuit court to certify to clerk of county court; when.

Sheriff to account for all such moneys, etc.

When juror not allowed pay.

Amount due jurors to be entered of record at each term of court.

Copies of orders for payment by state to be sent to auditor.

Penalty on clerk for failure to pay over any moneys, etc.

Clerk to deliver to each juror certified copy of order for his allowance; when.

Sheriff to pay same to juror.

Sheriff to be repaid; when.

How sheriff proceeded against for failure.

What frauds on jury box punishable; penalty

bond, as for other moneys coming to his hands by virtue of his office. The clerk of the circuit court of each county shall annually certify to the county court a list of all moneys so paid to him and by him paid to the sheriff, and in addition thereto a correct list of all cases in which jury fees have been taxed, and are at the time properly due and payable into the county treasury; and the sheriff of the county shall be held to account in his annual settlement for all such moneys collected by him.

24. No juror who shall depart without leave of the court, or being summoned as a witness for the state, shall charge for his attendance as such, shall be entitled to receive any compensation for his services as a juror.

25. The clerk of any court upon which juries are in attendance shall, before the final adjournment at each term, and under the direction of the court, make an entry upon its minutes, stating separately the amount which each juror is entitled to receive out of the state treasury, or out of the county treasury, for his services or attendance during the term. It shall be the duty of such clerk, as soon as practicable after adjournment of the court, to transmit to the auditor certified copies of all orders under this section, making allowances payable out of the state treasury. Any such clerk who shall fail to pay over, as required by law, any moneys so received by him, or otherwise to comply with the provisions of this chapter, shall be guilty of a misdemeanor and fined not less than fifty dollars.

26. It shall be the duty of such clerk, as soon as practicable after the adjournment of the court, to deliver to each juror a certified copy of any order under the preceding section making an allowance to him, payable out of the state treasury or out of the county treasury; and the sheriff of such county shall, upon demand, pay to such juror the amount allowed him, which shall be repaid to the sheriff out of the state treasury or out of the county treasury, upon the production of satisfactory proof that the same has actually been paid by him. If any sheriff fail to pay any such allowance as required by law, he may be proceeded against as for a contempt of court.

Penalty for Fraud on Jury Box.

27. If any person shall be guilty of any fraud, either by practicing on the jury box previously to a draft, or in drawing a juror, or in returning into the jury box the name of any person which has lawfully been drawn out, and drawing and substituting another instead, or in failing to place such name in the box for the ballots marked "drawn," or in any other way in the drawing of jurors, he shall, on conviction thereof, be punished by a fine not exceeding five thousand dollars.

*Trial of Case in which Juror is Interested at Same Term
Disqualifies Him.*

28. No person shall serve as a juror, except in trials for felony, at any term of a court during which he has any matter of fact to be tried by a jury, which shall have been, or is expected to be, tried during the same term.

What disqualifies a juror, except in trials for felony.

Trial by Jury may be Waived, or the Number Reduced by Consent.

29. In any case, except a case of felony, in which a trial by jury would be otherwise proper, the parties or their counsel by consent entered of record, may waive the right to have a jury, and thereupon the whole matter of law and fact shall be heard and determined, and judgment given by the court; or, by like consent, the jury may consist of seven, and in that case a verdict shall be as valid, and have the same effect as if it had been found by a jury of twelve.

Trial by jury may be waived, except in felony cases; how.

Trial by court in case jury waived.

Number of jurors may be reduced; how.

Views.

30. The jury may, in any case, at the request of either party, be taken to view the premises or place in question, or any property, matter or thing relating to the controversy between the parties, when it shall appear to the court that such view is necessary to a just decision, and in such case the judge presiding at the trial may go with the jury and control the proceedings; and in a felony case the judge and clerk shall go with the jury and the judge shall control the proceedings, and the accused shall likewise be taken with the jury, or if under recognizance shall attend the view and his recognizance shall be construed to require such attendance. The party making the motion in a civil case shall advance a sum sufficient to defray the expenses of the jury and the officers who attend them in taking the view; which expenses shall be afterwards taxed like other legal costs.

View of the place or property by jury; when.

In felony case judge and clerk to go with jury and judge to control proceedings.

Accused to go also.

Expenses of view in civil cases; who to pay.

Conduct of Jurors and Sheriff.

31. A juror knowing anything relative to a fact in issue shall disclose the same in open court, but not to the jury out of court; and the court shall inform the jury of this provision.

Juror must disclose everything he knows as to matter in issue in open court, etc.

Court to inform jury of this provision.

32. After a jury has been impaneled, no sheriff or other officer shall converse with, or permit any one else to converse with a juror, unless by leave of court.

Conduct of sheriff or other officer.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Acts repealed.

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER LXXXIV.

AN ACT amending and re-enacting chapter seventy-seven of the code of West Virginia.

[Passed March 9, 1882.]

Be it enacted by the Legislature of West Virginia:

Code amended;
chapter 77 of.

1. That chapter seventy-seven of the code of West Virginia be, and the same is hereby amended and re-enacted so as to read as follows:

CHAPTER LXXVII.

CONCERNING WILLS.

Who May Make Wills; How They are Executed, Revoked, Altered or Revived.

Who may make wills.

1. Every person not prohibited by the following section may by will dispose of any estate to which he is entitled at his death, and which, if not so disposed of, would devolve upon his heirs, personal representative or next of kin. The power hereby given shall extend to any estate, right or interest, to which the testator may be entitled at his death, notwithstanding he may become so entitled subsequently to the execution of the will.

What estate may be disposed of by will.

Who cannot make wills; exception as to personality of minors 18 yrs of age.

2. No person of unsound mind or under the age of twenty-one years, shall be capable of making a will, except that minors eighteen years of age or upwards, may, by will, dispose of personal estate.

Mode of executing wills prescribed.

3. No will shall be valid unless it be in writing and signed by the testator, or by some other person in his presence and by his direction, in such manner as to make it manifest that the name is intended as a signature; and moreover, unless it be wholly written by the testator, the signature shall be made or the will acknowledged by him in the presence of at least two competent witnesses, present at the same time; and such witnesses shall subscribe the will in the presence of the testator, and of each other, but no form of attestation shall be necessary.

Appointment made by will in the exercise of a power; how it

4. No appointment made by will, in the exercise of any power, shall be valid, unless the same be so executed that it would be valid for the disposition of the property to

which the power applies, if it belonged to the testator; must be executed to be a valid, etc. and every will so executed shall be a valid execution of a power of appointment by will, notwithstanding the instrument creating the power expressly require that a will made in execution of such power shall be executed with some additional or other form of execution or solemnity.

5. Notwithstanding the two preceding sections, a soldier How soldier or mariner may dispose of his personal estate. being in actual military service, or a mariner or seaman being at sea, may dispose of his personal estate as he might heretofore have done; and the will of a person domiciled out of this state at the time of his death shall be valid Will of person domiciled out of state, as to personality, etc. as to all personal property in this state, if it be executed according to the law of the state or country in which he was so domiciled.

6. Every will made by a man or woman shall be revoked by his or her marriage, except a will made in exercise of a power of appointment, when the estate thereby appointed would not, in default of such appointment, pass to his or her heirs, personal representative, or next of kin. Revocation of will; except, etc.

7. No will or codicil, or any part thereof, shall be revoked, unless under the preceding section or by a subsequent will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is required to be executed, or by the testator or some person in his presence and by his direction, cutting, tearing, burning, obliterating, canceling or destroying the same, or the signature thereto, with the intent to revoke. Further provision as to revocation of wills.

8. No will or codicil, or any part thereof which shall be in any manner revoked, shall, after being revoked, be revived otherwise than by re-execution thereof, or by a codicil executed in the manner heretofore required, and then only the extent to which an intention to revive the same is shown. How will revoked may be revived. Extent of revival.

9. No conveyance or other act, subsequent to the execution of a will, shall, unless it be an act by which the will is revoked as aforesaid, prevent its operation with respect to such interest in the estate comprised in the will, as the testator may have power to dispose of by will at the time of his death. What acts not sufficient to revoke will.

On What, and in Whose Favor, Will Operates.

10. A will shall be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will. What will construed to speak, etc., with reference to real and personal estate, etc., unless, etc.

When advancement deemed satisfaction, etc., of devise or bequest, etc.

11. A provision for or advancement to any person shall be deemed a satisfaction in whole or in part of a devise or bequest to such person, contained in a previous will, if it would be so deemed in case the devisee or legatee were the child of the testator; and whether he be a child or not, it shall be so deemed in all cases in which it shall appear from parol or other evidence to have been so intended.

If devisee or legatee die during life of testator, issue surviving to take.

12. If a devisee or legatee die before the testator, leaving issue who survive the testator, such issue shall take the estate devised or bequeathed, as the devisee or legatee would have done if he had survived the testator, unless a different disposition thereof be made or required by the will. And if a devise be made to two or more persons jointly, and one or more of them die without issue, the part of the estate so devised to him shall not go to the other joint devisees, but shall descend and pass to the heirs at law of the testator as if he had died intestate, unless the will otherwise provide.

When estate devised to be included in residuary clause, etc.

13. Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised in any devise in such will, which shall fail or be void, or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will; and if there be no residuary devise therein, such real estate or interest shall go to the heirs at law of the testator, as if he had died intestate.

Devises in general terms; when to be construed to include leasehold estates.

14. A devise of the land of the testator, or of the land of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include his leasehold estates, or any of them, to which such description shall extend, as well as freehold estates, unless a contrary intention shall appear by the will.

To what property devise or bequest extends, etc.

15. A devise or bequest shall extend to any real or personal estate (as the case may be) which the testator has power to appoint as he may think proper, and to which it would apply if the estate were his own property, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

Of Pretermitted Children.

Pretermitted children; how provided for.

16. If any person die leaving a child, or his wife *en ventre* of a child, which shall be born alive, and leaving a will made when such person had no child living, wherein any child he might have is not provided for or mentioned, such will, except so far as it provides for the payment of

the debts of the testator, shall be construed as if the devises and bequests therein had been limited to take effect, in the event that the child shall die unmarried and without issue.

17. If a will be made when a testator has a child living, and a child be born afterwards, such after-born child or any descendant of his, if not provided for by any settlement, and neither provided for nor expressly excluded by the will, but only pretermitted, shall succeed to such portion of the testator's estate as he would have been entitled to if the testator had died intestate, toward raising which portion the devisees and legatees shall out of what is devised and bequeathed to them, contribute ratably, either in kind or in money, as a court of equity, in the particular case, may deem most proper. But if any such after-born child or descendant, die under the age of twenty-one years, unmarried and without issue, his portion of the estate, or so much thereof as may remain unexpended in his support and education, shall revert to the person to whom it was given by the will.

If will be made when testator has a child living, how child born afterward, or a descendant of his, provided for.

Competency of Witnesses to Will.

18. If a will be attested by a person to whom, or to whose wife or husband, any beneficial interest in any estate is thereby devised or bequeathed, if the will may not be otherwise proved, such person shall be deemed a competent witness; but such devise or bequest shall be void, except, that if such witness would be entitled to any share of the estate of the testator, in case the will were not established, so much of his share shall be saved to him as shall not exceed the value of what is so devised or bequeathed.

When and how a person interested may be witness to will.

19. If a will, charging any estate with debts, be attested by a creditor, or the wife or husband of a creditor, whose debt is so charged, such creditor shall, notwithstanding, be admitted a witness for or against the will.

Creditor of testator, etc., a competent witness.

20. No person shall, on account of his being executor of a will be incompetent as a witness for or against the will.

Executor competent as witness.

On what Wills this Chapter Operates; When Will Deemed Made.

21. The preceding sections of this chapter shall not extend to wills made before the first day of July, one thousand eight hundred and fifty, but the validity and effect of such wills shall be determined by the laws in force on the day previous to that day. Every will re-executed, or republished, or revived by any codicil, shall, for the purposes of this chapter, be deemed to have been made at the time at which the same shall be so re-executed, republished or revived.

On what wills this chapter operates.

Provision as to wills revived, etc.

Of the Probate and Record of Wills; and the Appointment of a Curator.

What court has jurisdiction of the probate of wills.

Rules governing such jurisdiction.

22. The county court shall have power and jurisdiction to hear proof of, and admit wills to probate as follows:

First.—In the county wherein the deceased, at the time of his death had a mansion-house or known place of residence, or

Second.—If he had no such house or place of residence, then in the county wherein any real estate devised thereby is situated, or

Third.—If there be no real estate devised thereby, and the testator had no such house or place of residence, then in the county where he died, or in any county wherein he had any property at the time of his death, or

Fourth.—If he died out of this state, his will or an authenticated copy thereof, may be admitted to probate in any county in this state, wherein there is property devised or bequeathed thereby.

Power of court to appoint a curator; when; his duties.

23. The county court may appoint a curator of the estate of a decedent, during a contest about his will, or during the infancy or in the absence of an executor, or until administration of the estate be granted; taking from him bond in a reasonable penalty. The curator shall take care that the estate is not wasted before the qualification of an executor or administrator. He may demand, sue for, recover and receive all debts due to the decedent, and all his other personal estate, and, likewise, if a will be in contest, any rents and profits of real estate which, if it were established, an executor, or administrator with the will annexed, could receive. He shall pay debts, and may be sued in like manner as an executor or administrator, and upon the qualification of an executor or administrator, shall account with him for, and pay and deliver to him, such estate as he has in his hands, or is liable for.

How original will may be required to be produced.

24. A county court having jurisdiction in the case upon being informed that any person has in his custody the will of a testator, may summon him and by proper process compel him to produce the same.

Probate of Authenticated Copy of Will, Etc.

When copy of will may be admitted to probate.

25. Where a will relative to property, real or personal, within this state has been proved and admitted to record without the same, an authenticated copy thereof and the certificate of probate thereof may be offered for and admitted to probate in this state as provided in the twenty-second section of this chapter. When such copy is so offered the county court to which it is offered shall presume,

in the absence of proof to the contrary, that the will was duly executed and admitted to probate as a will of real and personal estate in the state or county of the testator's domicile, and shall admit such copy to probate as a will of realty and personalty in this state. But any person interested may within five years from the time such authenticated copy is admitted to record, upon reasonable notice to the opposite party, have the order admitting the same set aside upon due and satisfactory proof that such authenticated copy was not a true copy of such will, or that the probate of such will has been set aside by the court by which it was admitted to probate.

When and how such order of probate may be set aside.

Proceedings Upon Offer of Will for Probate.

26. A person desiring the probate of a will shall file his petition in the county court of the proper county therefor, and if the will is not in his possession or control, stating in whose possession and control, to the best of his knowledge and belief, the same is, and what persons, so far as he knows or believes, are interested in the probate thereof. The court or clerk shall thereupon award the proper process against the persons (if any) alleged in said petition to have the custody and control of such will, and all those interested in the probate thereof, which process shall be executed and returned by the same officers and in the same manner as other process. And if any such persons be non-residents of this state, or their names be unknown, the court or clerk shall make the necessary order of publication as to them. If any of the persons so interested be infants or of unsound mind, the court or clerk shall appoint a guardian *ad litem* for them who shall attend to their interest therein.

Petition for probate of will, when and by whom.

What such petition to state.

Process to be awarded by clerk in such case; against whom.

How such process executed and returned. Order of publication as to non-residents, etc.

When guardian *ad litem* assigned.

27. When any will is so offered for probate, and a witness who attested the same resides out of this state, or though in this state is in confinement in another county, under legal process, or is unable from sickness, age, or other infirmity to attend before the court or clerk as a witness to prove the same, such court or clerk shall enter an order that his deposition be taken, and annex to a certified copy thereof the said will, and forward it by some safe mode of conveyance to the place where such witness is, and the deposition of such witness shall be taken and certified, as depositions in other cases are taken and certified, and shall be returned in such manner as the court in its order, or the clerk in his order, may direct. A copy of every such will shall be made and filed by the clerk in his office before the same is so sent out of his office with such copy of the order for taking such deposition. But no notice need be given of the time and place of taking such deposition unless the probate of such will is opposed by some person who has made himself a party to the proceeding

How deposition of witnesses are taken, and when.

When no notice required. Effect of depositions so taken.

for that purpose, and then only to such person; and the evidence of the witness so taken shall have the same effect as if it had been given before the court or clerk.

Hearing of Motion to Probate, &c.

When motion for probate heard.

28. When all the persons interested in the probate of such will have been properly convened before the court by the execution of process, or order of publication, or otherwise, the court shall proceed as soon as practicable to hear and determine the motion for such probate, and make such order or sentence thereon as the law and the evidence in the case shall require.

Appeal From Decision of County Court and Proceedings Thereon.

Appeal from decision of county court; when and how.

29. Any person feeling himself aggrieved by the order or sentence of the county court admitting, or refusing to admit, such will to probate, may at the same term of the court at which such order or sentence is entered, give notice on the record of the court that he appeals therefrom to the circuit court of the county, or he may within one year thereafter give notice to the opposite party of such appeal; and in either event it shall be the duty of the clerk of the county court, as soon as possible after he is informed of such appeal being taken, to transmit to the clerk of the circuit court of the county, the said will and all the original papers filed or used in the proceedings before the county court, together with copies of all orders and proceedings of the said court thereon. The clerk of the circuit court shall, upon the reception thereof, docket the case for trial on the motion docket of his court, and the case shall be proceeded in, tried and determined in said court regardless of the proceedings before the county court, and in the same manner in all respects as if the application for such probate had been originally made to the circuit court.

Duty of clerk of county court in such case.

Duty of clerk of circuit court in such case.

How case proceeded in, tried and determined.

Power of court as to other testamentary papers.
Trial by jury, if desired.

If no jury asked, court to decide question.

If will probated, copy of order, with will, to be filed in office of clerk of county court.

30. If there be more than one testamentary paper in question in any such proceeding the court shall order them all to be produced. The court shall order a trial by jury, if any person interested so desire, to ascertain whether the will in question, or if there be more than one will in question, which of them is the true will of the decedent; and if no such trial be asked the court shall proceed without a jury to decide the question of probate, and shall make and enter in relation thereto such final sentence or order as the law and the evidence may require. A copy of such sentence or order shall, if the will be admitted to probate, together with the will so admitted, be returned to and filed in the office of the clerk of the county court.

Effect of Order or Sentence.

31. Every such order or sentence of a county court not appealed from, and every such order or sentence of a circuit court on such appeal, shall be a bar to a bill in equity to impeach or establish such will, unless on such a ground as would give to a court of equity jurisdiction over other judgments at law.

Effect of order or sentence.

32. After a sentence or order made as aforesaid, a person interested, who was not a party to the proceeding, may, within five years proceed by bill in equity to impeach or established the will, on which bill, if required by either party, a trial by a jury shall be ordered, to ascertain whether any, and if any, how much, of what was so offered for probate, be the will of the decedent. If no such bill be filed within that time, the sentence or order shall be forever binding.

Saving in favor of those interested, not parties to proceedings.

33. The two preceding sections are subject to this proviso: That any person interested who, at the time of the sentence or order, is within the age of twenty-one years, may file a bill in equity to impeach or establish the will, within one year after he becomes of age; and any person interested who, at that time, resides out of the state, or shall have been proceeded against by publication, may unless he actually appeared as a party, or was personally summoned, file such bill within two years after such sentence or order.

Further saving as to minors and non-residents who are interested.

Where Will or Copy to Remain.

34. Every will, or authenticated copy thereof, admitted to probate under the provisions of this chapter shall be recorded by the clerk of the county court, and when recorded shall remain in his office, except when removed therefrom by the order of a court, or under a subpoena *duces tecum* or otherwise as provided by law.

Will or copy preserved in clerk's office and recorded.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Acts repealed.

[Approved March 17, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXXXV.

AN ACT to amend and re-enact chapter thirty-four of the code of West Virginia, concerning insurance, telegraph and express companies.

[Passed March 16, 1882.]

Be it enacted by the Legislature of West Virginia :

Code amended;
chapter 34.

1. That chapter thirty-four of the code of West Virginia be amended and re-enacted so as to read as follows :

CHAPTER XXXIV.

OF INSURANCE, TELEGRAPH AND EXPRESS COMPANIES.

Distinction Between Domestic and Foreign Companies.

1. Every insurance, telegraph or express company having its principal place of business in this state, and incorporated by any act of the general assembly of Virginia, passed before the twentieth day of June, one thousand eight hundred and sixty-three, or heretofore or hereafter incorporated under and pursuant to any act of the legislature of this state, shall be deemed a domestic company; and every other insurance, telegraph or express company, a foreign company.

Domestic insurance, telegraph or express company; defined.

What defined as foreign company.

2. It shall not be lawful for any officer or agent of any life, fire or marine insurance company, directly or indirectly, to take risks or issue policies of insurance within this state, without first procuring from the auditor a certificate as hereinafter directed. Before obtaining such certificate such company, its officers, or agents, shall furnish the auditor with a statement under oath, of the president or secretary of the company, for which he or they may act, which statement shall show :

No officer or agent of any such company of insurance to take risks, etc., without auditor's certificate How certificate obtained; by statement to auditor, etc.

What statement to show.

First. The name and locality of the company.

Second. The amount of its capital stock.

Third. The amount of its capital stock paid up.

Fourth. The assets of the company; including, first, the amount of cash on hand, and in the hands of agents or other persons; second, the real estate unincumbered; third, the bonds owned by the company and how they are secured, with the rate of interest thereon; fourth, debts due to the company secured by mortgage or otherwise; fifth, debts for premiums; sixth, all other securities.

Fifth. The amount of liabilities due or owing to the banks or other creditors by the company.

Sixth. Losses adjusted and due.

Seventh. Losses adjusted and not due.

Eighth. Losses unadjusted.

Ninth. Losses in suspense, waiting for further proof.

Tenth. All other claims against the company.

Eleventh. The greatest amount insured in any one risk ; Where filed.
 which statement shall be filed in the office of the said auditor. No foreign insurance company, or agent thereof, shall transact any business of insurance in this state, unless such company is possessed of at least one hundred thousand dollars of actual capital, invested in the stock or bonds of some one or more of the states of this Union, whose bonds are at par, or of the bonds of the United States, at the current market value thereof at the date of such statement, or in bonds secured by mortgage or deed of trust on real estate, worth double the amount for which the same is mortgaged, free from any prior incumbrance, and having undoubted title. Duty of auditor to examine into condition, etc., of such companies. The auditor shall be authorized to examine into the condition and affairs of any insurance company doing business in this state, or cause such examination to be made by some person or persons appointed by him having no interest in any insurance company, and whenever it shall appear to the satisfaction of said auditor that the affairs of any such company are in an unsound condition, he shall revoke the certificate granted in behalf of such company, and shall cause a notification thereof to be published in some newspaper of general circulation published at the capital of this state, and the agent or agents, of such company are, on and after such notice, required to discontinue the issuing of any new policy or of the renewal of any previously issued. When found to be unsound; what then. When by the laws of any other state, any deposit of money or of securities, or other obligations or prohibitions, are imposed or would be imposed on insurance companies of this state doing, or that might seek to do business in such other state, or upon their agents therein, so long as such laws continue in force, the same obligations and prohibitions of whatever kind, shall be imposed upon all insurance companies of such other state doing business within this state, or upon their agents here. When, in certain cases, deposits of money or securities imposed upon certain foreign companies. But no foreign insurance company shall do business in this state which fails to pay four months after the rendition thereof any final judgment or decree of any court of this state against it, and if any such company have obtained the auditor's certificate for transacting business in this state, the auditor being satisfied such judgment or decree remains unpaid after said period, shall revoke and annul such certificate, and give notice thereof as aforesaid. Effect of failure on part of any such company to pay final judgment or decree. *Provided, however,* in case any appeal, writ of error or *supersedeas* be allowed to such judgment or decree, the auditor shall not revoke said certificate till sixty days after such appeal, writ of error or *supersedeas* be finally determined. Proviso.

3. Upon a compliance with the provisions of the preceding section by such foreign company, and upon satis-

When auditor required to issue certificate to foreign company.

When and how often such companies furnish statement of their condition, etc.

Company required to publish certificate.

What certificate must recite.

Rule as to domestic company.

Auditor's fees.

Copies of papers to be deposited with auditor. How certified; effect as evidence.

Assessments; how made of property of certain domestic companies. Exception as to stock notes.

Returns; certain foreign companies required to make annually to auditor

factory evidence of such investment by it, and of the making of such deposits and compliance with such obligations as may be required by reason of the laws of any other state, it shall be the duty of said auditor to issue certificate thereof with authority to the company so complying, its agent or agents, to transact the business of insurance. The said statements, instruments and evidence shall be renewed annually in the month of January in each year; and the auditor, on being satisfied that the capital, securities and investment remain secure as at first, shall furnish a renewal of the certificate as aforesaid, and the company, agent or agents obtaining such certificate shall cause the same to be published in some newspaper of general circulation published in the state, and cause a copy of such publication to be filed in the office of the clerk of the circuit court in each county where said company, its agent or agents, does insurance business, and for any failure to cause such publication and filing, shall be fined fifty dollars. Every such certificate shall recite the statement and evidence required by this and the preceding sections; and upon any domestic company complying with what is required of it by the preceding section, the auditor shall issue a like certificate thereof.

4. The auditor shall be entitled to ten dollars in each case for the examination of statements, and investigation, of the evidences of investment, and five dollars for each certificate of authority issued under the provisions of this chapter.

5. The written or printed copies of all papers required by this chapter to be deposited with the auditor, certified under the hand of such auditor to be true and correct copies of such papers, shall be received as evidence in all courts and places in the same manner, and have the same force and effect, as the original would have if produced.

Assessment of the Property of Domestic Insurance, Telegraph and Express Companies for the Purpose of Taxation.

6. The property of all domestic insurance, telegraph and express companies shall be assessed for taxation as other property in this state. But the stock notes of such companies shall not be assessed; nor shall such notes or any part of them be considered a part of the indebtedness of the maker thereof, in listing his property for taxation.

Returns to be Made on Behalf of Foreign Insurance, Telegraph and Express Companies.

7. Every foreign insurance, telegraph and express company doing business in this state, or the agent or agents thereof, shall annually make returns to the auditor as fol-

lows: *Provided*, that where there are several agents of any such company in this state, the returns may be made by any one of them on behalf of all. Proviso.

8. If such returns be made on behalf of an insurance company, they shall show the amount of premiums on all insurances made, renewed or negotiated within this state, or on any subject of insurance within this state, on behalf of such company, during the period to which the said returns relate, including as well premiums uncollected as those which are paid. What return, when on behalf of insurance company, to show.

9. If the returns be made on behalf of a telegraph company, they shall show the gross receipts for all dispatches or messages sent and received by such company within this state, during the period to which such returns relate. When on behalf of a telegraph company.

10. If the returns be made on behalf of an express company, they shall show the amount of charges and freights, whether paid or uncollected, accruing to such company during the period to which the said returns relate, on account of money, goods and merchandise forwarded or carried within this state by the said company or under its charge or care. When on behalf of an express company.

11. The said returns shall be made within twenty-one days after the first day of February in every year, and shall include the business of the twelve months preceding the first day of January in that year, and any business omitted in a former period. The amount only may be stated in the returns without the particulars, unless a more specific return be required by the auditor. The returns so made shall be verified by the affidavit of the officer or agent making the same. When such returns shall be made, and what to include.
How stated.
How verified.

12. It shall be the duty of the auditor to cause the provisions of this chapter to be carried into effect, and he may from time to time prescribe such forms and regulations as are proper for that purpose. And it shall be the duty of every assessor to transmit to the auditor, within the week preceding the first day of February in every year, a list of all such companies or agents doing business within his assessment district as are required to make returns as aforesaid. Duties of auditor as to this chapter.
Duty of assessor to transmit a list of companies, etc., to auditor.

Tax to be Paid.

13. At the time of making such return by any foreign insurance, telegraph, or express company, the officer or agent making the same shall pay into the treasury of the state a tax of two per cent on the gross amount of the premiums, or charges and freights, or receipts for dispatches and messages stated in the said return, which shall be in full of state taxes only. The company paying such taxes shall take duplicate receipts therefor, one of which Tax to be paid by such companies.
What regarded in full of state tax.

Receipts for same, when filed.
In case of failure to pay such tax and file such receipt, no certificate issued.
Proviso.

shall be filed with the auditor. Should any company fail to make such payment and file such receipt, the auditor shall not issue to such company the certificate mentioned in the third section of this chapter so long as such failure may continue. *Provided*, that any foreign life stock insurance company which shall invest in this state the whole amount of its net receipts from its business therein, shall pay only one-half of the aforesaid rates.

Penalty for Failure to Make True Returns or to Pay the Tax.

Penalty for failure to make true return, or pay tax.

14. Every company or agent hereby required to make return or payment as aforesaid, who shall fail to do so, or knowingly make a false return, shall forfeit not less than one hundred nor more than one thousand dollars for every such offense.

Service of Process and Notices.

Duty of such foreign companies to appoint an attorney in fact, in this state, to accept service of process, etc.

15. Every foreign insurance, telegraph and express company doing business in this state shall, by power of attorney duly acknowledged and authenticated, and filed by the company in the office of the auditor, appoint some person residing in this state to accept service of process and notices in this state for the said company; and by the same instrument shall declare its consent that service of its process or notice in this state on the said attorney, or his acceptance of service endorsed thereon, shall have the same effect as service thereof upon the company. And thereafter such acceptance by the said attorney, or service upon him, shall be equivalent, for all purposes, to service upon his principal.

What power of declare.
Its effect.

16. As long as any liability of the company in this state remains unsatisfied, no revocation of any such power of attorney shall be of any effect, until after a like power to some other person residing in this state has been filed by the said company in the office of the auditor. And when any such attorney dies or resigns, the company shall immediately make a new appointment and file the evidence thereof as aforesaid, until all its liabilities in this state are discharged.

How long such power of attorney to continue effective.

When attorney dies, company to make new appointment.

Effect of power of attorney in such case as evidence.

Fee of auditor for copy of same

17. A copy of any such power of attorney, certified by the auditor under his hand, shall be received in all courts and places as *prima facie* evidence of the execution and contents of such instrument. The auditor may demand for such copy from the person applying therefor, a fee at the rate of fifteen cents for every hundred words.

What officer or agent of foreign insurance, etc., company can not do, until compliance with sections 15 and 16.

18. No officer or agent of a foreign insurance company shall make, renew, or negotiate in this state any insurance, or contract for insurance on behalf of such company, nor shall any agent of a foreign express company undertake, in this state, to forward or carry any money, goods or mer-

chandise on behalf of such express company, unless the said insurance or express company has complied with the fifteenth and sixteenth sections of this chapter. No officer or agent of any insurance company shall make, renew or negotiate in this state, any insurance or contract, for insurance, on behalf of such company, or transact any business for such company, directly or indirectly, without first obtaining the auditor's certificate of authority, as required by law; and this applies to all persons engaged in any manner in soliciting risks, issuing or obtaining the issue of policies, selling tickets of insurance, or otherwise doing business of insurance. Any person violating this section shall forfeit not less than twenty nor more than two hundred dollars, for every such offense; but the contract or undertaking shall nevertheless not be invalidated by anything in this section contained.

Same, until auditor's certificate obtained.

Penalty for violating this section.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Inconsistent acts repealed.

[Approved March 24, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXXXVI.

AN ACT amending and re-enacting chapter sixty-five of the code of West Virginia.

[Passed March 20, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter sixty-five of the code of West Virginia be and the same is hereby amended and re-enacted so as to read as follows:

Code amended; chapter 65 of.

CHAPTER LXV.

OF DOWER, JOINTURE AND CURTESY.

Of What a Widow Shall be Endowed.

1. A widow shall be endowed of one-third of all the real estate whereof her husband or any other to his use was, at any time during the coverture, seized of an estate of inheritance, unless her right to such dower shall have been lawfully barred or relinquished.

Widow's dower; in real estate deeded.

When widow entitled to dower, when husband entitled to right of entry, etc.

2. When a husband, or any other to his use, shall have been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same, if the husband or such other had recovered possession thereof, she shall be entitled to such dower, although there shall have been no such recovery of possession.

When widow not entitled to dower against purchase lien.

3. Where land is *bona fide* sold in the lifetime of a husband, to satisfy a lien or incumbrance thereon, created by deed in which the wife has united, or for the purchase money thereof, whether she has united therein or not, or created before the marriage, or otherwise paramount to the claim of the wife, she shall have no right to be endowed in the said land. But if a surplus of the proceeds of sale remain after satisfying the said lien or incumbrance, or purchase money, she shall be entitled to dower in said surplus, and a court of equity having jurisdiction of the case may make such order as may seem to it proper to secure her right.

Different where there is a surplus.

When jointure bars dower.

4. If any estate, real or personal, intended to be in lieu of her dower, shall be conveyed or devised for the jointure of the wife, such conveyance or devise shall bar her dower of the real estate or the residue thereof.

When widow may waive same and claim dower.

5. But if such conveyance or devise was before the marriage, without the assent or during the infancy of the *feme*, or if it was after marriage, in either case the widow may, at her election, waive such jointure and demand her dower. And when she shall demand and receive her dower, the estate so conveyed or devised to her shall cease and determine.

Effect of such claim and waiver.

When widow deprived of jointure, etc.

6. If a widow be lawfully deprived of her jointure, or any part thereof, she shall be endowed of so much of the real estate whereof, but for said jointure, she would have been dowable, as is equal in value to that of which she was deprived.

Dower, When and How Barred.

Dower, how barred. For adultery.

For other causes

7. If a wife, of her own free will, leave her husband, and live in adultery, she shall be barred of her dower in his estate, unless her husband be afterwards reconciled to her and suffer her to live with him. Or, if she voluntarily leave her husband, without cause such as would entitle her to a divorce from the bond of matrimony or from bed and board, and without such cause and of her own free will, be living separate and apart from him at the time of his death, she shall be barred of her dower.

Dower, How Assigned or Recovered; to What Widow Entitled Before Assignment, &c.

8. Until her dower is assigned, the widow shall be en-

titled to demand of the heirs or devisees one-third part of the issues and profits of the other real estate which was devised or descended to them, of which she is dowable, and in the meantime may hold, occupy, and enjoy the mansion house and curtilage, without charge; and if deprived thereof may, on complaint of unlawful entry or detainer, recover the possession, with damages for the time she was so deprived.

What widow may demand until dower assigned.

9. Dower may be assigned as at common law; or upon the motion of the widow, or the heirs or devisees, or any of them, the circuit court of the county in which the will of the husband is admitted to record, or administration of his estate is granted, may, upon reasonable notice to the other parties interested, or such of them as may be in the county, appoint commissioners, by whom dower may be assigned, and the assignment, when confirmed by the court, shall have the same effect as if made by the heir at common law. But nothing herein contained shall be construed to take away or effect the jurisdiction, which courts of chancery now exercise over the subject of dower.

Assignment of dower; how and when made, and upon whose motion.

Not to effect chancery jurisdiction over dower.

10. A widow having a right of dower in any real estate may recover the said dower, and damages for its being withheld, by such remedy at law as would lie on behalf of a tenant for life having a right of entry, or by a bill in equity where the case is such that a bill would now lie for such dower.

How dower in real estate recovered; by action at law. By bill in equity.

11. In every such case a recovery of dower in such real estate in kind shall be of a third of the estate as it is when the recovery is had. Against the heirs or devisees of the husband, or their assigns, the damages shall be for such time after the husband's death as they have withheld the dower, not exceeding five years before the suit is commenced. Against one claiming under an alienation by the husband, or under a sale made by the judgment or decree of a court in his lifetime, the damages shall be from the commencement of the suit against such claimant. In either case they shall be to the time of the recovery. And if after suit brought, the widow or the tenant die before such recovery of damages, the same may be recovered by her personal representative, or against his.

For what such recovery of dower shall be.

Damages.

In case of alienation by husband in life time, etc.

When widow dies after suit brought, personal representative may recover.

12. The two preceding sections are subject to this qualification, that any person claiming under an alienation made by the husband or under a sale made in pursuance of the judgment or decree of a court, in his lifetime, may pay to the widow, during her life, lawful interest from the time the demand is made upon him by the widow, or her agent, for her dower in the lands, on one-third of the value thereof at the time of such alienation or sale, or he may pay her a gross sum in lieu thereof, to be computed upon the principle hereinafter provided; and in either

How and on what terms alienation of husband, etc., may settle claim for dower.

case the payment so made shall be a full discharge and satisfaction of the claim of the widow for dower in the real estate so aliened or sold.

Judgment by default or collusion against husband, etc., not to affect widow's claim. When heir can not be precluded from recovery of seizin of ancestor in real estate, as against widow.

13. No widow shall be precluded from her dower by reason of the real estate whereof she claims dower having been recovered from her husband by a judgment rendered by default or collusion, if she would have been entitled to dower therein, had there been no such judgment. Nor shall any heir who was under the age of twenty-one years at the time the dower was assigned to the widow, out of the lands of his ancestor, by his guardian, or by judgment by default or collusion against such guardian, be precluded from recovering the seizin of his ancestor from such widow unless she show herself entitled to such dower.

Crops on Dower Land at Death of Widow.

Crops on dower land. How disposed of at widow's death.

14. Crops growing on the dower land of a widow at the time of her death may be bequeathed by her, and shall go, to her personal representative, in like manner as crops growing on any other land held for life.

*Curtesy of the Husband in the Real Estate of his Wife—
Curtesy Defined.*

Curtesy; when husband entitled to,

How defined.

15. If a married woman die seized of an estate of inheritance in lands, her husband shall be tenant by the curtesy in the same. An estate by the curtesy in the lands of which a married woman may hereafter die seized, shall exist and be held by her husband therein, whether they had issue born alive during the coverture or not.

Curtesy of Husband; How Barred.

How curtesy barred, by act of husband.

16. If any estate, real or personal, be delivered by the wife to the husband in lieu of his curtesy, and he accept the same, he shall be barred of his curtesy in the residue thereof. And if a husband of his own free will shall leave his wife, except for cause such as would entitle him to a divorce, he shall be barred of his curtesy in his wife's estate, unless she afterwards become reconciled to, and live with him as his wife.

Gross Sum in Payment of Life Estate: How Ascertained, etc.

How present value in money, of a life estate ascertained.

To be governed by tables of longevity.

17. When a party as tenant in dower, or otherwise, is entitled to the use of one-third of any real estate, or of the proceeds arising therefrom by a sale or otherwise, and is willing to accept a gross sum in lieu thereof, or the party affected by such claim, has the right to pay a gross sum in lieu thereof, or if the court in any legal proceeding decree a gross sum to be paid in lieu thereof, the same shall be estimated according to the then value of an annuity of six per cent on the principal sum, during the probable life of

such person, according to the following table. And if a party as tenant for life, or by the curtesy, is entitled to the annual interest on an entire sum of money, or to the use of the whole of an estate, and the party liable for such interest or affected by such claim, has the right to pay a gross sum in lieu thereof, or if the court in any legal proceeding decree a gross sum to be paid in lieu thereof, the same shall be estimated according to the then value of an annuity at four per cent on the principal sum or value, during the probable life of such person, according to the said table.

Annuity Table.

A table showing the value of an annuity of one dollar at four or six per cent, on a single life, at any age from one year to ninety-four, inclusive: Annuity table.

Age.	No. of years' purchase the annuity is worth.	Age.	No. of years' purchase the annuity is worth.	Age.	No. of years' purchase the annuity is worth.	Age.	No. of years' purchase the annuity is worth.	Age.	No. of years' purchase the annuity is worth.
1	10.107	20	12.398	39	10.819	61	8.178	77	3.952
2	11,721	21	12,329	40	10,705	62	7,999	78	3,742
3	12,348	22	12,265	41	10,589	63	7,820	79	3,514
4	12,769	23	12,200	42	10,473	64	7,637	80	3,281
5	12,982	24	12,132	43	10,356	65	7,449	81	3,156
6	13,166	25	12,063	44	10,235	66	7,253	82	2,926
7	13,275	26	11,992	45	10,110	67	7,052	83	2,713
8	13,337	27	11,917	46	9,980	68	6,841	84	2,551
9	13,335	28	11,841	47	9,846	69	6,625	85	2,402
10	13,285	29	11,763	48	9,707	70	6,405	86	2,266
11	13,212	30	11,682	49	9,563	71	6,179	87	2,138
12	13,130	31	11,598	50	9,417	72	5,948	88	2,031
13	13,044	32	11,512	51	9,273	73	5,716	89	1,882
14	12,953	33	11,423	52	9,128	74	5,479	90	1,689
15	12,857	34	11,331	53	8,980	75	5,241	91	1,422
16	12,765	35	11,236	54	8,827	76	4,781	92	1,136
17	12,655	36	11,137	55	8,670	77	4,565	93	0,806
18	12,562	37	11,035	56	8,509	78	4,354	94	0,518
19	12,477	38	10,929	57	8,343	79	4,154		

Rule for Computing the Value of the Life Estate or Annuity.

18. Calculate the interest at four or six per cent. upon the sum to the income of which, or upon the value of the property to the use of which, the person is entitled. Multiply this interest by the number of years' purchase set opposite the person's age in the table, and the product is the gross value of the life estate of such person therein. Rule for computing the value of a life estate or an annuity.

Examples.

19. Suppose a widow whose age is fifty years is entitled to dower in real estate worth nine thousand dollars. Interest on three thousand dollars, the third part thereof, at six per cent for one year is one hundred and eighty dollars. The number of years purchase which an annuity of one dollar is worth at the age of fifty years, as appears by the Examples, under foregoing rule and table.

foregoing table, is nine years and four hundred and seventeen one thousand parts of a year, which multiplied by one hundred and eighty dollars, the value of one year, gives one thousand six hundred and ninety-five dollars and six cents as the gross value of such dower.

Examples continued.

20. Then suppose a person whose age is fifty years is tenant for life, or by the curtesy, in the whole of an estate worth nine thousand dollars. The annual interest on that sum at four per cent is three hundred and sixty dollars, which computed and multiplied as before, gives three thousand three hundred and ninety dollars and twelve cents as the gross value of such estate in the premises or the proceeds thereof.

Acts Repealed.

Inconsistent acts repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

[Approved March 24, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXXXVII.

AN ACT to amend and re-enact chapter eleven of the code of West Virginia.

[Passed March 23, 1882.]

Be it enacted by the Legislature of West Virginia:

Code amended; chapter 11 of.

1. That chapter eleven of the code of West Virginia, be, and the same is hereby amended and re-enacted so as to read as follows:

CHAPTER XI.

COMPENSATION OF PERSONS IN THE SERVICE OF THE STATE;
OFFICE EXPENSES.

Annual Salaries to be Paid by the State.

Annual salaries of.
Governor.
Sec'y of state.
State sup't schools.
Treasurer.
Auditor.
Attorney gen'l.
Judges supreme court.

1. Each of the officers mentioned in this section shall receive from the state an annual salary as follows: The governor, two thousand seven hundred dollars; the secretary of state, one thousand dollars; the state superintendent of free schools, one thousand five hundred dollars; the treasurer, one thousand four hundred dollars; the auditor, two thousand dollars; the attorney general, one thousand three hundred dollars; the judges of the supreme court

of appeals, two thousand two hundred dollars each; the clerk of said court, one thousand dollars; the judges of the circuit courts, one thousand eight hundred dollars each; the adjutant general and *ex-officio* state librarian, eleven hundred dollars; the vaccine agents, fifty dollars each; the keeper of the rolls, three hundred dollars besides his compensation as clerk of the house of delegates; the janitor, for himself and assistants, one thousand dollars, and three dollars per day in addition during the sessions of the legislature.

Clerk of such court.
Judges circuit court.
Adjutant general, etc.
Vaccine agents.
Keeper of rolls.
Janitor.

Pay of Acting Governor.

2. Any person acting as governor shall, while so acting, receive the pay of the governor under the preceding section.

Pay of acting governor.

Clerk Hire in Certain Offices.

3. The officers mentioned in this section may, at their discretion, annually expend not exceeding the following sums for necessary clerk hire in their respective offices, that is to say: The governor, one thousand dollars; the secretary of state, one thousand one hundred dollars; the treasurer, one thousand two hundred dollars; the auditor, five thousand six hundred dollars; the attorney general, one thousand dollars, and the state superintendent of free schools, nine hundred dollars.

Amounts to be expended for clerk hire in certain offices.

Contingent Expenses of Certain Offices.

4. Such sums of money, as may be indispensably necessary, may be annually expended by the governor, secretary of state, treasurer, auditor, attorney general, state superintendent of free schools and adjutant general for the contingent expenses of their respective offices, to be approved by the legislature.

What sums of money may be annually expended for contingent expenses of certain offices.

What are Contingent Expenses.

5. The words "contingent expenses," used in the next preceding section, shall include only stationery, blank books, blanks, advertising and all other printing, fuel, lights, postage, express charges, stamps and office furniture.

Contingent expenses; what to include.

Salary and Contingent, and Other Expenses of the Office of State Superintendent of Free Schools to be Deducted from Distributable School Fund.

6. The salary of the state superintendent of free schools, the contingent expenses of his office as provided in the fourth section of this chapter, and the expenses allowed him by section sixty-three of chapter forty-five of this code, shall be charged to the fund applicable annually to the support of free schools, and be deducted therefrom before distribution thereof is made.

Salary and expenses of office of state sup't schools; from what fund deducted.

Mileage of Judges.

Mileage of
judges.

7. The judges of the supreme court of appeals, and circuit courts shall be entitled to mileage for traveling to and from their respective courts, at the rate of ten cents for every mile, to be computed according to the nearest practicable route.

Compensation of the Legislature.

Pay and mileage of members of the legislature.

Additional compensation to presiding officers of the two houses.

8. The pay and mileage of members of the legislature shall be four dollars a day during the session, and ten cents for every mile they shall travel in going to and returning from the place of meeting by the most direct route. And the president of the senate and speaker of the house of delegates shall each receive an additional compensation of two dollars per day for each day they shall act as presiding officers.

Sick members to receive pay.

9. Any member of the legislature taken so sick after his election and before starting to the place of meeting, or on his journey thereto, or during the session, as to be unable to reach the place of meeting, or to sit in the house of which he is a member, shall receive pay for every day of the session which he is so unable to attend.

Loss of pay in case of absence without leave; when.

10. If a member of either house be absent from the service thereof without leave, except as provided in the next preceding section, the house of which he is a member may, by order or resolution, direct such absence to be entered on their journal, and that he receive no pay for the time he was so absent.

Compensation of Officers and Employees of the Legislature.

Compensation of officers, etc., of the legislature.

11. The officers and employees of the legislature mentioned in this section shall, respectively receive pay as follows, for each day during the session, that is to say: The clerk of the senate ten dollars; the assistant clerk six dollars; the sergeant-at-arms, five dollars; the doorkeeper four dollars; the committee clerks, four dollars each; and the pages two dollars each. The clerk of the house of delegates ten dollars; the assistant clerks six dollars each; the sergeant-at-arms five dollars; the doorkeeper four dollars; the committee clerks four dollars each; and the pages two dollars each. But no mileage or extra compensation shall be allowed to any of the foregoing officers or employes, except as provided in the next succeeding section.

No mileage or extra compensation allowed.

Pay of sergeant-at-arms for every arrest, etc.

12. Each sergeant-at-arms shall be allowed one dollar for every arrest, and one dollar and fifty cents for every day he detains the person arrested in custody, by virtue of any order or process of the senate or house of delegates; but if the person arrested be discharged the same day, only the fee for the arrest shall be charged. For summoning

a witness or serving a notice each sergeant-at-arms shall be entitled to a fee of fifty cents. For the travel of himself or messenger to execute any order or process, he shall be entitled to five cents per mile going, and the same returning. Witnesses summoned before the legislature or any committee thereof, shall receive the same *per diem* and mileage to which witnesses are entitled in the circuit courts.

For summoning witnesses or serving notice. For travel of himself, etc.

Pay of witnesses

How Salaries and Other Expenses are Payable.

13. The salaries mentioned in this chapter shall be paid out of the treasury quarterly, after being duly audited. The other expenses and allowances, in general, shall be payable when the service or travel has been performed, or the article delivered. But members of the legislature and others traveling to the seat of government, who would be entitled to mileage for traveling home, may receive the mileage last mentioned before going home.

Salaries and other expenses; how payable.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Acts repealed.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXXXVIII.

AN ACT to amend and re-enact chapter twelve of the code of West Virginia.

[Passed March 21, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter twelve of the code of West Virginia be and the same is hereby amended and re-enacted so as to read as follows:

Code amended; chapter 12 of.

CHAPTER XII.

OF THE LEGISLATURE—ITS MEMBERS, OFFICERS AND PROCEEDINGS.

Officers of the Legislature.

1. Each house of the legislature shall, at the commencement of each regular session thereof, elect a clerk, a sergeant-at-arms, and a doorkeeper. The terms of the office of the clerks of the senate and house of delegates shall,

The legislature, officers of; how and when elected. Terms of office, of the clerks.

Committee
clerks and
pages;
by whom
appointed.
Number of
same.

Their removal.

Proviso.

unless they are sooner removed, be and continue until the next regular meeting of the legislature, and until their successors are elected and qualified. The president of the senate and speaker of the house of delegates shall, as soon as practicable after their election, appoint for their respective houses such number of committee clerks and pages as each house may by resolution direct, and may, for any of the causes mentioned in chapter seven of this code, remove any person so appointed, and appoint another in his stead. *Provided*, That nothing in this section shall be construed to prevent either house from removing any such committee clerks or pages.

Janitor.

Janitor; by
whom appoint-
ed; his duties.

During session
of legislature.

Term of office.

How removal
made.

Vacancy; how
filled.

2. The governor shall, at the commencement of his term, or as soon thereafter as practicable, appoint a janitor, whose duty it shall be to properly guard and take care of the capitol building and grounds, together with all the apartments therein, or connected therewith, and to have the same kept clean and comfortable. He shall, during the sessions of the legislature, under direction of the president of the senate and speaker of the house of delegates, have charge of the halls and committee rooms of the two houses, and keep the same properly cleaned, warmed and in good order, and shall do and perform such other duties in relation thereto as either house or the governor may require. He shall hold his office for the same term as the governor, and until his successor is appointed and qualified. He may be removed from office by the governor for misconduct, incompetency, neglect of duty or gross immorality. A vacancy in said office shall be filled by the governor for the unexpired term.

Vacancy in Office of Clerk of Senate and House of Delegates

Vacancies in
office of senate
or house clerk;
how filled.

3. Vacancies in office of the clerk of the senate and house of delegates, happening when the legislature is not in session, shall be filled by appointment by the governor, to expire at the meeting of the next session of the legislature. If any such vacancy happen when the legislature is in session, it shall be filled in the same manner as is provided for the election of such officer at the commencement of each regular session.

Flag to be Raised while Either House is in Session.

Flag of Union;
when to be kept
suspended over
place of session
of legislature.

4. While either house is in session, the flag of the union shall be kept suspended over the place of session.

Privileges of Members.

Privilege of
members of
legislature from
arrest.

5. Any suit may be commenced and prosecuted against a member of the legislature, if his person be not taken into custody or imprisoned. But no trial shall be had or judg-

ment rendered in any such suit, nor shall any execution or attachment be levied upon the property of such member during the sessions of the legislature and for one day for every twenty miles he is necessarily compelled to travel in going to and returning from such session.

Stay of proceedings in suits, etc., against members.

Compelling the Attendance of Members.

6. Either house, or a less number than a quorum thereof, when assembled at the time and place of meeting, may, by order or resolution, direct such of its members as are absent without leave to be brought before the house. The order or resolution shall be executed by the sergeant-at-arms, or any messengers deputed by him, or appointed for the purpose by the officer presiding at the meeting; and a copy of such order or resolution, attested by the presiding officer or clerk, shall be a sufficient warrant. The sergeant or messengers shall thereupon forthwith arrest the members so absent, and bring them before the meeting; and each of them, as he is brought in, shall be heard, if he wishes it, in excuse of his absence. If any member so brought in do not render such an excuse for his absence as the house, or such of its members as are present, shall deem sufficient, he may be fined not exceeding six dollars, censured, or discharged from custody, as the house or such of its members as are present, shall order; and in either case shall pay the costs of the arrest. If the excuse be deemed sufficient, the costs of the arrest shall be certified by the presiding officer or clerk, and be paid out of the appropriation for the expenses of the legislature.

How members of either house may be compelled to attend.

By whom order executed.

How copy of order attested.

Arrest, and proceedings thereon.

When excuse insufficient, he may be fined, etc.

Costs.

When excuse sufficient. Who to pay.

Procuring Testimony in Legislative Proceedings.

7. When the senate or house of delegates, or a committee of either house, authorized to examine witnesses, or to send for persons and papers, shall order the attendance of any witness or the production of any paper as evidence, a summons shall be issued accordingly, signed by the presiding officer or clerk of such house, or the chairman of said committee, directed to the sheriff or other proper officer of any county, or to the sergeant-at-arms of such house, or any person deputed by him. And when served, obedience thereto may be enforced, by attachment, fine or imprisonment, at the discretion of the house which appointed the committee; and if the committee be authorized to sit during the recess of the legislature or the recess of the house which appointed the committee, then obedience to the summons may be enforced by said committee as aforesaid. And when a committee is appointed by each house under any joint or concurrent resolution, and directed to sit jointly, with authority to examine witnesses or send for persons and papers, the summons aforesaid may be signed by the chairman of the committee on the

Summons of witnesses in legislative proceedings.

By whom issued and signed.

To whom directed.

How obedience thereto enforced.

In case of a joint committee how persons and papers sent for.

How obedience enforced. part of the senate or the chairman of the committee on the part of the house of delegates; and obedience thereto may be enforced as aforesaid by the house which appointed the committee, which directed the summons to be issued; and if such committees be authorized to sit during the recess of the legislature, then obedience to the summons aforesaid may be enforced as aforesaid by the committee which directed the summons to be issued.

Administering Oaths in Legislative Proceedings.

Oaths in legislative proceedings; by whom administered. Oaths of office. When chairman of a committee may administer oaths. 8. The presiding officer or clerk of either house may administer the oaths of office to any member or officer of such house, and the oath to any witness to be examined before such house or its committee, or before any joint committee. When any committee of either house, or joint committee, is authorized to examine witnesses, or to send for persons and papers, the chairman of such committee, or in his absence any member thereof, may administer the oath to any witness produced to testify before it.

Appropriations.

Appropriations cannot be made by resolution. But otherwise as to application of an appropriation. 9. No money shall be appropriated by resolution of either house, or by joint resolution of the legislature; but when any money has been appropriated by law, the application of the same in pursuance of the law, may be directed by resolution.

Notice Required of Application for Certain Special Acts.

In certain cases, a notice required to be published before application to legislature for passage of special acts. Mode of publishing same. 10. Whoever intends to apply to the legislature, for the passage of an act to incorporate a city, town, or village, containing a population of two thousand or more, or to amend the charter of any such city, town or village, shall publish a notice of such application at least once in each week for four successive weeks before the application is presented, in a newspaper printed in the bounds of said proposed city, town or village, if the application be to incorporate the same, or within the corporate limits thereof if it be to amend the charter of such city, town or village; or if there be none printed therein, then in some newspaper printed in the county, or one of the counties, affected thereby; or if there be none printed in such county, then in a newspaper printed at the seat of government.

Evidence of such publication must be submitted with application. 11. With every such application as is mentioned in the next preceding section, there shall be submitted to the legislature satisfactory evidence that the notice has been published as herein prescribed.

Concerning the Duties of the Officers of the two Houses.

Powers and duties of officers of two houses. 12. The officers of each house shall respectively have such powers and perform such duties as are conferred upon

or required of them by law, or by the rules or orders of their respective houses.

13. The journals, papers and documents of each house shall be in the custody of its clerk, and copies certified by him shall be evidence in like manner as the originals. Journal etc., to be in custody of clerk.

14. The clerk of the house of delegates shall be the keeper of the rolls. After a bill or joint resolution has passed both houses, he shall cause the same to be correctly recorded, in a fair and distinct hand, in a well bound book to be kept for that purpose exclusively, which recording shall be equivalent to enrollment. He shall have the custody of the acts and joint resolutions of the legislature and shall make a copy of them for any person requiring the same, and such copy being certified by him shall be evidence in like manner as the original. For a copy of an act or joint resolution he may demand of the person at whose request it was made fifty cents, or at his option three cents for every thirty words contained therein. Keeper of the rolls; his duties.
Of what to have custody, and when to furnish copies of acts, etc.
His fees for copies.

15. As soon as possible after the close of each session, he shall prepare a well arranged index to the acts and joint resolutions passed at such session, and shall furnish to the public printer, the manuscript of such acts, resolutions and index and all matter directed by law to be printed therewith, properly prepared and arranged for publication, and shall superintend the printing thereof. Printing of the acts provided for.
To be superintended by clerk of the house.

16. The clerk of the senate and house of delegates shall each, at the end of every session of the legislature prepare indexes to their respective journals, and cause them to be printed and bound therewith. As a compensation therefor, the per diem of said clerks shall be extended ten days after the adjournment of the legislature. Journal index; duty of senate and house clerks to prepare same and print with journals.
Compensation.

• *Fees for Copying, &c.*

17. For any copying or recording, other than that mentioned in the fourteenth section of this chapter, and such as he is required to do for the legislature, or either house, or a committee thereof, in the discharge of his official duty, the clerk of either house may demand and receive of and from the person at whose request it is done, a fee at the rate of ten cents per hundred words, or fifty cents in all, at his option. Fees for copying, etc.
What clerks of senate and house may charge.

Assistant Clerks.

18. Whenever it may be necessary, the clerk of the senate may appoint one, and the clerk of the house of delegates not exceeding three, competent assistants, and may from time to time remove such assistants from office and appoint others in their stead. Every such assistant, during his continuance in office, may discharge any of the official Assistant clerks. By whom, how many, and when appointed.
Duties thereof.

Duty of committee clerk to render certain assistance

duties of his principal. And it shall be the duty of every committee clerk in each house, when not engaged in the actual discharge of his duties as such, to assist the clerk of either house in the discharge of any of his duties, whenever called upon by such clerk to do so.

Who to Preside Until the Organization of Senate and House.

Oldest member of Senate to preside until its organization effected.

Same as to house.

19. The oldest member of the senate present at the commencement of each regular session thereof shall call the senate to order, and preside over the same until a president of the senate shall have been chosen and has taken his seat. The oldest delegate present shall call the house to order, at the opening of each new house of delegates, and preside over it until the speaker thereof shall have been chosen and has taken his seat.

Acts Repealed.

Inconsistent acts repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent with the provisions thereof, are hereby repealed.

[Approved March 24, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER LXXXIX.

AN ACT to amend and re-enact chapter sixty-two of the code of West Virginia, concerning the preservation of certain useful animals.

[Passed March 21, 1882.]

Be it enacted by the Legislature of West Virginia:

Code amended; chapter 62 of. 1. That chapter sixty-two of the code of West Virginia be, and the same is hereby amended and re-enacted, so as to read as follows:

CHAPTER LXII.

FOR THE PRESERVATION OF CERTAIN USEFUL ANIMALS AND BIRDS.

Killing Deer—Hunting, &c., on Another's Land.

Killing, etc., of deer at certain times prohibited.

1. No person shall hunt, chase, kill or wound any deer from the fifteenth day of January to the first day of September following in each year. Any one violating this law shall be fined twenty dollars, to be recovered before any

justice for the county in which the offense was committed or the offender may be found. One half of the fine shall go to the informer and the other half into the school fund. Any person found with any recently killed venison or fresh deer skins in his possession, during the time when the killing of deer is prohibited by this section, shall be presumed to have killed said deer. *Provided*, This section shall not apply to deer killed in any park.

Fine for violation of law; how recovered.
Disposition of fine.

What deemed evidence of violation of act.

Proviso as to deer killed in park.

2. If any person shall shoot, hunt, range, fish, or fowl within the enclosed bounds of another person, without permission from the owner, occupier or agent, he shall forfeit three dollars for each offense to the owner. When any person is convicted a third time of said offense, the justice rendering judgment therefor shall require him to give a recognizance, with good security, in a sum of not less than one hundred dollars, for his good behavior for a year; or if he fail to give such surety, commit him to jail for one month, unless it be sooner given. Such recognizance shall be forfeited if such person offend as aforesaid, within the time limited in the recognizance. And the provisions of this section shall apply to the unenclosed lands of any county, from and after an order of the county court of such county made to that effect. The county court of any county may, upon the petition of twenty-five or more free holders of such county being filed in such court, by order entered of record, order that the provisions of this section shall apply to all lands within such county; and such order shall be published once a week for four successive weeks in some newspaper published in such county, if any be published therein, and posted at the front door of the court house of such county for a like period.

Penalty for hunting, etc., on enclosed bounds of another without permission.
Duty of justice on conviction for third offense

When recognizance forfeited.

Provision of section to apply to unenclosed lands; when.

When court to order provisions of section to apply to all lands in county.

Publication and posting of such order.

3. If any person shoot or kill a tame deer having a bell or collar on its neck, he shall pay to the owner the value of such deer.

Liability of person killing tame deer with collar or bell on.

Fish.

4. It shall not be lawful for any person to catch or destroy any of the fish in the creeks or runs of this state by means of drag or other nets, fish pots, woires, traps, by sledging, shooting, or other devices (except hook and line); nor shall it be lawful to place in the rivers, crooks or streams of this state, at any time, any fish pots, woires or traps; nor shall it be lawful for any person to catch or destroy or attempt to catch or destroy any of the fish in the rivers of this state by means of drag or other nets, sledging, shooting, seines, or other devices (except by hook and line), from the first day of March to the first day of November of each year. It shall not be lawful to catch or destroy any jack salmon or white salmon, in any manner, between the first day of May and the fifteenth day of June of each year, nor to catch or destroy any brook trout

Fishing in creeks or runs prohibited, except with hook and line.

Unlawful at any time to place in the rivers, creeks, etc., fish pots, woires, or traps.

Within what period fishing prohibited in rivers by means of nets, seines, etc.

Fishing at certain seasons in any manner, for certain fish, prohibited.

Unlawful to kill fish with poison, etc.

Unlawful to trespass upon enclosed field, etc.

Catching fish in private dam, etc., prohibited, except, etc.

Provision as to minnows, etc., for angling, etc., purposes, and fish for propagation.

Owner may take fish from private, etc., at any time.

Penalty for violating preceding section.

When nets, traps, etc., placed in rivers, creeks, etc., may be removed or destroyed.

Any dog, etc., chasing sheep may be killed; when.

Liability of the owner of dog to owner of sheep for damages.

How recovered.

What not necessary to be proven.

or land locked salmon, in any manner, between the first day of September and the first day of January in each year; nor shall it be lawful for any person to kill fish with *cocculus indicus*, or other poison, or by the explosion of powder or other substance at any time. It shall not be lawful for any person engaged at any time in catching fish to trespass upon, or go into any enclosed field adjoining or near to the stream in which such person is fishing; nor to pass through any enclosed field for the purpose of fishing, without permission from the owner or occupier of such field; nor shall it be lawful for any person, at any season of the year, to catch or destroy fish in any dam or pond, the property of any person, except with the consent of the owner of such dam or pond. But nothing in this act shall be so construed as to prevent the catching of minnows or small fish (except salmon, shad and trout), by means of hand or cast-nets, to be used for angling or scientific purposes; nor to prevent the commissioners of fishes of this state, or any person with their consent, from catching any fish at any time with nets or seines, for purposes of propagation, or stocking other waters; nor to prevent any person from taking in any way fish from his private dam, pond or spring at any time.

5. Any person violating the preceding section shall be fined ten dollars for each offense.

6. It shall be lawful for any person at any time to remove or destroy any nets, traps or other devices placed on any creeks or runs within this state for the purpose of catching or destroying fish, or any obstructions so placed for the purpose of preventing the passage of fish; and in regard to rivers, it shall be lawful for any person to do the same thing at any time between the first day of March and the first day of October in any year.

Dogs Chasing, Killing Sheep, &c.

7. Any person may kill any dog that he may see chasing, worrying, wounding or killing any sheep or lambs, outside of the enclosure of the owner of such dog, unless the same be done by the direction of the owner of such sheep or lambs.

8. If any dog shall have killed, or assisted in killing, wounding or worrying any sheep or lambs out of the enclosure of the owner of such dog, the owner or keeper of such dog shall be liable to the owner of such sheep or lambs in the amount of the damages sustained, to be recovered in an action before any court or justice having jurisdiction of such action; and it shall not be necessary to sustain such action to prove that the owner or keeper of such dog, knew such dog was accustomed to do such worrying, killing or wounding. But a recovery under

this section shall bar and preclude the owner of such sheep or lambs from obtaining compensation from the county court, and when compensation is obtained from the county court under any law which is now or may hereafter be in force, then the county wherein the payment is made is authorized to sue under this section and recover as the owner of the sheep or lambs might have done, and the amount so recovered shall be paid into the county treasury. But no suit shall be commenced unless authorized by the county court.

Recovery under this section precludes owner of such sheep from obtaining compensation from county court. If compensation obtained from county court, county may sue and recover, etc. Am't recovered paid into county treasury. Suit must be authorized by court.

9. The owner or keeper of any dog, that has been worrying, chasing wounding or killing any sheep or lambs, (not the property of such owner or keeper), out of his enclosures, shall within forty-eight hours after having received notice thereof in writing from reliable and trustworthy source, cause such dog to be killed. For every neglect so to do, he shall forfeit the sum of three dollars, and the further sum of one dollar and fifty cents for every twenty-four hours thereafter until such dog is killed, unless it shall satisfactorily appear to the court or justice before which proceedings shall be brought for the recovery of said penalty, that it was not within the power of such owner or keeper to kill such dog. Nor shall any recovery be had unless it shall satisfactorily appear that such dog has done the mischief, and that such owner or keeper has had notice as aforesaid.

Duty of owner, etc., to cause such dog to be killed, when properly notified. Penalty for failure to do so, unless, etc.

What must satisfactorily appear to justify recovery

Birds and Game.

10. It shall be unlawful for any person at any time to catch, kill or injure, or to pursue with such intent, any turkey buzzard, sparrow, robin, blue bird, martin, thrush, mocking bird, swallow, oriole, red bird, grosbeak, catbird, chewit, or ground robin, pewee, or phoebe bird, wren, cuckoo, indigo bird, nut-hatch creeper, yellow or fringilla; yellow-hammer or flicker, warbler or finch, maris, red start, dummock, nightingale, crossbill or corn-crane, Hungarian robin, great tit or blue tit.

Certain birds; unlawful, at any time, to catch, kill, etc.

11. It shall be unlawful for any person in any place to catch, kill or injure, or to pursue with such intent, any quail or Virginia partridge, between the first day of January and the fifteenth day of October, inclusive; or any wild turkey, ruffled grouse, pheasant, pinnated grouse, prairie chicken, between the first day of February and the first day of September; or blue-winged teal, mallard or wood duck, or any other wild duck, wild goose or brant, at any time between the first day of April and the first day of November. And it shall be unlawful for any person, at any time, to catch by snare, net or trap, any quail or Virginia partridge. And it shall be unlawful for any person by the use of any swivel or pivot gun, or any other than the common shoulder gun, or by the aid of any push boat, or sneak boat, used for carrying such gun, to catch,

Certain game; unlawful to catch, kill, etc., at certain periods.

Swivil or pivot gun, etc., not to be used to kill wild duck, etc.

kill or would or destroy, or to pursue after with such intent, upon any of the waters, bogs, rivers, marshes, mud flats, or any cover to which wild fowl resort within the state of West Virginia, any wild goose, wild duck or brant.

Destruction, etc., of eggs of certain birds made unlawful.
Penalty.
 12. And it shall be unlawful for any person to destroy or disturb the eggs of any of the birds protected by this chapter; and any person offending against any of the foregoing provisions of this chapter, shall be fined in any sum not less than two dollars, nor more than twenty-five dollars for each offense on conviction in the proper court, or be imprisoned in the county jail not more than twenty days, or both, at the discretion of the court, and pay the costs of prosecution.

Discharging fire arms on any lawn, etc., near occupied dwelling, prohibited.
 13. No person when shooting on the land of another shall discharge any fire arms on any lawn, pleasure ground or orchard, or other ground which is directly appurtenant to or within gun shot of an occupied dwelling house. The penalty for violating this section shall be a fine of not less than five nor more than twenty dollars, or imprisonment not more than twenty days, or both, at the discretion of the court, and pay the costs of the prosecution.

Purchasing or offering for sale any game or birds made unlawful; when
Penalty.
 14. It shall be unlawful for any person to purchase or offer for sale, any of the birds or game mentioned in this chapter, caught or killed during the time when such catching, killing or destroying, is made unlawful hereby. Any person offending against the provisions of this section, shall be liable to the same penalty as is provided in this chapter for catching, killing or destroying such birds or game.

What deemed prima facie evidence of unlawful killing of game, etc.
 15. The exposure for sale of any of the birds or game mentioned in this chapter during the time when the killing thereof is made unlawful, shall be *prima facie* evidence that the same were killed or caught unlawfully within the state of West Virginia.

Prosecutions; how and before whom.
Fines collected; how disposed of.
 16. All prosecutions under this chapter shall be in the name of the state of West Virginia, before any court, justice of the peace, mayor or other officer having jurisdiction, and all fines imposed or collected under this chapter shall be paid into the county treasury for the use of common schools.

Acts Repealed.

Acts repealed.
 2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

[Approved March 24, 1882.]

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[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XC.

AN ACT apportioning representation in the senate and House of delegates of this state.

[Passed March 22, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That until the senatorial districts of this state shall be altered in pursuance of the provisions of the constitution, the state shall consist of thirteen senatorial districts, instead of twelve, as now provided by law. The counties of Hancock, Brooke and Ohio shall constitute the first senatorial district; Marshall, Wetzel and Marion, the second; Ritchie, Doddridge, Harrison, Gilmer and Calhoun, the third; Tyler, Pleasants, Wood and Wirt, the fourth; Mason, Jackson and Roane, the fifth; Putnam, Cabell and Wayne, the sixth; Lincoln, Boone, Logan, Wyoming, McDowell, Mercer and Raleigh, the seventh; Greenbrier, Pocahontas, Monroe, Summers and Fayette, the eighth; Kanawha, Clay, Nicholas, Braxton and Webster, the ninth; Lewis, Randolph, Upshur, Barbour, Taylor and Tucker, the tenth; Preston and Monongalia, the eleventh; Hampshire, Hardy, Grant, Mineral and Pendleton, the twelfth; Berkeley, Morgan and Jefferson, the thirteenth. And each of said districts shall have two senators.

Representation in senate apportioned.

2. That the senators elected at the last general election for the full term of four years shall continue to hold their seats for the term for which they were elected. And each district shall at the next general election, to be held on the second Tuesday of October, 1882, elect one senator, except that the sixth district, composed of the counties of Cabell, Wayne and Putnam, shall elect two senators, one of whom shall hold his seat for the term of two years, and the other for the term of four years, to be determined by lot; and hereafter the election for senator for said district shall be as provided by law.

Senators now elected to hold for full term. Number of senators to be elected at next election.

Provision as to sixth district.

3. That until a new apportionment of delegates in pursuance of the constitution, the house of delegates shall consist of sixty-five members, which shall be apportioned as follows: To the county of Ohio, four delegates; to the counties of Kanawha and Wood, three delegates each; to the counties of Berkeley, Greenbrier, Harrison, Jackson, Jefferson, Marion, Marshall, Mason and Preston, two delegates each; and to the counties of Barbour, Boone, Braxton, Cabell, Calhoun, Doddridge, Fayette, Gilmer, Hampshire, Lewis, Lincoln, Logan, Mercer, Mineral, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Putnam, Raleigh, Ritchie, Summers, Taylor, Tyler, Upshur, Wayne, Wirt and Wetzel, one delegate each.

Representation in the house apportioned.

Delegate districts.	To the counties of Brooke and Hancock, which shall constitute the first delegate district, one delegate.
First.	To the counties of Grant and Hardy, which shall constitute the second delegate district, one delegate.
Second.	To the counties of McDowell and Wyoming, which shall constitute the third delegate district, one delegate.
Third.	To the counties of Pocahontas and Webster, which shall constitute the fourth delegate district, one delegate.
Fourth.	To the counties of Randolph and Tucker, which shall constitute the fifth delegate district, one delegate.
Fifth.	To the counties of Clay and Roane, which shall constitute the sixth delegate district, two delegates.
Sixth.	

[Approved March 24, 1852.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XCI.

AN ACT for districting the state for representatives in the Congress of the United States.

[Passed March 14, 1852.]

Be it enacted by the Legislature of West Virginia:

Representatives in the congress of the United States; state districted for. Congressional districts.	1. The number of members to which this state is entitled in the house of representatives of the United States shall be apportioned amongst the several counties of the state, arranged into four districts, numbered as follows, that is to say:
First.	First Congressional District.—Hancock, Brooke, Ohio, Marshall, Wetzel, Tyler, Doddridge, Harrison, Gilmer, Lewis and Braxton.
Second.	Second Congressional District.—Monongalia, Marion, Preston, Taylor, Barbour, Randolph, Tucker, Pondloton, Hardy, Mineral, Hampshire, Grant, Morgan, Jefferson and Berkeley.
Third.	Third Congressional District.—Logan, Wyoming, McDowell, Mercer, Raleigh, Boone, Kanawha, Fayette, Clay, Nicholas, Greenbrier, Monroe, Summers, Webster, Pocahontas and Upshur.
Fourth.	Fourth Congressional District.—Pleasants, Wood, Ritchie, Wirt, Calhoun, Jackson, Roane, Mason, Putnam, Cabell, Lincoln and Wayne.
	And that each of said congressional districts shall elect

one member of the house of representatives to the Congress of the United States. Each district to elect one member.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XCII.

AN ACT to amend and re-enact chapter forty-seven of the code of West Virginia, concerning the incorporation of cities, towns and villages without special charter, and the amendment of the charters of cities, towns and villages containing a population of less than two thousand.

[Passed March 14, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter forty-seven of the code of West Virginia be, and the same is hereby amended and re-enacted so as to read as follows: Code amended; chapter 47.

CHAPTER XLVII.

OF CITIES, TOWNS AND VILLAGES, INCORPORATION OF WITHOUT SPECIAL CHARTER; AMENDING CHARTER WHERE POPULATION LESS THAN TWO THOUSAND.

To What Cities, Towns and Villages this Chapter is to Apply.

1. The cities, towns and villages in this state, heretofore established under the laws of the state of Virginia, or of this state, shall remain subject to the law now in force applicable thereto respectively; and the provisions herein-after contained in this chapter shall be deemed applicable only to cities, towns and villages hereafter established, except that the municipal authorities of a city, town or village heretofore established, other than the city of Wheeling, may exercise all the powers conferred by this chapter, although the same may not be conferred by their charter; and so far as this chapter confers powers on the municipal authorities of a city, town or village, other than said city of Wheeling, not conferred by the charter of any such city, town or village, the same shall be deemed an amendment to said charter. To what cities, towns, etc., this chapter does not apply. To what it does apply. Exception. In certain cases, may be taken as amendments to existing charters.

How Certificate of Incorporation is Obtained.

- 2.** Any part of any district or districts not included within any incorporated town, village or city, and containing a resident population of not less than one hundred persons, and if it shall include within its boundaries a territory of not less than one-quarter of one square mile in extent, may be incorporated as a city, town or village under the provisions of this chapter.
- 3.** The persons intending to make application for the incorporation of such city, town or village, as hereinafter provided, shall cause an accurate survey and map of the territory intended to be embraced therein, to be made by a practical surveyor, which shall show the courses and distances of the boundaries thereof, and the amount of territory contained therein; the accuracy of which survey and map shall be verified by the affidavit of such surveyor annexed thereto.
- 4.** Such persons shall also cause an accurate census to be taken of the resident population of such territory, as it may be on some day not more than sixty days previous to the time of presenting such application to the court, as hereinafter provided; which census shall exhibit the name of every head of a family residing within such territory on such day, and the number of persons then belonging to every such family; and it shall be verified by the affidavit of the person taking the same, annexed thereto.
- 5.** Such survey, map and census, when completed and verified as aforesaid, shall be left at the residence or place of business, within such territory, of some person residing therein, and shall be subject to examination, at all reasonable hours, by every person interested in such application, for the period of four weeks at least from the posting or first publication of the notice of such application, as hereinafter provided.
- 6.** The persons intending to make such application shall give notice that they will apply, on some day therein specified, to the circuit court of the county in which such territory lies, or if it lies in more than one county, to the circuit court of one of the counties to be named in such notice, for a certificate of the incorporation of such territory as a city, town or village, by a name to be therein specified. Such notice shall describe the boundaries of such territory by courses and distances, and specify the district or districts in which it lies; and it shall state where such survey, map and census have been left for examination as aforesaid. It shall also specify a day on which all the qualified voters residing within such territory, will meet at a place to be named therein, to vote upon the question of such incorporation.

Incorporation of city, town or village.

What boundary and population requisite.

A survey to be made, together with map, etc.

How its accuracy must be verified.

Census of population requisite.

Up to what time taken.

What census to show.

How verified.

Where survey, map and census left; how subject to examination, etc.

Notice for making application for such incorporation; how made.

What notice shall describe.

It shall specify day on which voters may vote thereon.

7. If there be a newspaper printed within such territory, such notice shall be printed therein once in each week for four successive weeks previous to the time specified therein for making such application and taking such vote; and if there be no such paper, the notice shall be posted in at least three of the most public places in such territory, for four weeks at least before the time so specified therein.

How in certain cases such notice printed.

How posted.

8. On the day named in such notice for the taking of the vote mentioned in the sixth section, the qualified voters residing within the proposed bounds of such corporation shall meet at the place named therein and cast their votes for, or against, such incorporation. Each voter shall deposit a ballot in a ballot-box to be provided for that purpose, with the words written or printed thereon: "For Incorporation," or "Against Incorporation," which vote shall be taken under the superintendence of any three voters within the said boundary appointed for that purpose by the voters present, and the result of such vote shall be certified and returned by them under oath to the circuit court of the county, in case a majority of all the qualified voters residing within such boundary shall vote in favor of such incorporation.

Election; how held and votes cast for or against such incorporation.

By ballot; what written or printed thereon.

How vote superintended.

How result certified.

9. Upon the filing of such certificate and upon satisfactory proof that all the provisions of the foregoing sections of this chapter have been complied with, the circuit court shall, by an order entered of record, direct the clerk of said court to issue a certificate of the incorporation of such city, town or village, in form or in substance as follows: "A certificate under oath of A— B—, C— D— and E— F—, was this day filed, showing that a majority of all the qualified voters residing in the following boundary, to-wit: Beginning, etc., (here recite the boundaries), have been given in due form of law in favor of the incorporation of the (city, town or village) of ———, in the county, or counties, of ———, bounded as herein set forth. And it appearing to the satisfaction of the court, that all the provisions of chapter forty-seven of the code of West Virginia have been complied with by the applicants for said incorporation, the said (city, town or village) is duly authorized within the corporate limits aforesaid to exercise all the corporate powers conferred by the said chapter from and after the date of this certificate. G— H—, clerk."

Form and effect of certificate of incorporation.

And from and after the date of such certificate the territory embraced within the boundary mentioned in said certificate shall be an incorporated (city, town or village), by the name specified in the said notice and certificate.

First Election of Officers.

10. At the time of ordering the certificate mentioned in

First election of officers. the preceding section the court shall appoint three legal voters residing within the said territory, who shall act as commissioners of election at the first election to be held in said city, town or village, as hereinafter provided, and in case they shall fail or refuse to act, the said election may be held, conducted, certified and returned by any three voters of said city, town or village appointed for that purpose by the voters present.

When first election held. 11. The first charter election for officers of such corporation shall be held within sixty days from the date of the certificate mentioned in the ninth section, and the commissioners of election appointed in such order shall cause notice to be given of the time and place of holding such election, which notice shall specify the officers to be voted for, and shall be printed in a newspaper for four weeks next preceding the day appointed for such election, if one be published in such city, town or village, and if none be published therein, copies thereof shall be posted in at least three of the most public places in such city, town or village for four weeks next preceding such election.

Notice to be given.

Oath to be taken by commissioners of election. 12. Such commissioners or the persons acting as such, after taking the oath prescribed for commissioners of election by chapter three of this code, shall preside and act as inspectors of such election, and all the laws applicable to the election of district officers shall apply to such election, if not inconsistent with the provisions of this chapter, and such commissioners shall within five days after such election grant a certificate to the persons elected, which shall be recorded among the records of such city, town or village.

Certificate of result to be given by commissioners.

Municipal authorities, of whom composed 13. The municipal authorities of such city, town or village shall be a mayor, a recorder and five councilmen, who shall be freeholders therein, and who together shall form a common council.

To be a body corporate. 14. The mayor, recorder, and councilmen of such city, town or village, so soon as they have been elected and qualified as herein provided, and their successors in office, shall be a body politic and corporate, by the name of "The city, (town or village) of _____," and shall have perpetual succession and a common seal; and by that name may sue and be sued, plead and be impleaded; purchase and hold real estate necessary to enable them the better to discharge their duties, and needful for the good order, government and welfare of said city, town or village. All the corporate powers of such corporation shall be exercised by said council, or under their authority, except where otherwise provided.

What officers to be 15. There shall be a city, town or village sergeant, an assessor and a superintendent of roads, streets and alleys,

appointed by the council, to continue in office during its pleasure, and perform the duties respectively as herein prescribed, or as may be required by the council. The sergeant shall be *ex-officio* treasurer of said corporation.

appointed by council.

Sergeant to be *ex-officio* treasurer.

Terms of Officers.

16. The officers first elected in such city, town or village shall hold their offices until their successors are elected and qualified. The terms of all officers elected after the said first election shall commence on the first day of February in each year, and shall be for one year, and until their successors are elected and qualified according to law.

Terms of officers

Subsequent Elections.

17. After the first election of officers in such corporation they shall be elected on every first Thursday of January, at such place in the town or village, and under such supervision, rules, and regulations, not inconsistent with the laws regulating district elections, as the council may prescribe.

Subsequent elections: when held, etc.

18. Every person elected or appointed to an office in such corporation shall within twenty days after his election or appointment, and before he shall enter upon the duties of his office, take and subscribe the oath of office prescribed for district officers; which may be done before any person authorized by law to administer oaths, or before the mayor or recorder of such city, town or village, which oath, with the certificate of the officer administering the same, shall be filed with the recorder of the town or village.

Oaths of officers, etc.

Where filed.

Who Are Voters of the City, Town or Village.

19. All persons who have been *bona fide* residents of such city, town or village for six months next preceding a charter election held therein, and who are qualified voters under the constitution and laws of this state, and none others, shall be entitled to vote at any charter election held in said city, town or village. But no person shall be deemed a resident of any such city, town or village by reason of being a student of any school or college therein, or of being stationed therein for any temporary purpose.

Who are qualified to vote.

Vacancies in Office—Qualifications of Certain Officers, etc.

20. When a vacancy shall occur from any cause in the office of mayor, recorder, or in the council, the vacancy shall be filled by appointment by the council from among the citizens of the city, town or village eligible under this chapter.

Vacancies in office; how filled.

21. The mayor, recorder and councilmen, must be residents of such city, town or village and entitled to vote for members of its common council.

Qualifications of mayor, recorder, and councilmen.

The votes in election of officers, how decided.

22. Whenever two or more persons shall receive an equal number of votes for the same office, if such number be the highest cast for such office, the persons under whose supervision the election is held shall decide by lot which of them shall be returned as elected, and shall make their return accordingly.

Contested Elections.

Contested elections.

23. All contested elections shall be heard and decided by the council.

Meetings of the Council; Their Record, etc.

Meetings of council; who to preside.

24. The council shall be presided over at its meetings by the mayor, or in his absence by the recorder; or in the absence of both mayor and recorder, by one of the councilmen selected by a majority of the council present; and a majority of the council shall be necessary to form a quorum for the transaction of business. But no member of the council of any city, town or village, heretofore or hereafter incorporated, shall vote upon any order, measure, resolution, or proposition, in which he may be interested, other than as a citizen of such city, town or village.

Councilman not to vote on any question in which he is interested.

Record of proceedings to be kept. To be indexed and open to inspection.

25. The council shall cause to be kept, in a well-bound book, an accurate record of all its proceedings, by-laws, acts, orders and resolutions, which shall be fully indexed, and open to the inspection of any one who is required to pay taxes to such town or village.

Proceedings of council to be read. Ayes and noes to be recorded when demanded.

26. At each meeting of the council, the proceedings of the last meeting shall be read, and corrected, if erroneous, and signed by the presiding officer for the time being. Upon the call of any member, the yeas and nays on any question shall be taken and recorded in the journal.

Mayor and recorder to have votes in council. Presiding officer to have casting vote.

27. The mayor and recorder shall have votes as members of the council, and in case of a tie, the presiding officer for the time being shall have the casting vote.

Powers and Duties of the Council.

Powers and duties of council. To lay and keep in repair streets, etc., and light the same.

28. The council of such city, town or village shall have power therein to lay off, vacate, close, open, alter, curb, pave, and keep in good repair roads, streets, alleys, sidewalks, crosswalks, drains and gutters, for the use of the public, or of any of the citizens thereof, and to improve and light the same, and have them kept free from obstructions on or over them; to regulate the width of sidewalks on the streets, and to order the sidewalks, footways, crosswalks, drains and gutters to be curbed and paved, and kept in good order, free and clean, by the owners or occupants thereof, or of the real property next adjacent thereto; to establish and regulate markets, to prescribe

To cause streets, etc., to be paved.

To establish markets.

the times of holding the same; to prevent injury or annoyance to the public or individuals from anything dangerous, offensive, or unwholesome; to prevent hogs, cattle, horses, sheep and other animals, and fowls of all kinds, from going at large in such city, town or village; to protect places of divine worship in and about the premises where held; to abate, or cause to be abated, anything which, in the opinion of a majority of the whole council, shall be a nuisance; to regulate the keeping of gun-powder and other combustibles; to provide in or near the city, town or village places for the burial of the dead, and to regulate interments therein; to provide for the regular building of houses or other structures, and for the making of division fences by the owners of adjacent premises, and the drainage of lots by the proper drains and ditches; to make regulations for guarding against danger or damage by fire; to prevent the illegal sales of all intoxicating liquors, drinks, mixtures and preparations therein; to protect the persons and property of the citizens of such city, town or village, and to preserve peace and good order therein; and for this purpose, to appoint, when necessary, a police force to assist the sergeant in the discharge of his duties; to prescribe the powers and define the duties of the officers appointed by the council, fix their terms of service and compensation, require and take from them bonds, when deemed necessary, payable to such city, town or village in its corporate name, with such sureties and in such penalty as the council may see fit, conditioned for the faithful discharge of their duties; to erect, or authorize or prohibit the erection of, gas-works or water-works in the city, town or village; to prevent injury to or pollution of the same, or to the water or healthfulness thereof; to regulate and provide for the weighing of hay, coal, and other articles sold or for sale in the city, town or village, and to provide a revenue for the city, town or village, and appropriate the same to its expenses; to provide for the annual assessment of taxable property therein, to adopt rules for the transaction of business, and the government and regulation of its own body.

To prevent hogs, etc., from going at large.

To protect divine worship.

To abate nuisances.

To regulate keeping of gun-powder.

To prevent the illegal sale of intoxicating liquors.

To appoint a police force.

To erect gas works or water works.

To provide a revenue by the assessment of property.

29. To carry into effect those enumerated powers and all others conferred upon such city, town or village, or its council, by this chapter or by any future act of the legislature of this state, the council shall have power to make and pass all needful orders, by-laws, ordinances, resolutions, rules and regulations, not contrary to the constitution and laws of this state; and to prescribe, impose and enact reasonable fines, penalties and imprisonments in the county jail or the place of imprisonment in said corporation, if there be one, for a term not exceeding thirty days, for a violation thereof. Such fines, penalties and imprisonments shall be recovered and enforced under the judg-

To make orders, by-laws and ordinances.

To prescribe reasonable fines and penalties.

To be enforced under judgment of mayor.

ment of the mayor of such city, town or village, or the person lawfully exercising his functions.

Annual estimate of expenses to be made and entered on journal.

Levy for same.

30. The council shall cause to be annually made up and entered upon its journal, an accurate estimate of all sums which are, or may become lawfully chargeable on such city, town or village, and which ought to be paid within one year, and it shall order a levy of so much as may, in its opinion, be necessary to pay the same.

Upon what imposed.

31. The levy so ordered shall be upon all dogs in the said city, town or village, and upon all the real and personal estate therein, subject to state and county taxes; provided, that the taxes so levied upon property shall not exceed one dollar on every one hundred dollars of the value thereof.

Who Are to Work on the Streets, etc.

Who to work on streets, etc.

Commutation of labor.

Levy of tax for streets, etc.

32. Every male resident of the said city, town or village not under twenty-one, nor over fifty years of age, and who is not a pauper, shall, if required by the council thereof, work not exceeding two days, by himself or an acceptable substitute, on the roads, streets and alleys of such city, town or village, under the direction of the superintendent of roads, streets and alleys, or may be released from such work upon the payment to the superintendent of such amount as may be fixed by the council, the money so paid to be used in the improvement of said roads, streets and alleys; and if said work and money so paid is not sufficient to put and keep the roads, streets, alleys, sidewalks, crosswalks, drains and gutters of such city, town or village in good repair, the council thereof shall levy a tax on all the subjects of taxation therein sufficient for that purpose, and to pay all other expenses incident thereto.

Licenses.

Licenses; how and for what purposes granted.

Bond required in certain cases.

33. Whenever anything for which a state license is required is to be done within such city, town, or village, the council may require a city, town or village license therefor, and may impose a tax thereon for the use of the city, town or village. But no license to sell, offer or expose for sale any brandy, whisky, rum, gin, wine, portor, ale or beer, or any other spirituous, vinous or malt liquor, or any intoxicating liquor, drink, mixture or preparation whatever within such city, town or village, or within one mile of the corporation limits thereof, unless it be within another incorporated city, town or village, shall be authorized or granted except as provided in chapter thirty-two of this code. The council shall require from every person so licensed, a bond with good security, to be approved by the council, in a penalty of at least three thousand five hundred dollars, payable to such city, town or village by its

corporate name, conditioned as prescribed in section eighteen of chapter thirty-two of this code; and may revoke such license at any time the condition of said bond be broken, upon ten days previous notice to the person holding the same. And suits may be prosecuted and maintained on such bond as prescribed in said section of said chapter, by the same persons in the same manner and to the same extent as upon the bonds mentioned in said section, and all the provisions of said section in relation to the bonds therein mentioned, shall be applicable to the bonds required by this section.

Revocation of license.

Sidewalks; How Made, etc.

34. If the owner or occupant of any sidewalk, footway or gutter, in such city, town or village, or of the real property next adjacent thereto, shall fail or refuse to curb, pave or keep the same clean, in the manner or within the time required by the council, it shall be the duty of the council to cause the same to be done at the expense of the city, town or village, and to assess the amount of such expense upon such owner or occupant, and the same may be collected by the sergeant in the manner herein provided for the collection of the city, town or village taxes.

Sidewalks; how made, etc.

Expense of, assessed upon adjacent property in certain cases.

Collection of Taxes, etc.

35. It shall be the duty of the sergeant to collect the city, town or village taxes, fines, levies and assessments, and in case the same are not paid within one month after they are placed in his hands for collection, he may distrain and sell therefor in like manner as the officer collecting the state taxes may distrain therefor, and he shall have, in all other respects, the same power to enforce the payment and collection thereof. And the said sergeant shall have all the powers, rights and privileges within the corporate limits of such city, town or village in regard to the arrest of persons, the collection of claims, and the execution and return of process, that can be legally exercised by the constable of a district within the same, and he shall be entitled to the same compensation therefor, and he and his sureties shall be liable to all the fines, penalties and forfeitures that a constable of a district is liable to, for any failure or dereliction in said office, to be recovered in the same manner and in the same courts that the said fines, penalties and forfeitures are now recovered against such constable. The sergeant shall, before entering upon the duties of his office, execute a bond, conditioned according to law, with surety satisfactory to the council, payable to the city, town or village, in such penalty, not less than one thousand dollars, as the council may proscribe.

Sergeant to collect taxes, fines, etc.

May distrain therefor.

To have all the powers of a constable.

To be liable on his official bond

Bond of sergeant.

Penalty thereof.

Lien for Taxes, Fines, etc.

36. There shall be a lien on real estate within such city,

Lien on real estate for taxes, fines etc.

To have priority, etc.

Delinquent lists to be certified to auditor. How delinquent real estate sold.

town or village for the city, town or village taxes assessed thereon and for all other assessments, fines and penalties assessed or imposed upon the owners thereof by the authorities of such city, town or village, from the time the same are so assessed or imposed; which shall have priority over all other liens, except the lien for taxes due the state, county and district, and may be enforced by the council in the same manner now provided by law for the enforcement of the lien for county taxes, or in such other manner as the council may by ordinance prescribe. If any real estate within such city, town or village be returned delinquent for the non-payment of the taxes thereon, a copy of such delinquent list may be certified by the council to the auditor, and the same may be sold for the taxes, interest and commissions thereon, in the same manner, at the same time and by the same officer as real estate is sold for the non-payment of state taxes.

Settlements by Sergeant; His Compensation for Collection, etc.; Remedy Against Him for Failure to Account, etc.

Sergeant to account for taxes, etc.

To be allowed credit for delinquents.

Compensation of sergeant.

37. It shall be the duty of the sergeant at least once in six months, during his continuance in office, and oftener if required by the council, to render an account of the taxes, fines, penalties, assessments and other claims in his hands for collection, and return a list of such as he shall not have been able to collect, by reason of insolvency, removal or other cause; to which list he shall make an affidavit that he has used due diligence to collect the same, but has been unable to do so; and if the council shall be satisfied of the correctness of said list, it shall allow the sergeant a credit for said claims. He shall receive for his services in the collection of taxes and assessments a compensation, to be fixed by the council, of not exceeding five per centum on the amount duly collected and accounted for. He shall pay any money in his hands belonging to the city, town or village upon the order of the council.

Remedy against sergeant in case of failure to pay.

How enforces.

38. If the sergeant shall fail to collect, account for and pay over all or any of the moneys with which he may be chargeable, belonging to the city, town or village, according to the conditions of his bond and the orders of the council, it shall be lawful for the council to recover the same by action or motion, in the corporate name of the city, town or village, in the circuit court of the county in which the same is situated; or, where the sum does not exceed three hundred dollars, before a justice of the district in which the same is situated, against the sergeant and his sureties, or any or either of them, or his or their executors or administrators, on giving ten days notice of such motion.

Powers and Duties of the Mayor.

39. The mayor shall be the chief executive officer of the

city, town or village, and shall take care that the orders, by-laws, ordinances, acts and resolutions of the council thereof, are faithfully executed. He shall be *ex-officio* a justice and conservator of the peace within the city, town or village, and shall within the same, have, possess and exercise all the powers, and perform all the duties vested by law in a justice of the peace, except that he shall have no jurisdiction in civil cases of causes of action arising out of the corporate limits of the city, town or village. He shall have the same power to issue attachments in civil suits as a justice of his county has, though the cause of action arose out of his city, town or village. But in such case he shall have no power to try the same but said attachments shall be returnable and be heard before some justice of his county. Any warrant or other process, issued by him may be executed at any place within the county. He shall have control of the police of the city, town or village, and may appoint special police officers whenever he deems it necessary; and it shall be his duty especially to see that the peace and good order of the city, town or village are preserved, and that persons and property therein are protected, and to this end he may cause the arrest and detention of all riotous and disorderly persons in the city, town or village before issuing his warrant therefor. He shall have power to issue executions for all fines, penalties and costs imposed by him, or he may require the immediate payment thereof, and in default of such payment, he may commit the party in default to the jail of the county in which such city, town or village is situated, or other place of imprisonment in such corporation, if there be one, until the fine or penalty and costs shall be paid; but the term of imprisonment in such case shall not exceed thirty days. He shall, from time to time, recommend to the council such measures as he may deem needful for the welfare of the city, town or village. The expense of maintaining any person committed to the jail of the county by him, except it be to answer an indictment, or be under the provisions of sections two hundred and twenty-seven and two hundred and twenty-eight of chapter fifty of this code, shall be paid by the city town or village. But such mayor shall not receive any money belonging to the state, or to individuals, unless he shall give the bond and security required of a justice of the peace by chapter fifty of this code; and all the provisions of said chapter relating to moneys received by justices shall apply as to like moneys received by such mayor.

Powers and duties of mayor.

Ex-officio a justice and conservator of the peace.

Power to issue attachments in civil suits.

To have control of the police.

May cause arrest and detention of rioters and disorderly persons. Power to issue executions.

In default of payment may commit to jail.

Term of imprisonment not to exceed thirty days.

How expense of confinement in jail paid.

Bond to be given by mayor in certain cases.

Duties and Powers of Recorder.

40. It shall be the duty of the recorder to keep the journal of the proceedings of the council, and have charge of and preserve the records of the city, town or village. In

Duties and powers of recorder.

To keep Journal of proceedings of council. To act as mayor in certain contingencies.

the absence from the city, town or village, or sickness of the mayor, or during any vacancy in the office of mayor, he shall perform the duties of the mayor and be invested with all his powers.

Duties and Powers of Assessors.

Duties and powers of assessors. To make assessment of property. When return to be made.

Dogs to be listed

41. It shall be the duty of the assessor to make an assessment of the property within the city, town or village subject to taxation, substantially in the manner and form in which assessments are made by the assessor of the county, and return the same to the council on or before the first day of May in each year, and for this purpose he shall have all the powers conferred by law on county assessors. He shall list the number of dogs in the city, town or village, and the names of the persons owning the same, which list shall be returned to the council.

Salaries of Officers.

Salaries of officers. To be fixed by council.

42. The mayor, recorder, assessor and superintendent of roads, streets and alleys of such corporation, shall each receive a compensation for his services, to be fixed by the council, which shall not be increased or diminished during the term for which he shall have been elected.

When the Inhabitants of City, Town or Village, Exempt from Working on Roads, etc.; and Payment of Poor Levies, etc.

When inhabitants exempt from working on roads.

Not to pay poor levies assessed by county court

43. The inhabitants of any incorporated city, town or village, whether the same is or has been incorporated under this chapter or otherwise, which constructs and keeps in good repair, the roads, streets, alleys, sidewalks and gutters within the same, shall not be required to pay any district road taxes, assessed by the county court, or to perform any labor on the roads outside of the corporate limits of the city, town or village in which they reside, nor shall the inhabitants of any such city, town or village, which provides for its own poor, be required to pay any poor levies assessed by the county court for the support of the poor outside of said corporate limits; but beyond this, the taxable property in no city, town or village shall be exempt from the payment of county levies for any purpose for which such levy may be lawfully laid, by reason of any provision in its charter or act of incorporation, or otherwise.

Forfeiture of Charter; When and How.

Forfeiture of charter; when and how.

44. Any city, town or village, which shall fail for one year to keep its roads, streets, alleys, sidewalks and gutters in good order and repair, or which shall fail for one year to exercise its corporate powers and privileges, shall thereby

forfeit its charter and all the rights, powers and privileges conferred thereby.

Cost of Procuring Charter; by Whom Paid.

45. All costs incurred in procuring the incorporation of any city, town or village under this chapter, shall be paid by the same. Cost of procuring charter; by whom paid.

Condemnation of Real Estate for Streets, etc.

46. The condemnation of real estate for roads, streets, alloys, drains and gutters in such corporation, shall be as prescribed in chapter forty-two of this code, and shall be at the expense of the corporation. Condemnation of real estate for streets, etc.

Amendment of Charter of City, Town or Village Having a Population of Less than Two Thousand.

47. No special act shall be passed incorporating or amending the charter of any city, town or village containing a population of less than two thousand, but the incorporation of all such cities, towns and villages, and the amendment of the charters thereof shall be as now is, or shall hereafter be, provided by general law. Amendments of charter.

Change of Corporate Limits of Such City, Town or Village.

48. Any five or more freeholders residing in any such corporation desiring to change the corporate limits thereof, may file their petition in writing with the council thereof, setting forth the change proposed in the metes and bounds of such corporation, and asking that a vote be taken upon the proposed change. The council shall thereupon order a vote of the qualified voters residing in such corporation to be taken upon the proposed change at a time and place therein to be named in the order, not less than twenty nor more than thirty days from the date thereof, and if it be proposed to include any additional territory within such corporate limits, the council shall at the same time order a vote of all the qualified voters residing on such additional territory, and of all such voters owning any part of such territory, whether they reside thereon or not, to be taken upon the question on the same day, at some convenient place on or near said additional territory, which vote shall be taken, superintended and conducted, and the result thereof ascertained, certified and returned, in the same manner and by the same persons that elections for city, town or village officers are held, superintended, conducted, ascertained, certified and returned. The ballots cast on such question shall have written or printed on them the words, "For change of corporate limits," or "Against change of corporate limits," as the voter may choose. If a majority of all the votes so cast within such corporation be in favor of the proposed change, and Change of corporation limits; how made. Vote to be taken How election conducted, and the result declared. What ballots to contain,

no additional territory is proposed to be included therein, the corporate limits of such city, town or village shall thereafter be as proposed by such petition. But if additional territory is proposed to be included in such corporate limits such change shall not take effect unless a majority of all the votes cast by the persons residing on said territory and owning any portion thereof be also in favor of such change.

Council to Certify Change to Circuit Court.

Council to
certify change
to circuit court.

Form of order
granting change
of boundary.

49. The council of such city, town or village shall enter the result of such vote upon its minutes, and when the change proposed is adopted as provided in the next preceding section, they shall certify the same to the circuit court of the county, and the said court shall thereupon enter an order in substance as follows: "A certificate of the council of the city (or town or village, as the case may be), of _____ was this day filed, showing that a change has been made in the manner required by law, in the corporate limits thereof, and that by such change the said corporate limits are as follows: Beginning at (here recite the boundaries as changed). It is therefore ordered that said change in said corporate limits be, and the same is hereby approved and confirmed, and the clerk of this court is directed to deliver to the said council a certified copy of this order as soon as practicable after the rising of this court." And from and after the date of such order the corporate limits of such city, town or village, shall be as set forth therein.

Acts Repealed.

Acts repealed,

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XCIII.

AN ACT amending and re-enacting chapter one hundred and fifty of the code of West Virginia, concerning the public health.

[Passed March 15, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter one hundred and fifty of the code of

West Virginia be, and the same is hereby amended and re-enacted so as to read as follows: Code amended; chapter 150.

CHAPTER CL.

OF THE STATE BOARD OF HEALTH—OFFENSES AGAINST THE PUBLIC HEALTH.

State Board of Health.

1. There shall be a state board of health in this state consisting of two physicians residing in each congressional district thereof, who shall be graduates of reputable medical colleges, and who shall have practiced medicine for not less than twelve years continuously. They shall be appointed by the governor, and hold their office for the term of four years, unless sooner removed as provided in this chapter. But the members of said board now in office shall, unless sooner removed therefrom, remain in office until their successors are appointed and qualified. On the first day of June, 1882, and in every second year thereafter, or as soon after said day as practicable, the governor shall appoint two members of said board for the term of four years; vacancies in the said board shall be filled by the governor for the unexpired term. Any person so appointed may be removed from office by the governor for incompetency, neglect of duty, gross immorality or drunkenness, or for any cause deemed necessary for the public good.

State board of health. Of whom composed.
How appointed, and term of office.
Provision for present members to remain in office until, etc.
When new members appointed by governor.
Vacancies to be filled by governor.
For what causes removals may be made.

Their Oath of Office.

2. The persons so appointed shall take the oath of office prescribed by the fifth section of the fourth article of the constitution of this state, before entering upon the duties of their office, and file a certificate of their having done so with the secretary of state.

Oath of office.
Certificate of, to be filed with secretary of state.

Election of President, etc.

3. The said board shall, on a day to be fixed by them, in every two years, elect from their own number, a president and secretary, who shall hold their offices for the term of two years, and until their successors are appointed and enter upon the duties of their office. The said board shall be a corporation by the name and style of "The state board of health of West Virginia," and have and use a common seal, and, as such corporation, may sue and be sued, contract and be contracted with, plead and be impleaded, to the extent of the powers conferred upon said board by this chapter. Said board may make and adopt all necessary rules, regulations and by-laws, not inconsistent with the constitution and laws of this state, or of the United States, to enable it to perform its duties and transact its business under the provisions of this chapter. A majority of said

President and secretary; how elected.
Their terms of office.
Board incorporated.
Its corporate powers defined.

Quorum. board shall constitute a quorum for the transaction of business. A meeting of the board may be called by the president or any three members thereof.

How a meeting called.

Duties of Secretary.

Secretary of board; his duties defined.

Special duties may be imposed upon him by board. During prevalence of endemics, etc. to visit infected localities when requested so to do by local boards of health. His report to governor; when made and what to contain. To be printed and distributed.

4. The secretary shall be the recording officer of the board, and in addition to his other duties prescribed in this chapter, he shall respond to all communications of the local boards of health, as well as from any member of said state board of health residing at a distance from his office, and give to them such advice and information relative to their duties, as he may deem necessary and proper. He shall also do and perform such other duties as the state board may lawfully direct, and in case of the prevalence of endemics, epidemics, infectious and contagious diseases, or other unusual sickness, he shall, on the request of the local board of health, visit the locality and advise with them, and adopt such regulations for its suppression as may seem best. He shall annually report to the governor, on or before the first day of January, the investigations, discoveries and recommendations of the board, which shall be printed and distributed as soon as practicable thereafter, in the same manner as other public documents of the state, except that the governor may cause said report to be printed and distributed annually.

Duties of the Board.

Duties of the board defined and enumerated. As to human diseases.

As to diseases occurring among stock and domestic animals.

They are to examine and advise as to water supply, drainage, etc., of cities and towns. Ventilation and warming of public buildings, coal mines, etc. What action taken by them to prevent invasion of diseases from other states.

5. The board shall take cognizance of the interests of the life and health of the inhabitants of the state, and shall make, or cause to be made, sanitary investigations and inquiries respecting the causes of diseases, especially of endemics, epidemics, and the means of prevention, the sources of mortality, and the effects of localities, employments, habits and circumstances of life on the public health. They shall also investigate the causes of diseases occurring among the stock or domestic animals in the state, the methods of remedying the same, and shall gather information in respect to these matters and kindred subjects for diffusion among the people. They shall also examine into and advise as to the water supply, drainage and sewerage of towns and cities; the ventilation and warming of public halls, chambers, school houses, workshops and prisons; the ventilation of coal mines, and how to treat promptly accidents resulting from poisonous gases. When they may believe there is a probability that any infectious or contagious disease will invade this state from any other state, it shall be their duty to take such action, and adopt and enforce such rules, as they may in the exercise of their discretion, deem efficient in preventing the introduction and spread of such disease or diseases. The better to accomplish such objects, the board

are empowered to establish and strictly maintain quarantine at such places as they may deem proper, and may adopt rules and regulations to obstruct and prevent the introduction or spread of infectious or contagious diseases, to or within the state. They may enforce inspections of persons and articles of baggage, or other goods of whatever character, as well as the purification of the same; and companies or individuals operating or controlling railroads, passenger coaches, public conveyances, and steamers plying the Ohio river, or its tributaries in this state, shall obey the rules and regulations when made and published by the board in some newspaper printed at or near the place where the danger is, and any owner or person having charge of such railway train, passenger coach, steamboat, or public or private conveyance, who shall refuse to obey such rules and regulations when so made and published, shall be guilty of a misdemeanor, and for each offense be fined not less than fifty nor more than five hundred dollars, and be confined in the county jail not less than fifteen days, nor more than two months, at the discretion of the court.

Quarantines; their power to establish, etc.

What inspections of persons and baggage may be enforced by them.
Duty of corporations, etc., to obey instructions of board, in certain cases. Instructions to be printed in newspaper near place of danger.

Penalty for disobedience by such corporations, etc., to obey instructions of board. Declared a misdemeanor. Fine and imprisonment.

6. It shall be the duty of the county court to nominate, and the said board to appoint, in each of the counties of this state, three intelligent and discreet persons residing therein, one of whom, at least, shall be a person qualified to practice medicine under the provisions of this chapter, if there be such person residing in the county, and the persons so appointed shall constitute a local board of health for the county of their residence, and hold their office for the term of two years, and until their successors are appointed, unless sooner removed from office by the state board of health. Vacancies in said local board shall be filled by the state board for the unexpired term upon the nomination of the county court. The said local board of health shall make and establish, for their county or for any district, or place therein, such sanitary regulations and rules as they may deem necessary and proper to prevent the outbreak and spread of cholera, small-pox, scarlet-fever, diphtheria and other endemic, infectious and contagious diseases, and they, or any of them, may, except in the night time, in the performance of the duties imposed upon them, enter into or upon any house or premises and inspect the same whenever they have reason to believe that such house or premises is in an unclean or infectious condition; and if any house or premises so inspected be found in such condition as aforesaid, said local board shall direct and require the person in charge of, or occupying the same, if of sufficient ability, to cleanse and purify the same according to the sanitary rules and regulations made by said board as aforesaid, and if any such person shall fail or refuse to comply with and obey the said directions and re-

Local county boards; how appointed, number and qualification of members, etc.

Their terms of office.

Vacancies to be filled by state board on nomination of county court. Duties of local boards as to sanitary regulations, etc.

Privilege of members as to entering and inspecting houses, etc. When house or premises found infected, power of local board to order the same purified.

Penalty for failure to comply with such order
Local boards to enforce rules and regulations of state board.
Practicing physicians to report certain diseases to local boards.

When and what local boards to report to state board.

City, town or village boards of health not under jurisdiction of local board.
But auxiliary to state board.

Quarantines established by local boards.
Against what diseases and persons.
When established, duty of local board to report fact in writing to member of state board residing in same congressional district.
Duty of such member in relation thereto.
Power of local board to continue quarantine until raised, etc.
May confine infected persons to their residences or place provided for same.
Power to summon guard to assist in enforcing orders.
Penalty for failure to comply with orders of board.
When guard fails or refuses.
Fine.

quirements of said board, he shall be guilty of a misdemeanor, and fined not less than ten nor more than one hundred dollars. Such local board shall also enforce within their county all the lawful rules and regulations of the state board of health applicable to such county. It shall be the duty of every practicing physician in any county, in which there is such local board of health, to report to said board promptly, all or any diseases of the above named character under treatment by him, and said local board shall once, at least, in every three months, report to the state board of health the character of all such infectious, contagious, endemic, or epidemic diseases; the number of persons reported as infected with either of said diseases, naming the same; the action taken by such local board to arrest the progress of every such disease, and the visible effects, (if any), of such action. Where any city, town or village has a board of health of its own, the jurisdiction of the local board so appointed shall not extend thereto, but such city, town or village board of health shall be auxiliary to, and act in harmony with the state board of health.

Duties of Local Board as to Quarantine, etc.

7. The local board of health of any county may declare quarantine therein, or in any particular district, or place therein, against the introduction of any contagious or infectious disease, prevailing in any other state, county or place, and of any and all persons and things likely to spread such contagion or infection. As soon as such quarantine is established, such local board shall, in writing, inform the members of the state board of health residing in their congressional districts, thereof, whose duty it shall be to ascertain, as soon as practicable, the necessity therefor, if any exists, and if they find that no such necessity exists, they shall declare the same raised. The said local board shall have power and authority to enforce such quarantine until the same is raised as aforesaid, or by themselves, and may confine any such infected person, or any person liable to spread such contagion or infection to the house or premises in which he resides, or if he have no residence in the county, at a place to be provided by them for the purpose; and if it shall become necessary to do so, they shall summon a sufficient guard for the enforcement of their orders in the premises. Every person who shall fail or refuse to comply with any order made by such board under this section, and every person summoned as such guard who shall, without a lawful excuse, fail or refuse to obey the orders and directions of such board in enforcing said quarantine, shall be guilty of a misdemeanor, and for each offense be fined not less than twenty-five nor more than one hundred dollars. In cases of emergency or of actual necessity, and when the court

or corporate authorities are from any cause unable to meet or to provide for the emergency or the necessity of the case, all actual expenditures necessary for local and county sanitation, as provided for in this section, shall be certified by the local board of health to the county court, and the whole or as much thereof, as the said court may deem right and proper shall be paid out of the county treasury. The board of health of any city, town or village, shall have the same powers and perform the same duties herein conferred upon and required of the local board of health in their county. The state board of health may also, under the provisions of this section, declare quarantine in any part of the state, and all the provisions of this section shall be applicable to the quarantine so declared.

When actual expenses for county sanitation to be paid out of county treasury. How and to what courts accounts certified.

Powers of city, town and village boards of health defined.

State board may declare quarantine in any part of state.

8. The state board of health, its agents and employes, and the local boards of health, in the absence of the state board, its agents and employes, when they have reason to believe that any steamboat or other water craft, navigating the Ohio river, or its tributaries in this state, or any other of the waters of the state, or bordering thereon, is infected with any contagious or infectious disease, may prevent the landing of such boat or craft at any point in this state. They may also, if they have reason to believe that any railroad train, coach, or other vehicle passing on or along any railroad in this state contains any person or thing infected with contagious matter, detain at any station or point on such railroad where it can be done with safety, such train, coach, or vehicle for a time sufficient to examine the same, and if found to be so infected, for a time sufficient to disinfect and purify the same; and if the conductor or person in charge of such train, coach, or vehicle, shall wilfully fail or refuse to stop the said train, coach or vehicle, for the time aforesaid, he shall be guilty of a misdemeanor and punished as prescribed in section five of this chapter. Nothing herein contained shall be so construed as to impair or affect the powers and duties of the county court of any county under the provisions of sections twenty-five and twenty-six of chapter thirty-nine, of the code of West Virginia, as amended and re-enacted by chapter five of the acts of one thousand eight hundred and eighty-one.

By whom and when steamboats and other water crafts, infected with certain diseases, may be prevented from landing at any point in state.

When railroad trains, etc., may be detained and examined. When found infected, to be detained until disinfected.

Penalty imposed on conductor, etc., for failing to stop train, etc., when directed so to do.

Construction; not to impair or affect certain powers and duties of county court.

Who May Practice Medicine in this State.

9. The following persons and no others shall hereafter be permitted to practice medicine in this state, viz:

First. All persons who are graduates of a reputable medical college in the school of medicine to which the person desiring to practice belongs. Every such person shall, if he has not already done so, and obtained the certificate hereinafter mentioned, present his diploma to the state board of health, or to the two members thereof in

Medical practitioners. Who privileged to practice in this state. Graduates of reputable medical schools. In such cases, diploma, when found genuine, etc., may entitle

applicant to
certificate.

By whom cer-
tificate issued.

Effect of
diploma and
certificate.

Persons residing
in state, or
counties border-
ing thereon,
who have
practiced con-
tinuously for ten
years prior to
March 8, 1881.
To whom and
how such person
must furnish
proof of
requisite fact.
When proof
entitles appli-
cant to
certificate.

Examination of
certain appli-
cants, not grad-
uates, etc.,
provided for.
Before and by
whom such
examination
made.

When found
qualified, to be
granted a certifi-
cate to that
effect.
Rights con-
ferred by
certificate.

Meetings for
such examina-
tions; by whom,
how and when
notice of same
to be advertised.

Not to apply to
a physician or
surgeon of
another state,
called to treat a

his congressional district, and if the same is found to be genuine, and was issued by such medical college as is hereinafter mentioned, and the person presenting the same be the graduate named therein, the said board or said two members thereof (as the case may be) shall issue and deliver to him a certificate to that effect; and such diploma and certificate shall entitle the person named in such diploma to practice medicine in all its departments in this state.

Second. All persons who have practiced medicine in this state, continuously, for the period of ten years prior to the eighth day of March, one thousand eight hundred and eighty-one. Every such person shall make and file with the two members of the state board of health in the congressional district in which he resides, or if he resides out of the state, in the district nearest his residence, an affidavit of the number of years he has continuously practiced in this state, and if the number of years therein stated be ten or more, the said board or said two members thereof, shall, unless they ascertain such affidavit to be false, give him a certificate to that fact, and authorizing him to practice medicine in all its departments in this state.

Third. A person who is not such graduate and who has not so practiced in this state for a period of ten years, desiring to practice medicine in this state, shall, if he has not already done so, present himself for examination before the state board of health or before the said two members thereof in the congressional district in which he resides, or if he resides out of this state, to the said two members of the state board of health in the congressional district nearest his place of residence, who, together with a member of the local board of health who is a physician (if there be such member of the local board), of the county in which the examination is held, shall examine him as herein provided; and if, upon full examination, they find him qualified to practice medicine in all its departments, they, or a majority of them, shall grant him a certificate to that effect, and thereafter he shall have the right to practice medicine in this state to the same extent as if he had the diploma and certificate hereinbefore mentioned. The members of the state board of health in each congressional district shall, by publication in some newspaper printed in the county in which their meeting is to be held, or if no such paper is printed therein, in some newspaper of general circulation in such district, give at least twenty-one days notice of the time and place at which they will meet for the examination of applicants for permission to practice medicine, which notice shall be published at least once in each week for three successive weeks before the day of such meeting. But this section shall not apply to a physician or surgeon who is called from another state to treat a particular case or to perform a particular surgical ope-

ration in this state, and who does not otherwise practice particular case, etc.
in this state:

Certificate to be Recorded.

10. Every person holding any such certificate as is Certificate to be recorded in office of secretary of state board of health. Fact of recordation to be endorsed on certificate.
hereinbefore provided for shall have the same recorded in the office of the secretary of the state board of health, in a book to be kept by him for that purpose, and the secretary shall endorse on said certificate the fact of such recordation, and deliver the same to the person named therein, or to his order.

Fee for Examination, etc.

11. Every person on presenting himself for examination Fees for examination. To whom paid. Amount of same. Not to be returned when certificate refused. But in such case applicant may within a certain time be re-examined, without additional fee, etc.
as hereinbefore provided, shall pay to the state board of health, or to the members thereof by whom he is examined, a fee of ten dollars, which shall not be returned if a certificate be refused him. But he may again at any time within one year after such refusal, present himself for examination as aforesaid, without the payment of an additional fee, and if a certificate be again refused him, he may as often as he see fit thereafter, on the payment of a fee of ten dollars, be examined as herein provided until he obtains such certificate.

Examinations—How Made.

12. Examinations may be in whole or in part in writing Examinations. How made; what subjects to embrace, etc.
and shall be of an elementary and practical character, and shall embrace the general subjects of anatomy, physiology, chemistry, *materia medica*, pathology, pathological anatomy, surgery and obstetrics, but sufficiently strict to test the qualifications of the candidate as a practitioner of medicine, surgery and obstetrics. This chapter not to apply to mid-wife. The provisions of this chapter shall not apply to females practicing midwifery.

To Whom this Chapter Applies.

13. Any person shall be regarded as practicing medicine, Construction; what persons regarded as practicing medicine. To apply to certain druggists and pharmacists. Not to commissioned officers of U. S. army, etc.
within the meaning of this chapter, who shall profess publicly to be a physician, and to prescribe for the sick or who shall append to his name the letters "M. D." This act shall also apply to apothecaries and pharmacists who prescribe for the sick. This act shall not apply to commissioned officers of the United States army and navy and marine hospital service.

Itinerant Physicians; Tax On, etc.

14. Any itinerant physician desiring to practice medicine Itinerant physicians; special tax to be paid by same; to whom and the amount.
in this state, shall before doing so, pay to the sheriff of every county in which he desires to practice, a special tax of fifty dollars for each month and fraction of a month he shall so practice in such county, and take his receipt in

Receipt in duplicate; to be presented to clerk of county court; one to be filed and other returned with endorsement thereon. Penalty for such physician practicing, etc., without paying tax, etc.

Of practicing for longer period than tax paid for. Fine. Who to be regarded as itinerant physicians.

duplicate therefor. He shall present said receipts to the clerk of the county court of such county, who shall file and preserve one of them in his office, and endorse on the other the words "A duplicate of this receipt has been filed in my office," and sign the same and deliver it to the person presenting the same; and if any such physician shall practice or attempt to practice medicine in any such county, without having paid such tax and filed such receipt with the clerk of the county court and obtained his endorsement on the other as aforesaid, or if he shall so practice or attempt to practice for a longer period than that for which he has paid such tax as aforesaid, he shall be guilty of a misdemeanor and fined not less than one hundred nor more than five hundred dollars. Any person who shall travel from place to place and by writing, printing or otherwise publicly profess to cure or treat diseases, injuries or deformities, shall be held and deemed to be an itinerant physician and subject to the taxes, fines and penalties prescribed in this section.

Penalty for Practicing, etc., Unlawfully.

Penalty for practicing medicine, etc., without complying with provisions of section 9 of this chapter.

Fine and imprisonment. Penalty for using diploma or certificate of another; or a false or forged diploma, etc.

Punishment.

15. If any person shall practice, or attempt to practice, medicine, surgery, or obstetrics in this state, without having complied with the provisions of section nine of this chapter, except as therein provided, he shall be guilty of a misdemeanor and fined for every such offense not less than fifty nor more than five hundred dollars, or imprisoned in the county jail not less than one month nor more than twelve months, or be punished by both such fine and imprisonment, at the discretion of the court. And if any person shall file or attempt to file, as his own, the diploma or certificate of another, or shall file or attempt to file a false or forged affidavit of his identity, or shall wilfully swear falsely to any question which may be propounded to him on his examination, as herein provided for, or to any affidavit herein required to be made or filed by him, he shall, upon conviction thereof, be confined in the penitentiary not less than one nor more than three years, or imprisoned in the county jail not less than six nor more than twelve months, and fined not less than one hundred nor more than five hundred dollars, at the discretion of the court.

Salaries, etc.

Salaries. Of secretary of state board of health; by whom fixed; what amount not to exceed. Traveling expenses.

16. The secretary of the state board of health shall receive a salary to be fixed by the board, but not to exceed the sum of five hundred dollars; he shall also receive his traveling and other necessary expenses incurred in the performance of his official duties within the limits of this state, not to exceed, however, one hundred dollars. The other members of said board shall each receive four dol-

lars per day for each day actually and necessarily employed by them in the discharge of the duties of their office. But the whole of the expenses so incurred, the salary of the secretary, and the *per diem* of the members of the board, shall not exceed the sum of fifteen hundred dollars in any one year. The state board shall audit all bills made out in due form, and verified by the member rendering the service, or incurring the expense or traveling in the performance of the duties of his office. Such bills, when approved by the governor, shall be paid out of the state treasury.

Of other members of board.

Amount for salaries, etc., limited.

Bills to be audited by state board.

How same must be verified. How paid.

17. All moneys received by the state board of health, or any of its members, in payment of fees for examination, as well as the special taxes received by the sheriff under the provisions of section fourteen of this chapter, shall be paid into the state treasury within one month after the same are received. And it shall be the duty of the secretary of the state board of health on the first days of January and July in each year, or within five days thereafter, to certify to the auditor all such moneys received by said board, or by any member thereof, during the preceding six months. It shall also be the duty of the clerk of every county court on the same days in each year, or within five days thereafter, to certify to the auditor all moneys received by the sheriff under this chapter shown by the receipts filed in his office, as required by section fourteen of this chapter; and any such secretary or clerk who shall fail to comply with the provisions of this section, shall be guilty of a misdemeanor and fined for each offense not less than fifty nor more than two hundred dollars. And if any member of the state board of health shall fail to account for and pay into the treasury as herein required, any moneys received by him as aforesaid, he shall be guilty of a misdemeanor and fined double the amount of the moneys so received and which he has failed to pay as aforesaid.

All moneys received by state board of health, etc., to be paid in the state treasury within a certain time.

Duty of sec'y of board to certify such moneys; at what times.

Duty of clerk of county court to certify to auditor moneys received by sheriff under this chapter, etc.

Penalty for failure of such secretary or clerk to comply, etc. Fine.

Penalty for failure of member of state board to account for moneys, etc. Fine.

Authority to Administer Oaths.

18. The secretary of the state board of health, or any member thereof, shall have power to administer oaths and take and certify affidavits in any matter or thing pertaining to the business of the board, or of any of the members thereof.

Oaths; secretary or any member of state board to administer certain oaths, etc.

Selling of Unsound Provisions.

19. If a person knowingly sell any diseased, corrupted, or unwholesome provisions, whether food or drink, without making the same known to the buyer, he shall be confined in jail not more than six months, and fined not exceeding one hundred dollars.

Unsound provisions; penalty imposed for selling same knowingly.

Adulterating Provisions or Drinks.

Adulterating provisions or drinks; penalty for prescribed. For knowingly misrepresenting food or drinks. Punishment.

20. If a person fraudulently adulterate, for the purpose of sale, anything intended for food or drink, or if he knowingly sell or barter anything intended for food or drink, which is not what it is represented to be, or what it is sold for, he shall be confined in jail not more than one year, and fined not exceeding five hundred dollars; and the adulterated or other articles shall be forfeited and destroyed.

Acts Repealed.

Inconsistent acts repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER XCIV.

AN ACT amending and re-enacting chapter seventy-eight of the code of West Virginia.

[Passed March 17, 1882.]

Be it enacted by the Legislature of West Virginia:

Code amended; chapter 78.

1. That chapter seventy-eight of the code of West Virginia be, and the same is hereby amended and re-enacted so as to read as follows:

CHAPTER LXXVIII.

OF DESCENTS AND DISTRIBUTIONS.

Course of Descents.

Course of descents in this state.

1. When any person, having title to any real estate of inheritance, shall die intestate as to such estate, it shall descend and pass in parcenary to his kindred, male and female in the following course:

I. To his children and their descendants.

II. If there be no child, nor the descendants of any child, then to his father.

III. If there be no father, then to his mother, brothers, and sisters, and their descendants.

IV. If there be no mother, nor brother, nor sister, nor any descendant of either, then one moiety shall go to the

paternal, the other to the maternal kindred in the following course :

V. First, to the grandfather.

VI. If none, then to the grandmother, uncles and aunts on the same side, and their descendants.

VII. If none such, then to the great-grandfathers, or great-grandfather, if there be but one.

VIII. If none, then to the great-grandmothers or great-grandmother, if there be but one, and the brothers and sisters of the grandfathers and grandmothers, and their descendants.

IX. And so on in other cases without end, passing to the nearest lineal male ancestors, and for want of them, to the nearest lineal female ancestors in the same degree, and the descendants of such male and female ancestors.

X. If there be no father, mother, brother or sister, nor any descendant of either, nor any paternal kindred, the whole shall go to the maternal kindred; and if there be no maternal kindred, the whole shall go to the paternal kindred. If there be neither maternal nor paternal kindred, the whole shall go to the husband or wife of the intestate; or if the husband or wife be dead, to his or her kindred in the like course as if such husband or wife had survived the intestate and died entitled to the estate.

2. Collaterals of the half blood shall inherit only half so much as those of the whole blood. But if all the collaterals be of the half blood, the ascending kindred (if any) shall have double portions.

Collaterals of the half-blood. What to inherit.

3. When the children of the intestate, or his mother, brothers and sisters, or his grandmother, uncles and aunts, or any of his female lineal ancestors living with the children of his deceased lineal ancestors, male and female, in the same degree, come into the partition, they shall take *per capita* or by person; and where, a part of them being dead and a part living, the issue of those dead have right to partition, such issue shall take *per stirpes*, or by stocks, that is to say, the shares of their deceased parents; but whenever those entitled to partition are all in the same degree of kindred to the intestate, they shall take *per capita* or by persons.

When persons take *per capita* or *per stirpes*.

4. In making title by descent, it shall be no bar to a party that any ancestor (whether living or dead,) through whom he derives his descent from the intestate, is or hath been an alien.

Alien; when ancestor being such, is no bar.

5. Bastards shall be capable of inheriting and transmitting inheritance on the part of their mother, as if lawfully begotten.

Bastards capable of inheriting, etc., through mother.

6. If a man, having had a child or children by a woman, shall afterwards intermarry with her, such child or children, or their descendants, if recognized by him before or after the marriage, shall be deemed legitimate.

How children born out of marriage may be legitimized

When issue deemed legitimate, though marriage void.

7. The issue of marriages deemed null in law, or dissolved by a court, shall nevertheless be legitimate.

Children in ventre sa mere, born within ten months, capable of inheriting.

8. Any person in *ventre sa mere* who may be born in ten months after the death of the intestate, shall be capable of taking by inheritance in the same manner as if he were in being at the time of such death.

Distribution of Personal Estate.

Personal estate; order of distribution.

9. When any person shall die intestate as to his personal estate or any part thereof, the surplus, after payment of funeral expenses, charges of administration and debts, shall pass and be distributed to and among the same persons, and in the same proportion, to whom and in which real estate is directed to descend, except as follows :

First. Alienage in any person claiming a distributive share of the personal estate shall be no impediment to his receiving the same share that he would have been entitled to, if he had been a citizen.

Second. If the intestate was a married woman, and leave children surviving, her husband shall be entitled to one-third of the said surplus, and if she leave no children, he shall be entitled to the whole thereof.

Third. If the intestate leave a widow and children by the same or a former marriage, the widow shall be entitled to one-third of the said surplus, and if he leaves no children, she shall be entitled to the whole thereof.

When personal estate of decedent accrues to state.

10. To the state shall accrue all the personal estate of every decedent, of which there may be no other distributee.

Widow's and Husband's Renunciation; What Bars Her or His Right as Distributee.

Renunciation of will by widow. How provided for.

11. When any provision for a wife is made in the husband's will, she may, within one year from the time of the admission of the will to probate, renounce such provision. Such renunciation shall be made either in person before the county court by which the will is admitted to record, or by a writing recorded in the office of the clerk of said court, upon such acknowledgment or proof as would authorize a writing to be admitted to record under chapter seventy-three of this code. If such renunciation be made, or if no provision be made for her in the will, she shall have such share of her husband's real and personal estate as she would have had if he had died intestate leav-

Effect of renunciation or failure of husband to make provision.

ing children; otherwise, she shall have no more thereof than is given her by the will. A husband may, in like manner, renounce a provision made for him in the will of his wife, and in such case, or if no provision for him be made in the will, he shall have such share of his wife's estate, real and personal, as he would have had if she had died intestate leaving children; otherwise, he shall have no more thereof than is given him by the will.

Renunciation of wife's will by husband.
How provided for and effect of same.

12. The foregoing provisions in favor of the husband and the wife are all subject to this qualification, that if the husband would be barred of his curtesy in the estate of his wife, or the widow be barred of her dower in the estate of her husband under any provision of law, neither shall have any part of the estate of the other, unless the same be given him or her by will, and then only so much as is so given.

When curtesy or dower barred by law, renunciation not allowable.

Advancements to be Brought into Hotchpot.

13. Where any descendant of a person dying intestate as to his estate or any part thereof, shall have received from such intestate in his lifetime, or under his will, any estate, real or personal, by way of advancement, and he or any descendant of his shall come into the partition and distribution of the estate with the other parceners and distributees, such advancement shall be brought into hotchpot with the whole estate, real and personal, descended or distributable, and thereupon such party shall be entitled to his proper portion of the estate, real and personal.

Hotchpot; when and how advancements may be brought into

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Inconsistent acts repealed.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XCV.

AN ACT amending and re-enacting chapter one hundred and five of the code of West Virginia, as amended and re-enacted by chapter one hundred and thirty-four of the acts of one thousand eight hundred and seventy-two and seventy-three.

[Passed March 18, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter one hundred and five of the code of

Code amended; chapter 105 as amended by chapter 134 acts 1872-3.

West Virginia be, and the same is hereby amended and re-enacted so as to read as follows:

CHAPTER CV.

OF THE SALE OF LANDS FOR THE BENEFIT OF THE SCHOOL FUND.

What Lands to be Sold for the Benefit of the School Fund; Duty of Auditor and Surveyor in Relation Thereto.

What lands to be sold for benefit of school fund.

1. All waste and unappropriated lands within this state, and all lands in this state heretofore vested in the state of Virginia by forfeiture or purchase at the sheriff's or collector's sale for delinquent taxes and not released and exonerated or redeemed within one year, according to law; all lands heretofore or hereafter purchased for this state, at a sale thereof for taxes, and not redeemed within one year, according to law; and all lands forfeited to this state for the failure to have the same entered upon the land books of the proper county, and charged with the taxes thereon, as provided for by law, shall, so far as the title thereof shall not be vested in junior grantees or claimants under the provisions of the constitution and laws of this state, be sold for the benefit of the school fund, in the manner hereinafter prescribed. The auditor shall certify to the clerk of the circuit court a list of all such lands, which, or the greater part of which, lie in his county, within sixty days after the title thereto shall vest in the state.

Auditor to certify list to clerk of circuit court.

Duty of surveyor to report to circuit court certain waste, etc., lands.

2. It shall be the duty of the surveyor of each county in this state, as soon as the same shall come to his knowledge, to report to the circuit court all waste and unappropriated lands in his county, except the lands under the bed of the Ohio river, subject to sale under the provisions of this chapter; designating particularly the quantity of the tract or parcel, and the local situation thereof, together with all information he can procure in relation to the same, and of any claim of title thereto.

What report to designate.

Duty of Clerk of County Court.

Duty of county court clerk to report certain lands not entered and charged with taxes, etc., to auditor.

3. In order to enable the auditor to make the record required by section thirty-nine of chapter thirty-one of this code, and to make the report to the clerk of the circuit court required by the first section of this chapter, it shall be the duty of every clerk of a county court in this state in whose county any real estate should be entered on the land books and charged with taxes as required by law, but which is not so entered and charged with taxes, upon discovering any such failure, to report to the auditor all the facts in relation thereto, required to be entered in such record by the said thirty-ninth section of said chapter thirty-one.

Commissioner of School Lands.

4. The circuit court of every county shall, from time to time, appoint a commissioner of school lands for such county, who shall do and perform the duties and exercise the powers hereinafter provided for. Every such commissioner shall, before entering upon the duties of his office, take an oath in open court that he will faithfully, to the best of his skill and judgment, execute the duties of his office, and shall give bond with good security to be approved by the court in the penalty of at least five thousand dollars, conditioned that he will faithfully and impartially discharge the duties of his office, and will pay over and account for, according to law, all moneys, bonds and other securities which may come to his hands by virtue of his office. He shall, as far as possible, see that every officer having any duty to perform under this chapter performs the same as therein required, and report any failure of any such officer to do so to the circuit court of his county.

Commissioner of school lands; when and by whom appointed. His duties. Oath of office; bond, etc.

To report failure of other officers to circuit court.

Petition for Sale of Land and Proceedings Thereon.

5. It shall be the duty of the commissioner of school lands once in each year to ascertain from the reports made as aforesaid, and such information as he may be able, by the use of due diligence, to obtain all the lands which have become or been ascertained to be liable to sale under the provisions of this chapter, as to which proceedings have been commenced for the sale thereof, to file his petition, in which he shall include all the tracts, lots and parts and parcels of any tract or lot of land so liable to sale, in the circuit court of his county, praying that the same be sold for the benefit of the school fund. In such petition he shall state according to the best of his information and belief, the local situation, quantity, or supposed quantity, and probable value of each tract, lot, or parcel and part of a tract of land therein mentioned, together with all the facts at his command in relation to the title to the same, and to each tract, lot, part or parcel thereof; the claimant or claimants thereof, and their residence if known, and if not known that fact shall be stated; and stating also how and when, and in whose name every such tract, lot and parcel and part of a tract or lot was forfeited to the state. Upon the filing of such petition the court shall direct a summons to be issued by its clerk against the claimants, if any, named in the petition, the person or persons in whose name the same was forfeited, and all unknown parties having or claiming the land, or any part of them named in the petition, requiring them to appear before a commissioner in chancery of the court at a time and place to be therein named, and show cause, if any they can, why the said lands shall not be sold for the benefit of the school fund. The summons

Lands liable for sale; commissioner to ascertain same once a year.

Petition praying for sale; where filed and what to contain.

Parties claiming title to be summoned.

What such summons to require.

How served.

When published, etc.

shall be served on each of the persons named therein, if they can be found in the county, and as to such of them as cannot be found in the county, and such unknown parties, it shall be published at least once in each week, for four successive weeks, in some newspaper printed in the county, and if there be no such paper printed in the county, then in some newspaper of general circulation therein; and if no such newspaper will publish such summons, it shall be posted at the front door of the court house of such county, and at some public place in each magisterial district therein, at least four weeks before the day named therein for the appearance of the parties before said commissioners, and such publication or posting, when so made or done, shall be equivalent to the personal service of the said summons on all the parties named therein, upon whom it has not been served personally, and on all the said unknown parties.

Petition to be referred to commissioner in chancery. Instructions thereupon as to matters to be enquired into and reported.

6. The said court shall also, by a proper decree, refer the said petition to a commissioner in chancery thereof, with instructions to enquire into and report upon the matters and things therein contained, and such others as the court may think proper to direct, and particularly to enquire and report as to the amount of taxes and interest due and unpaid on each tract, lot and parcel, and part of a tract, or lot of land mentioned in the petition, in whose name it was forfeited, and when and how forfeited, in whom the legal title was at the time of the forfeiture, and if more than one person claimed adverse titles thereto at the date of the forfeiture, the name of each of such claimants, and a reference to the deed book or books in which the title papers of any claimant thereof can be found; what portion or portions, if any, of any such lands is claimed by any person or persons under the provisions of section three of article thirteen of the constitution of this state, with the names of such claimants and the amount claimed by each as far as he can ascertain the same. But such commissioner shall not proceed under said decree until the summons aforesaid shall have been served as required by the next preceding section. If it be necessary to enable the commissioner to perform his duties under this section, he shall employ the surveyor of the county to do such surveying as is necessary to be done for that purpose, or if there be no such surveyor, or he be interested, or for any reason it shall be improper for him to act, the commissioner may employ another surveyor for the purpose.

Commissioner not to proceed under decree till summons served. He may employ surveyor to make certain surveys, etc.

Commissioner's Report.

His report; when and where filed.

7. The commissioner shall proceed with all reasonable diligence to perform the duties required of him by such decree, and as soon as his report is completed he shall file the same in the office of the clerk of the circuit court, and

the commissioner of school lands and any other person interested therein, may file exceptions thereto, at any time after such filing in the clerk's office and before the hearing thereon. But no hearing shall be had on said report at the first term after it is filed, unless the same was filed at least thirty days before the commencement of such term.

Exceptions thereto.

When hearing may be had.

Hearing on Report, etc.

8. If there be no exceptions to such report, or if there be exceptions thereto which are overruled, the court shall confirm the same and decree a sale of the lands, or any part of them therein mentioned, which are subject to sale for the benefit of the school fund, upon such terms and conditions as to the court may seem right and proper. When exceptions are filed to such report, which are sustained in whole or in part, the same proceedings shall be had in the case as if it were a suit in chancery. The sale of any such land made under a decree therefor shall be made, conducted and reported, and such proceedings shall be had thereon in all respects as if such sale had been made under a decree in a suit in chancery, and the court may from time to time, decree a sale of any one or more of the tracts or lots, or parts or parcels thereof, without waiting to determine the question as to the sale of the whole thereof mentioned in the petition.

Decree for sale; when may be made by court.

Terms and conditions of sale.

Proceedings when exceptions are filed to commissioner's report. Sales; how made, conducted, etc.

May be in part or whole.

Sale by Whom Made and Report Thereof; Money Received, and Notes Taken, How Disposed Of.

9. Every such sale shall, unless the court otherwise order, be made by the commissioner of school lands upon the terms, conditions and notice provided for in the decree of sale. The commissioner of school lands, or other commissioner, making such sale shall make a report thereof to the court which decreed the same, in which he shall state the name of each purchaser and the particular tract or tracts, lot or lots, or parts or parcels of any tract or lot purchased by him, and the quantity, as near as may be, so purchased by each purchaser; the amount of the purchase money of each tract, lot or parcel, or the part thereof so purchased; the amount of the purchase money paid on each at the time of the purchase, and the amount of the notes taken for the residue of the purchase money; the name of the surety in such notes, and the time at which they will become due and payable; the gross amount of money in his hands arising from such sales, and the costs and legal expenses thereof, exclusive of his commissions. He shall return with his report all notes and securities taken by him for the purchase money of the real estate sold by him, and the clerk of the court shall endorse thereon the day they will respectively become due and payable, and file and preserve the same in his office; and such notes and securities

Commissioner of school lands to make sales.

Report of sale; how made and what to contain.

Notes and securities for purchase money; to be returned with report, etc.

When same have force of judgments.

Execution on same; how awarded.

Notice.

shall, if not paid when due, have the force of judgments against the makers thereof, or the obligors therein, from and after the day they so become due and payable. The court in which such proceedings are had may, on motion of the commissioner of school lands, award execution on any such note or security against the makers thereof, or the obligors therein, or the personal representatives of any of them, for the principal and interest due thereon and the costs, including an attorneys fee of not less than five nor more than ten dollars, as the court shall order. Every such motion shall be after ten days notice thereof served upon such makers or obligors, of the day on which the motion will be made.

Compensation of Commissioner.

Compensation of commissioners fixed.

10. Every commissioner shall receive for his services under this chapter the following compensation and no other, to-wit: For filing the petition mentioned in the fifth section of this chapter and for attending to all the proceedings thereunder for the sale of the lands therein mentioned, one dollar for each tract and lot, and each part or parcel of a tract or lot, the sale of which shall be decreed by the court. For all moneys collected and paid over by him as such commissioner, a commission of not less than five nor more than ten per cent. on the amount thereof. For each deed to a purchaser of any part of such lands, five dollars. For prosecuting all suits and proceedings for the collection of the purchase money of any such lands he shall receive the attorney's fees taxed by the court therein if they are recovered from the defendants, but not otherwise. And in addition thereto he shall be allowed all reasonable and proper expenses necessarily incurred and actually paid by him in the proper discharge of the duties of his office under this chapter, to be fixed and adjusted by the court upon the production of sworn vouchers showing the amounts so paid and for what paid.

Expenses; when paid.

Costs of Proceedings—How Adjusted and Paid, etc.

Costs; how ascertained and taxed. How paid.

11. The costs of the proceedings shall be ascertained and taxed by the clerk under the direction of the court, and, except as provided in the next preceding section, paid out of the proceeds of the sales of the said real estate, and not otherwise, to the several persons entitled thereto, if sufficient for the purpose, but if the said proceeds are not sufficient to pay the whole of such costs, the same shall be paid therefrom to the several persons entitled thereto, *pro rata*. The residue of the proceeds of the sale of such real estate after the payment of such costs, and the commissions and expenses of the commissioner of school lands as provided in the next preceding section, shall be paid by the commissioner of school lands into the treasury of the state for the benefit of the school fund.

Purchase money, after costs paid, to be turned into treasury for benefit of school fund.

Deed to Purchaser.

12. When the whole of the purchase money of any tract or lot of land, or any part, or parcel of a tract or lot, purchased by any person at any such sale with the interest due thereon, and the costs, if any, incurred in the collection thereof, is fully paid, the commissioner of school lands or other commissioner making the sale, shall convey to the purchaser, his heirs, devisees or assigns, or to such person as he or they may direct, to be evidenced by him or them joining therein, by a proper deed, all the right, title and interest of the state of West Virginia, in and to the real estate thereby conveyed, which passed to and vested in the state under the constitution and laws thereof, by reason of the forfeiture of such real estate, or otherwise. If the commissioner fail or refuse to make said deed, the same may be made by a commissioner appointed by the court for the purpose as provided in section twenty-two of chapter thirty-one of this code.

Deed to purchaser; when made; by whom, etc.

When court may appoint a special commissioner to make deed.

Excess of Purchase Money Paid to Former Owner, When; Proceedings in Such Case; Redemption by Former Owner, etc.; Effect Thereof.

13. The former owner of any such land shall be entitled to recover the excess of the sum for which the land may be sold over the taxes charged and chargeable thereon, or which, if the land had not been forfeited, would have been charged or chargeable thereon, since the formation of this state, with interest at the rate of twelve per centum per annum and the costs of the proceedings, if his claim be filed in the circuit court that decrees the sale, within two years thereafter, as provided in the next succeeding section.

Excess of purchase money; when former owner entitled thereto.

When claim therefor filed.

14. Any owner may, within the time aforesaid, file his petition in the said circuit court, stating his title to such lands, accompanied with the evidences thereof, and upon full and satisfactory proof that at the time the title to said lands vested in the state he had a good and valid title thereto, legal or equitable, superior to any other claimant thereof, such court shall order the excess mentioned in the next preceding section to be paid to him; and upon a properly certified copy of such order being presented to the auditor, he shall draw his warrant on the treasury in favor of such owner, or his personal representative, for such excess. At any time during the pendency of the proceedings for the sale of any such land as hereinbefore mentioned, such former owner, or any creditor of such former owner of such land having a lien thereon, may file his petition in said circuit court as hereinbefore provided, and asking to be allowed to redeem such part or parts of any tract of land so forfeited, or the whole thereof, as he

Proceedings upon owner's petition.

Payment to owner; how ordered and made.

Redemption of lands by former owner. Proceedings in such cases.

may desire, and upon such proof being made as would entitle the petitioner to the excess of purchase money hereinbefore mentioned, such court may allow him to redeem the whole of such tract if he desire to redeem the whole, or such part or parts thereof, as he may desire, less than the whole, upon the payment into court, or to the commissioner of school lands, all costs, taxes and interest due thereon, as provided in this chapter, if he desire to redeem the whole of such tract; or if he desire to redeem less than the whole of such tract, upon the payment, as aforesaid, of so much of the costs, taxes and interest due on such tract as will be a due proportion thereof for the quantity so redeemed. But if the petition be for the redemption of a less quantity than the whole of such tract, it shall be accompanied with a plat and certificate of survey of the part, or parts thereof sought to be redeemed.

When plat or survey to accompany owner's petition

Order of the court, what same must show

Whenever it shall satisfactorily appear that the petitioner is entitled to redeem such tract, or any part or parts thereof, the court shall make an order showing the sum paid in order to redeem the whole tract, or the part or parts thereof which the petitioner desires to redeem, and declaring the tract, or part or parts thereof, redeemed from such forfeiture, so far as the title thereto was in the state immediately before the date of such order; which order, when so made, shall operate as a release of such forfeiture so far as the state is concerned, and of all former taxes on said tract, or part or parts thereof so redeemed, and no sale thereof shall be made. If the redemption be of a part or parts of a tract, the plat or plats and certificate of the survey thereof hereinbefore mentioned, together with a copy of the order allowing the redemption shall be recorded in a deed book in the office of the clerk of the county court. *Provided*, That such payment and redemption shall in no way affect or impair the title to any portion of such land transferred to and vested in any person, as provided in section three of article thirteen of the constitution of this state.

Effect of such order.

When order and plat or survey to be recorded in deed book.

Proviso.

Acts Repealed.

Repeal of inconsistent acts.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XCVI.

AN ACT to amend and re-enact chapter fifty-three of the code of West Virginia, concerning joint stock companies, whether incorporated under special charters or general law.

[Passed March 25, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter fifty-three of the code of West Virginia Chapter 53 be, and the same is hereby amended and re-enacted so as code amended. to read as follows:

CHAPTER LIII.

REGULATIONS APPLICABLE TO JOINT STOCK COMPANIES,
WHETHER INCORPORATED UNDER SPECIAL CHARTERS OR
GENERAL LAW.

Definitions.

1. The words "joint stock company" include every corporation having a joint stock or capital divided into shares owned by the stockholders respectively. The words "joint stock company" defined.

2. When the word "by-law" is used in this chapter, it is to be understood as if immediately followed by the words "adopted by the stockholders in general meeting assembled." The word "by-law" defined.

No Joint Stock Companies to be Incorporated Under Special Charter.

3. No corporation shall hereafter be created by special charter; and no act shall be passed granting special privileges to any joint stock company heretofore or hereafter incorporated under the provisions of chapter fifty-four of this code, or any other general law of this state, and no joint stock company shall be authorized to engage in any business other than that which is proper under its charter; except that a mining, manufacturing, oil, salt or internal improvement company, may lay out a town not to include more than six hundred and forty acres, at or near their works, and sell lots therein; and any corporation may take real estate, stocks, bonds and securities, in payment, in whole or in part of any debt *bona fide* owing to it, or as a security therefor, or may purchase the same if deemed necessary to secure or obtain payments of any such debt, in whole or in part, and may manage, use and dispose of what has been so taken or purchased, as a natural person might do; and any corporation may compromise or pur- Special charters prohibited. Special privileges prohibited. Confined to business proper under its charter. Exception as to certain companies. May lay out town and sell lots. May take lands, stocks, etc., in payment of debts. May use and dispose of same.

May compromise or purchase its debts and establish sinking fund.

May purchase stock, bonds, etc., of other corporations and become surety for their debts.

chase its own debt, and establish and manage a sinking fund for that purpose, and any manufacturing company may with the assent of the holders of two-thirds of its stocks, had by a vote at a stockholders' meeting, subscribe for or purchase the stock, bonds or securities of any corporation formed for the purpose of manufacturing or producing any articles or material used in the business of such joint stock company, or dealing in any articles or materials manufactured or produced by such joint stock company, or constructing a railroad or other work of internal improvement, through or into the county in which the principal place of business of such joint stock company may be, or operating a railroad or other work of internal improvement so constructed, and may, with the like assent, become surety for or guarantee the debts of such corporation, or in any manner aid it in carrying on its business.

Certain charters heretofore granted deemed extinct.

Proviso.

4. All existing charters or grants of special or exclusive privileges under which organizations shall not have taken place, or which shall not have been in operation within two years from the twenty-second day of August one thousand eight hundred and seventy-two, shall have no validity or effect whatever. *Provided*, That nothing herein shall prevent the execution of any *bona fide* contract heretofore lawfully made in relation to any existing charter or grant in this state.

Rights, powers and privileges heretofore granted preserved.

5. All rights, powers and privileges heretofore granted by the general assembly of Virginia, or by the legislature of this state to any joint stock company, which are not rendered invalid and of no effect by the preceding section, are hereby preserved to it.

Within what time joint stock company must organize.

6. Where a certificate of incorporation has been or shall hereafter be issued for a joint stock company under a general law, such company must be organized and commence its proper corporate business within one year after the date of such certificate; otherwise the certificate shall be of no effect.

Dissolution of corporation by suspension of business.

7. If a joint stock company whether organized under special charter, or general law, suspend its proper corporate business at any time for two years continuously, its corporate rights and privileges shall cease.

Right Reserved to Alter or Repeal, or Amend Charters, etc.

Right of legislature to alter or repeal charters.

8. Where the legislature has the right to alter or repeal the charter or certificate of incorporation heretofore granted to any joint stock company, or to alter or repeal any law relating to such company, nothing contained in this chapter shall be construed to surrender or impair such right. And the right is hereby reserved to the legislature

to alter any charter or certificate of incorporation hereafter granted to a joint stock company, and to alter or repeal any law applicable to such company. But in no case shall such alteration or repeal affect the right of the creditors of the company to have its assets applied to the discharge of its liabilities, or of its stockholders to have the surplus, if any, which may remain after discharging its liabilities, and the expenses of winding up its affairs distributed among themselves in proportion to their respective interests.

What Companies are Subject to this Chapter.

9. Every joint stock company heretofore organized, and which has commenced its proper corporate business, under special charter or general law, shall remain subject to the laws now in force applicable thereto unless it accepts the provisions of this chapter, or shall be declared subject thereto by act of the legislature.

Companies heretofore organized subject to laws now in force.

10. Every joint stock company which shall be hereafter organized or commence its proper corporate business, or which shall accept the provisions of this chapter, or be declared subject thereto by act of the legislature, shall, so far as it is not otherwise expressly provided, have the rights, power and privileges, and be subject to the regulations, restrictions and liabilities specified in this and the preceding chapter.

Companies hereafter organized subject to provisions of this chapter.

Of the Corporate Name, and the Manner in which it may be Changed.

11. No joint stock company shall adopt the same name which is being used at the time by another corporation of this state.

Name of one company not to be used by another; when.

12. If the stockholders of a joint stock company desire to change the name thereof, and pass in general meeting a resolution to that effect, stating the name by which it is intended the corporation shall be thereafter known, and cause such resolution to be certified under its common seal and the signature of its president to the secretary of state, the secretary shall issue under his hand and the great seal of the state, a certificate reciting the resolution and declaring that the corporation is to be thereafter known by the new name so adopted; and such certificate shall be evidence of the change of name therein specified. Notice of every such change of name shall be published by such corporation, in some newspaper of general circulation in the county where the principal office of such corporation is, once a week for four successive weeks immediately thereafter.

Name of company how changed and proceeding in such case.

13. The seventeenth, eighteenth, nineteenth and twen-

Sections of chapter 54 applicable in such case.

both sections of chapter fifty-four of this code, shall be applicable to such certificates of change of name.

Change of name not to effect previous liability, etc.

14. No contract, right or liability, previously existing or inchoate, or suit, motion or proceeding then pending, shall be affected by such change of name.

Of the Capital Stock.

Division of capital stock into shares.

15. The capital stock shall be divided into shares of such amount each as may be prescribed by the charter of incorporation; but every share shall be of the same amount.

Preferred stock, how provided for, and proceedings in relation thereto.

16. The stockholders in general meeting may, by resolution or by-law, provide for or authorize the issuing of preferred stock, on such terms and conditions, and with such regulations respecting the preference to be given to such stock over the other stock in relation to future dividends or otherwise, as they may deem proper. *Provided*, That the maximum capital of the corporation shall not be exceeded; and that notice be first published at least once a week for four weeks successively in some newspaper of general circulation in the county wherein the principal office or place of business of the corporation is situated, of the intention to offer such resolution or by-law.

Number of stockholders; when corporation dissolved for want of sufficient number.

17. There shall not be less than five stockholders. If the number be at any time reduced below five, and so remain for six months continuously, the corporation shall be dissolved.

Corporation may acquire shares of its own stock; how disposed of, etc.

18. If the corporation acquire shares of its own stock, it may either extinguish or sell the same. If extinguished, it shall operate to that extent as a reduction of the amount of its capital stock. No vote shall be given on any stock while owned by the corporation.

Who deemed the owner of stock.

19. The person in whose name shares of stock stand on the books of the corporation shall be deemed the owner thereof, so far as the corporation is concerned.

Shares of stock deemed personal estate.

20. The shares shall be deemed personal estate, and as such shall pass to the legal representative or transferee of the stockholder and be subject to legal process.

Transfer of Stock.

Transfer book to be kept by company, etc.

21. A transfer book shall be kept by the corporation in which the shares shall be assigned, under such regulations, if there be any, as may have been prescribed by the by-laws.

Shares not paid for, how transferred; bond and security may be given and the effect thereof.

22. No share shall be transferred without the consent of the board of directors, until the same is fully paid up, or security given to the satisfaction of the board for the residue remaining unpaid. And where bond and security

have been given to the corporation for any sum remaining unpaid upon stock, no transfer shall affect the validity of such bond and security.

Of Subscriptions to the Capital, and Recovery of Installments Thereon.

23. Before a corporation is organized, shares may be disposed of as prescribed by the sixteenth section of chapter fifty-four of this code, or by the charter. After it is organized, the disposal of additional shares to increase the capital stock shall be subject to the order and direction of the board of directors for the time being, so that the maximum capital be not exceeded.

How shares may be disposed of before organization.

24. In no case shall stock be sold or disposed of at less than par in order to increase the capital of any such corporation beyond the maximum fixed by its charter. But nothing herein contained shall be so construed as to prevent any mining corporation, subject to the provisions of this chapter, from issuing stock or bonds and negotiating the sale of the same in payment of real and personal estate for the use of such corporation, and for its other corporate purposes and business, at such price and upon such terms and conditions as may be agreed on by the owners, directors or stockholders of such corporation. And any subscriber to the capital stock of any such mining corporation may pay for such stock by the transfer and conveyance to such corporation of real or personal property, or both, necessary for the uses and purposes of the corporation, upon such terms as may be mutually agreed upon.

Stock not to be sold at less than par to increase capital stock. Provisions as to mining corporations.

25. At least ten per cent. of the par value of each share shall be paid at the time of subscription, and the residue as required by the board of directors or the commissioners having control of the subscription.

Ten per cent. of par value of stock to be paid in at time of subscribing. Residue, how paid.

26. No stock shall be regarded as taken, or the person subscribing therefor considered entitled to the same until the first installment is paid thereon.

Stock not regarded as taken until first installment paid.

27. If more than the amount necessary to make up the maximum capital, or the amount of capital to be disposed of, be at any time subscribed, the subscriptions shall be reduced to the proper amount by deducting the excess from the largest subscriptions in such manner that no subscription shall be reduced while any one remains larger.

When more than maximum amount of stock subscribed.

28. If any person who has received a sum of money on a subscription to the capital stock of a corporation fail to account for and pay over the same as the board of directors may require, or if any stockholder fail to pay any installment upon his shares when required by the board, the corporation may recover from him the principal sum

Surplus deducted from largest subscriptions.

Subscriptions to stock, how recovered.

due, with interest thereon at the rate of ten per cent. per annum, by motion on ten days notice, or by action before any justice or court having jurisdiction.

Stock of delinquents may be sold by order of directors.

Notice required in such case.

29. Or, in the case of a stockholder failing to pay any installment upon his shares when required by the board of directors, the said shares may, by order of the board, after four weeks notice in a newspaper of general circulation in the county wherein the principal office or place of business of such corporation is situated, be sold at public auction for cash, and be transferred to the purchaser by such person as the board shall appoint for the purpose. In such case there shall be paid out of the proceeds of the sale the expenses of advertising and selling, and the whole residue remaining unpaid upon said stock; and the surplus, if any, shall be paid to the delinquent stockholder.

If proceeds of sale insufficient, deficiency may be recovered from delinquent stockholder.

30. If there be no sale for want of bidders, or if the sale do not produce enough to pay the expenses and the whole residue remaining unpaid on the said stock, the corporation may recover from such stockholder whatever may remain unpaid, with interest at the rate of ten per cent. per annum from the time it was due until payment, by action or motion as aforesaid.

Of Security for Unpaid Installments of Stock.

Security for unpaid installments may be required.

31. A corporation, the stock of which is not fully paid up, may, by by-law, require each stockholder to give security to the satisfaction of its board of directors for the payment, at such times and in such installments as the board may direct, of the residue remaining unpaid on his stock. In such case, the security may be given by bond, with one or more sureties, or by pledge of other stocks or securities, or by deed of trust or mortgage on real estate, or in any other manner satisfactory to the board and not prohibited by such by-law.

Directors to examine sufficiency of security.

32. When security is taken from stockholders for the unpaid residue of their stock according to the preceding section, the board of directors shall from time to time examine the said securities to ascertain the sufficiency thereof. And if, in any case, they deem the security insufficient or doubtful, they shall require other security in lieu thereof; and so from time to time thereafter, whenever they find the security insufficient or doubtful.

Stockholders failing to give security, how unpaid residue recovered.

33. If any stockholders being thereto required, according to either of the two preceding sections, fail to give security satisfactory to the board of directors for the unpaid residue of his stock, the corporation may recover from him, by motion on ten days notice, or by action before any justice or court having jurisdiction, the whole unpaid residue of the stock, with interest thereon at the rate of ten per

cent. per annum from the time of such failure until payment; or the board of directors at their option, (having first given not less than two weeks notice to the stockholder of their intention so to do), may declare the stock in regard to which such failure occurred to be forfeited to the corporation.

Stock may be declared forfeited.

34. If any stockholder, having given security as aforesaid, fail to pay the unpaid residue of his stock or any installment thereof, when thereto required by the board of directors, the corporation may recover the amount in arrears, with interest thereon at the rate of ten per cent. per annum from the time of such failure until payment, from the person liable on such security, or any one or more of them, by motion or action as aforesaid; or by the sale or collection of the stocks or securities pledged, or enforcement of the deed of trust or mortgage or other securities given as aforesaid; or in the manner specified in the twenty-ninth and thirtieth sections of this chapter. And if it proceed in any of the modes above mentioned, it shall not be thereby precluded from resorting to the others for the recovery of so much as may remain unpaid.

Stockholders failing to pay installments; how unpaid residue recovered from sureties.

Certificates of Stock.

35. The board of directors may cause to be issued, if demanded, to any person appearing on the books of the corporation to be the owner of any shares of its stock, a certificate therefor, under the corporate seal, to be signed by the president and such other officer, if any, as the board may direct; which certificate shall show the amount paid on each share.

Certificates of stock; when and how issued.

36. A stockholder to whom such certificate has been issued shall not be allowed to transfer the shares therein mentioned, or any part thereof, without delivering up the said certificate to the corporation to be cancelled, unless the same be lost or destroyed, or sufficient cause be shown to the satisfaction of the board of directors why it cannot be produced.

Transfers not to be made without delivery of certificate.

37. If any person for valuable consideration, sell, pledge or otherwise dispose of any shares belonging to him to another, and deliver to him the certificate for such shares, with a power of attorney authorizing the transfer of the same on the books of the corporation, the title of the former shall vest in the latter so far as may be necessary to effect the sale, pledge or other disposal of the said shares, not only as between the parties themselves, but also as against the creditors of, and subsequent purchaser from the former, but subject nevertheless, to the provisions contained in the nineteenth section of this chapter.

Transfer of stock; effect thereof.

38. When a person to whom a certificate has been is-

Duplicate certificate of stock; how issued.

sued alleges it to have been lost, he shall file in the office of the corporation, first, an affidavit setting forth the time, place and circumstances of the loss, to the best of his knowledge and belief; second, proof of his having advertised the same in a newspaper of general circulation, published near the principal office of the corporation, once a week for four weeks; and, third, a bond to the corporation, with one or more sufficient sureties, conditioned to indemnify the corporation and all persons against any loss in consequence of a new certificate being issued in lieu of the former. And thereupon the board of directors shall cause to be issued to him a new certificate, or duplicate of the certificate alleged to be lost.

Dividends on Stock.

Dividends on stock.

39. The board may from time to time declare dividends of so much of the net profits as they deem it prudent to divide. If any stockholder be indebted to the corporation, his dividend, or so much thereof as is necessary, may be applied to the payment of the debt, if the same be then due and payable.

Dividends declared by diminution of stock. Stockholders liable to creditors.

40. If the board declare a dividend by which the capital of the corporation shall be diminished, all the members present who do not dissent therefrom and cause said dissent to be entered on the record of their proceedings, shall be jointly and severally liable to the creditors of the corporation for the amount the capital may have been so diminished; and may be decreed against therefor on a bill in equity filed by any creditor; and moreover, every stockholder who has received any such dividend shall be liable to the creditors for the amount of capital so received by him.

Of the Meetings of the Stockholders.

Meetings of stockholders; when held, etc.

41. An annual meeting of the stockholders of every corporation subject to this chapter shall be held at such time as may be prescribed by the by-laws, or if there be no such by-law, then on the fourth Tuesday of January. A general meeting of the stockholders may be called at any time by the board of directors, or by any number of stockholders holding together at least one-tenth of the capital. Notice of the annual or any other general meeting shall be given in such manner as the by-laws may direct, or if there be no such by-law, by advertising the same once a week for two weeks at least, in some newspaper of general circulation published near the principal office or place of business of the company.

Notice of meeting; how given.

What to constitute a quorum may be prescribed by by-laws.

42. The number of stockholders, or amount of stock necessary to constitute a quorum at a meeting of stockholders, and the mode of transacting business at such

meetings, may be prescribed by the by-laws. If there be no such by-law, a majority of the stock must be present, in person or by proxy, to constitute a meeting. But if a sufficient number do not attend at the time and place appointed, those who do attend may adjourn from time to time until a meeting is regularly constituted. Every meeting of stockholders may adjourn from time to time till its business is completed.

If not so prescribed, a majority necessary.
Less than a quorum may adjourn.

43. A list of stockholders, showing the number of shares and votes to which each is entitled, shall, for one month before every annual meeting, be hung up in the most public room at the principal office or place of business of the corporation; but the failure to do so shall not affect the validity of the proceedings of such meeting.

List of stockholders to be hung up in principal office one month before annual meeting, etc.

44. In all elections for directors or managers of incorporated companies, whether in other respects governed by this chapter or not, every stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principal among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner, and on any other question to be determined at any meeting of stockholders, if a vote by stock be demanded upon such question by any stockholder every stockholder may in person or by proxy, give the following vote on whatever stock he may hold in the same right, that is to say, one vote for every share of stock held in such company.

Stockholders entitled to one vote for each share of stock.

Cumulative voting.

45. No officer or director of a corporation shall vote as the proxy of a stockholder thereof.

No officer or director to act as proxy.

46. The board of directors shall make a report to the stockholders, at the annual meeting, of the condition of the corporation. The report shall show the property and funds belonging to the corporation, and the estimated value thereof; the debts due to it, distinguishing such as are believed to be good from those considered doubtful or hopeless; the debts and liabilities of the corporation; the amount of capital paid in; and the estimated surplus or deficiency, as the case may be. It shall also state the amount of dividends declared, and the losses incurred or profits accruing during the preceding year. The board shall furnish to each stockholder requiring it, a true copy of such report, together with a list of the stockholders and their places of residence.

Annual report of directors. What to contain

Report to be furnished to stockholders.

47. The property and funds, books, correspondence and

Property books, etc., of corporation to be subject to inspection.

Proceedings of board to be open to inspection thirty days before annual meeting, and to be produced when required.

Meetings; where held and notice thereof.

Board of directors. Their powers.

Number.

Qualification.

To be elected at annual meeting.

How removed from office.

Vacancies; how filled.

General meeting of stockholders may be called to elect new directors.

Board to appoint a president.

President *pro tempore*.

papers of the corporation, in the possession or control of any officer or agent thereof, shall at all times be subject to the inspection of the board, or a committee thereof appointed for the purpose, or of any committee appointed for the purpose by a general meeting of the stockholders. The minutes of the resolutions and proceedings of the board shall, for thirty days before the annual meeting of the stockholders, be open to the inspection of any stockholder. They shall be produced when required by the stockholders at any general meeting.

48. The annual meeting and other meetings of the stockholders within this state shall be held at such place as may be prescribed by the by-laws; or if there be no such by-law, then at the principal office or place of business of the corporation. Notice of the place of meeting shall be given in the manner prescribed by the forty-first section of this chapter.

Of the Board of Directors and President.

49. For every corporation subject to this chapter there shall be a board of directors, who shall have power to do, or cause to be done, all things that are proper to be done by the corporation. The stockholders may in general meeting, by a by-law, prescribe the number of which the board shall consist; but unless a different number be so prescribed, there shall be five directors. They may also, by a by-law, prescribe the qualifications of directors; but if it be not otherwise provided, every director must be a resident of this state and a stockholder. The directors shall be elected at the annual meeting of the stockholders, or as soon thereafter as practicable, and shall hold their offices until their successors are elected and qualified. The stockholders in general meeting may remove any director and fill the vacancy; but any vacancy not caused by such removal may be filled by the board. A majority of the board shall constitute a quorum, unless it be otherwise provided in the by-laws; and if the number of the board be reduced at any time so as to interrupt the proper and efficient management of the business of the corporation, a general meeting of the stockholders may be called to elect new directors, or to take such order in the premises as they may deem proper.

50. As soon as may be after their election, the board of directors shall choose one of their own body, president of the corporation, who shall act as such till his successor is qualified, without ceasing, however, to be a member of the board. During the absence of the president, the board may appoint a president *pro tempore*, who for the time shall discharge the official duties of the president.

51. The board shall hold meetings at such time as they

see fit, or the president shall require. They may, by resolution, prescribe when and where their regular meetings shall be held, how special meetings shall be called, and what notice of their meetings shall be given.

Meetings of board.

52. They shall keep a record of their proceedings, which shall be verified by the signature of the president or president *pro tempore*. No member of the board shall vote on a question in which he is interested otherwise than as a stockholder, except the election of a president, or be present at the board while the same is being considered; but if his retiring from the board in such case reduce the number present below a quorum, the question may nevertheless be decided by those who remain. On any question the names of those voting each way shall be entered on the record of their proceedings, if any member at the time require it.

Records of the board; how verified. When members of board not to vote, etc.

When names of those voting to be entered on record.

53. The board of directors shall appoint such officers and agents of the corporation as they may deem proper, and prescribe their duties and compensation; but there shall be no compensation for services rendered by the president or any director, unless it be allowed by the stockholders. The officers and agents so appointed shall hold their places during the pleasure of the board; and if required by the board, or the by-laws, shall give bonds payable to the corporation, in such penalties and with such conditions and security, as the board may approve.

Officers and agents to be appointed by the board, etc. Compensation of president and directors; how allowed. Term of office of persons appointed by board; may be required to give bond, etc.

54. The board of directors shall cause regular and correct books of account to be kept, and to be settled and balanced once at least every six months.

Books of account to be kept, etc.

55. The board of directors, in the exercise of their powers, shall be subject to such by-laws and regulations, not inconsistent with the laws of this state, as the stockholders may pass from time to time in general meeting.

Board to be subject to by-laws passed by stockholders.

Of the Voluntary Dissolution of a Corporation.

56. The stockholders may at any time in general meeting resolve to discontinue the business of the corporation, a majority of the capital stock being represented and voted in favor of such discontinuance; and may divide the property and assets that may remain after paying all debts and liabilities of the corporation. Public notice of such resolution shall be immediately given by advertisement in some newspaper of general circulation published near the principal office or place of business of the corporation, once a week for six weeks at least before any dividend of the capital shall be made; and the said resolution shall be forthwith certified by the president under his hand and the common seal of the corporation to the secretary of state, who shall preserve the same in his office, and deliver a

Voluntary dissolution of corporation.

copy to the clerk of the house of delegates, to be printed and bound with the acts of the legislature. As soon as practicable after such resolution is passed, the stockholders shall cause ample funds and assets to be set apart, either in the hands of the trustees or otherwise, to secure the payment of all debts and liabilities of the corporation; and any creditor who supposes his claim not to be sufficiently secured thereby, whether such claim be then due or thereafter to become due, may, on bill in chancery, if sufficient cause therefor be shown, obtain an injunction to prevent the distribution of the capital, and a decree against any stockholder for the amount of the capital received by him; and if necessary or proper in the case, the court may appoint a receiver to take charge of and administer the property and assets of the corporation.

Proceedings in Equity to Dissolve a Corporation.

Proceedings in chancery to dissolve corporation by stockholders.

57. If not less than one-third in interest of the stockholders of a corporation desire to wind up its affairs, they may apply by bill in chancery to the circuit court of the county in which the principal office or place of business of such corporation is situated, or if there be no such office or place of business in this state, to the circuit court of the county in which the other stockholders, or any one or more of them reside or are found, or in which the property of such corporation or any part of it may be, setting forth in the bill the grounds of their application; and the court may thereupon proceed according to the principles and usages of equity to hear the matter, and if sufficient cause therefor be shown, to decree a dissolution of the corporation, and make such orders and decrees, and award such injunctions in the cause as justice and equity may require.

Certain Equity Jurisdiction Respecting Corporations.

Proceedings in equity against a corporation on application of creditor or stockholder, etc.; receivers may be appointed, etc.

58. When a corporation expires or is dissolved, or before its expiration or dissolution, such court as is mentioned in the preceding section may, on application of a creditor or stockholder, sufficient cause being shown therefor, appoint one or more persons to be receivers to take charge of and administer its assets; and whether such receiver be appointed or not, may make such orders and decrees, and award such injunctions in the cause as justice and equity may require.

Effect of Dissolution or Expiration of a Corporation.

Effect of dissolution of corporation; its property; how disposed of.

59. When a corporation shall expire or be dissolved, its property and assets shall, under the order and direction of the board of directors then in office, or of the receiver or receivers appointed for the purpose by such circuit court as is mentioned in the fifty-seventh section of this

chapter, be subject to the payment of the liabilities of the corporation, and the expenses of winding up its affairs; and the surplus, if any, then remaining, to distribution among the stockholders according to their respective interests. And suits may be brought, continued or defended, the property, real or personal of the corporation be conveyed or transferred under the common seal or otherwise, and all lawful acts be done, in the corporate name, in like manner and with like effect as before such dissolution or expiration; but so far only as shall be necessary or proper for collecting the debts and claims due to the corporation, converting its property and assets into money, prosecuting and protecting its rights, enforcing its liabilities, and paying over and distributing its property and assets, or the proceeds thereof, to those entitled thereto.

Examination or Report Required by the Legislature.

60. Every corporation subject to this chapter shall exhibit its books, papers and property to such agents or committees as the legislature may from time to time appoint to examine the same; and when required by the legislature, shall report thereto a full, fair and detailed exhibit of its property, liabilities and condition, verified by the oath of the president, and of the secretary or principal book-keeper.

Books, papers and property subject to examination of agents or committee of legislature. Report to be made to legislature when required, and contents thereof

61. Process on, or notice to a corporation, may be served as is provided in section seven of chapter one hundred and twenty-four of this code.

Service of process and notice on corporation.

Restriction in Relation to the Quantity of Land Which a Corporation May Hold.

62. No corporation subject to this chapter, whether incorporated under special charter or general law, shall hold more than one hundred acres of land; except that a company for mining iron, lead or copper ore, and manufacturing the same into metal, may hold ten thousand acres for every charcoal blast furnace, and three thousand acres for every other furnace; companies for mining and selling coal, ten thousand acres each; other mining companies, salt companies and oil companies, three thousand acres each; other manufacturing companies, one thousand acres each; and a springs company, fifteen hundred acres; nor shall any corporation subject to this chapter hold more than five acres in any incorporated town or city, except as provided in the fourth section of chapter fifty-two of this code, and except that societies formed to promote agriculture or stock raising, may hold not exceeding thirty acres in any incorporated town or city. But nothing in this section contained shall be construed to prevent any company heretofore incorporated from holding such num-

Restriction in relation to land which corporation may hold.

ber of acres of land, in addition to the number herein prescribed as may be authorized by its charter. But any such springs company now owning or occupying the real estate of a former springs company, may take, hold and use the same, notwithstanding the quantity thereof shall exceed fifteen hundred acres.

Preservation of the Peace, etc., at Watering Places.

Preservation of the peace, etc., at watering places.

May appoint police officers.

Powers of such police officers.

63. Every incorporated springs company may adopt by laws, rules and regulations for the preservation of the peace and good order within the boundary lines of its real estate, and for the arrest of persons violating the penal laws of the state within said lines. And the board of directors of any such corporation may, from time to time, appoint such number of police officers as may be deemed necessary to carry into effect the objects and purposes of this section; and the officers so appointed shall have all the powers within the territory for which he is appointed, in criminal cases, as a constable of a district has under the law.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

[Approved March 30, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XCVII.

AN ACT amending and re-enacting sections eight, eleven, twenty-one, twenty-two, twenty-three, thirty, thirty-two, thirty-three, thirty-four, thirty-six, thirty-eight, forty, forty-four, forty-five, forty-seven, forty-eight, fifty-two, fifty-three, fifty-four, fifty-five, fifty-eight, sixty-one, sixty-two, sixty-three, sixty-four, sixty-eight and seventy-five of chapter fifty-four of the code of West Virginia, as amended and re-enacted by chapter seventeen of the acts of one thousand eight hundred and eighty-one.

[Passed March 18, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That sections eight, eleven, twenty-one, twenty-two,

twenty-three, thirty, thirty-two, thirty-three, thirty-four, thirty-six, thirty-eight, forty, forty-four, forty-five, forty-seven, forty eight, fifty-two, fifty-three, fifty-four, fifty-five, fifty-eight, sixty-one, sixty-two, sixty-three, sixty-four, sixty-eight and seventy-five of chapter fifty-four of the code of West Virginia, be, and the same are hereby amended and re-enacted so as to read as follows:

Code amended; certain sections of chapter 54, as amended by acts 1881, chapter 17.

8. The agreement shall be acknowledged by the several corporators before a justice, notary or judge; and such acknowledgment shall be certified by the officers before whom they are made. The affidavits of at least two of the corporators named in the agreement shall be annexed thereto, to the effect that the amount therein stated to have been paid on the capital has been in good faith paid in, for the purposes and business of the intended corporation, without any intention or understanding that the same shall be withdrawn therefrom before the expiration or dissolution of the corporation.

How agreement acknowledged and certified.

What affidavits must be annexed thereto

11. No corporation formed under this chapter, except life insurance companies and such as are formed exclusively for the purposes mentioned in the fourth, fifth, sixth, seventh, eighth and ninth clauses of the second section, shall continue for more than fifty years from the date of its certificate of incorporation. Any corporation heretofore formed under the general laws of this state and now in existence, may extend the time of its continuance beyond that limited in the agreement for its formation, for such additional time, not exceeding fifty years, as it may desire, in the manner following: The stockholders of such corporation may, at a general or special meeting, adopt a resolution to extend the time of the continuance of such corporation for such time, not exceeding fifty years, as may be decided upon by said stockholders, a majority of the stock of such company being represented by the holders thereof in person or by proxy, and voting for such resolution, but notice of the intention to offer such resolution must have been given by advertisement published once a week for four successive weeks in some newspaper of general circulation printed in this state. When such resolution shall have been adopted by any corporation, the president thereof shall, under his signature and the common seal of the company, certify the resolution to the secretary of state, and the secretary under his hand and the great seal of this state shall issue to the company adopting such resolution a certificate, reciting the resolution and declaring the proposed extension to be authorized by law, which certificate shall be received in all courts and places as evidence of the extension of the continuance of such corporation, and of the authority for the same. The provisions of sections seventeen, eighteen,

How long corporation may continue. Exception.

Extension of continuance.

Manner of same provided for.

Certificate of secretary of state requisite.

Certain provisions of this

chapter to apply to certificate.

nineteen and twenty of this chapter shall apply to such certificate.

How number of shares or par value of stock may be increased or diminished; when.

21. Any corporation formed, or which may hereafter be formed, or which has accepted, or may accept the provisions of this chapter, may, by resolution at any general or special meeting of the stockholders thereof, make such increase or reduction in the number of shares of its capital stock, or the par value of each share, as may be decided upon by said stockholders, a majority of the stock of such company being represented by the holders thereof, and such holders being present either in person or by proxy, and voting for such increase or reduction. *Provided*, That notice be given by advertisement published four successive weeks in some newspaper of general circulation, printed in this state, of the intention to offer such resolution.

Such increase or reduction to be certified. To whom and by whom; when and how.

22. When such increase or reduction shall have been made by any such company, the president thereof shall, under his signature and the common seal of the company, certify the resolution to the secretary of state, and the secretary of state, under his hand and the great seal of this state, shall issue to the company so making such increase or reduction, a certificate reciting the resolution and declaring the proposed increase or reduction to be authorized by law, which certificate shall be received in all courts and places as evidence of the change in the number or par value of the shares of the capital stock of such company, and of the authority to increase or reduce the same.

Effect of certificate as evidence.

When and how meetings of stockholders may be held out of state.

23. The stockholders or directors of any corporation formed under or accepting the provisions of this chapter, may hold meetings for the transaction of the lawful business of the corporation, including the first general meeting for purposes of organization out of this state, and may keep their principal office in any state or territory of the United States, or in the District of Columbia. But no meeting shall be held out of this state without the concurrence of persons holding a majority in value of the stock of the company, nor without reasonable notice.

Companies Incorporated by Other States.

Foreign corporations; rights, powers and privileges of, in this state.

Requirements.

30. Any corporation duly incorporated by the laws of any state or territory of the United States or of the District of Columbia, or of any foreign country may, unless it be otherwise expressly provided, hold property and transact business in this state, upon complying with the requirements of this section, and not otherwise. Such corporation so complying shall have the same rights, powers and privileges, and be subject to the same regulations, restrictions and liabilities that are conferred and imposed by this and the fifty-second and fifty-third chapters of this code on corporations chartered under the laws of this state.

Every such corporation shall file with the secretary of state a copy of its articles of association, and of the law or authority under which it is incorporated. The secretary of state shall issue to every such corporation complying with the provisions of this section, a certificate of the fact of its having done so, which certificate shall be filed and recorded in the office of the clerk of the county court of the county, or one of the counties in which its business is conducted. Such corporation shall also file in said clerk's office a copy of its charter, to be kept and preserved therein. Every railroad corporation doing business in this state under the provisions of this section, or under charters granted or laws passed by the state of Virginia, or this state, is hereby declared to be as to its works, property, operations, transactions and business in this state, a domestic corporation, and shall be so held and treated in all suits and legal proceedings which may be commenced or carried on by or against any such railroad corporation, as well as in all other matters relating to such corporation. No railroad corporation which has a charter or any corporate authority from any other state, shall do business in this state as the lessee of the works, property or franchises of any other corporation or person, or otherwise, or bring or maintain any action, suit or proceeding in this state until it shall in addition to what is hereinbefore required, file in the office of the secretary of state a writing duly executed under its corporate seal accepting the provisions of this section and agreeing to be governed thereby; and its failures so to do, may be pleaded in abatement of any such action, suit or proceeding; but nothing herein contained shall be construed to lessen the liability of any corporation which may not have complied with the requirements of this section, upon any contract or for any wrong. Every such corporation which shall do business in this state without having complied with the provisions of this section, shall be guilty of a misdemeanor and fined one thousand dollars for each month its failure so to comply shall continue. Prosecutions under this section shall be in the county in which the seat of government is. For every certificate issued under this section, the secretary of state shall be paid by the corporation a fee of five dollars.

What must be filed with sec'y of state.

Certificate to be issued by said secretary.

When recorded.

When copy of charter to be filed.

Such corporations declared in certain respects to be domestic corporations in law.

On what conditions railroad corporations of other states may do business in this state

Penalty for failure to comply with such conditions.

Where prosecutions to be.

Fee of secretary of state.

32. The persons desiring to form such corporation, shall adopt, sign and acknowledge for record, articles of incorporation, in form or effect as follows:

Form of articles of incorporation prescribed.

"We, whose names are hereto subscribed, desiring to become a corporation for the purpose of constructing and operating a railroad in the state of West Virginia, do hereby adopt these articles of incorporation for that purpose:

Name.	<i>First.</i> The name of the corporation shall be the — company.
Location of route.	<i>Second.</i> The railroad which this corporation proposes to build, will commence at or near —, in the county of —, and run thence by the most practicable route, to a point at or near —, in the county of —.
Principal office.	<i>Third.</i> The principal business office of this corporation will be at —, in the county (or city) of —, in the state of —.
How long to continue.	<i>Fourth.</i> This corporation shall continue perpetually.
Capital stock; how divided.	<i>Fifth.</i> The capital stock of this company shall be — dollars, divided into shares of — dollars each.
Names and residences of corporators, and number of shares subscribed by each.	<i>Sixth.</i> The names and places of residence of the persons forming this corporation, and the number of shares of stock subscribed by each, are as follows: A—, B—, county (or city) of —, state of —, — shares," and so on, giving the names and residence of all the parties, and the number of shares of stocks subscribed by each.
Articles; when signed and acknowledged, to be filed and recorded. Where.	33. When said articles are adopted and signed, as prescribed in the next preceding section, and acknowledged by the parties signing the same, in the same manner as deeds are required by law to be acknowledged, they shall be filed and recorded in the office of the secretary of state, and be preserved therein.
When so filed and recorded, secretary of state to issue certificate.	34. When such articles of incorporation shall have been filed and recorded as aforesaid, the secretary of state shall issue and deliver to the said corporators, his certificate under the great seal of the state, in form or effect as follows: "I, A— B—, secretary of state of the state of West Virginia, do hereby certify that articles of incorporation duly signed and acknowledged, have this day been recorded in my office, which articles of incorporation are in the words and figures following: 'We' etc., (here insert the articles of incorporation in full), wherefore the corporators named in said articles of incorporation, and who have signed the same, and their successors and assigns, are hereby declared to be a corporation by the name, for the purpose and for the length of time set forth in said articles of incorporation. Given under my hand and the great seal of the said state, at the seat of government thereof, this — day of —." When such certificate shall be issued and delivered as aforesaid, the corporators named in the articles of incorporation recited therein, and who have signed the same, and their successors and assigns, shall, from the date of said certificate, become and be a body corporate as therein stated, and as such, authorized to proceed to carry into effect the object set forth in said articles of incorporation in accordance with the provisions of this chapter. As such corporation they shall have perpetual succession, and in their corporate name may sue and be sued, plead and be impleaded. Every such cor-
Form of certificate.	
Effect of certificate in making corporators a body corporate.	
Powers and privileges of same.	

poration shall have and use a common seal which it may alter at pleasure. It may declare the interest of its stockholders transferable, and shall make and establish all such by-laws, rules and regulations not inconsistent with the laws of the United States or of this state, as it may deem necessary for the management of its affairs and the transaction of its business. Any such railroad corporation heretofore incorporated under the provisions of this chapter, as amended and re-enacted by chapter seventeen of the acts of one thousand eight hundred and eighty-one, may, if it desire to do so, obtain the certificate hereinbefore mentioned, which may bear the same date it would have borne if issued at the proper time, but no other or additional force or effect shall be conferred on said corporation by such certificate, than it would have had if such certificate had not been issued. And any such railroad corporation, may, in the location of its railroad, pass out of this state into any other state, with the assent of such state, and back again into the state, as often as may be found necessary in making such location.

How railroad company heretofore incorporated may obtain certificate.

Effect of same.

How railroad may, in locating its line, pass out of this state into another.

First Meeting of Stockholders and What May be Done Thereat.

36. Every railroad company incorporated under the provisions of this chapter shall hold its first meeting for organization and such other proceedings as might be had at an annual meeting, at such time and place as the corporators thereof, or a majority of them, may designate, of which time and place a notice shall be published, at least, once in each week for four successive weeks in some newspaper of general circulation published near the place of such meeting, and in two other such newspapers published in the vicinity of the proposed railroad, in this state, for a like period. The stockholders of such corporation, or such of them as are the owners of a majority of the shares of its capital stock subscribed up to that date, shall meet at the time and place mentioned in said notice and elect a temporary board of directors consisting of such number as they may see fit, who shall hold their office until their successors are elected, as hereinafter provided. But before any such meeting is held, the said corporators shall open books of subscription, at such places and under the direction of such persons as a majority of them may direct, for the purpose of receiving subscriptions to the capital stock of such company; and at least one-twentieth of the said stock, including the shares subscribed by the corporators, must have been subscribed for, and ten per cent actually and in good faith paid in on each share of stock so subscribed for. A majority of the directors elected at such meeting shall constitute a quorum for the transaction of business, and they shall, as soon as practicable after their election, meet and organize by the appointment (from their own body) of a president and such other officers as

First meeting; when and where held.

Proceedings.

Notice of time and place; how published.

What done at first meeting.

Temporary board of directors.

Their term of office.

Books of subscription; when and where opened.

Under whose direction.

How much stock subscribed for and how much paid in.

Quorum.

Organization; appointment of president, etc.

they may deem necessary, who shall hold their offices until the election of a board of directors under the provisions of section thirty-eight of this chapter. The stockholders shall, at the meeting herein provided for, appoint the time and place at which the first annual meeting of the stockholders of such corporation shall be held, and designate the place at which the principal office or place of business shall be kept until otherwise ordered, and may do and perform all other business necessary and proper to be done, under the law, at a stockholders' meeting.

Stockholders to fix time and place of first annual meeting, etc.

Principal office, etc.

Annual Meetings of Stockholders, etc., Election of Directors, Statements, Interests, etc.

38. At the first annual meeting of the stockholders of such corporation, held in pursuance of the thirty-sixth section of this chapter, and at every annual meeting of said stockholders thereafter held, a board of directors thereof shall be elected consisting of not less than five nor more than thirteen of the stockholders of said corporation, a majority of whom, unless otherwise provided in the by-laws, shall constitute a quorum for the transaction of business; and all the corporate powers of such corporation shall be vested in and exercised by said board of directors. If for any cause an election for directors shall not be made at the proper time, such election may be made at a special meeting of the stockholders called in pursuance of the next section. The number of such directors, the manner of their election and removal from office, and the mode of filling vacancies in the board shall be prescribed by the by-laws, and shall not be changed, except at the annual meeting of the stockholders. And at every such annual meeting of the stockholders of such corporation, after the first, it shall be the duty of the president and directors to exhibit a full, distinct, and accurate statement of the affairs of the said corporation; and, any meeting of the stockholders, a majority of those present in person or by proxy, may require similar statements from the president and directors, whose duty it shall be to furnish such statements, when required, in manner aforesaid, and at all general meetings of the stockholders a majority in value of the stock of any corporation may fix the rates of interest which shall be paid by the corporation for loans for the construction of such railroad and its appendages, and the amount of such loans. All stockholders shall, at reasonable hours, have access to, and may examine all the books, records and papers of such corporation.

Directors; how and when elected; of how many to consist, etc.

Quorum of said board.

Powers of board of directors,

When directors elected at special meeting. How number of directors fixed, how elected and mode of filling vacancies.

Duty of president, etc., to make annual reports to stockholders. What such reports to show. Additional reports.

How rate of interest for loans fixed and paid.

Stockholders may examine books, etc.

Meetings of Stockholders and Directors, Where Held; Time of Annual Meeting; Principal Office; Where Kept; One Office to be Kept in This State.

40. The meeting of the stockholders of such corporation,

and of the board of directors thereof, shall be held at such place, in or out of this state, and the annual meeting of said stockholders shall be held at such time as the stockholders shall at an annual meeting prescribe; but in case no time for such annual meeting be so proscribed, it shall be held on the second Wednesday in January in such year. The principal office or place of business of such corporation shall be at such place, in or out of this state, as the stockholders thereof at an annual meeting may fix and determine. But every such corporation shall have and maintain an office or place in this state for the transaction of its business, where an exhibit of the transfers of all its stocks shall be kept, and in which shall be kept for the inspection of any officer or stockholder, books wherein shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock; the number of shares held by each person, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock; the amount of its assets and liabilities, and the names and places of residence of all its officers.

Where first, and an annual meeting of stockholders held.

In case no time for annual meeting fixed, when held.

Principal office or place of business.

Some office or place of business must be maintained in this state.

What kept therein Stockholders to have access.

Stock of Corporation, Personal Property; Transfers Thereof, etc.

44. The stock of every such corporation shall be deemed personal property, and shall be transferable in such manner as may be prescribed in the by-laws of the corporation. But no shares shall be transferable without the consent of the board of directors, until all previous calls thereon shall have been paid.

Stock deemed personal property; how transferable.

Capital Stock, How Increased, etc.

45. If the capital stock of any such corporation be insufficient for the purposes for which it was incorporated, the same may be increased at any annual meeting of such stockholders, or at a special meeting thereof called for the purpose by the board of directors. If at any such meeting two-thirds in amount of all the stock of such corporation, represented by the holders thereof in person, or by proxy, shall agree to such increase the same shall be increased to such an amount as said stockholders may deem necessary for the purpose of the corporation. But a notice of the time and place of every such special meeting, and of the purpose for which it was called, must be published at least once in each week, for four successive weeks in some newspaper of general circulation published in the vicinity of the principal office or place of business of the corporation, and in like manner and for a like period, in at least two other newspapers published in the vicinity of the line of the railroad of such corporation within this state. But no other business shall be transacted at any such special meeting than that for which it was called. *Provided, That*

How capital stock increased.

How sanctioned at a special meeting.

Notice to be given; how published.

No other business to be transacted at such special meeting than, etc. *Provided.*

the powers authorized by this section, and by the eleventh and twelfth clauses of section fifty of this chapter, may be exercised at any meeting of stockholders called or assented to in writing by all the stockholders. Every order or resolution increasing the capital stock of such corporation, shall be recorded as required by section thirty-three of this chapter.

Order, etc., increasing capital stock must be recorded as required.

Stockholder personally liable for amount of his unpaid stock.

Not to apply to assignee or purchaser of stock, in certain cases.

47. Each subscriber to the stock of any railroad corporation formed under this chapter, or any other general law of the state, shall be held individually liable to the creditors thereof for any sum remaining unpaid on the stock subscribed for by him, and no more, for the payment of any debts or liabilities of such corporation. But no person holding any such stock by purchase and assignment from another, or who shall purchase any such stock at a public sale thereof, or who shall receive any such stock on payment of any debt or demand against such corporation, shall be liable to the creditors of such company for any sum whatever, which may be due or unpaid on such stock, or any part thereof due from another.

Real estate; how condemned

How county court may allow telephone and telegraph companies to use public roads, etc.

48. If any such corporation shall be unable to agree with the owner of any real estate for the purchase thereof for its corporate purposes, it may have such real estate condemned for such purposes, under the provisions of chapter forty two of this code, and the county court of any county may authorize any telegraph or telephone company organized under this chapter, to secure and maintain telegraph or telephone poles on any land condemned or used as a public road, but not in such way as to obstruct any such road. But this section shall not apply to the National or Cumberland road.

Stocks or bonds; when railroad corporation may issue same.

How they are limited in so doing.

52. Every such railroad corporation may sell, issue and transfer its stocks or bonds, or both, for land, money, labor, property or other materials to be used for the purposes for which the corporation was formed, and especially for the construction and equipment of its railroad; and in case it be found necessary to do so, it may sell and dispose of the same at less than the par value. But no such corporation shall issue any stock, or declare any stock dividend, except as aforesaid, for any sum which shall exceed the net earnings of such corporation, and which shall have been actually and in good faith applied and invested in and for the purposes of the corporation. All other stock dividends, and all fictitious increase of the capital stock, or indebtedness of any such corporation, shall be void.

Consolidation of Stock With Other Roads, etc.—Leasing, etc.

Parallel competing lines not to be consolidated without

53. No railroad corporation owning or operating a railroad wholly or in part within this state, shall consolidate its capital stock with any other railroad running a paral-

1el, or competing line, without the consent of the legislature; but any such railroad corporation whose line of railroad is made, or is in process of construction, may merge, or consolidate with, or lease its railroad or any part thereof for a term of years, to any other corporation owning or operating any connecting line of railroad whose line of road is completed, or is in process of construction, wholly or partly within this or an adjoining state, in order to make a continuous line of railroad to be run and operated with or without change of cars, or break of bulk, or exchange or transfer of passengers or freight, and may sell to or purchase such connecting line of railroad, and may adopt another name for their said road thus merged, consolidated or connected, by filing in the office of the secretary of state a declaration of the adoption of such other name, and publishing such declaration, for sixty days, in all newspapers published along the line of such railroad. But such merger, consolidation or sale shall be made only upon such terms and conditions as shall be agreed to by a majority of the stockholders in each of the companies so merging, consolidating, selling or purchasing; *Provided*, That such merger or consolidation shall not invalidate any action, suit, claim or demand against any or either of the companies who are parties thereto; and any such action, suit, claim or demand shall be held to be in full force against the company owning such consolidated or merged line of railroad. And in no case shall any consolidation take place, except after sixty days notice thereof, which notice shall be given in the manner prescribed in section forty-five of this chapter; *Provided*, That this section shall not apply to the Baltimore and Ohio railroad and the Northwestern Virginia railroad so as to enlarge any powers or privileges which either of said railroads now possess.

out consent of legislature.

Exception as to continuous line.

Power to sell to or purchase from such line, and to change name; what necessary in the last case.

Proviso.

Suits at law, etc., not to be invalidated by such merger and consolidation. Provision in such case. Consolidation not to take place until after notice, etc. Proviso.

Not to apply to B. & O. railroad and Northwestern Va. railroad

Annual Report to Auditor and What to Contain; Penalty for Failure to Make it.

54. Every railroad corporation doing business in this state, whether incorporated under a special charter granted by the legislature of this or any other state, or under a general law of this or any other state, shall annually report to the auditor, as required by section sixty-seven of chapter twenty-nine of this code, as amended, and for a failure to do so every such corporation so failing shall be subject to all the pains, penalties, forfeitures, fines and liabilities imposed by said last named section. Prosecutions under this section shall be in the county wherein the seat of government is.

Railroad corporation to report to auditor.

Penalty for failure.

Prosecutions under this section.

Powers Reserved to the Legislature.

55. The right is reserved to the legislature to enact, from time to time, laws applicable to all the railroad cor-

What rights reserved to legislature as to

maximum rates, abuses, etc.

porations in the state, establishing reasonable maximum rates of charges for the transportation of passengers and freights, and providing for the correction of abuses, the prevention of unjust discriminations between through and local or way freight and passenger tariffs, and for the protection of the just rights of the public.

Agents to make subscription. By whom appointed.

58. When any such subscription has been authorized, as aforesaid, the county court of the county, or the council of the city, town or village (as the case may be) shall, appoint an agent to make the subscription on the part of such county, district, city, town or village, upon the terms and conditions specified in the order under which the vote is taken. Said subscription shall be paid in cash, or in the coupon bonds of such county, district, city, town or village, bearing interest at a rate not exceeding six per centum per annum, and redeemable in such time not exceeding thirty-four years, as such court or council may prescribe; which bond shall be received by said corporation at par. The president of the county court shall have power, when so directed by such court, by an order entered of record therein, to execute and deliver the bonds of his county, or of any district therein, to the corporation to the capital stock of which such subscription has been made; and the mayor of any such city, town or village shall have power, when so directed by an order or resolution of the council thereof, entered of record, to execute and deliver the bonds of such city, town or village to such corporation. The bonds of any such county, and of any district therein, shall be valid and binding thereon when signed by the president of the county court of such county, and countersigned by the clerk of such court with the seal of such county attached thereto; and the bonds of any such city, town or village shall be binding thereon when signed by the mayor thereof and countersigned by the recorder, clerk or other recording officer, with the seal of the corporation attached.

Subscription to be paid in cash or coupon bonds. Bonds to bear interest. When redeemable.

When and by whose order president of county court to execute and deliver bonds

Mayor of city, etc., may issue, etc.

When bonds become valid.

Warning of Approaching Trains—Penalty for Neglect.

Bell or whistle on locomotive. When to be sounded. How long.

61. A bell or steam whistle shall be placed on each locomotive engine, which shall be rung or whistled by the engineer or fireman, at the distance of at least sixty rods from the place where the railroad crosses any public street or highway, and be kept ringing or whistling for a time sufficient to give due notice of the approach of such train before such street or highway is reached, under a penalty of not exceeding one hundred dollars for each neglect, one half of which shall go to the state, and the other to the prosecuting witness; and the corporation owning or operating the railroad shall be liable to any party injured for all damages sustained by reason of such neglect. *Provided,* That such penalty shall be sued for within three months

Penalty for neglect.

Corporation liable.

Limitation as to enforcement.

from the time the cause of action arises, and not after. When the tracks of two railroads cross each other, or in any way connect, at a common grade, the crossing shall be made and kept in repair, and watchmen maintained thereat at the joint expense of the companies owning the tracks; all trains or engines passing over such tracks shall come to a full stop not nearer than two hundred feet nor farther than eight hundred feet from the crossing, and shall not cross until signalled so to do by the watchman, nor until the way is clear; and when two passenger or freight trains approach the crossing at the same time, the train on the road first built shall have precedence, if the tracks are both main tracks over which all passengers and freights on the roads are transported; but if only one track is such main track, and the other is a side or depot track, the train on the main track shall have precedence; and if one of the trains is a passenger train and the other a freight train, the former shall take precedence; and regular trains on time shall take precedence over trains of the same grade not on time, and engines with cars attached not on time shall take precedence of engines without cars, not on time.

When tracks of two railroads cross each other. Duty as to keeping watchman, etc.; expense thereof, etc. Rules of such crossing.

62. Every such corporation shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained across each public road or street, where the same is crossed by the railroad on the same level. Said boards shall be elevated so as not to obstruct the travel and be easily seen by travelers; and on each side of said boards shall be painted in legible capital letters "railroad crossing; look out for the locomotive!" Any corporation failing to comply with the provisions of this section within six months after the passage of this chapter as amended, shall for each crossing at where there is such failure, be fined five dollars for every week the failure may continue.

Boards to be erected at all railroad crossings. How placed and maintained.

How painted and worded.

Failure to comply.

Drunkenness of Engineer, Brakeman or Conductor; Penalty.

63. If any person shall, while in charge of a locomotive engine running upon the railroad of any corporation, or while acting as the conductor or brakeman of any car or train of cars on any such railroad, be intoxicated, he shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined not exceeding five hundred dollars.

Intoxication of conductor, brakeman, etc., a misdemeanor.

Penalty therefor.

Injuries, etc., to Corporate Property.

64. Any person who shall wilfully and unlawfully injure, impair, weaken or destroy any building, construction, work, engine, machine, or structure, or any matter or thing appertaining thereto, or obstruct the said corporation in the use thereof, or in the use of any of its property or franchises, the person or persons so offending shall be

Injury or damage to property of such corporation.

Misdemeanor. How punished.	guilty of a misdemeanor and fined not exceeding one thousand dollars, and imprisoned not exceeding six months,
Murder, when death occurs therefrom.	and if the death of any person occur in consequence of any such unlawful act, the person or persons committing the same shall be guilty of murder. And if any person shall,
Riotous or disorderly behavior while on train of railroad. Misdemeanor. How punished.	while on any passenger or other train of a corporation behave in a riotous or disorderly manner so as to disquiet or disturb the passengers thereon, he shall be guilty of a misdemeanor and fined not less than twenty-five, nor more than two hundred dollars, and may, at the discretion of the court, be confined in jail not less than one, nor more than six months; and he may be ejected from such train by the person or persons in charge thereof, and such force as is necessary to so eject him may be used for the purpose. And if any person shall shoot or throw stones, or
Shooting or throwing stones etc., at railroad car.	other dangerous missiles, at or into any passenger or other railroad car used for carrying passengers or other persons, while any such passenger or person is within the same, he shall be guilty of a felony and confined in the penitentiary not less than two nor more than ten years. And the conductor of every such train shall have all the powers of a
When a felony. How punished.	conservator of the peace while in charge thereof.
Conservative powers of conductor.	

Company May Receive Donations, etc.; How Subscription May be Paid, etc.

May receive donations devises, etc., of lands, property, etc.

Upon what terms and conditions. When such corporation may receive, purchase and hold land as basis for construction, etc. Terms and conditions.

68. All railroad companies organized or constructed under the provisions of this chapter may, and they shall have power and authority to receive donations and devises of lands, property and materials, and to receive subscriptions to their capital stock, payable in lands, property, materials, work, labor and otherwise, upon such terms and conditions as the directors and owners may agree and determine, and may also receive, purchase and hold real estate as a basis for the construction of the railroad of any such corporation, and to issue stock or bonds, or both, for the payment of the same, upon such terms and conditions as the stockholders, directors or owners thereof may agree upon and determine, and to sell and convey such real estate upon such terms and conditions as the corporation may authorize.

Certain Words—How Construed.

75. The words "internal improvement," when used in this chapter, shall be construed to apply to and include railroads, canals, toll bridges and turnpikes on which tolls are permitted to be charged and collected.

E. W. WILSON,
Speaker of House of Delegates.

A. E. SUMMERS,
President of Senate.

STATE OF WEST VIRGINIA,
OFFICE OF SECRETARY OF STATE,
WHEELING, March 29, 1882. }

I certify that the foregoing act, having been presented to the governor for his approval, and not having been returned by him to the house of the legislature in which it originated, within the time prescribed by the constitution of the state, has become a law without his approval.

RANDOLPH STALNAKER, JR.,
Secretary of State.

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XCVIII.

AN ACT to amend and re-enact chapter fifty-five of the code of West Virginia, concerning incorporated associations other than joint stock companies, as amended and re-enacted by chapter eighty-three of the acts of one thousand eight hundred and seventy-two and seventy-three.

[Passed March 16, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter fifty-five of the code of West Virginia, as amended and re-enacted by chapter eighty-three of the acts of one thousand eight hundred and seventy-two and seventy-three be, and the same is hereby amended and re-enacted so as to read as follows :

CHAPTER LV.

OF INCORPORATED ASSOCIATIONS OTHER THAN JOINT STOCK COMPANIES.

How Incorporated.

1. Corporations (other than joint stock companies) may be formed under this chapter, for benevolent associations, societies and orders, including cemetery associations, orphan, blind and lunatic asylums and hospitals, lodges of free and accepted masons, independent order of odd fellows, improved order of red men, sons of temperance, good templars, law or other library associations, and all other associations, societies, and orders of like character, and for mutual fire insurance companies.

What corporations may be formed under this chapter.

What number of persons may organize; exception.

Agreement to be entered into; form of.

How agreement acknowledged and where filed.

Recording of.

Clerk to issue certificate of incorporation; what to be stated therein.

Effect of such certificate issued by clerk.

Corporation not to adopt name of another, etc.

Fees of clerks for issuing certificate, etc.

When and by whom paid.

2. It shall be lawful for any number of persons not less than five, except for mutual fire insurance companies, which shall be organized under section nine of this chapter, desiring to become a corporation for any business or purpose prescribed in the first section, to sign and acknowledge an agreement or declaration to the following effect: "The undersigned agree to become a corporation by the name of (here insert the name), for the purpose of (here insert the purpose), and for that purpose desire authority to purchase, hold, lease, sell and convey real property to the value of \$—, and personal property to the value of \$—. Given under our hands this — day of —, —."

3. The said agreement or declaration shall be acknowledged by the parties signing the same, in the same manner that deeds are required to be acknowledged by the laws of this state; and when so acknowledged, it shall be filed with the clerk of the county court of the county in which the business or purpose of the corporation is to be carried on or pursued, and by said clerk preserved and duly recorded in a book to be kept exclusively for that purpose.

4. The clerk shall thereupon issue to the incorporators a certificate under the seal of his office, stating distinctly the names of the incorporators, and the name as well as the object and purpose of the corporation.

5. When a certificate of incorporation shall be issued by the clerk, pursuant to the preceding section, the incorporators, named therein, and their associates and successors, shall from the date of such certificate be a corporation by the name and for the purpose and object therein specified. And the said certificate of incorporation, or a certified copy thereof, shall be received in all courts and places as evidence of the existence of the corporation as aforesaid.

6. No corporation formed under this chapter shall be allowed to use or adopt the name of any other corporation within this state.

Fees of Clerks.

7. For issuing a certificate of incorporation according to the fourth section of this chapter, the clerk may charge a fee of one dollar, and for recording the original agreement or declaration, as required by the third section of this chapter, fifty cents, or in lieu thereof fifteen cents for every one hundred words; which fees shall be paid at the time the service is rendered, by the person at whose instance it is done.

By-Laws and Regulations.

8. Corporations formed under this chapter may make

and adopt for their government, and to enable them to conduct and pursue their business and purpose, all necessary by-laws and regulations not inconsistent with the constitution and laws of the United States and of this state; and except where it is otherwise in this chapter provided, shall (so far as the same are applicable) be subject to and governed by the provisions of chapters fifty-two, fifty-three and fifty-four of this code; *Provided*, That no corporation formed under this chapter, shall be authorized or allowed to hold and possess, at any one time, more than five acres of land within, and not exceeding fifty acres, outside of an incorporated village, town or city.

By-laws and regulations of such corporations.

How much land corporation may hold.

Mutual Fire Insurance Companies.

9. Any twenty or more citizens of this state may associate themselves together for the protection of themselves against loss to their property by fire, by signing an agreement in writing to that effect, and thereupon they shall become a corporation and take such name as a majority of the members may determine, and have succession by such name for such time as may be prescribed by its by-laws, and if no time be fixed, perpetually; such agreement shall be acknowledged and filed as provided by the third section of this chapter. Such corporation shall have a common seal, and may renew or alter the same at pleasure. It may sue and be sued, plead and be impleaded, contract and be contracted with by simple contract or specialty, purchase, hold, use and grant estate, real and personal, appoint officers and agents, prescribe their powers, duties and liabilities, take bond and security from any of them, and fix and pay their compensation, and make ordinances, by-laws and regulations for the government of its board of directors and other officers and agents, and the management and regulation of its property and business.

Mutual fire insurance companies; incorporation of, authorized; how formed, etc. Name.

Duration.

Where agreement filed, etc.

General powers of such corporations.

10. All mutual fire insurance companies organized under this chapter, shall have power to take risks and make contracts of insurance on such real and personal property as may be designated and provided for in their by-laws.

Power to take risks, etc., of insurance.

11. Sections two, three, seventeen, eighteen, nineteen, twenty-one and twenty-two of chapter fifty-two of this code shall be applicable to mutual fire insurance companies organized under this chapter.

Provisions of code applicable.

12. Every such mutual fire insurance company shall commence its proper corporate business within one year after its organization, by issuing policies and making contracts of insurance; otherwise the same shall be considered dissolved without any legal proceedings to that end.

When to commence business.

Failure to begin dissolves company.

13. All by-laws shall be adopted by the stockholders of

By-laws.

the company in a general meeting assembled, and shall be void if not consistent with the laws of the state.

- Who to be members and for what period. Rates to be paid
- Liability of members.
- Board of directors; when elected.
- Notice to be given; how.
- Annual meeting; when held, etc.
- Board and officers to be elected at.
- Quorum.
- Less than quorum may adjourn, etc.
- Numbe. votes cast by each member, and mode and manner.
- Certain sections of chapter 53 of code applicable to companies organized under this act.
- Quorum for transaction of business.
14. All persons insuring with and continuing to be insured in such company and none other, shall thereby become members thereof during the period they shall remain so insured and no longer, and shall pay such rates as shall be determined by the board of directors, and be liable for all losses and expenses of said company to the amount of the premiums paid or agreed to be paid by said members respectively, and no farther.
15. At the first meeting of the members of such company held after the association of twenty or more, as provided in the first section of this chapter, there shall be elected a board of directors consisting of five or more members; *Provided, however,* That at least two weeks' notice of the time and place of holding such meeting shall have been given by advertisement in some newspaper having a general circulation in the county where the meeting is to be held.
16. The annual meetings of the members of such company shall be held as prescribed for the annual meetings of the stockholders of joint stock companies by the forty-first section of chapter fifty-three of this code, at which meeting there shall be elected by the members, or a majority thereof, the board of directors and other officers for the ensuing year.
17. At the first meeting held for the purpose of organizing, a majority of the members shall constitute a quorum. The number necessary to constitute a quorum at all subsequent meetings, shall be determined by the by-laws, and if at any time a quorum is not in attendance, those present may adjourn from time to time until a quorum is obtained.
18. At the first election of the board of directors each member shall have one vote and no more; and at all subsequent elections the number of votes to be cast by each member, and the mode and manner of casting same may be prescribed by the by-laws; but if not so prescribed, then each member shall have one vote, to be given either in person or by proxy.
19. The forty-fifth, forty-sixth, forty-seventh, forty-eighth, forty-ninth, fiftieth, fifty-first, fifty-second, fifty-third, fifty-fourth, fifty-fifth and sixty-first sections of chapter fifty-three of this code, shall be applicable to companies organized under this chapter, and in the application of said sections the word "members" shall be substituted for the word "stockholders."
20. A majority of the board of directors shall constitute a quorum for the transaction of business, and, when au-

thorized by the by-laws, may appoint such officers or agents as may be necessary for the transaction of the business of the company, and remove the same at any time; and may require bond of the same payable to the company, in such penalty and with such conditions and security as they may think proper, and, when so authorized, may accept or reject applications for insurance, and may determine the rates of insurance, the sums to be insured, and also the terms and conditions upon which insurance may be effected by the company; and, when so authorized, may generally do any and all acts authorized by this chapter.

Powers of board of directors.

21. Every person who shall become a member of such company by effecting insurance therein, shall, before receiving a policy, execute his bond, in which shall be described briefly and concisely the property insured, and shall also pay in cash such a per centum of said bond as he or she may be required to pay, and the said bond shall be paid at such times and in such installments as the same may be required for the payment of losses by fire, and said bond shall bear interest, at a rate not exceeding three per cent per annum, to be fixed by the board of directors, and at the expiration of the term of insurance the said bond, or such part thereof as remains unpaid after deducting its proportion of all losses and expenses incurred during said term, shall be given up to the maker or makers thereof. And the clerk of the county court shall keep in his office, in a well-bound book, a mutual fire insurance docket, in which he shall record without delay any bond given as aforesaid, when he shall be required to do so, by any insurance company organized under the law, when such bond has been signed by the obligor thereof and acknowledged before the clerk of the said county court, or other person authorized to take the acknowledgment of deeds. In such docket there shall be stated in separate columns:

What required of person who becomes member of such company, by effecting insurance therein.

What interest bond to bear.

When and what part of bond to be given up to maker. Clerk of court to keep mutual fire insurance docket. What to be recorded therein and when.

What to be stated in docket, and how.

I. Names of parties.

II. Amount of bond.

III. Property described in said bond as insured.

IV. Date of bond.

V. The date of docketing it.

Every bond shall, as soon as it is docketed, be indexed in the name of each defendant therein. If the clerk of a county court fail to do anything required of him by this section, he shall pay a fine of not less than thirty nor more than one hundred dollars to any person who will prosecute therefor, and for every bond recorded as aforesaid under the provisions of this chapter, the clerk of the county court shall be allowed fifty cents, to be paid by the party having the same recorded. Every bond given as aforesaid by any person or persons, shall be a lien on the real estate therein described, and insured, from the time

Index to docket.

Penalty on clerk for failure.

Fee for recording bond; who to pay.

Effect of such bond when recorded.

- it is duly admitted to record, just as a mortgage would be, and said lien so created may always be enforced in a court of equity. Any lien acquired under this section shall be released in the same manner and mode as prescribed in chapter seventy-six of this code, in case of a deed of trust.
- How lien enforced or released.**
- Void when property aliened; what then as to policy and deposit note.**
- If policy assigned, what alienee, etc., may do.**
- Effect of ratification, etc.**
22. When property insured has been aliened by sale or otherwise, the policy shall thereafter be void, and the same shall be delivered up and annulled, and upon such delivery the insured shall be entitled to receive his or her deposit note, on payment of his or her proportion of losses and expenses incurred prior to such surrender; but the alienee or grantee having the policy assigned to him may, upon proper application, have the same ratified and confirmed to him for his own proper use and benefit, and thereafter shall be entitled to all the rights and privileges, and be subject to all the liabilities to which the original party to whom the policy was issued was entitled and subject.
- Liability of members for losses, etc.**
23. Every member of such company shall be bound to pay for losses, damages and such necessary expenses as may be incurred by the company in proportion to his or her deposit or premium note.
- Suits may be maintained against members, and by members against company; for what.**
24. Suits at law or in equity may be maintained by such company against any member thereof for the collection of his or her premium note or any assessment thereon, or for any other cause relating to the business of the company, or growing out of the obligations assumed by, or liability incurred by him or her in becoming a member of such company, and like suits may be maintained by any member against such company for loss or damage sustained by him or her by fire, if payment be withheld or refused contrary to the by-laws of such company, and the terms and conditions of the policy, and all members and officers of the company shall be competent witnesses either for or against the company.
- Who may be witnesses.**
- Expenses and losses of company, how paid.**
25. The expenses of the company as well as the losses, shall be paid out of any moneys, securities or funds in the treasury, or by assessment on the insurances or premium notes, each member to pay in proportion to the amount of his premium note.
- Annual statement; how published and what to show.**
26. An annual statement of the affairs of the company shall be published in one or more newspapers published near the principal office of the company, which report shall show the amount of property insured, and all the other liabilities and expenses of the company; and also the amount of premium notes and the amount of cash on hand, and all other statistics necessary to give the members and the public generally, full information of the condition of the company.

27. The legislature shall have the power to alter or amend this chapter. But in no case shall such alteration or amendment affect the right of the creditors of the insurance company, organized under this chapter, to have its assets applied to the discharge of its liabilities, nor affect any contract or proceeding at law or in equity, either for or against the company.

Power of legislature to amend, etc., chapter; but not to affect rights of creditors, etc.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Acts repealed.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER XCIX.

AN ACT fixing the maximum retail price of certain school books in use in the schools of this State.

[Passed March 11, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That until the present contract for the supply of school books for the use of schools in this state expires the retail price at which certain books named therein shall be sold in this state shall be as follows: That is to say, McGuffey's new eclectic speller not to exceed fifteen cents per copy; McGuffey's new first eclectic reader not to exceed fifteen cents per copy; McGuffey's new eclectic third reader not to exceed thirty-five cents per copy. This act shall not take effect until Messrs. Van Antwerp, Bragg & Co., themselves, or by their duly authorized agents, shall file with the state superintendent of free schools, in writing duly authenticated, a declaration signed by themselves or some one duly authorized to sign the same for them, that this act will not by them be construed as in any way increasing the special West Virginia wholesale contract price as now published by them, or in any way abrogating or releasing them from any responsibility arising out of the now existing contract made in pursuance of the provisions of section one, chapter fifty-six of the acts of one thousand eight hundred and seventy-nine. It shall be the duty of the state superintendent of free schools as soon as the declaration before mentioned is approved and filed in his office, to inform the county superintendents of schools and dealers in school books throughout

Maximum price of certain school books fixed.

When act to take effect.

Duty of state superintendent.

the State of the passage of this act by such means as may to him seem proper.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER C.

AN ACT to amend and re-enact chapter fifty-six of the code of West Virginia, and to repeal chapter two hundred and nine of the acts of one thousand eight hundred and seventy-two and seventy-three, chapter twenty-seven of the acts of one thousand eight hundred and seventy-one and chapter seventy-one of the acts of one thousand eight hundred and eighty-one.

[Passed March 15, 1882.]

Be it enacted by the Legislature of West Virginia:

Code amended;
chapter 56 of.

1. That chapter fifty-six of the code of West Virginia be amended and re-enacted so as to read as follows:

CHAPTER LVI.

OF THE BOARD OF PUBLIC WORKS AND OF TOLLS ON THE CUMBERLAND ROAD AND OTHER TURNPIKES.

How Board Constituted.

The board of
public works; of
whom composed

1. The governor, auditor, treasurer, superintendent of free schools and attorney general shall be, and continue a corporation under the style of "The board of public works."

Records; How Kept.

Sec'y of state to
be sec'y of
board.
His duties; how
record kept and
signed.

2. The secretary of state shall act as secretary of the board, and shall keep a record of the official acts thereof, and shall discharge such other duties as may be by the board prescribed. The proceedings of each day shall be signed by the officer presiding on that day, and shall at all times be open to inspection.

The State's Interest in Internal Improvements; The Cumberland Road.

Interest of state
in works of
internal

3. The board of public works shall care for the interest of the state, however that interest may be derived, in all works of internal improvement in the state. Said board

shall appoint a proxy or proxies to represent the interest of the state in all meetings of the stock holders of any internal improvement company or other corporation in which the state is a stockholder.

improvement,
to be cared for
by board.
When proxy
appointed by
board.

4. The directors of all such corporations or companies shall annually report to the board of public works the condition, financial or otherwise, of such corporations or companies.

Duty of direc-
tors of such
corporations to
report to board.

5. The Cumberland road, so far as it lies within this state, together with all works of internal improvement owned by the state, shall be under the care and control of the board of public works. The said Cumberland road shall be four rods in width.

Cumberland
road, etc., to be
under care and
control of board.
Width of said
road.

6. The board are hereby empowered to appoint collectors of tolls for said road and works of internal improvement, and if deemed expedient, a superintendent of the same, or any of them, and to regulate his compensation; also, where not otherwise provided, to fix the amount of tolls, and to provide for and regulate the collection of the same.

Collectors of
tolls, etc. to be
appointed by
board.
Power of board
to fix compensa-
tion and amount
of tolls.

7. It shall be the duty of the said board to apply the tolls collected and all the income or profit derived from said road and works of internal improvement, after deducting the costs of collecting the same, to the repair and preservation of said road and works, and to pay the surplus, if any, into the treasury of the state.

Application of
such tolls, etc.;
how made.
Surplus.

8. The board of public works or the superintendent of said road may obtain wood, stone, gravel or earth, deemed necessary for the repair of the road, in the manner prescribed in section fourteen of chapter fifty-two of this code.

Materials for
repairs; by
whom and how
obtained.

9. A collector of tolls on the Cumberland road, or any other turnpike authorized by law to receive tolls, may refuse to allow any person, animal or vehicle, to pass on such roads until the lawful toll be paid. If any person, animal or vehicle pass a toll gate on such roads or other proper place for payment, without paying or tendering the toll, or if any person misrepresent the distance he may have traveled on such road, such person, or the owner or person in possession of such animal or vehicle, shall be fined not exceeding twenty dollars; and the like penalty shall be incurred, when any person, animal or vehicle subject to toll is passed through any private gate, bars or fence for the purpose of evading the payment of toll. This section shall not apply to persons now having a lawful right to pass on such roads without the payment of tolls.

Rules and regu-
lations for
collecting tolls
on Cumberland
road, etc.,
prescribed.

To whom not to
apply.

10. If any person, without authority from the board of pub-

Defacing, injuring, etc., mile stones, etc. of public roads.

lic works or the superintendent of said road, shall remove, injure or deface any of the mile stones, or posts, parapet, walks, culverts, bridges, masonry of any kind, gates or toll houses belonging to said Cumberland road, or any other turnpike authorized by law to receive tolls, or shall turn any stream of water from its regular course toward or upon such road so as to injure the same, or shall obstruct any of the gutters, drains or culverts of such road, or shall connect any county or private road with such road without securing such road from injury by reason of such connection, or by the flow of water at the place of connection, or shall place or leave on such road any earth, ashes, stones or other obstructions to the travel and use of such road, or shall so place or leave thereon any vehicle as to interfere with such travel, or shall fast-lock or rough-lock either of the wheels of any vehicle upon a part of the road not covered with ice, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten nor more than fifty dollars.

How punished.

Tolls on Turnpikes.

Tolls on turnpikes. What may be received on every section of five miles.

11. On all turnpikes in this state, tolls not exceeding the following rates may be received on every section of five miles which has been completed, to-wit: For a single horse, mare, gelding, mule, jack or jennet, three cents; and for every horse, mare, gelding, mule, jack or jennet in addition, one cent, if the same be not hitched to any vehicle; for twenty sheep or hogs, five cents; and for twenty cattle, ten cents, and so on in proportion for a greater or less number; for a riding carriage, whether two or four wheeled, if the road be macadamized or be a plank road, ten cents, but if not macadamized nor a plank road, five cents; and for a cart or wagon, if the tires of the wheels are not more than four inches wide, three cents for each animal drawing it, and if such tires be more than four and less than seven inches wide, two cents for each animal drawing it; and if such tires be seven inches wide or more, one cent for every such animal. For a fractional part of a section, tolls may be received bearing the same proportion to the tolls for a full section that the said fractional part bears to such full section. *Provided*, That when the toll from the fractional part would be less than one cent they may charge and receive one cent. *Provided, further*, that all coaches, carriages, vehicles and horses used by persons in going to and returning from divine worship, funerals and grist mills for the purpose of having grinding done, shall be exempt from tolls.

For a fractional part of a section

When said tolls may be demanded, and of whom.

12. The said tolls may be demanded of every person passing the toll-gate, for the section or fractional part, whether he shall have traveled the whole or only a part of the section or fractional part.

Acts Repealed.

2. Chapter two hundred and nine of the acts of the legislature of one thousand eight hundred and seventy-two and seventy-three, entitled, "an act concerning turnpike roads; when and how tolls shall be collected; authorizing gates to be erected; prescribing the penalties for passing gates without paying tolls, and making regulations concerning said roads, and prescribing penalties for failing to keep the same in repair;" chapter twenty-seven of the acts of the legislature of one thousand eight hundred and seventy-one, entitled, "an act for the protection of the Cumberland road;" chapter seventy-one of the acts of the legislature of one thousand eight hundred and eighty-one, entitled, "an act in relation to the Cumberland road in this state," and all other acts and parts of acts within the purview of this act, and inconsistent therewith, are hereby repealed.

Certain acts and all inconsistent acts repealed

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CI.

AN ACT to amend and re-enact section six of chapter forty-five of the code of West Virginia, as amended and re-enacted by chapter fifteen of the acts of one thousand eight hundred and eighty-one, concerning salaries of teachers.

[Passed March 15, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That section six of chapter forty-five of the code of West Virginia, as amended and re-enacted by chapter fifteen of the acts of one thousand eight hundred and eighty-one, be amended and re-enacted so as to read as follows:

Code amended; sec. 6 of chapter 45 of, as amended, etc., by chapter 15 of acts 1881.

6. The boards of education of the several districts shall hold their first meeting for each school year on the first Monday in July. At this meeting they shall determine the number of months the school shall be held in the district, the number of teachers that may be employed in the several sub-districts, and fix the salaries that shall be paid to the teachers. In determining the salaries, they shall have regard to the grade of teachers' certificates, fixing to each grade the salary that shall be paid to teachers of said

Boards of education; first meeting of; when held. What to determine.

Salaries of teachers; how determined.

grade in the several sub-districts, as follows: Teachers having certificates of the grade of number one shall be paid not less than twenty-five dollars per month; those holding certificates of the grade of number two, not less than twenty-two dollars per month; and those holding certificates of the grade of number three, not less than eighteen dollars per month. And the trustees of the several sub-districts shall in no case transcend or diminish the salaries so fixed in any contract they may make with teachers. A quorum of the board of education shall consist of a majority of the members thereof, and in the absence of the president one of said members may act as such; but they shall do no official business except when assembled as a board, and by due notice to all the members, except that the president and secretary may sign orders upon the sheriff for any sum of money which may have been already ordered to be paid. The members of the board of education shall each receive as compensation for his services the sum of one dollar and fifty cents per day, to be paid in like manner as the salary of the clerks of the boards of education; *Provided*, that no member shall receive pay for more than four days' service in any one year.

Minimum salary to each grade fixed.

Trustees not to exceed salary so fixed.

Quorum of board.

Absence of president; who to act.
To do no official business, except, etc.

Pay of members of board, and how.

Am't limited.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CII.

AN ACT to amend and re-enact chapter one hundred and four of the code of West Virginia.

[Passed March 16, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter one hundred and four of the code of West Virginia be, and the same is hereby amended and re-enacted so as to read as follows:

Code amended; chapter 104 of.

CHAPTER CIV.

LIMITATION OF SUITS.

Limitation of Entry on, or Action for, Land.

1. No person shall make an entry on, or bring an action to recover, any land, but within ten years next after the time at which the right to make such entry or to bring such action shall have first accrued to himself or to some person through whom he claims.

Limitation of entry on, or action for, land.

2. No continual or other claim upon or near any land shall preserve any right of making an entry or bringing an action. Right not preserved by continual claim, etc.

3. If at the time at which the right of any person to make an entry on, or bring an action to recover, any land, shall have first accrued, such person was an infant, married woman, or insane, then such person, or the person claiming through him, may, notwithstanding the said period of ten years shall have expired, (except in the case of a married woman, where such land is her sole and separate property), make an entry on, or bring an action to recover such land, within five years next after the time at which the person to whom such right shall have first accrued as aforesaid, shall have ceased to be under such disability as existed when the same so accrued, or shall have died, whichever shall first have happened. Saving in favor of infants or persons under disability. exception.

4. The preceding section is subject to these provisos: That no such entry or action shall be made or brought by any person, who, at the time at which his right to make or bring the same shall have first accrued, shall be under any such disability, or by any person claiming through him, but within twenty years next after the time at which such right shall have first accrued, although the person, under disability at such time, may have remained under the same during the whole of such twenty years, or although the term of ten years from the period at which he shall have ceased to be under any such disability, or have died, shall not have expired. And when any person shall be under any such disability at the time at which his right to make an entry or bring an action shall have first accrued, and shall depart this life without having ceased to be under any such disability, no time to make an entry or to bring an action, beyond the ten years next after the right of such person shall have first accrued, or the five years next after the period of his death, shall be allowed by reason of any disability of any other person. What provisions the preceding section is subject to.

5. All actions pending on the twenty-seventh day of March, one thousand eight hundred and sixty-one, or brought within two years thereafter, for the recovery of land, and not determined on the day this chapter takes effect, shall be governed as to limitation by the law in force on the twenty-sixth day of March, one thousand eight hundred and sixty-one; and all such actions brought after the expiration of the said two years, and pending on the first day of April, one thousand eight hundred and sixty-nine, shall be governed as to limitation by the law in force on the day previous thereto. All such actions, brought on or after the first day of April, one thousand eight hundred and sixty-nine, shall be governed as to limitation by the law in force on the day before this chapter as amend- What actions for recovery of land are governed as to limitation by certain laws.

ed takes effect, anything in any statute passed since the seventeenth day of April, one thousand eight hundred and sixty-one, to the contrary notwithstanding.

Limitation of Personal Actions.

6. Every action to recover money, which is founded upon an award, or on any contract other than a judgment or recognizance, shall be brought within the following number of years next after the right to bring the same shall have first accrued, that is to say: If the case be upon an indemnifying bond taken under any statute, or upon a bond of an executor, administrator, guardian, curator, committee, sheriff or deputy sheriff, clerk or deputy clerk, or any other fiduciary or public officer within ten years; if it be upon any other contract by writing under seal, executed before the first day of April, one thousand eight hundred and sixty-nine, within twenty years, but if executed on or after that day within ten years; if it be upon an award, or upon a contract by writing, signed by the party to be charged thereby, or by his agent, but not under seal, within ten years; and if it be upon any other contract, within five years, unless it be an action for an article charged in any store account, in which case the action may be brought within three years, or an action by one partner against his co-partner for a settlement of the partnership accounts, or upon accounts concerning the trade of merchandise between merchant and merchant, their factors or servants, where the action of account would lie, in either of which cases the action may be brought until the expiration of five years from a cessation of the dealings in which they are interested together, but not after.

7. The right of action upon the bond of an executor, administrator, guardian, curator, or committee, or of a sheriff acting as such, shall be deemed to have first accrued as follows: Upon a bond of a guardian or curator of a ward, from the time of the ward's attaining the age of twenty-one years, or from the termination of the guardian's or curator's office, whichever shall happen first; and upon the bond of any personal representative of a decedent or committee of an insane person, the right of action of a person obtaining execution against such representative or committee, or to whom payment or delivery of estate in the hands of such representative or committee shall be ordered by a court acting upon his account, shall be deemed to have first accrued from the return day of such execution, or from the time of the right to require payment or delivery upon such order, whichever shall happen first. And as to any suit against such fiduciary himself, or his representative, which could have been maintained if he had given no bond, there shall be no

Limitation of personal actions generally.

When action on bond of fiduciaries is deemed to have accrued.

Limitation in suits against fiduciary himself, etc.

other limitation than would exist if the preceding section were not passed.

How Cause of Action Barred May be Revived, etc.

8. If any person, against whom the right shall have so accrued on an award or on any such contract, shall, by writing signed by him or his agent, promise payment of money on such award or contract, the person to whom the right shall have so accrued may maintain an action or suit for the money so promised, within such number of years after the said promise, as it might originally have been maintained within upon the award or contract, and the plaintiff may either sue on such promise, or on the original cause of action, and in the latter case, in answer to a plea under the sixth section, may, by way of replication, state such promise, and that such action was brought within the said number of years thereafter; but no promise, except by writing as aforesaid, shall take any case out of the operation of the said sixth section, or deprive any party of the benefit thereof. An acknowledgment in writing as aforesaid, from which a promise of payment may be implied, shall be deemed to be such promise within the meaning of this section.

Where there is a new promise in writing to pay; what deemed such promise.

9. No acknowledgment or promise by any personal representative of a decedent, or by one of two or more joint contractors, shall charge the estate of such decedent, or charge any other of such contractors, in any case, in which, but for such acknowledgment or promise, the decedent's estate or another contractor could have been protected under the sixth section of this chapter.

Effect of promise of personal representative or joint contractor.

10. No provision in the will of any testator, devising his real estate, or any part thereof, subject to the payment of his debts, or charging the same therewith, shall prevent this chapter from operating against such debts, unless it plainly appear to be the testator's intent that it shall not so operate.

Effect on right of action, of devise for payment of debts.

Limitation of Action, etc., on Recognizance.

11. Every action or *scire facias* upon a recognizance shall, if it be not a recognizance of bail, be commenced within ten years next after the right to bring the same shall have first accrued, and if it be a recognizance of bail, within three years after the right to bring the same shall have first accrued.

Limitation of action or *scire facias* on recognizances.

Limitation of Personal Action Not Specifically Provided For.

12. Every personal action for which no limitation is otherwise prescribed, shall be brought within five years next after the right to bring the same shall have accrued, if it be for a matter of such nature that, in case a party

Limitation of personal actions on which no other limitation is prescribed.

die, it can be brought by or against his representative; and if it be for a matter not of such nature, shall be brought within one year next after the right to bring the same shall have accrued, and not after.

Limitation of Action or Suit on Foreign Judgment, etc.

Actions on judgments, etc., of another state, etc., when barred.

13. Every action or suit upon a judgment or decree, rendered in any other state or country, shall be barred, if by the laws of such state or country such action or suit would there be barred, and the judgment or decree be incapable of being otherwise enforced there. And whether so barred or not, no action against a person who shall have resided in this state, during the ten years next preceding such action, shall be brought upon any such judgment or decree rendered more than ten years before the commencement of such action.

Suits to Avoid Gifts, etc., and to Repeal Grants.

Within what time creditor must proceed to avoid gift or other voluntary disposition,

14. No gift, conveyance, assignment, transfer or charge, which is not on consideration deemed valuable in law, shall be avoided, either in whole or in part, for that cause only, unless within five years after it is made suit be brought for that purpose, or the subject thereof, or some part of it, be distrained or levied upon by or at the suit of a creditor, as to whom such gift, conveyance, assignment, transfer or charge is declared to be void by the second section of the seventy-fourth chapter of this code.

Limitation of bill to repeal a grant.

15. A bill in equity to repeal, in whole or in part, any grant of land by this state or of the state of Virginia, shall be brought within ten years next after the date of such grant, and not after.

When Limitation Does Not Apply, or is Qualified.

General saving for persons under disability

16. If any person to whom the right accrues to bring any such personal action, suit or *scire facias*, or any such bill to repeal a grant, shall be, at the time the same accrues, an infant, married woman or insane, the same (except in the case of a married woman, as provided in section three of this chapter) may be brought within the like number of years after his becoming of full age, unmarried or sane, that is allowed to a person having no such impediment, to bring the same after the right accrues, or after such acknowledgment as aforesaid, except that it shall in no case be brought after twenty years from the time when the right accrued.

In cases of persons who are dead when their right accrued, time allowed personal representative.

17. If a person die before the time at which any right mentioned in this chapter would have accrued to him if he had continued alive, and there be an interval of more than five years between the death of such person and the qualification of his personal representative, such personal

representative shall, for the purposes of this chapter, be deemed to have qualified on the last day of the said five years

18. Where any such right as is mentioned in this chapter shall accrue against a person who had before resided in this state, if such person shall, by departing without the same, or by absconding or concealing himself, or by any other indirect ways or means, obstruct the prosecution of such right, or if such right has been or shall be hereafter obstructed by war, insurrection or rebellion, the time that such obstruction may have continued shall not be computed as any part of the time within which the said right might or ought to have been prosecuted. But if another person be jointly or severally liable with the person so obstructing the prosecution of such right, and no such obstruction exist as to him, the exception contained in this section as to the person so absconding shall not apply to him in any action or suit brought against him to enforce such liability. And upon a contract which was made and was to be performed in another state or country, by a person who then resided therein, no action shall be maintained after the right of action thereon is barred by the laws of such state or country.

What acts of defendant, etc., will prevent the running of statute of limitations.

But limitation only stops as to person obstructing.

What contracts are governed as to limitation by the laws of another state, etc.

19. If any action, commenced within due time, in the name of or against one or more plaintiffs or defendants, abate as to one of them by the return of no inhabitant, or by his or her death or marriage, or if, in an action commenced within due time, judgment (or other and further proceedings) for the plaintiffs should be arrested or reversed, on a ground which does not preclude a new action for the same cause, or if there be occasion to bring a new suit by reason of the said cause having been dismissed for want of security for costs, or by reason of any other cause, which could not be plead in bar of an action, of the loss or destruction of any of the papers or records in a former suit which was in due time; in every such case, notwithstanding the expiration of the time within which a new action or suit must otherwise have been brought, the same may be brought within one year after such abatement, dismissal or other cause, or after such arrest or reversal of judgment, or such loss or destruction, but not after.

Further time given when suit abates or is defeated on ground not affecting the right to recover.

Acts Repealed.

2. All acts and parts of acts inconsistent with the provisions of this act, and coming within the purview thereof, are hereby repealed.

Acts repealed.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CIII.

AN ACT to revive, amend and re-enact chapter six of the code of West Virginia, concerning contested elections.

[Passed March 16, 1882.]

Be it enacted by the Legislature of West Virginia:

Code amended; chapter 6 of. 1. That chapter six of the code of West Virginia be, and the same is hereby revived, amended and re-enacted so as to read as follows:

CHAPTER VI.

OF CONTESTED ELECTIONS.

County and District Officers.

Contested elections for county or district officers. Notice of contest, and as to votes and objections. 1. A person intending to contest the election of another to any county or district office, shall, within ten days after the result of the election is declared, give him notice in writing of such intention, and a list of the votes he will dispute, with the objections to each, and of the votes rejected for which he will contend. If the contestant object to the legality of the election, or the qualification of the person returned as elected, the notice shall set forth the facts on which such objection is founded. The person whose election is so contested shall, within ten days after receiving such notice, deliver to the contestant a like list of the votes he will dispute, with his objections to each, and of the rejected votes for which he will contend; and if he has any objection to the qualification of the contestant, he shall specify in writing the facts on which the objection is founded. Each party shall append to his notice his affidavit that he verily believes the matters and things therein set forth to be true.

Additional notice where new facts discovered. 2. If new facts be discovered by either party after he has given notice as aforesaid, he may, within ten days after such discovery, give an additional notice to his adversary, with the specifications and affidavit prescribed in the next preceding section.

Attendance of witnesses; how enforced; allowances, etc. Proceedings after notice in county court to try and determine contested election for county and district officers. 3. Subpœnas for witnesses for either party shall be issued by the clerk of the county court, and served as in other cases, and the witnesses shall be entitled to the same allowances and privileges, and be subject to the same penalties as witnesses attending a circuit court in a civil suit. The notice of contest shall be presented to the county court at its first term after the same is delivered to the person whose election is contested, and the same shall be docketed for trial in such court. At the trial of said contest, the said court shall hear all such legal and proper evidence as may be brought before it by either party, and

may, if deemed necessary, require the production of the poll books, certificates and ballots deposited with its clerk, and examine the same. The hearing may be continued by the court from time to time, if it be shown that justice and right require it, but not beyond three months from the day of election. At the final trial of said contest, the said court shall declare the true result of said election, and cause the same to be entered on the records of said court. The costs in such case, if the contestant fail to set aside the election, shall be awarded against the contestant; otherwise, each party shall pay his own costs, unless it appears to the court that the person returned elected by the commissioners was guilty of fraud or misconduct in the election, or in procuring such return to be made, in which case costs shall be awarded against him in favor of the contestant. The amount of costs to which either party is entitled against the other, shall be ascertained by the said court, and entered of record therein, which entry shall have the force of a judgment and execution, and if said costs are not paid within ten days thereafter, the clerk of said court may make out and deliver to the sheriff or one of his deputies, a certified copy of such entries, and said sheriff or deputy shall proceed to collect the same therein specified, in the same manner as if said copy were a writ of *feri facias* against the goods and chattels of the person against whom said costs were awarded. When the result of said election is declared as aforesaid, a certified copy of the order declaring said result shall, if required, be delivered by the clerk of said court to the person declared elected, if such be the result of the trial, and such copy shall be received in all courts and places as legal evidence of the result of the election therein declared.

Costs; against whom awarded.

Am't of costs to be ascertained by court and entered of record. Effect of such entry. If not paid within ten days, how collected

Certified copy of order declaring result to be delivered to person declared elected; when.

Effect of such copy.

Members of the Legislature.

4. Any person intending to contest the election of another as senator or delegate, shall within twenty-one days after the election, in case of delegate, and within thirty days after the election in case of a senator, give him notice thereof in writing, and a list of the votes he will dispute, with his objections to each, and of the votes rejected for which he will contend. If the contestant object to the legality of the election, or the qualification of the person returned, the notice shall set forth the facts on which such objection is founded. The person whose election is contested as delegate shall, within fourteen days after he receives such notice, and the person whose election as senator is contested shall, within twenty days after he receives such notice, deliver to the contestant a like list of the votes he will dispute and of his objections to each, and of the rejected votes he will claim; and if he has any objection to the qualification of the contestant, shall specify in such notice the facts on which the objection is founded.

Contested election for senator or delegate; notice of contest and as to votes and objections.

Each party shall append to his notice his affidavit that the matters therein set forth, so far as they are stated of his knowledge, are true, and so far as they are stated on the information of others, he believes them to be true.

Provision for contest on special election.

5. Where, however, such contest arises upon a special election to fill a vacancy, held at any other than a general election, the notice, with specifications and affidavit as above, shall be given by the contestant within ten days after the election, in case of a delegate, and within thirty days after the election, in case of a senator, and by the party whose election is contested, in the first case within five days, and in the second, twenty days.

Additional notice, where new facts discovered.

6. If new facts be discovered by either party after he has given notice as aforesaid, he may give an additional notice or notices to his adversary, with specifications and affidavit as above prescribed.

Depositions; when and how taken, and how disposed of.

7. Either party may begin to take the depositions at any time after the delivery of the original notice by the contestant. But reasonable notice of every such deposition shall be given, and such notice shall specify the names of the witnesses to be examined. The depositions may be taken before a justice, notary, or any officer authorized to take depositions in civil suits; and the officer before whom they are taken, shall certify and seal up the same, and endorse his name across the place where they are sealed, and address and transmit the same, by mail or otherwise, to the clerk of the branch in which the seat is contested. When the petition of the contestant is referred to a committee the clerk shall deliver the depositions to such committee for examination and report.

How witnesses are paid and compelled to attend in such case.

8. Subpœnas for witnesses shall be issued by the clerk of the circuit court, or by a justice, upon application of either party; and witnesses shall be entitled to the same allowances and privileges, and be subject to the same penalties, as if summoned to attend before the said court in civil suits.

Within what time depositions must be taken.

9. If the contest arise respecting any general election, the parties shall finish taking depositions five days at least before the second Wednesday of January next following. But if it arise upon a special election to fill a vacancy, held at any other time, they shall finish within thirty days after the election in the case of a delegate, and sixty days in the case of a senator.

Proper branch of legislature may extend time for taking depositions.

10. Neither party shall have the benefit of any deposition taken otherwise than as aforesaid, unless further time be given by resolution of the proper branch of the legislature.

11. The petition of the contestant shall be presented to

the proper branch of the legislature, within ten days after its meeting, if the disputed election was held at the regular annual period; or if it was a special election to fill a vacancy, within twenty-five days after the taking of the testimony is completed.

When petition of contestant to be presented to legislature.

12. If it be ascertained that an equal number of legal votes was given for the petitioner and the person returned, the senate or the house of delegates, as the case may be, in which the contest is pending, shall declare which of them is elected.

Decision in case of tie vote.

Governor, State Officers and Judges.

13. If the election of governor, treasurer, auditor, state superintendent of free schools, attorney general, judge of the supreme court of appeals, or judge of a circuit, be contested, the contestant must give notice, with specifications and affidavit, to the person whose election is contested, within sixty days thereafter; and within thirty days thereafter the return notice must be given to the contestant. The parties shall finish taking depositions within forty days after the last mentioned notice is delivered. The depositions shall be transmitted to the clerk of the house of delegates, to be delivered by him to the joint committee or special court hereinafter provided for. In other respects, the regulations contained in this chapter respecting contests for a seat in the legislature shall be observed, so far as they are applicable.

Contested election for governor, state officers and judges; how instituted.

Within what time depositions must be taken. How disposed of.

14. When the election of governor is contested, the petition of the contestant and the depositions shall be referred to a joint committee of the two houses, for examination and report; which committee shall consist of two senators elected by ballot by that house, and three delegates elected in the same manner by the house of delegates. The contest shall be determined by the legislature, both houses thereof sitting in joint session in the hall of the house of delegates, and the president of the senate shall preside.

Contest in case of governor; how tried and determined.

15. Where the election of treasurer, auditor, state superintendent of free schools, attorney general, or of a judge of the supreme court of appeals, or a circuit court, is contested, the case shall be heard and decided by a special court constituted as follows: The person declared elected shall select one, the contestant another, and the governor a third person, who shall preside in said court; and the three, or any two of them, shall meet at a time and place to be appointed by the governor, and being first duly sworn impartially to decide according to law and the truth upon the petition, returns and evidence to be submitted to them, shall proceed to hear and determine the case and certify their decision thereon to the governor. They shall

How contest in case of auditor, treasurer, etc., and judge, tried and determined.

Pay of members of such special court. be entitled to the same pay and mileage as members of the legislature, to be paid out of the treasury of the state.

Costs of Contested Elections.

Costs in contested elections; how ascertained, by whom paid, and how payment enforced.

No pay, etc., to person contesting seat in legislature, if he fail.

16. The costs of every contested election shall include only the expenses of serving notices, taking of depositions and the allowances to witnesses; and shall be noted at the foot of every deposition or set of depositions, by the person taking the same. If the contestant fail in setting aside the election, there shall be awarded against him the amount of such costs incurred or expended by the person who was returned or declared elected. Otherwise, each party shall pay his own costs; unless it appears that the person returned or declared elected was guilty of fraud or malpractice in the election, or in procuring such return or declaration, in which case costs shall be awarded against him in favor of the contestant. Where costs are awarded in favor of either party, the amount thereof shall be ascertained under direction of the house, joint session, or court which decides the case, and a certificate thereof, authenticated by the signature of the presiding officer, shall be delivered to the party in whose favor they are awarded, which certificate shall have the force of a judgment, and if such costs be not paid within ten days after the date thereof, the clerk of the circuit court of the county in which the party against whom the costs were awarded resides, may issue execution on such certificate upon its delivery to him in like manner, as upon a judgment of the said circuit court. But no person contesting the seat of another in the legislature shall be entitled to pay or mileage if his contest fail.

Acts Repealed.

Acts repealed.

2. All acts and parts of acts coming within the purview of this chapter, and inconsistent with its provisions, are hereby repealed.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CIV.

AN ACT to amend and re-enact section six of chapter ninety-six of the code of West Virginia.

[Passed March 16, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That section six of chapter ninety-six of the code of

West Virginia, be amended and re-enacted so as to read as follows: Code amended; section 6 of chapter 96 of.

6. Any defendant may plead in general terms that the contract or assurance on which the action is brought was for the payment of interest at a greater rate than is allowed by law, to which plea the plaintiff shall reply generally, but may give in evidence upon the issue made up thereon, any matter which could be given in evidence under a special replication; under the plea aforesaid the defendant may give in evidence any fact showing, or tending to show, that the contract, or assurance, or other writing upon which the action was brought, was for an usurious consideration. And upon such plea the court shall direct a special issue to try and ascertain: Plea of usury; evidence upon the issue thereon. Court to direct special issue to be tried, etc.

I. Whether or not, the contract, assurance or other writing is usurious.

II. If usurious, to what extent.

III. Whether or not interest has been paid on said contract, assurance or other writing, above six per cent., and if so, to what extent. And if a verdict be found upon the plea of usury, for the defendant, a judgment shall be rendered for the plaintiff for the principal sum due, with interest at the rate of six per centum per annum, and if any interest has been paid above the rate of six per centum per annum, the excess over and above that rate shall be entered as a credit on the sum due, and if nothing be found due after applying all credits and all excesses of interest paid above six per cent., judgment shall be entered for the defendant. What judgment to be rendered and entered.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CV.

AN ACT to amend and re-enact section six of chapter one hundred and three of the code of West Virginia.

[Passed March 16, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That section six of chapter one hundred and three of the code of West Virginia, be amended and re-enacted so as to read as follows: Code amended; section 6 of chapter 103 of.

6. Every such action shall be brought by and in the

Action for injuries where death ensues; how, in whose name and for whose benefit brought.

Amount of damages limited.

When such action to commence.

name of the personal representative of such deceased person; and the amount recovered in every such action shall be distributed to the parties and in the proportions provided by law in relation to the distribution of personal estates left by persons dying intestate. In every such action the jury may give such damages as they shall deem fair and just, not exceeding ten thousand dollars, and the amount so recovered shall not be subject to any debts or liabilities of the deceased; provided, that every such action shall be commenced within two years after the death of such deceased person.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CVI.

AN ACT to amend and re-enact section three of chapter seventy-four of the code of West Virginia:

[Passed March 17, 1882.]

Be it enacted by the Legislature of West Virginia:

Code amended; section 3 of chapter 74 of.

1. That section three of chapter seventy-four of the code of West Virginia, be amended and re-enacted so as to read as follows:

Loans, reservations and sales of goods and chattels, where title retained, etc., to be recorded, etc.

3. Where any loan of goods or chattels is pretended to have been made to any person with whom, or those claiming under him, possession shall have remained five years without demand made and pursued by due process of law on the part of the pretended lender, or where any reservation or limitation is pretended to have been made of a use or property, by way of condition, reversion, remainder, or otherwise, in goods or chattels, the possession whereof shall have so remained in another as aforesaid, the absolute property shall be taken to be with the possession, and such loan, reservation or limitation, void as to creditors of, and purchasers from, the person so remaining in possession, unless such loan, reservation, or limitation, be declared by will, deed, or other writing, duly recorded. And if any sale be made of goods, and chattels reserving the title until the same is paid for, or otherwise, and possession be delivered to the buyer, such reservation shall be void as to creditors of, and purchasers without notice from, such buyer, unless a notice of such reservation be recorded in the office of the clerk of the county court of the county where the property is, or in case said goods

and chattels consist of engines, cars or other rolling stock or equipment to be used in or about the operation of any railroad, unless such notice be recorded in the office of the secretary of state who in such case shall record the same in a book to be kept for the purpose, and be entitled to a fee of five dollars for so doing.

If said goods, etc., consist of engines, etc., of railroad, notice to be recorded in office of sec'y of state. His fee.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CVII.

AN ACT to amend and re-enact sections six, seven and eight of chapter eighty-four of the code of West Virginia, as amended and re-enacted by chapter six of the acts of the legislature of one thousand eight hundred and eighty-one.

[Passed March 18, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That sections six, seven and eight of chapter eighty-four of the code of West Virginia, as amended and re-enacted by chapter six of the acts of one thousand eight hundred and eighty-one be, and the same is hereby amended and re-enacted so as to read as follows :

Code amended; sections 6, 7 and 8 of chapter 84 of, as amended by chapter 6 of acts 1881.

6. When any personal estate in this state is vested in a trustee resident therein, or who acts by virtue of a deed, will or other instrument, recorded or probated therein, or when any administrator or executor in this state, has assets in his hands of a decedent, who at the time of his death, was domiciled in another state, and those having the beneficial interest in said estate or assets, are non-residents of this state, the circuit court of the county in which such trustee, administrator or executor may reside, or in which such estate may be, may, upon petition or bill in equity filed for that purpose, order such trustee or his personal representative, or such administrator or executor to pay, transfer and deliver such estate or assets, or any part thereof to a non-resident trustee, administrator or executor, appointed by some court of record in the state in which such beneficiaries reside.

Transfer of personal estate vested in trustee, or of assets in hands of executor, etc., when those having beneficial interest are non residents; when and how made.

7. No such order shall be made in the case of a petition until notice of the application shall have been given to all persons interested in such trust estate, either by personal

Such order not to be made by court until, etc.

service, or by publication of such notice once a week for four successive weeks in a newspaper, nor until the court shall be satisfied by authentic documentary evidence, that the non-resident trustee, administrator or executor appointed as aforesaid, has given bond with sufficient security for the faithful execution of the trust, nor until it is satisfied that the payment and removal of such estate out of the state will not prejudice the right of any person interested, or to become interested therein.

Sale of such property may be ordered and proceeds transferred.

8. If in any proceeding under the third or sixth sections of this chapter, it shall appear to the court to be proper, it may order the property, or any part of it to be sold and the proceeds to be paid to the non-resident guardian, committee, trustee, administrator or executor.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CVIII.

AN ACT to amend and re-enact section three of chapter sixty-three of the code of West Virginia, as amended and re-enacted by chapter one hundred and sixty-one of the acts*of one thousand eight hundred and seventy-two and three, and as further amended and re-enacted by chapter one hundred and four of the acts of one thousand eight hundred and seventy-seven, in relation to ministers authorized to celebrate the rites of marriage.

[Passed March 18, 1882.]

Be it enacted by the Legislature of West Virginia :

Code amended; section 3 of chapter 63 of, as amended by acts 1872-3 and 1877.

1. That section three of chapter sixty three of the code of West Virginia, as amended by chapter one hundred and sixty-one of the acts of one thousand eight hundred and seventy-two and three, and as further amended by chapter one hundred and four of the acts of one thousand eight hundred and seventy-seven, be and the same is hereby amended and re-enacted so as to read as follows :

Rites of matrimony; who authorized to celebrate, and how.

3. When any minister of the gospel shall, before the circuit or county court of any county in this state, or the clerk of any county court therein when neither of such courts shall be in session, produce proof that he is duly licensed as such, and of his being in regular communion.

with the religious society of which he is a member, and give bond in the penalty of fifteen hundred dollars, such court or clerk may make an order authorizing him to celebrate the rites of marriage in all the counties of the state. And no person, other than a minister who has complied with this section, shall hereafter celebrate the rites of marriage in this state, anything in any act of the legislature, or order of any court, to the contrary notwithstanding.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CIX.

AN ACT amending and re-enacting chapter one hundred and nine of the code of West Virginia.

[Passed March 21, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter one hundred and nine of the code of West Virginia, be and the same is hereby amended and re-enacted so as to read as follows: Code amended; chapter 109 of.

CHAPTER CIX.

OF THE WRIT OF MANDAMUS AND QUO WARRANTO.

Mandamus.

1. When a writ of *mandamus* is issued, the return thereto shall state plainly and concisely, the matter of law or fact relied on in opposition to the complaint. Writ of mandamus; of the return thereto.
2. The complainant may thereupon demur to the return, or plead specially thereto, or both. Pleadings thereon; by complainant.
3. The defendant may reply to, take issue on, or demur to the pleas of the complainant. By defendant.
4. If a verdict be found, or a judgment be rendered for the person suing out the writ, on demurrer or by *nil dicit* or for want of a replication or other pleading, he shall recover his costs, and such damages as the jury may assess, and final judgment thereupon shall be entered and enforced by execution, as in other cases; and a peremptory *mandamus* shall be awarded without delay as if the return to the writ had been adjudged insufficient. What judgment to be rendered if verdict be for person suing out writ.

Defendant to
recover his
costs; when.

5 If judgment be rendered for the defendant he shall recover his costs.

Quo Warranto.

Writ of quo war-
ranto.

6. A writ of *quo warranto* may be awarded and prosecuted, in the name of the state of West Virginia, at the instance of the attorney general, or prosecuting attorney of any county, in any of the following cases, viz:

In what cases
writ may be
awarded and
prosecuted.

First. Against a corporation for a misuse or non-user of its corporate privileges and franchises, or for the exercise of a privilege or franchise not conferred upon it by law, or where a certificate of incorporation has been obtained by it for a fraudulent purpose, or for a purpose not authorized by law.

Second. Against a person for the misuse or non-use of a privilege and franchise conferred upon him by, or in pursuance of law.

Third. Against any person or persons acting as a corporation, without authority of law, and

For what such
writ not to be
awarded or
prosecuted.

Fourth. Against any person who shall intrude into, or usurp any public office. But no such writ shall be awarded or prosecuted against any person now in office for any cause which would have been available in support of a proceeding to contest the election of such person to such office.

Application for Writ—When and How Made.

When, by
whom and how
application for
writ made

7. Whenever the attorney general or prosecuting attorney of any county is satisfied that a cause exists therefor he may, at his own instance, or at the relation of any person interested apply by petition to the circuit court of the county wherein the seat of government is, or of the county wherein the cause for the issuing of such writ arose, to have such writ issued, and shall state therein the reason therefor. Whenever such writ is issued at the relation of any person, the petition shall be to the circuit court of the county wherein the seat of government is, or of the county wherein the cause or any part thereof for the issuing such writ arose, as the relators may elect.

When and How Writ to Issue—Security for Costs, etc.

Writ to issue;
when and how.

8. If, in the opinion of the court the reasons so stated in the petition are sufficient in law, it shall award the said writ, and the same shall be signed by the judge of such court and attested by the clerk thereof. But if such writ be awarded at the relation of any person it shall not be issued until the relator shall give bond with good security to be approved by the court, in such penalty as the court shall proscribe, with condition that the relator will pay all such costs and expenses as may be incurred by the

When bond and
security to be
given before
writ shall issue.

Condition of
such bond.

state in the prosecution of such writ in case the same shall not be recovered from and paid by the defendant therein.

Information in the Nature of a Writ of Quo Warranto.

9. In any case in which a writ of *quo warranto* would lie, the attorney general or prosecuting attorney of any county, at his own instance, or at the relation of any person interested, or any person interested may, in the name of the state of West Virginia, apply to any such court as is mentioned in the seventh section of this chapter, for leave to file an information in the nature of a writ of *quo warranto* for any of the causes and against any of the corporations, officer or persons mentioned in the sixth section of this chapter, and he shall at the time of his application, present to the court the information he proposes to file. If, in the opinion of such court, the matters stated in such information are sufficient in law to authorize the same to be filed, an order shall be made filing the same and awarding a summons against the defendant named therein to answer such information. But if the leave to file such information be asked on the relation of any person, or by any person at his own instance, the summons thereon shall not be issued by the clerk until such relator or person shall give the bond and security required by the next preceding section. A copy of every such information, if not made out and filed therewith, shall be made out by the clerk, and such copy shall be delivered to the officer to whom the summons is delivered to be served, and shall be served on the defendant or one of the defendants named in the summons.

Who may file an information in the nature of *quo warranto*; and upon whose relation; when and how.

Duty of court if matters stated in information are sufficient, etc.

When summons not to issue unless security for costs be given.

Copy of such information to be served on defendant; how.

Service of Writ or Summons; How and on Whom Made.

10. Every such writ or summons shall be served as provided in chapter one hundred and twenty-one of this code, and if it be against a corporation it shall be served on some of the persons mentioned in sections seven and eight of chapter one hundred and twenty-four of this code; and if service thereof cannot otherwise be made upon any defendant named in such writ or summons, it may be made by publication as prescribed in said last named chapter.

Service of writ and summons; how and on whom made.

Proceedings on Writ or Information After Service Thereof.

11. If the defendant named in such writ or information, fail to appear after the service thereof as aforesaid, the court may hear proof of the allegations of the petition or information, and if such allegations be sustained, the court shall give judgment accordingly. But if the service be made by publication, the defendant against whom such judgment is rendered, upon giving bond and security as provided in section eight of this chapter, may have the judgment against him set aside, and make such defense as

Proceedings on writ of information after service thereof.

he or it may have thereto. If the defendant appear before the end of the term next after the service of summons, or thereafter before judgment is rendered against him, he may demur or plead not guilty, or both, to such writ, or demur or answer in writing, or both, to such information, and every allegation contained in such information which is not denied by such answer shall be taken as true, and no proof thereof shall be required.

Trial, Verdict and Judgment.

Verdict and judgment after trial.

12. If upon the trial of such writ or information the defendant be found guilty, or not guilty, of any of the charges therein, the verdict shall be "guilty," or "not guilty," as the case may be; but if he be found guilty as to a part of such charges only, the verdict shall be guilty as to such charges, and shall particularly specify the same, and as to the residue of such charges the verdict shall be "not guilty." Against a defendant so found guilty, the court shall give such judgment as is appropriate and authorized by law, and for the costs incurred in the prosecution of such writ or information, including an attorney's fee of not less than ten nor more than fifty dollars, to be fixed by the court.

Costs.

Appointment of Receiver of Property of Corporation—When.

Court may appoint receiver of property of corporation; when.

13. If by the judgment of the court rendered as aforesaid, a corporation, or pretended corporation, be dissolved, the court may appoint a receiver of the property of such corporation or pretended corporation, as provided in section twenty-eight of chapter one hundred and thirty-three of this code, and may make all such other orders in relation thereto as may be necessary for the preservation and safe-keeping of such property.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CX.

AN ACT amending and re-enacting sections one, two, eight and nine of chapter one hundred and fifty-three of the code of West Virginia, and to repeal section eleven of said chapter.

[Passed March 21, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That sections one, two, eight and nine of chapter one

hundred and fifty-three, of the code of West Virginia, be and the same are hereby amended and re-enacted so as to read as follows:

Code amended: sections 1, 2, 8 and 9 of chapter 153 of.

1. Every justice of the peace shall have power to require from persons not of good fame, security for their good behavior for a term not exceeding one year.

Justices of the peace: power to bind to good behavior.

2. If complaint be made to any justice, that there is good cause to fear that a person intends to commit an offense against the person or property of another, he shall examine on oath the complainant and any witnesses who may be produced, reduce the complaint to writing and cause it to be signed by the complainant.

Duty of Justice on complaint that a crime is intended.

8. If any person go armed with a deadly or dangerous weapon in violation of section seven, of chapter one hundred and forty-eight of this code, he may be required to give a recognizance, with the right of appeal, as before provided, and like proceedings shall be had on such appeal.

Person going armed with deadly weapon, when required to give recognizance, etc.

9. If any person shall, in the presence of a constable and within his county, make an affray, or threaten to beat, wound, or kill another, or to commit violence against his person or property; or contend with angry words to the disturbance of the peace; or improperly or indecently expose his person; or appear in a state of gross intoxication in a public place; such constable may, without warrant or other process, or further proof, arrest such offending person and carry him before some justice of the peace in the county, in which such offense is committed, who, upon hearing the testimony of such constable and other witnesses, if any are then and there produced, if, in his opinion the offense charged be proved, shall require the offender to give a bond or recognizance, with security, to keep the peace and be of good behavior for a term not exceeding one year.

Duty of constable as to offense committed in his presence.

2. Section eleven of said chapter one hundred and fifty-three is hereby repealed.

Section 11 of chapter 153 repealed

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXI.

AN ACT amending and re-enacting section four of chapter forty-three of the code of West Virginia, as amended and re-enacted by chapter fourteen of the acts of one thousand eight hundred and eighty-one.

[Passed March 22, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That section four of chapter forty-three of the code

Code amended; section 4 of chapter 43 of, as amended by Acts 1881. of West Virginia as amended and re-enacted by chapter fourteen of the acts of one thousand eight hundred and eighty one be amended and re-enacted so as to read as follows :

4. The county court of every county shall in the year one thousand eight hundred and eighty-three, and in every second year thereafter, appoint a surveyor of roads for each precinct of their respective counties, who is a resident of the precinct for which he may be appointed, and whose term of office shall be for two years from the first day of January succeeding his appointment. Vacancies in said office shall be filled by the county court from time to time as they may occur, and shall be for the unexpired term. The county court of any county may, in its discretion, require a bond from any surveyor of a road precinct, with good security, conditioned for the faithful discharge of his duties as such surveyor, in a penalty to be fixed by the court.

Appointment of surveyor of roads; when and how.

His term of office. How vacancies filled,

Court may require bond of surveyor; condition and penalty of.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXII.

AN ACT to amend and re-enact sections one, two, three, four, seven, eight, nine, ten, eleven, thirteen and fourteen of chapter fifty-two of the acts of one thousand eight hundred and eighty-one.

[Passed March 25, 1882.]

Be it enacted by the Legislature of West Virginia :

Acts 1881 amended; certain sections of chapter 52 of.

1. That sections one, two, three, four, seven, eight, nine, ten, eleven, thirteen and fourteen of chapter fifty-two of the acts of the legislature of one thousand eight hundred and eighty-one, passed February twenty-one, one thousand eight hundred and eighty-one, be amended and re enacted so as to read as follows :

Pharmacist; must be registered, etc., to conduct any pharmacy, etc.

1. It shall be unlawful for any person, not a registered pharmacist, or who does not employ as his salesman a registered pharmacist, within the meaning of this act, to conduct any pharmacy, drug store, apothecary shop or store for the purpose of retailing, compounding or dispensing medicines or poisons for medical use, except as hereinafter provided.

2. It shall be unlawful for the proprietor of any store or pharmacy to allow any person except a registered pharmacist to compound or dispense the prescriptions of physicians, or to retail or dispense the poisons named in schedules "A" and "B" herein for medical use, except as an aid to, and under the supervision of a registered pharmacist.

Only registered pharmacist allowed to compound prescriptions or dispense, etc., certain poisons, except, etc.

3. The board of public works shall appoint one person from each congressional district, from among the most competent pharmacists of the state, all of whom shall have been residents of the state for five years, and of at least five years' practical experience in their profession, who shall be known as "Commissioners of pharmacy for the state of West Virginia," one of whom shall hold his office for one year; one for two years; one for three years and one for four years; and each until his successor shall be appointed and qualified; and each year thereafter one commissioner shall be so appointed for four years, and until a successor be appointed and qualified. If a vacancy occur in said commission, another shall be appointed, as aforesaid, to fill the unexpired term thereof. Said commissioners, a majority of whom may act, shall have power to make by-laws, and all necessary regulations for the proper fulfillment of their duties under this act, without expense to the state, and to examine applicants and grant certificates.

Commissioners of pharmacy; how appointed and for what time.

Vacancies.

Power of such commissioners.

4. The commissioners of pharmacy shall register, in a suitable book, a duplicate of which is to be kept in the office of the secretary of state, the names and place of business of all persons to whom they issue certificates, and the dates thereof. It shall be the duty of said commissioners of pharmacy to register, without examination, as registered pharmacists, all pharmacists and druggists who are engaged in business in the state of West Virginia, at the passage of this act, as owners or principals of stores or pharmacies for selling at retail, compounding or dispensing drugs, medicines or chemicals for medical use, or for compounding and dispensing physicians' prescriptions; and all assistant pharmacists, not under eighteen years of age, engaged in said stores or pharmacies in the state of West Virginia at the passage of this act, and who have been engaged as such in some store or pharmacy where physicians' prescriptions were compounded and dispensed, for not less than five years prior to the passage of this act; *Provided, however,* That in case of failure or neglect on the part of such person or persons to apply for registration within sixty days after they shall have been notified, they shall undergo an examination such as is provided for in section five of this act.

Registry to be made of names, etc., of persons to whom certificates are issued, where duplicate kept.

Certain persons to be registered without examination.

Provision if such persons fail, etc., to apply, etc.

7. Every applicant for registration as a pharmacist shall

Applicant for registration must be of good moral character, etc.
 Responsibility for quality of drugs, etc., sold, etc.

present to the commissioners of pharmacy satisfactory evidence that he is a person of good moral character and not addicted to drunkenness, and all persons whether registered pharmacists or not, shall be held responsible for the quality of all drugs, chemicals and medicines they may sell or dispense, with the exception of those sold in the original packages of the manufacture, and those known as "patent medicines." Any person who shall knowingly, intentionally and fraudulently adulterate or cause to be adulterated any drugs, chemicals or medical preparations, or knowingly sell any adulterated drugs, chemicals or medical preparations, shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined not exceeding one hundred dollars, and if he be a registered pharmacist his name shall be stricken from the register.

Adulteration, etc., of drugs, a misdemeanor.

Penalty.

8. Apothecaries registered as in this act provided, shall have the right to keep and sell under such restrictions as herein provided, all medicines and poisons, authorized by the National, American or United States dispensatory and pharmacopœa, as of recognized utility.

Right of registered apothecaries to sell all medicines, etc.

9. No druggist or registered pharmacist shall retail any of the poisons enumerated in the following schedules except as hereinafter provided:

Restriction as to sale of certain poisons.

Schedule A.

Schedule of such poisons.

Arsenic and its preparations, corrosive sublimate, white precipitate, red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnia, and all other poisonous vegetable alkaloids and their salts, essential oil of bitter almonds, opium and its preparations, except paregoric and other preparations of opium containing less than two grains to the ounce.

Schedule B.

Further schedule.

How poisons sold to be labelled.

Inquiries to be made by seller of purchaser. Entry to be made by pharmacist; when, and what such entry to show.

Aconite, belladonna, colchicum, conium, nux vomica, henbane, savin, ergot, cotton root, cantharides, creosote, digitalis, and their pharmaceutical preparations; croton oil, chloroform, chloral hydrate, sulphate of zinc, sulphate of copper, acetate of lead, mineral acids, carbolic acid and oxalic acid. Whenever any of the said poisons are sold, the box, vessel or paper in which the same is put up, shall be distinctly labelled with a device bearing the death's head and cross-bones, and also the name of the article, the word "poison" and the name and place of business of the seller. The seller shall also ascertain upon due inquiry that the purchaser is aware of the poisonous character of the drug, and that it is to be used for a legitimate and lawful purpose. He shall also before delivering any of the poisons named in "schedule A" to the purchaser, cause an entry to be made in a book kept for the purpose,

which entry shall show the date of the sale, the name and residence of the purchaser, the name and quantity of the poison sold, the purpose for which it is to be used as represented by the purchaser, and the name of the dispenser; such book to be always subject to the inspection of the proper authorities, and to be preserved for at least five years from the date of the last entry. The provisions of this section shall not apply to the dispensing of drugs in not unusual quantities on the prescriptions of physicians. Nothing in this act contained shall be construed so as to protect any druggist or registered pharmacist from any penalty or forfeiture prescribed in any other law regulating the sale of alcoholic or other intoxicating liquors; and the name of any registered pharmacist who shall be convicted twice of the violation of such law, shall be stricken from the register and he shall no longer be a registered pharmacist. Nor shall this act be construed to authorize any person to carry on the business of a druggist without having first obtained a license therefor, if such license be required by any other law, or to sell, offer or expose for sale any of the liquors, drinks, mixtures or preparations mentioned in section one of chapter thirty-two of the code of West Virginia, as amended and reenacted by chapter one hundred and seven of the acts of eighteen hundred and seventy-seven, except for medicinal, mechanical or scientific purposes. And if any person carrying on or interested in the business of a druggist shall, in violation of this section, sell any such liquors, drinks, mixtures or preparations, he shall be guilty of a misdemeanor, and for each offense be fined not less than twenty-five nor more than one hundred dollars; and it shall be the special duty of the judge of every circuit court to give this provision in charge to the grand juries of their respective courts. In any prosecution against a person carrying on or interested in the business of a druggist for selling any such liquors, drinks, mixtures or preparations, contrary to law, if the sale be proved, it shall be presumed that such sale was unlawful unless the contrary be shown.

Entry book subject to inspection; how long to be preserved. Provisions of section not to apply in certain cases.

How act construed as to any penalty, etc., prescribed in any other law regulating the sale of intoxicating liquors. If convicted twice of violation of such law, what then. How act construed as to licenses for doing business as a druggist; or for sale of liquors, etc., except for medicinal, etc., purposes.

Penalty for violation as to sale of such liquors, etc.

Duty of judges of circuit courts.

In any prosecution, if sale be proved, it shall be presumed to be unlawful, unless, etc.

10. No person shall procure, or attempt to procure, registration for himself or for another, under this act, by making, or causing to be made, any false representations; nor shall any person not a registered pharmacist, as provided in this act, conduct a store, pharmacy, or place for retailing, compounding or dispensing drugs, medicines or chemicals for medicinal use, or for compounding or dispensing physicians' prescriptions, or take, use or exhibit the title of a registered pharmacist.

Fraudulent registration prohibited.

What persons only allowed to conduct a pharmacy, etc. for compounding, etc., drugs, etc.

11. This act shall not apply to physicians putting up their own prescriptions, nor to any one not doing business in an incorporated city or town who sells such ordinary drugs as are usually kept in country stores, nor to such

To whom this act not to apply.

person in any such city or town in which there is no registered pharmacist engaged in the business of selling drugs; but the term ordinary drugs shall not be held to include any of the poisons named in schedules "A" and "B," nor any intoxicating liquor.

13. Every registered pharmacist shall keep his certificate of registration posted in a conspicuous place at his place of business, and any failure so to do shall be deemed and held to be *prima facie* evidence that such person is not a registered pharmacist.

Where certificate of registration to be posted
Failure to do so deemed evidence of what.

14. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and for every such offense shall be fined not less than twenty-five nor more than one hundred dollars, and (except as provided in section seven of the act) the name of any person convicted of such violation, shall be stricken from the register and he shall no longer be a registered pharmacist in this state. It shall be the duty of the clerk of the court in which, or the justice of the peace before whom any conviction is had, to transmit forthwith, a certified copy of the record entry of such conviction to the commissioners of pharmacy, who shall thereupon strike the name of the person so convicted from the register. All fines collected under any of the provisions of this act shall be paid one-half to the state school fund and the other half to the commissioners of pharmacy.

Violation of act deemed a misdemeanor.
Penalty.

Certified copy of record entry of such conviction to be transmitted to commissioners; by whom.
Duty of commissioners in such cases.
Fines collected; how disposed of.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Acts repealed.

[Approved March 28, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER CXIII.

AN ACT to amend and re-enact section nineteen of chapter one hundred and fifty-nine of the code of West Virginia:

[Passed March 22, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That section nineteen of chapter one hundred and fifty-nine of the code of West Virginia, be amended and re-enacted so as to read as follows:

Code amended; section 19 of chapter 159 of.

19. If a person indicted for murder be found by the jury guilty thereof, they shall in their verdict find whether he is guilty of murder in the first or second degree. If they find him guilty of murder in the first degree, they may in their discretion further find that he be punished by confinement in the penitentiary. If such further finding be not added to their verdict, the accused shall be punished with death, but if added, he shall be punished by confinement in the penitentiary during his life. If the accused plead guilty of murder in the first degree, sentence of death or confinement in the penitentiary for life shall be pronounced upon him by the court, as may seem right, in the same manner and with like effect as if he had been found guilty by the verdict of a jury.

Trial; what jury to find in case of murder.

If accused plead guilty, what sentence court to pronounce.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CXIV.

AN ACT to amend and re-enact sections five and six of chapter thirty-three, of the code of West Virginia, as amended and re-enacted by chapter thirty-two of the acts of one thousand eighteen hundred and eighty-one.

[Passed March 22, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That sections five and six of chapter thirty-three of the code of West Virginia, as amended and re-enacted by chapter thirty-two of the acts of one thousand eight hundred and eighty-one, be amended and re-enacted so as to read as follows:

Code amended; sections 5 and 6 of chapter 33 of, as amended by acts 1881.

5. The state tax on every license for theatrical performances in a city or town with a population of twenty thousand or more, shall be twenty dollars; in a city or town with a population of more than ten thousand, but less than twenty thousand, ten dollars; and in a city or town with a population less than ten thousand, five dollars for each week, and no such license shall be issued for any fraction of a week; *Provided*, That a theatre, opera house, or other permanent public show, shall have license to exhibit for three months for fifty dollars, or six months for seventy-five dollars, or for one year for one hundred dollars, in a city or town with a population of twenty

Tax on license for theatrical performances.

Provision as to theatres, etc., or other permanent public show.

For what a city, town, etc., may require license for.

Tax for such license; exception as to city of Wheeling. Provision of section not to apply to literary, etc., associations.

State tax on license to exhibit circus, menagerie, etc.

thousand or more; and for three months, twenty-five dollars, or six months for thirty-seven dollars and fifty cents, or for one year seventy-five dollars in a city or town with a population more than ten thousand and less than twenty thousand; and in a city or town with a population less than ten thousand, for three months, twelve dollars and fifty cents, for six months, eighteen dollar and seventy-five cents, and for one year twenty five dollars. Whenever anything for which a state license is required, by this section, is to be done within any incorporated city, town or village, (whether incorporated under general or special law), the council may require a city, town or village license therefor, and may impose a tax thereon for the use of the city, town or village, not exceeding, except in the city of Wheeling, the amount of state tax thereon. *Provided*, That the provisions of this section shall not apply to literary, dramatic, musical or benevolent societies, where they do not give exhibitions outside of their own counties.

6. The state tax on every license to exhibit a circus shall be fifty dollars for each exhibition; on a license to exhibit a menagerie, twenty-five dollars for each exhibition; and on a license to exhibit any other public show, five dollars for each exhibition. If a circus and menagerie be exhibited at the same time and place, together or separately, a license for each shall be required and the proper tax thereon be paid.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXV.

AN ACT to amend and re-enact sections one, two and three of chapter sixty of the code of West Virginia, as amended and re-enacted by chapter one hundred and forty-eight of the acts of one thousand eight hundred and seventy-two and seventy-three.

[Passed March 22, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That sections one, two and three of chapter sixty of

the code of West Virginia, as amended and re-enacted by chapter one hundred and forty-eight of the acts of one thousand eight hundred and seventy-two and seventy-three be amended and re-enacted so as to read as follows:

1. Every fence of the height and description hereinafter mentioned, shall be deemed a lawful fence as to any stock named in the third section, which could not creep through the same, that is to say:

I. If built of common rails, known as the worm fence, four and one-half feet high.

II. If built with posts and rail, or posts and wire, or posts and plank or pickets, four feet.

III. If built with stone, two feet wide at the base, three and one-half feet high.

IV. If a hedge fence four feet high:

If any such fence be built upon a mound, the same from the bottom of the ditch shall be included in estimating the height of the fence.

2. All rivers and streams, and parts thereof, within this state, which are lawful fences at the time this chapter takes effect, under existing laws, shall continue such until otherwise ordered by the county court of the county.

And hereafter the county court of any county may declare any river or stream in its county, or which constitutes a boundary line thereof a lawful fence, for such places and for such distances as it may deem proper, and may discontinue any such river or stream, or any part thereof as a lawful fence, which has already been or shall be declared to be such.

3. If any horses, mules, cattle, sheep, hogs or goats, shall enter into any grounds enclosed by a lawful fence, the owner or manager of any such animal shall be liable to the owner of such grounds for any damages he may sustain thereby; and for every succeeding trespass by such animal, the owner thereof shall be liable for double damages. And after having given at least five days notice in writing to the owner or manager of such animal of the fact of two previous trespasses, the owner or occupier of such grounds shall be entitled to such animal if it be found again trespassing on said grounds.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CXVI.

AN ACT to amend and re-enact chapter one hundred and nineteen of the code of West Virginia, concerning attorneys-at-law, as amended and re-enacted by chapter one hundred and forty-six of the acts of one thousand eight hundred and seventy-two and seventy-three.

[Passed March 21, 1882.]

Be it enacted by the Legislature of West Virginia :

Code amended;
chapter 119 of,
as amended by
acts 1872-3.

1. That chapter one hundred and nineteen of the code of West Virginia, as amended and re-enacted by chapter one hundred and forty-six of the acts of one thousand eight hundred and seventy-two and seventy-three, is hereby amended and re-enacted so as to read as follows:

CHAPTER CXIX.

OF ATTORNEYS-AT-LAW.

License to
practice law; by
whom granted;
when and upon
what certificate.

1. Any person desiring to obtain a license to practice law in the courts of this state, must appear before the county court of the county in which he has resided for the last preceding year, and prove to the satisfaction of such court that he is a person of good moral character, that he is twenty-one years of age, and that he has resided in such county for one year next preceding the date of his appearance; and upon such proof being made the court shall make and enter an order on its record accordingly. And any three judges of the supreme court of appeals, or of the circuit courts of this state, may, upon the production of a duly certified copy of such order, and after a full and thorough examination of the applicant upon all the various branches of the law, a knowledge of which is necessary in the practice thereof in this state, if they find him duly and sufficiently qualified to practice law in the courts of this state, grant him a license in writing to do so; and such license shall show upon its face that all the provisions of this section have been fully complied with.

Person authorized to practice in another state may practice here.

2. Any person duly authorized and practicing as counsellor or attorney-at-law in any state or territory of the United States, or in the District of Columbia, may practice as such in the courts of this state, upon producing before the courts in which he intends to practice, satisfactory evidence of his being so authorized.

Oaths of attorneys generally.

3. Every attorney-at-law shall, before each court, in which he proposes to practice, take the following oath, that is to say: If he be a resident of this state, an oath to support the constitution of the United States and the con-

stitution of the state of West Virginia, and to honestly demean himself in the practice of the law, and to the best of his ability execute his office of attorney-at-law; and if he be not a resident of this state, an oath to support the constitution of the United States, and to honestly demean himself in the practice of the law, and to the best of his ability execute his office of attorney-at-law.

4. If any person shall practice law in any court of this state, without being so licensed, or without taking the oaths required, he shall forfeit one hundred and fifty dollars for each case in which he shall appear as attorney, one half whereof shall go to the informer. But this penalty shall not be incurred by any attorney for instituting suits in the circuit courts after obtaining a license, if he shall qualify at the first term thereafter of the circuit court of any county of the circuit in which he resides.

Penalty for practicing without being licensed and qualified.

In what cases penalty not incurred.

5. Any court before which any attorney has been qualified, or proof made to it, that he has been convicted of any felony may supersede his license.

Court may supersede license; when.

6. If the supreme court of appeals or any circuit or county court observe any malpractice therein by any attorney, or if complaint be made to any of said courts of malpractice by any attorney therein, such court shall order the attorney to be summoned to show cause why his license shall not be suspended or annulled, and upon the return of the summons executed, if the attorney appear and deny the charge of malpractice, a jury shall be impaneled to try the same; and if the attorney be found guilty, or if he fail to appear and deny the charge, the court may either suspend or annul the license of such attorney as in its judgment shall seem right; and whenever a judgment or decree shall be standing or rendered in either of said courts against an attorney for money by him collected as such, it shall be the duty of such court to suspend the license of such attorney until such judgment or decree shall be satisfied.

How and for what license of attorney may be suspended or annulled.

7. Nothing in the preceding section shall affect the right of any court to require from an attorney therein security for his good behavior, or to fine him for a contempt of the court.

Security for good behavior or fine for contempt, not affected.

8. If any clerk, sheriff or any deputy of either, or any person interested in the profits of any such officer, shall act as attorney at-law in any case in any court of which such clerk or sheriff is an officer, he shall forfeit thirty dollars.

Forfeiture by clerk or sheriff, etc., for practicing as attorney in certain courts.

9. Every attorney-at-law shall be liable to his client for any damages sustained by the neglect of his duty as such attorney.

Attorney liable to client for damages incurred by neglect of duty.

10. If any attorney-at-law or agent shall by his negligence or improper conduct, lose any debt or other money, he shall be charged with the principal of what is so lost, and interest thereon, in like manner as if he had received such principal, and it may be recovered from him by suit or motion.

How far liable for debts lost.

11. If any attorney receive money for his client as such attorney and fail to pay the same on demand, or within six months after receipt thereof, without good and sufficient reason for such failure, it may be recovered from him by suit or motion, and damages in lieu of interest not exceeding fifteen per centum per annum until paid, may be awarded against him, and he shall be deemed guilty of a misdemeanor and be fined not less than twenty nor more than five hundred dollars.

Remedy against attorney for failing to pay money collected

Deemed a misdemeanor; penalty.

12. Any attorney convicted under the eleventh section of this chapter, shall in addition to the punishment therein proscribed, be debarred from practicing as an attorney in any of the courts of this state, and the same shall be entered by the court as part of its judgment.

For what attorney debarred from practicing. To be entered as part of the judgment.

13. An attorney shall be entitled for his services as such, to such sum as he may contract for with the party for whom the service is rendered; and in the absence of such contract, he may recover of such party, what his services were reasonably worth.

What fee attorney entitled to.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Acts repealed.

[Approved March 27, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXVII.

AN ACT to amend and re-enact chapter one hundred and twenty-four of the code of West Virginia.

[Passed March 22, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter one hundred and twenty-four of the code of West Virginia, is hereby amended and re-enacted so as to read as follows:

Code amended; chapter 124 of.

CHAPTER CXXIV.

OF PROCESS AND THE ORDER OF PUBLICATION.

Of Process Generally.

1. Until the supreme court of appeals shall alter the Form of writs. forms of writs, the same may be as heretofore used, except so far as is otherwise provided.

2. Process from any court, whether original, *mesne* or Process; how directed and returnable; when and by whom it may be executed. final, may be directed to the sheriff of any county, except that process against a defendant (unless a railroad, canal, turnpike, telegraph or insurance company be defendant), to answer in any action brought under the second section of chapter one hundred and twenty-three of this code, shall not be directed to an officer of any other county than that wherein the action is brought. Any process may be executed on or before the return day thereof. If it appear to be duly served, and good in other respects, it shall be deemed valid, although not directed to any officer, or if directed to an officer, though executed by any other to whom it might lawfully have been directed. Process to commence suits, including writs of *scire facias*, *mandamus*, *quo warranto*, *certiorari*, *prohibition* and the *alias* or other process, where the original is returned not executed, may also be served by any credible person; and the return of such person, verified by his affidavit, shall be evidence of the manner and time of service. Any process shall be returnable within ninety days after its date, to the court on the first day of a term, or in the clerk's office, to the first Monday in a month, or to some rule day, except as follows: a summons for a witness shall be returnable on whatever day his attendance is desired, and an order of attachment may be returnable to the next term of the court, although more than ninety days from the date of the order, and process awarded in court may be returnable as the Summons for witness; when returnable. Also order of attachment. Process awarded in court; when returnable. court shall direct.

3. If at the return day of any process, it be not returned When new process may issue. executed, an *alias* or other proper process may be issued, without waiting (where the first process is returnable to a term) for the subsequent process to be awarded at rules. And where, for want of a return of the first process against a defendant, any subsequent process is issued, if the former was executed, the officer shall not execute the latter, but shall return the former if it is in his possession, and if he has it not, shall return the latter with an endorsement of the execution of the former, and the proceedings thereupon shall be as if the first had been duly returned. If officer has executed and not returned former process, what is to be done.

4. Every officer who attends a court shall, within five Officer's duty after every rules days after the end of any rules, go to the clerk's office and receive all process, orders, and decrees to be executed by

Penalty for failure.

him, and give receipts therefor. For any failure so to do, he shall forfeit fifty dollars.

Process Commencing Suit, etc.

Process commencing suit; how issued; not to be altered afterwards, except, etc.

5. The process to commence a suit shall be a writ commanding the officer to whom it is directed, to summon the defendant to answer the bill or action. It shall be issued on the order of the plaintiff, or his attorney or agent, and shall not, after it is issued, be altered, nor any blank therein filled up, except by the clerk.

Service of process and summons for witness; how made; copies to be made out, etc.

6. Any summons or *scire facias* against any person, including a summons for a witness, may be served as a notice is served under the first section of chapter one hundred and twenty-one of this code, to which end the clerk issuing such process, unless otherwise directed, shall deliver or transmit therewith as many copies thereof as there are persons named therein, on whom it is to be served. No judgment by default on a *scire facias* or summons shall be valid, if it become final within thirty days after the service of such process.

When judgment by default not valid.

Process against or notice to a corporation; how served.

7. It shall be sufficient to serve any process against or notice to a corporation on its mayor, president or other chief officer, or any person appointed pursuant to law to accept service of process for it, or in his absence, from the county or municipal corporation, to the officer of which the process is directed, it shall be sufficient to serve the notice or process, if the corporation to be served be a city, town or village, on two members of the council; and if it be not a city, town or village, on the secretary, cashier, or treasurer, and if there be none such or he be absent, on a member of the board of trustees, directors or visitors. If there be not within the state any other person on whom there can be service as aforesaid, service on a director, agent, (including in the case of a railroad company, a depot or station agent in actual employment of the company), or other officer of the corporation against which the case is shall be sufficient.

How served on corporation organized, etc. under chapter 64 of code.

8. It shall be sufficient service of any process on, or notice to a corporation which shall have been formed or which may be hereafter formed under, or which has accepted, or which may hereafter accept, the provisions of chapter fifty-four of this code, and which, within the time prescribed by the twenty-fourth section of said chapter, shall fail to comply with the said section, if a copy of such process or notice be delivered by a proper officer or person to any person at or in charge of its principal office or place of business; or such corporation may be proceeded against by order of publication.

9. In a case against any common carrier (other than a

corporation) for any liability as such, it shall be sufficient to serve any process against or notice to the carrier, or any agent, or the driver, captain or conductor of any vehicle of such carrier, and to publish a copy of the process or notice as an order is published under the twelfth section of this chapter.

Service on common carrier other than a corporation.

Returns of Nihil ; and Order of Publication.

10. No judgment shall be rendered on a *scire facias*, or in any other case, on returns of *nihil*.

No judgment on returns of nihil.

11. On affidavit that a defendant is not a resident of this state ; or that diligence has been used by or on behalf of the plaintiff to ascertain in what county he is, without effect ; or that process, directed to the officer of the county in which he resides or is, has been twice delivered to such officer more than ten days before the return day, and been returned without being executed ; or that the defendant is a corporation, and that no person can be found in the county upon whom the process can be legally served ; an order of publication may be entered against such defendant. And in any suit in equity, where the bill states that the names of any persons interested in the subject to be divided or disposed of are unknown, and makes such persons defendants by the general description of parties unknown, on affidavit of the fact that the said names are unknown, an order of publication may be entered against such unknown parties. Any order under this section may be entered either in court or at the rules. In a proceeding by petition, there may be an order of publication in like manner as in a suit in equity.

On what affidavit order of publication is entered.

It may be in court or at rules. May be made in proceeding by petition.

12. Every order of publication shall state briefly the object of the suit, and require the defendants against whom it is entered, or the unknown parties to appear within one month after the date of the first publication thereof, and do what is necessary to protect their interests. It shall be published once a week for four successive weeks, in some newspaper published in the county in which the order is made or directed, if one is so published, unless the circuit court of such county otherwise order ; and if no newspaper be published in the county, then in such other newspaper as the court may proscribe ; or if none be so proscribed as the clerk may direct. It shall be deemed to have been duly published on the day of the fourth publication thereof. It shall also be posted at the front door of the court-house of the county wherein the court is held, at least twenty days before judgment or decree is rendered.

What order of publication must state ; how it must be published and posted.

13. When such order shall have been so posted and published, if the defendants against whom it is entered, or the unknown parties, shall not appear at the next term of the

Within what time case may be tried or heard after publication.

Personal service of summons, etc., may be made on non-resident defendant, etc. Effect of such service. Return of such service, how and what to show. What judgments, etc., to be entered.

court, after such publication is completed, the case may be tried or heard as to them. Personal service of a summons, *scire facias*, or notice may be made on a non-resident defendant out of this state, which service shall have the same effect, and no other, as an order of publication, duly posted and published against him. In such case the return must be made under oath, and must show the time and place of such service, and that the defendant so served is a non-resident of this state. Upon any trial or hearing under this section, such judgment, decree or order shall be entered as may appear just.

Within what time case may be reheard and injustice corrected.

14. Any unknown party or other defendant, who was not served with process in this state, and did not appear in the case before the date of such judgment, decree or order, or the representative of such, may, within five years from that date, if he be not served with a copy of such judgment, decree or order, more than one year before the end of said five years, and if he was so served, then within one year from the time of such service, file his petition to have the proceedings reheard in the manner and form provided by section twenty-five of chapter one hundred and six of this code, and not otherwise; and all the provisions of that section are hereby made applicable to proceedings under this section.

Order of Publication by Clerk of Court of Appeals Authorized.

Clerk of court of appeals authorized to issue order of publication; when and in what cases.

15. When, by the return of any officer, of process issued to answer any appeal or *supersedeas* now pending or which may be hereafter pending in the supreme court of appeals in this state, or when, from affidavits filed with the clerk of said court, it shall appear that the appellee or defendant in any such appeal or *supersedeas* is a non-resident of this state, or that the names or places of residence of such parties are unknown, so that process cannot be served upon them, where such service may be necessary, it shall be lawful for the clerk of said court in vacation, upon application, to take and issue, on the first Monday in any month, an order of publication against such absent or unknown parties, requiring them to appear on a certain day, to be designated in said order, then and there to answer the said appeal or *supersedeas*, and to have a rehearing of the whole matter therein contained.

What such order to contain.

How such order entered, published and posted.

16. Such order of publication shall be entered upon the order book of the court by the clerk, and signed by him and a certified copy of such order shall be inserted once a week for four successive weeks in some newspaper to be named therein, and a copy of said order shall be posted at the front door of the building in which said court is held; and when it shall appear that said order of publication has been duly published and posted as aforesaid, the court may

Effect of such order.

proceed to hear and decide such causes in the same manner as if the said parties had been personally served with process. *Provided, however,* that the order of publication shall Proviso. have been executed as aforesaid, at least thirty days before the day on which any such cause may be called for hearing.

17. Any unknown party or other defendant who was Right reserved to absent defendant. not served with process in this state and did not appear in the cause, may have the same reheard, and any injustice in the proceedings corrected, within the time prescribed by the fourteenth section of this chapter.

Acts Repealed.

2. All acts and parts of acts coming within the purview Acts repealed. of this act, and inconsistent therewith, are hereby repealed.

[Approved March 27, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXVIII.

AN ACT amending and re-enacting chapter one hundred and forty-four of the code of West Virginia, concerning offenses against the person.

[Passed March 22, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter one hundred and forty-four of the code of West Virginia be, and the same is hereby amended and re-enacted so as to read as follows: Code amended; chapter 144 of.

CHAPTER CXLIV.

OF OFFENSES AGAINST THE PERSON.

Homicide and Poisoning.

1. Murder by poison, lying in wait, imprisonment, starving, or any willful, deliberate, and premeditated killing, or in the commission of, or attempt to commit, arson, rape, robbery or burglary, is murder of the first degree. All other murder is murder of the second degree. In an indictment for murder and manslaughter, it shall not be necessary to set forth the manner in which, or the means Murder in first degree; crime defined. by which the death of the deceased was caused, but it shall All other, is murder in second degree. What sufficient allegation in indictment for

be sufficient in every such indictment to charge that the defendant did feloniously, willfully, maliciously, deliberately and unlawfully slay, kill and murder the deceased. An indictment for murder and manslaughter shall be sufficient if it be in form or effect as follows:

Form of indictment for murder.

“*State of West Virginia, ——— County, to-wit:*

The grand jurors of the state of West Virginia, in and for the body of the county of —, upon their oaths present that A— B—, on the — day of —, eighteen —, in the said county of —— feloniously, willfully, maliciously, deliberately and unlawfully did slay, kill and murder one C— D—, against the peace and dignity of the state.” A grand jury may, in a case of homicide, which in their opinion amounts to manslaughter only, and not to murder, find an indictment against the accused for manslaughter, and in such case the indictment shall be sufficient if it be in form or effect as follows:

Form of indictment for manslaughter.

“*State of West Virginia, ——— County, to-wit:*

The grand jurors of the state of West Virginia, in and for the body of the county of —, upon their oaths present that A— B—, on the — day of —, eighteen—, in the said county of ——, feloniously, and unlawfully did kill and slay one C— D—, against the peace and dignity of the state.

Of what the accused may be convicted.

Upon the trial of such indictment the accused may be convicted of either voluntary or involuntary manslaughter, as the evidence may warrant.

Punishment for murder in first degree.

2. Murder of the first degree shall be punished with death, except as provided in chapter one hundred and fifty-nine of this code.

For murder in second degree.

3. Murder of the second degree shall be punished by confinement in the penitentiary not less than five nor more than eighteen years.

For voluntary manslaughter.

4. Voluntary manslaughter shall be punished by confinement in the penitentiary not less than one nor more than five years.

Involuntary manslaughter a misdemeanor.

5. Involuntary manslaughter shall be a misdemeanor.

Where offender prosecuted if death occurs out of this state

Where prosecuted if mortal stroke be given out of state, but person dies within the state.

6. If a person be stricken or poisoned in, and die by reason thereof, out of this state, the offender shall be as guilty, and be prosecuted and punished, as if the death had occurred in the county in which the stroke or poison was given or administered. And if any person be stricken or poisoned out of this state, and die by reason thereof within this state, the offender shall be as guilty, and may be prosecuted and punished, as if the mortal stroke had been given, or poison administered in the county in which the person so stricken or poisoned may so die.

7. If any person administer, or attempt to administer, any poison or destructive thing in food, drink, medicine or otherwise, or poison any spring, well or reservoir of water, with intent to kill or injure another person, he shall be confined in the penitentiary not less than three nor more than eighteen years.

Administering poison, etc., with intent to kill, etc.

Punishment.

8. Any person who shall administer to, or cause to be taken by, a woman, any drug or other thing, or use any means with intent to destroy her unborn child, or to produce abortion or miscarriage, and shall thereby destroy such child or produce such abortion or miscarriage, shall be confined in the penitentiary not less than three nor more than ten years. No person, by reason of any act mentioned in this section, shall be punishable where such act is done in good faith, with the intention of saving the life of such woman or child.

Attempting to procure abortion. Penalty if child be destroyed, etc.

To whom this section not to apply.

Shooting, Stabbing, Robbery or Extorting Money.

9. If any person maliciously shoot, stab, cut or wound any person, or by any means cause him bodily injury with intent to maim, disfigure, disable or kill, he shall, except where it is otherwise provided, be punished by confinement in the penitentiary not less than two nor more than ten years. If such act be done unlawfully, but not maliciously, with the intent aforesaid, the offender shall, at the discretion of the court, either be confined in the penitentiary not less than one nor more than five years, or be confined in jail not exceeding twelve months, and fined not exceeding five hundred dollars.

Shooting, stabbing, cutting, etc., with intent to kill, etc.

Punishment

If such be done unlawfully, but not maliciously, what punishment imposed.

10. If any person in the commission of, or attempt to commit a felony, unlawfully shoot, stab, cut or wound another person, he shall, at the discretion of the court, either be confined in the penitentiary not less than two nor more than ten years, or be confined in jail not exceeding one year and fined not exceeding one thousand dollars.

Shooting, etc., in committing or attempting a felony.

Penalty.

11. If any person unlawfully shoot at another person in any street in a city, town or village, or in any place of public resort, he shall be confined in jail not less than six months, nor more than three years, and be fined not less than one hundred, nor exceeding one thousand dollars.

Shooting in street, etc., or any place of public resort. Penalty.

12. If any person commit robbery, being armed with a dangerous weapon, he shall be confined in the penitentiary not less than ten years; if not so armed, he shall be confined therein not less than five years.

Robbery. Punishment for.

13. If any person threaten injury to the character, person or property of another person, or to accuse him of any offense, and thereby extort money or pecuniary benefit, he

Extorting money by threatening injury, etc.

shall be confined in the penitentiary not less than one, nor more than five years.

14. If any person seize, take or secrete a child from the person having lawful charge of such child, with intent to extort money or pecuniary benefit, he shall be confined in the penitentiary not less than two nor more than ten years. Or if any person, other than the father or mother, illegally seize, take or secrete a child from the person having lawful charge of such child, he shall be confined in the penitentiary not less than one nor more than five years, or at the discretion of the court, in the common jail, not exceeding one year, and be fined not exceeding one thousand dollars.

Extorting money by secreting, etc., a child.
Punishment for Child stealing.

Punishment for

Rape, Abduction and Kidnaping.

15. If any person carnally know a female of the age of twelve years or more, against her will, by force, or carnally know a female child under that age, he shall be punished with death or by confinement in the penitentiary as follows: If the jury, upon the trial of an indictment under this section, return a verdict of guilty, merely, the accused shall be punished with death; but if the jury add to such verdict that the accused be punished by confinement in the penitentiary, he shall be confined in the penitentiary not less than seven, nor more than twenty years.

Rape; carnal knowledge of female child.
Punishment for

Abduction of female, etc.
Punishment for

16. If any person take away or detain against her will a female, with intent to marry or defile her, or cause her to be married or defiled by another person, or take from any person having lawful charge of her, a female child under twelve years of age, for the purpose of prostitution or concubinage, he shall be confined in the penitentiary not less than three nor more than ten years.

Injury in Public Conveyance and Provisions for the Prevention Thereof.

17. If any driver, conductor or captain of any vehicle or boat, for public conveyance, or any person in charge of such vehicle or boat shall, in the management of such vehicle or boat willfully or negligently inflict bodily injury on any person he shall be punished as for a misdemeanor.

Injuries in public conveyances, by drivers, captains, etc.
How punished.

18. If any railroad company in this state shall keep all or any of the doors of their passenger cars, in which passengers are being carried, locked while such cars are in motion, such company shall be subject to a fine of not less than one hundred dollars. The agent, conductor, or other person in charge of such cars, shall be held liable criminally for a violation of the foregoing provision, and shall, for every such violation, be fined not exceeding one thousand dollars, and imprisoned not exceeding one year.

Railroad company to keep doors of passenger cars unlocked; when.
Penalty. Liability of conductor for violation.
Fine.

Dueling.

19. If any person fight a duel in this state, and in so doing inflict a mortal wound, he shall be deemed guilty of murder. And if any person resident in this state, by previous agreement made within the same, fight a duel without the state, and in so doing inflict a mortal wound, he shall be deemed guilty of murder in this state.

Killing in a duel, murder.

Killing in duel out of state; when deemed murder in this state.

20. If any person resident in this state, by like agreement, be the second of either party in such duel as is mentioned in the preceding section and be present at such duel when such mortal wound is inflicted he shall be deemed an accessory before the fact to the crime of murder in this state.

Provision as to seconds.

21. An offender under either of the two preceding sections may be prosecuted in the county in which the death occurs, if it occur within the state; and if not, in any county in which the offender may be found.

In what county offender prosecuted.

22. If any person fight a duel, though no death ensue, or send or deliver to another a challenge, or message intended to be a challenge, oral or written, to fight a duel, though no duel ensue, he shall be confined in jail not more than one year, and be fined not exceeding one thousand dollars.

Punishment for fighting duel, etc., when no death ensues.

23. And if any person accept or knowingly carry or deliver any such challenge, or message, or advise, encourage or promote such duel, he shall be confined in jail not more than six months, and fined not exceeding five hundred dollars.

Punishment for accepting or carrying challenge, or advising, etc., a duel.

24. If any person, resident in this state, leave the same for the purpose of eluding the provisions herein contained, respecting dueling or challenges to fight, and without the state engage in a duel (though no death ensue), or challenge another, or send or deliver a message intended to be a challenge to fight such duel, or accept or knowingly carry or deliver any such challenge, or message, or be present at the fighting of such duel as an aid, second, or surgeon, or advise, encourage or promote such duel, he shall be deemed as guilty and subject to the like punishment, as if the offense had been committed in this state.

If any person leave this state to evade the law and engage in duel, to what punishment subject

25. A person indicted in this state under the nineteenth, twentieth, twenty-first or twenty-fourth sections of this chapter, may plead his conviction or acquittal of the same offense, when committed in another state, in bar of such indictment.

Plea of former conviction or acquittal.

26. If any person post another, or in writing or in print, use any reproachful or contemptuous language to, or concerning another, for not fighting a duel, or for not send-

Posting or upbraiding another for not being engaged

In a duel;
penalty.

ing or accepting a challenge, he shall be confined in jail not more than six months, or fined not exceeding one hundred dollars.

Duty of justice
suspecting duel
is about to be
fought.

27. If any justice or judge have good cause to suspect that any persons are about to be engaged in a duel, he may issue his warrant to bring them before him, and if he think proper to take from them a recognizance to keep the peace, he shall insert therein a condition that they will not, during the time for which they may be bound, be concerned in a duel, directly or indirectly.

[Approved March 27, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER CXIX.

AN ACT for the more effectual protection of persons dealing in timber.

[Passed March 22, 1882.]

Be it enacted by the Legislature of West Virginia :

Persons, etc.,
dealing in tim-
ber; by what
name known;
may adopt trade
mark.

Trade mark.

Notice by deal-
ers in timber
who desire to
adopt such
mark.

How such
writing
acknowledged
and where
recorded.

How published.

1. Any person, firm or corporation dealing in timber in any form shall be called and known as "timber dealers," and as such may adopt a trade mark in the manner and with the effect hereinafter provided.

2. Every such dealer desiring to adopt a trade mark, may do so by the execution of a writing in form and effect as follows :

Trade-Mark.

"Notice is hereby given that I (or we, &c., as the case may be) have adopted the following trade-mark to be used in my (or our, &c.,) business as timber dealer, (or dealers,) to-wit: (Here insert the words, letters, figures, &c., constituting the trade mark, or if it be any devise other than words, letters or figures, insert a *fac similitie* thereof.) Dated this — day of —, eighteen —. A — B —." The said writing shall be acknowledged or proved for record in the same manner as deeds are acknowledged or proved, and shall be recorded in the office of the clerk of the county court of the county in which the principal office or place of business of such timber dealer may be, and also in the office of the secretary of state, and a copy thereof shall be published at least once in each week for four suc-

cessive weeks in some newspaper printed in such county, or if there be no such paper printed therein, then in some newspaper of general circulation in such county.

3. Every trade-mark so adopted shall from the date thereof be the exclusive property of the person, firm or corporation adopting the same, and any other person, firm or corporation knowingly using or attempting to use such trade-mark without the written consent of the proprietor thereof, shall be guilty of a misdemeanor and fined not less than twenty nor more than two hundred dollars for each offense, and shall moreover be liable to the proprietor of such trade mark for all damages sustained by such proprietor by reason of such use of said trade-mark.

Trade-mark to be exclusive property of person, etc., adopting same.

Penalty for using same by any other person, etc.

4. The proprietor of such trade-mark shall in using the same, cause it to be plainly stamped, branded or otherwise impressed upon each piece of timber, upon which the same is placed, and any person who shall intentionally and without lawful authority, remove, deface or destroy said trade-mark, shall be guilty of a misdemeanor and subject to all the pains and penalties and liable to the same damages as are provided for in the next preceding section.

How such trade-mark used by proprietor.

Penalty for defacing or destroying same intentionally, etc.

5. If any person knowingly and unlawfully take and carry away, secrete, destroy or convert to his own use, any timber upon which said trade-mark is stamped, branded or impressed as aforesaid, he shall be deemed guilty of larceny thereof and punished as in other cases of larceny; and if the value of such timber be five dollars, or more, he shall be guilty of grand larceny. And if any person shall intentionally put any such timber in such a position or place so remote from the stream from which it was taken, or on which it was afloat, as to render it inconvenient or unnecessarily expensive to replace the same in such stream, he shall be guilty of a misdemeanor, and fined not less than twenty dollars.

Persons knowingly, etc., secreting, destroying, etc., timber so stamped, etc., guilty of larceny.

Penalty for placing such timber remote from stream, etc.

6. When timber is purchased by the proprietor of any such trade-mark and the said trade-mark is placed thereon as hereinbefore provided, such timber shall thenceforth be deemed the property of such purchaser, without any other or further delivery thereof, and such timber shall thereafter be at the risk of the purchaser, unless otherwise provided by contract in writing between the parties.

Effect of such trade-mark when placed on timber purchased.

7. Every person who shall take up and secure any saw-logs, or other logs or trees prepared for the purpose of sale, or any cross or railroad ties, boards, planks, staves, heading or other timber prepared for market, of another, found adrift in the Ohio, Great Kanawha or Little Kanawha river, in which there is no boom in use for the preservation thereof below the point where they are so found, whether the same have thereon any such trade-mark or

Persons taking up and securing logs, etc., ties, staves, etc., in certain rivers and at certain points, entitled to compensation

What compensation to be paid.

When such timber so secured may be sold; and how.

How proceeds disposed of.

What done if no person appear within one year and establish right to such proceeds.

What to be presumed in absence of satisfactory proof to contrary, in any suit, etc., as to title to timber upon which such trade-mark has been placed. Penalty for falsely, etc., putting trade-mark on timber.

not, shall be entitled to receive from the owner thereof a compensation for so much thereof as he shall deliver to such owner, as follows: For each saw-log or other log or tree prepared for sale, which is not more than thirty inches in diameter, twenty-five cents, and for all others fifty cents each. Except that the price for catching and securing oak logs that are not less than eighteen inches in diameter at the top and fifty feet or more in length shall not exceed the sum of seventy-five cents each. For each cross or railroad tie six cents. For boards or plank, if caught in rafts or large bodies fifty cents per thousand feet board measure, for twenty thousand feet or a less quantity, and over twenty thousand feet, twenty-five cents per thousand feet board measure; but if the same be not in rafts, but loose and scattered, two dollars and fifty cents per thousand feet board measure, and for staves and headings three dollars per thousand, for all such as are marketable, to be paid by the owner thereof, if required, before the delivery of the same to him. If the owner of any such logs, trees, ties, boards, plank, staves or headings fail to pay the sums so chargeable thereon, within sixty days from the day they are so taken up, they may be sold at the instance of the person to whom such charges are due, by a constable or the sheriff of the county, at public auction, to the highest bidder, upon thirty days notice posted on the front door of the court-house of the county in which the sale is to be made, and at the place of the sale thereof, the officer making said sale, shall from the proceeds thereof, pay to the person who took up said logs, trees, ties, boards, plank, staves or headings, the sum to which he is entitled therefor as aforesaid, and retain the balance, after deducting his commissions (which shall be the same as upon sales under execution) for the use of the owners. But if no person shall appear and establish his right to such proceeds within one year after such sale, he shall place the same to the credit of the distributable school fund of his county, and report the amount thereof to the county superintendent of schools therein.

8. In any action, suit or contest in which the title to any timber upon which any such trade-mark has been placed as aforesaid, shall come in question, it shall be presumed that such timber was the property of the proprietor of such trade-mark, in the absence of satisfactory proof to the contrary; and any person who shall falsely or fraudulently place any trade-mark on timber not the property of the proprietor thereof, shall be guilty of a misdemeanor and fined not less than one hundred nor more than five hundred dollars, and imprisoned not less than one nor more than twelve months for each and every such offense.

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXX.

AN ACT to amend and re-enact chapter one hundred and thirty-one of the code of West Virginia.

[Passed March 25, 1882.]

Be it enacted by the Legislature of West Virginia :

1. Chapter one hundred and thirty-one of the code of West Virginia, is hereby amended and re-enacted so as to read as follows : Code amended; chapter 131 of.

CHAPTER CXXXI.

OF THE COURT DOCKET; INQUIRY OF DAMAGES; TRIAL BY JURY; AND JUDGMENTS AND DECREES OF THE COURT FOR MONEY.

Of the Court Docket and Order in which Cases are Heard.

1. Before every term of a circuit court, the clerk shall make out a docket of the following cases pending, to-wit : Docket in circuit court; how made out, etc., and cases disposed of.
First. Cases of the state; and, *Secondly.* Motions and actions, in the order in which the notices of the motions were filed, or in which the proceedings at rules in the actions were terminated, docketing together as new cases, those not on the docket at the previous term. He shall, under the control of the court, set the cases to certain days; and the docket shall be called and the cases on it tried or disposed of for the term in that order, except that the court may for good cause take up any case out of turn.

2. Before every term of a circuit court the clerk shall make out a separate docket of chancery cases in which there are motions, and of other chancery cases which have been set for hearing as to any party, or which the court is to hear upon a plea, demurrer or exceptions to an answer, and during such term every cause on said docket shall be called and disposed of. Chancery cases; separate docket for. Every cause on docket to be called, etc.

3. Any party asking the court to hear a case may, if the court refuse to hear it, have his application spread upon the record, with a statement of the facts in relation thereto. Remedy if court refuse to hear a case.

Power of Court to Have a Trial by Jury, or Inquiry of Damages.

4. A circuit court wherein is pending a chancery case,

Court may direct an issue to be tried in chancery cause; where tried.

No new trial if verdict set aside: what court to do. No issue out of chancery in any other case. What provisions section not to conflict with.

In other cases court may have issue tried or damages inquired into by jury; Province of court at trial. When court may order separate verdict, etc.

Action of court subject to review. When general verdict to control special.

When case, when there is to be an enquiry of damages, may be tried. What required if continuance be asked.

When court may try cause and render judgment without jury.

Amendments of pleadings at trial.

in which there is such a conflict in the evidence, as in the opinion of such court, to render it proper, may direct an issue thereon to be tried in such court or in any other circuit court. Although the verdict on such issue may be set aside, there shall be no new trial thereof, but the court may proceed to decree as if no issue had been directed. No issue out of chancery shall be directed in any other case. Nothing in this section contained shall be construed to conflict with any of the provisions of chapter seventy-seven of this code.

5. A circuit court may in any case before it, other than a chancery case, have an issue tried, or an inquiry of damages made by a jury, and determine all questions concerning the legality of evidence and other matters of law which may arise. Upon the trial of any issue or issues to a jury, whether under this section or not, the court may on motion of any party, direct the jury, in addition to rendering a general verdict, to render separate verdicts upon any one or more of the issues, or to find in writing upon particular questions of fact to be stated in writing. The action of the court upon such motion shall be subject to review as in other cases. Where any such separate verdict or special finding shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

6. At the next term after an order at the rules for an inquiry of damages, the same may be tried and a final judgment rendered therein, unless good cause be shown for a continuance. If a continuance be asked because of the absence of a witness, an affidavit must be filed, if required by any party opposing, setting forth, in addition to other matters required in order to obtain a continuance, the name of the witness and the testimony he is expected to give, and the affiant must, if required by any opposing party, submit to cross-examination in open court upon the matters set forth in such affidavit.

7. The court, in an action at law, if neither party require a jury, or if the defendant has failed to appear, shall ascertain the amount the plaintiff is entitled to recover in the action, if any, and render judgment accordingly.

Amendments of Pleadings at the Trial.

8. If at the trial of any action there appear to be a variance between the evidence and allegations or recitals, the court may, if in its opinion substantial justice will be promoted thereby allow the pleadings to be amended, and if it be made to appear that a continuance of the cause is thereby rendered necessary, such continuance shall be granted at the costs of the party making the amendment.

Bill of Exceptions—Argument of Counsel—Non-Suit.

9. In the trial of a case at law in which a writ of error or *supersedeas* lies to the court of appeals, a party may except to any opinion of the court, and tender a bill of exceptions, which (if the truth of the case be fairly stated therein) the judge shall sign, and it shall be a part of the record of the case. If any judge refuse to sign such bill of exceptions, he may be compelled to do so by the court of appeals by *mandamus*; in which case the bill of exceptions shall be a part of the record to the same extent as if it had been signed by the judge at the proper time. A party may avail himself of any error, appearing on the record, by which he is prejudiced, without excepting thereto.

As to bill of exceptions.

Judge to sign; when; how compelled.

When exception need not be taken.

10. Not more than two counsel shall argue in a civil case on the same side unless by leave of the court, and the argument of each counsel shall not occupy more than two hours, unless by like leave. The court may in its reasonable discretion still further limit the time of argument on each side.

Number of counsel to argue in civil case.

Time limited.

11. A party shall not be allowed to suffer a non-suit, unless he do so before the jury retire from the bar.

No non-suit after jury retires.

Retirement of Jury; Verdict and New Trial.

12. Depositions or other papers read in evidence may, by leave of the court, be carried from the bar by the jury.

What papers jury may carry out.

13. When there are several counts, one of which is faulty, the defendant may ask the court to instruct the jury to disregard it; yet if entire damages be given, the verdict shall be good.

Where several counts, one of which is faulty, what then.

14. The jury in any action founded on contract, may allow interest on the principal due, or any part thereof, and in all cases they shall find the aggregate of principal and interest due at the time of the trial, after allowing all credits, payments and set-offs, and judgment shall be entered for such aggregate with interest from the date of the verdict.

Judgment to be for principal and interest at time of trial.

To allow all credits, etc. What judgment entered.

15. In any civil case, the court before which a trial by jury is had may grant a new trial, unless it be otherwise specially provided. A new trial may be granted, as well where the damages are too small as where they are excessive. Not more than two new trials shall be granted to the same party in the same cause.

New trial; when it may be granted.

Number limited.

16. When there is a recovery on a bond conditioned for the payment of money, as well as in all cases where a judgment or decree is rendered or made for the payment of money, it shall be for the aggregate of principal and interest due at the date of the verdict if there be one,

On bond for payment of money, and cases where judgment, etc., is rendered for payment of

money, how judgment entered.

otherwise at the date of the judgment or decree, with interest thereon from such date, except in cases where it is otherwise provided.

Action on certain bonds, etc.

. 17. In an action on an annuity bond, or a bond for money, payable by installments, where there are further payments of the annuity, or further installments to become due after the commencement of the action, or in any other action for a penalty for the non-performance of any condition, covenant or agreement, the plaintiff may assign as many breaches as he thinks fit. If there be judgment for the plaintiff on a demurrer, or by confession, or by default or *nil dicit*, he may so assign after such judgment. The jury impaneled in any such action shall ascertain the damages sustained, or the sum due by reason of the breaches assigned, including interest thereon to the date of the verdict; and judgment shall be entered for what is so ascertained, provided, that if the action be on such annuity bond, or a bond for money, payable by installments, such judgment shall also be for such further sums as may be afterwards assessed, or be found due upon a *scire facias*, assigning a further breach. Such *scire facias* may be sued out from time to time by any person injured, against the defendant or his personal representative, and for what may be assessed or found due upon the new breach or breaches assigned, execution may be awarded.

Assignment of breaches. Same after judgment by default.

Jury to ascertain damages, etc.

Judgment; how entered, etc.

When *scire facias* may be sued out.

Judgment, etc., to bear interest from date, whether so stated therein or not.

18. Every judgment or decree for the payment of money, except where it is otherwise provided by law, shall bear interest from the date thereof, whether it be so stated in the judgment or decree or not.

When plaintiff may recover against part of defendants sued

19. In an action, founded on contract, against two or more defendants, although the plaintiff may be barred as to one or more of them, yet he may have judgment against any other or others of the defendants against whom he would have been entitled to recover if he had sued them only on the contract alleged in the declaration.

Judgment or decree against personal representative or committee; how entered.

20. A judgment or decree against any person, as the personal representative of a decedent, or committee of a convict or an insane person, for a debt due from such decedent, convict or insane person, may, without taking an account of the transactions of such representative or committee, be ordered to be paid out of the personal estate of such decedent, convict or insane person, in, or which shall come to, the hands of the representative or committee to be administered. When the court enters of record that if he had prudently discharged his duty, the suit or motion would not have been brought or made, the judgment or decree, so far as it is for costs, shall be ordered to be paid out of his own estate.

When such personal representative to pay costs.

21. A circuit court, after the fifteenth day of its term,

may make a general order allowing executions to issue on judgments or decrees after ten days from their date, although the term at which they are rendered be not ended. For special cause it may, in any particular case, except the same from such order, or allow an execution thereon at an earlier period.

When executions may issue during term by order of court.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Acts repealed;

[Approved March 27, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXXI.

AN ACT to amend and re-enact section thirty-five of chapter thirty-nine of the code of West Virginia as amended and re-enacted by chapter five of the acts of the legislature of one thousand eight hundred and eighty-one, formerly concerning boards of supervisors, but hereafter concerning county courts, their jurisdiction and power.

[Passed March 23, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That section thirty-five of chapter thirty-nine of the code of West Virginia, as amended and re-enacted by chapter five of the acts of the legislature of one thousand eight hundred and eighty-one, be and the same is hereby amended and re-enacted so as to read as follows:

Code amended; section 35 of chapter 39 of, as amended by acts 1881.

35. The county court of every county, within four weeks after the first session held after the beginning of each fiscal year, shall cause to be published in one or more papers for one week, if any be published therein, or if none be published therein, or if no such paper will publish the same for the price fixed by law therefor, the same shall be posted at each place of voting in the county, an account of the receipts and expenditures of the county during the previous fiscal year by separate items, arranged under distinct heads, and a specific statement of the debts of the county, showing the purpose for which each debt was contracted, the time when it became due, and up to what time the interest thereon has been paid. Such statement shall be prepared by the clerk, and for performing such

Publication of financial statement; when and how.

What to contain.

Clerk to prepare same; his

compensation. services, he shall be allowed a reasonable compensation by such court. And any clerk of a county court, who shall, within the time prescribed, fail to perform the duties required by the provisions of this section, shall forfeit the sum of fifty dollars.

Penalty on clerk for failure.

[Approved March 28, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXXII.

AN ACT amending and re-enacting sections one and eight of chapter one hundred and fifty-nine of the code of West Virginia.

[Passed March 23, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That sections one and eight of chapter one hundred and fifty-nine of the code of West Virginia be, and the same are hereby amended and re-enacted so as to read as follows :

Code amended; sections 1 and 8 of chapter 59 of.

When person indicted for felony may have a continuance.

No further continuance except for good cause.

If subsequent application be on account of absence of witnesses, what must be stated in affidavit. May be sworn and cross-examined. When and how accused may have depositions of absent witnesses taken.

1. When an indictment is found in the circuit court of any county against a person for felony, the accused, if in custody, or if he appear in discharge of his recognizance, or voluntarily, may have a continuance of his trial on said indictment at the term at which the indictment is found, if he file with the papers in the cause an affidavit showing the absence of one or more necessary and material witnesses for him on his said trial, whether he has had such witnesses summoned to attend the said term or not. But no further continuance shall be granted him, except for good and sufficient cause to be shown by affidavit, filed as aforesaid, and if the subsequent application be made on account of the absence of witnesses he shall state in his affidavit their names and residence as far as he is able to do so, and what efforts he has made to procure their attendance, at the term of the court at which the application for a continuance is made. He may also be sworn and cross-examined on such application for a continuance. If any witness for the accused be a non-resident of the state, or absent therefrom in any service or employment, so that service of a subpoena cannot be had upon him in this state, the accused may present to the court in which the case is pending or to the judge thereof in vacation, an affidavit showing such facts, and stating therein what he expects to prove by any such witness, with his name, residence, or place of service and employment, and, if, in the opinion of

such court or judge, the evidence of any such witness as stated in such affidavit is necessary and material to the defense of the accused on his trial, an order shall be made by such court or judge for the taking of the deposition of every such witness, upon such notice to the prosecuting attorney of the time and place of the taking thereof, as the court or judge shall proscribe. But of every such application to the judge in vacation, reasonable notice shall be given to the prosecuting attorney of the time and place at which it will be made. Every deposition so taken shall, so far as the evidence therein contained is competent and proper, be read to the jury on the trial of the case, with the same effect as if the witness were present and gave the same in person. The accused shall be allowed counsel, if he desire it, to assist him in his defense; and a copy of the indictment, and of the list of jurors selected or summoned for his trial, shall be furnished him, without fees, upon his request at any time before the jury is impaneled.

Notice.

Depositions read to jury; effect of.

Accused to be allowed counsel; and copy of indictment and list of jurors to be furnished him, without fees.

8. Persons indicted and tried jointly for felony shall be allowed to strike from the panel of jurors not more than eight thereof, and only such as they all agree upon shall be stricken therefrom; and if they cannot agree upon the names to be so stricken off, the prosecuting attorney shall strike therefrom a sufficient number of names to reduce the panel to twelve. If persons jointly indicted elect to be, or are tried separately, the panel in the case of each shall be made up as provided in the third section of this chapter.

Persons tried jointly; jury in case of.

How panel reduced to twelve.

If tried separately, how panel made up.

[Approved March 28, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXXIII.

AN ACT amending and re-enacting chapter one hundred and forty-nine of the code of West Virginia, concerning offenses against morality and decency.

[Passed March 24, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter one hundred and forty-nine of the code of West Virginia be and the same is hereby amended and re-enacted so as to read as follows :

Code amended; chapter 149 of.

CHAPTER CXLIX.

OFFENSES AGAINST MORALITY AND DECENCY.

Unlawful Marriages.

1. Any person being married, who, during the life of the former husband or wife, shall marry another person in this state, or if the marriage with such other person take place out of this state, shall thereafter cohabit with such other person in this state, shall be confined in the penitentiary not less than one nor more than five years.

Unlawful marriages; how punished.

2. The preceding section shall not extend to a person whose former husband or wife has been continually absent from such person for seven years next before the marriage of such person to another, and shall not have been known by such person to be living within that time; nor to a person who shall, at the time of the subsequent marriage, have been divorced from the bond of the former marriage or whose former marriage shall, at that time, have been declared void, by the sentence of a court of competent jurisdiction.

To what persons provisions of preceding section do not extend.

3. If any person marry in violation of the ninth or tenth sections of chapter sixty-three of this code he shall be confined in jail not more than six months, or fined not exceeding five hundred dollars, or both, at the discretion of the court. And if any persons, resident in this state, and within the degrees of relationship mentioned in those sections, shall go out of this state for the purpose of being married, and with the intention of returning, and be married out of it, and afterwards return to and reside in it, cohabiting as man and wife, they shall be as guilty, and be punished as if the marriage had been in this state. The fact of their cohabitation here as man and wife shall be evidence of their marriage.

Marriage with in prohibited degrees punished.

Such marriage celebrated out of state; when punishable therein.

Cohabitation in this state evidence of such marriage.

4. If any clerk of the county court knowingly issue a marriage license contrary to law, he shall be confined in jail not more than one year, or fined not exceeding five hundred dollars, or both, at the discretion of the court.

Issuing license contrary to law; how punished.

5. If any person knowingly perform the ceremony of marriage without lawful license, or officiate in celebrating the rites of marriage without being authorized by law to do so, he shall be confined in jail not more than one year, or fined not exceeding five hundred dollars, or both, at the discretion of the court.

Celebrating rites of matrimony unlawfully; how punished.

Adultery and Fornication.

6. If any person commit adultery or fornication, he shall be guilty of a misdemeanor and fined not less than twenty dollars. An indictment under this section shall be sufficient if it be in form or effect as follows:

Adultery and fornication; punishment.

"State of West Virginia, ——— County, to-wit :

The grand jurors of the state of West Virginia, in and for the body of the county of ———, upon their oaths present, that A ——— B ———, on the ——— day of ———, eighteen ———, in the county aforesaid, did commit adultery and fornication with one C ——— D ———, against the peace and dignity of the state."

Form of indictment.

7. If any persons, not married to each other, lewdly and lasciviously associate and cohabit together, or, whether married or not, be guilty of open and gross lewdness and lasciviousness, they shall be fined not less than fifty dollars, and may, at the discretion of the court, be imprisoned not exceeding six months. In prosecutions for adultery and fornication, and for lewdly and lasciviously associating and cohabiting together, the persons named in the indictment shall be presumed to be unmarried persons in the absence of proof to the contrary.

Lewd and lascivious cohabitation; punishment.

What to be presumed in such prosecutions.

8. Any white person who shall intermarry with a negro, shall be confined in jail not more than one year, and fined not exceeding one hundred dollars,

Marriage between white person and negro; punishment.

9. Any person who shall knowingly perform the ceremony of marriage between a white person and a negro, shall be guilty of a misdemeanor, and be fined not exceeding two hundred dollars.

Knowingly performing ceremony of marriage between white person and negro; punishment.

10. If any person keep a house of ill fame, he shall be confined in jail not more than one year, and fined not exceeding two hundred dollars.

Keeping house of ill-fame; punishment.

11. If a person import, print, publish, sell or distribute any book or other thing containing obscene language, or any print, picture, figure or description manifestly tending to corrupt the morals of youth, or introduce into any family or place of education, or buy or have in his possession, any such thing, for the purpose of sale, exhibition or circulation, or with intent to introduce it into any family or place of education, he shall be confined in jail not more than one year, and fined not exceeding two hundred dollars.

Obscene books and prints, etc.

Penalty.

12. If any person shall commit the crime of buggery, either with mankind or with any brute animal, he shall be confined in the penitentiary not less than one nor more than five years.

Buggery.

Punishment.

Violation of Sepulture; Cruelty to Animals; Profanity; Sabbath Breaking.

13. If a person unlawfully disinter or displace a dead human body, or any part of a dead human body, which shall have been deposited in any vault or other burial

Violation of sepulture.

Punishment. place, he shall be confined in the penitentiary not less two nor more than five years.

Cruelty to animals. 14. If any person shall cruelly, unnecessarily or needlessly beat, torture, mutilate, or kill or overload, overdrive, or wilfully deprive of necessary sustenance, any horse or other domestic animal, or cause the same to be done by another, whether such horse or other animal be his own or that of another person, he shall be guilty of a misdemeanor, and fined not less than fifty dollars, and at the discretion of the court, be imprisoned in the county jail not exceeding six months.

Punishment.

Profane swearing and drunkenness. 15. If a person, arrived at the age of discretion, profanely curse, or swear or get drunk, he shall be fined by a justice one dollar for each offense.

Fine for.

Sabbath breaking, except, etc.; fine for and in what cases. 16. If a person, on a Sabbath day, be found laboring at any trade or calling, or employ his minor children, apprentices, or servants in labor, or other business, except in household or other work of necessity or charity, he shall be fined not less than five dollars for each offense. And every day any such minor child, or servant, or apprentice is so employed shall constitute a distinct offense. And any person found hunting, shooting, or carrying fire-arms on the Sabbath day, shall be guilty of a misdemeanor and fined not less than five dollars.

No forfeiture for, in certain cases. 17. No forfeiture shall be incurred under the preceding section for the transportation on Sunday of the mail, or of passengers and their baggage, or for running any railroad train or steamboat on the Sabbath day, or for carrying fire-arms or shooting on that day, by any person having the right to do so under the laws of the United States or of this state; and no forfeiture for laboring on the Sabbath day shall be incurred under the said section by any person who conscientiously believes that the seventh day of the week ought to be observed as a Sabbath, and actually refrains from all secular business and labor on that day, provided he does not compel an apprentice or servant not of his belief to do secular work or business on Sunday, and does not on that day disturb any other person in his observance of the same. And no contract shall be deemed void because it is made on the Sabbath day.

Proviso.

No contract void because made on Sunday

Disturbance of Religious Worship.

Willful interruption, etc., of religious worship. 18. If a person, wilfully, interrupt, molest or disturb any assembly of people met for the worship of God, he shall be confined in jail not more than six months, and fined not less than twenty-five nor more than one hundred dollars, and a justice may put him under restraint during religious worship, and bind him for not more than one

year, to be of good behavior. An indictment under this section shall be sufficient if it be in form or effect as follows: Form of indictment for such offense.

"State of West Virginia, _____ County, to-wit:

The grand jurors of the state of West Virginia, in and for the body of the county of _____, on their oaths present that A— B— on the _____ day of _____ eighteen—, in the county aforesaid, did wilfully interrupt, molest and disturb an assembly of the people then and there met for the worship of God, against the peace and dignity of the state."

Disturbance of Schools, Literary Societies, etc.

19. If a person, wilfully, interrupt, molest or disturb any free or other school, literary society or any other society formed for intellectual, social or moral improvement, or organized or carried on under or in pursuance of the laws of this state, he shall be guilty of a misdemeanor, and fined not less than ten, nor more than fifty dollars, and, at the discretion of the court, be confined in the jail of the county not more than thirty days. Schools, literary societies, etc.; disturbance of; how punished.

Protection of Religious Meetings Against the Sale of Intoxicating Liquors, etc.

20. If any person shall within two miles of any religious camp-meeting or association, or within one half mile of any other place of religious worship, erect or have any booth, stall, tent, carriage, boat, vehicle, or other contrivance or place whatever, for the purpose of selling, giving or furnishing any kind of spirituous or fermented liquor, or any mixtures or preparations thereof, (or any other article of traffic therein), or shall within the said two miles of a camp-meeting, or association, or within one half mile of any other place of religious worship, sell, give or furnish any such liquors, mixtures or preparations, or shall within one half mile sell, give or furnish any other article of traffic between the time of the commencement of any such meeting, association or worship, and of the final closing thereof, he shall be guilty of a misdemeanor and fined not less than ten nor more than fifty dollars for each and every of Sale of spirituous liquors, etc., within certain distances of places of religious worship, deemed a misdemeanor. Fine for. Duty of conservator of peace and justice in such cases. Recognizance in such cases; condition of. And it shall be the duty of any conservator of the peace, either upon his knowledge that any person is violating any of the provisions of this section, or upon the verbal or written complaint of any credible person, that he is doing so, to cause the person so offending to be arrested and taken before a justice of the peace, whose duty it shall be, upon proof of such violation by him, to cause such person to enter into a recognizance, with good and sufficient security, in the sum of two hundred dollars, conditioned for his appearance before the then next term of the circuit court of the county to answer an indictment for the offense charged against him, and in the meantime to be of good behavior, and not to violate any of the provi-

To be committed to jail; when

Forfeiture of liquors, etc., in such cases.

Duty of sheriff, etc., as to property declared forfeited.

When forfeiture becomes absolute.

Officers to sell forfeited property, except, etc.
How sold, etc.

Report of clerk to auditor in such case.

Where proceeds of such sale paid

Such liquors, etc., to be destroyed.

To whom foregoing section not to apply.

Incest; deemed a felony; how punished.

sions of this section, and upon his failure to give such recognizance, the justice shall commit him to jail to answer said charge. Any person violating any of the provisions of this section, shall, in addition to the penalties herein mentioned, forfeit all such spirituous and fermented liquors, and mixtures and preparations thereof, and other articles of traffic, and all the chests and other things containing the same, belonging to and in the possession of the person so offending, together with such booth, stall, tent, carriage, boat, vehicle or other contrivance or thing prepared and used in violation of this section. The sheriff or other officer, when he arrests the offender, shall seize and take into his possession the property hereby declared to be forfeited, and hold the same subject to the orders of the circuit court of his county. If the accused be convicted of the offense so charged against him, such forfeiture shall become absolute, and the officer shall sell the forfeited property, the liquors, mixtures, and preparations hereinbefore mentioned excepted, in the same manner as if it had been levied on by execution, and he shall return an account of such sale to the clerk of the circuit court within thirty days after the sale is made, and the clerk shall include in his report to the auditor of the fines and other monies chargeable to the sheriff, the amount of the proceeds of such sale remaining in the hands of the sheriff, after deducting therefrom the costs and legal expenses attending the care, keeping, and sale of said property, and the same shall be paid into the treasury of the state by the sheriff as other monies collected by him belonging to the state are paid by him. The liquors, mixtures and preparations in this section shall be destroyed by the sheriff or other officer and not sold.

21. The provisions of the next preceding section shall not apply to any licensed tavern keeper, merchant, shop keeper, farmer or other person in the usual lawful transaction of his ordinary business at the usual place of transacting such business, or to any person having permission in writing from the proper authorities of such meeting, association, church or congregation conducting such religious service to sell such articles as may be named in such permission, and which the person having such permission may lawfully sell outside of said two miles, without a state license therefor. Nor shall the provisions of the next preceding section apply to persons selling or furnishing articles of traffic (except spirituous or fermented liquor) within any incorporated city, town or village.

Incest—How Punished.

22. If any male person shall have sexual intercourse with his mother, sister, or daughter, or with the daughter of his brother or sister, or if any female person have sex-

nal intercourse with her father, brother or son, or with the son of her brother or sister, every such person shall be guilty of a felony, and be confined in the penitentiary not less than two nor more than ten years.

[Approved March 28, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXXIV.

AN ACT to amend and re-enact chapter one hundred and thirty-six of the code of West Virginia :

[Passed March 24, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter one hundred and thirty-six of the code of West Virginia be amended and re-enacted so as to read as follows : Code amended; chapter 136 of

CHAPTER CXXXVI.

GENERAL PROVISIONS AS TO CIVIL CASES—SUITS ON BONDS WITH CONDITION.

1. Where the proceeding before a court or justice is on a penal bond, with condition for the payment of money, the jurisdiction shall be determined as if the undertaking to pay such money had been without a penalty. And where jurisdiction depends on the amount of a judgment, if it be on such a bond, the jurisdiction shall be determined by the sum payment whereof will discharge the judgment. Suits on penal bond, with condition; how jurisdiction determined.

2. A bond for obtaining any writ or order in term time or vacation may be executed by any one person with sufficient surety, though it be in a case no party to which is an obligor. Who may execute bond for obtaining writ or order.

Damages for Detention of Property After Verdict.

3. When a judgment for specific personal property is affirmed by an appellate court, or an injunction to such judgment is dissolved, the person who is entitled to execution of such judgment, or who would be entitled if execution had not been had, may, on motion to the court from which such execution has issued, or might issue, after four weeks notice to the defendant or his personal representatives, have a jury impaneled to ascertain the damages sustained by reason of the detention of such property subsequent to such judgment, or, if it was on a Damages for detention of property after verdict, and how party entitled to damages to proceed.

verdict, subsequent to such verdict; and judgment shall be rendered for the damages so ascertained, if any.

Period Excluded From Operation of Statute of Limitation.

Period excluded from operation of statute of limitation in certain cases.

4. In computing the time within which any action of debt, detinue, covenant, assumpsit, trover, trespass, or case, pending at the time this chapter as amended takes effect, shall be barred by any statute of limitation, the period from the seventeenth day of April one thousand eight hundred and sixty-one, to the first day of March, one thousand eight hundred and sixty-five, shall be excluded from such computation.

Certain suits growing out of late rebellion prohibited.

5. No citizen of this state who aided, or participated in the late war between the government of the United States and a part of the people thereof, on either side, shall be liable in any proceeding, civil or criminal; nor shall his property be seized or sold under final process, issued upon judgments, or decrees heretofore rendered, or otherwise, because of any act done according to the usages of civilized warfare, in the prosecution of said war, by either of the parties thereto.

Stay of Proceedings in Certain Cases.

Stay of proceedings in certain cases; when and how.

6. Whenever it shall be made to appear to a circuit court, or to the judge thereof in vacation, that a stay of proceedings in a case therein pending, should be had, until the decision of some other action, suit, or proceeding in the same, or another court, such court or judge shall make an order staying proceedings therein, upon such terms as may be prescribed in the order. But no application for such stay shall be entertained in vacation until reasonable notice thereof has been served upon the opposite party.

Effect of Release, etc., in Certain Cases.

Effect of release or accord, etc., as to part of joint trespassers.

7. A release to, or an accord and satisfaction with one joint trespasser, hereafter executed or had, shall not enure to the benefit of another such trespasser, and shall be no bar to an action or suit against such other joint trespasser for the same cause of action to which the release or accord and satisfaction relates.

When judgments have been rendered in actions *ex delicto* against several parties jointly, effect of satisfaction of such judgments by one or more of said parties

8. Where judgments have been rendered since the twenty-fourth day of March, one thousand eight hundred and seventy-three, or may hereafter be rendered in action *ex delicto* against several persons jointly, and satisfaction of said judgments have been, or may be, made by any one or more of the said parties, the others shall be liable to contribution to the same extent as if the judgments were upon actions *ex contractu*.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed. Acts repealed.

[Approved March 28, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXXV.

AN ACT to amend and re-enact section forty-nine of chapter thirty-nine of the code of West Virginia, as revived, amended and re-enacted by chapters *ten, twenty-four and twenty-five of the acts of the legislature of one thousand eight hundred and eighty-one.

[Passed March 25, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That section forty-nine of chapter thirty-nine of the code of West Virginia, as revived, amended and re-enacted by chapters *ten, twenty-four and twenty-five of the acts of the legislature of one thousand eight hundred and eighty-one, be and the same is hereby amended and re-enacted so as to read as follows :

Code amended; section 49 of chapter 39 of, as amended by acts 1881.

49. The county court of every county shall allow annually to the county officers hereinafter mentioned, for their public services, for which no other fee or reward is allowed by law, such sums, to be paid out of the county treasury, as are deemed reasonable by the court within the limits ascertained by law, that is to say: The sheriff not to exceed two hundred dollars, except that the sheriffs of Cabell, Fayette, Jackson, Greenbrier, Lewis, Mason, Marshall, Marion, Monongalia, Morgan, Ohio and Wood counties shall be allowed a sum not to exceed three hundred dollars, and to the sheriff of Kanawha county a sum not exceeding five hundred dollars. To the clerk of the circuit court not to exceed two hundred dollars, except that the clerk of the circuit court of Ohio county shall be allowed annually not less than five hundred nor more than one thousand dollars, and of Barbour, Cabell, Fayette, Greenbrier, Jackson, Kanawha, Lincoln, Lewis, Marion, Mason, Marshall, Wetzel and Wood counties, a sum not

Allowance by county court to certain county officers.

To sheriff, except, etc.

To clerks of circuit courts, except, etc.

*Chapter "ten" of the acts of one thousand eight hundred and eighty-one, should be chapter "five." The mistake was made by the mover of the amendments. See House Journal, March sixteenth and twentieth.

To clerks of county courts, except, etc.

To prosecuting attorneys, except, etc.

No extra allowance after service rendered, etc. Salary not to be increased or diminished. Prosecuting attorney to prosecute, etc., all actions, etc., in which his county, etc., is interested. No additional pay.

to exceed six hundred dollars. To the clerk of the county court a sum not to exceed two hundred dollars, except that the clerks of the county courts of Barbour, Greenbrier, Jefferson, Lincoln, Lewis, Monongalia, Monroe, Ohio, Preston, Randolph, Tyler, Taylor, Upshur and Wayne counties shall be allowed a sum not to exceed three hundred dollars, and to the clerks of the county courts of Berkeley, Cabell and Fayette counties, a sum not to exceed the sum of five hundred dollars; to the clerks of the county courts of Marion, Marshall, Mason, Jackson, Kanawha, Wetzel and Wood counties a sum not exceeding six hundred dollars each. To the prosecuting attorney not less than two hundred nor more than four hundred dollars, except as follows: In the counties of Barbour, Berkeley, Greenbrier, Harrison, Jackson, Jefferson, Preston, Randolph and Wetzel not less than three hundred nor more than six hundred dollars; in the counties of Cabell, Fayette, Marion, Marshall, Summers and Taylor, not less than five hundred nor more than one thousand dollars; in the counties of Kanawha, Mason, Ohio and Wood, not less than five hundred nor more than twelve hundred dollars. But no compensation shall be granted or allowed to any public officer, agent, servant or contractor, after the services shall have been rendered or the contract made, nor shall the salary of any public officer be increased or diminished during his term of office. And it shall be the duty of the prosecuting attorney to attend to and prosecute or defend, (as the case may be), all actions, suits and proceedings in which his county, or any district therein is interested, without additional compensation.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXXVI.

AN ACT amending and re-enacting chapter one hundred and thirty nine of the code of West Virginia.

[Passed March 25, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter one hundred and thirty-nine of the code of West Virginia be, and the same is hereby amended and re-enacted so as to read as follows:

Code amended;
chapter 139 of.

CHAPTER CXXXIX.

OF ENFORCING DECREES AND ORDERS; DOCKETING JUDGMENTS AND OF OTHER LIENS OF THE LIKE NATURE; THE EFFECT OF SUCH LIENS; AND THE LIMITATION OF PROCEEDINGS ON JUDGMENTS.

Decrees and Orders on the Footing of Judgments.

1. A decree for land or specific personal property and a decree or order requiring the payment of money, shall have the effect of a judgment for such land, property, or money, and be embraced by the word "judgment" where used in this or any of the three succeeding chapters. But a party may proceed to carry into execution a decree or order in chancery, other than for the payment of money, as he might have done if this and the following section had not been enacted.

Decrees and orders for property or money have effect of judgments. What embraced by word "judgment."

2. The persons entitled to the benefit of any decree or order requiring the payment of money shall be deemed judgment creditors, although the money may be required to be paid into a court, or a bank, or other place of deposit. In such case, an execution on the decree or order shall make such recital thereof, and of the parties to it as may be necessary to designate the case; and if a time be specified in the decree or order within which the payment is to be made, the execution shall not issue until the expiration of that time.

Who deemed judgment creditors.

How and when execution issued on decree or order.

Docketing Judgments and Other Liens of a Like Nature.

3. In the following section the word "judgment" shall include any undertaking, bond, or recognizance which has the force of a judgment.

What the word "judgment" includes in the following section.

4. The clerk of every circuit and municipal court shall, without delay, make out and deliver a duly certified abstract of every judgment rendered by such court, and every justice of the peace shall without delay make out and deliver a duly certified abstract of every judgment rendered by him or by any other justice, the docket of which is in his possession and under his control, to any person interested therein who may demand the same, and pay or tender the fee therefor, in which abstract shall be stated the names in full of the plaintiff or plaintiffs, and the defendant or defendants, as they appear in the papers and proceedings in the cause, and if the defendants are sued as partners the partnership name shall be stated; the amount of the judgment and the amount of the costs, stating each separately; the value of specific property (if any) recovered by it, and the damages (if any) for its detention; the date of the judgment and the court in which, or the justice by whom, the judgment was rendered. Any clerk or justice who shall fail to deliver such abstract as herein re-

Clerks of circuit and municipal courts, and justices, to make certified abstracts of judgments; when and to whom delivered

What to be stated in such abstracts.

Penalty for failure to deliver such abstracts Judgment docket kept by clerk of county court.
His duty to docket judgments.
What to be stated in such docket, and how.

quired shall be guilty of a misdemeanor and fined fifty dollars. And the clerk of every county court shall keep in his office in a well-bound book a judgment docket, in which he shall docket without delay any judgment in this state upon the delivery to him of such authenticated abstract thereof for that purpose and the payment or tender of his fee therefor. In such docket there shall be stated, in separate columns :

I. The names in full of the plaintiff or plaintiffs, and the defendant or defendants, as they are stated in such abstract, and if it appear by such abstract that the defendants were sued as partners, their partnership name shall also be stated.

II. The amount of the judgment and of the costs, stating each separately.

III. The value of any specific property recovered by the judgment, and the damages, (if any,) for its detention.

IV. The date of the judgment.

V. The court in which, or the justice by whom it was rendered.

VI. The date of docketing the judgment.

How judgment indexed when docketed.

Penalty and liability for failure.

Every judgment docketed by the clerk of the county court as aforesaid, shall at the same time be indexed by him in an index to be kept in or annexed to said judgment docket, in the full name of the defendant, and if more than one defendant, in the full name of each, as they appear in the said abstract. If the defendants are sued as partners, it shall also be indexed in the partnership name appearing by such abstract. Any clerk of a county court failing to perform any duty required of him by this section shall be guilty of a misdemeanor and fined fifty dollars, and he and his securities in his official bond shall moreover be liable to any person injured by such failure for all such damages as he may sustain by reason thereof.

Lien of Judgments on Real Estate.

Judgment a lien on all of debtor's real estate; from what time.

5. Every judgment for money rendered in this state heretofore or hereafter, against any person, shall be a lien on all real estate of or to which such person shall be possessed or entitled at or after the date of such judgment, or, if it was rendered in court, at or after the commencement of the term at which it was so rendered, except as follows :

Judgment not a lien against purchaser for value without notice, unless docketed. When must be docketed.

6. No judgment shall be a lien on real estate as against a purchaser thereof for valuable consideration without notice, unless it be docketed according to the third and fourth sections of this chapter in the county wherein such real estate is, either within sixty days next after the date of the judgment or before a deed therefor to said pur-

chaser is delivered for record to the clerk of the county court. *Provided*, That the judgment of a justice of the peace shall not be a lien on real estate as against such purchaser, until the same is docketed as aforesaid.

Suits to Enforce Judgment Liens.

7. The lien of a judgment may always be enforced in a court of equity. If it appear to such court that the rents and profits of the real estate subject to the lien will not satisfy the judgment in five years, the court may decree the said estate, or any part thereof, to be sold and the proceeds applied to the discharge of the judgment. In every such suit all persons having liens on the real estate sought to be subjected by judgment or otherwise, shall be made parties plaintiff or defendant, or if the number of such persons exceed ten the suit may be brought by any one or more of them, for the benefit of himself, and such other lien holders as will come in and contribute to the expenses of the suit. And whether the suit be so brought or not, every such lien holder, whether he be named as a party to the suit or not, or whether he be served with process therein or not, may present, prove and have allowed any claim he may have against the judgment debtor, which is a lien on such real estate, or any part thereof, and from and after the time he presents any such claim he shall be deemed a party plaintiff in such suit. No decree for the distribution of the proceeds of such real estate shall be made until a notice to all persons holding liens on the real estate of the judgment debtor be posted and published, under a decree of the court, as hereinafter provided. Such notice shall be sufficient if it be in form or effect as follows:

Jurisdiction of equity to enforce judgment lien; power to decree sale.

Who made parties to suit.

Where lien holders exceed ten; what then.

Provision as to rights of lien holders generally.

No decree for distribution until notice to all lien holders is posted and published.

"Notice to Lien Holders.

To all persons holding liens by judgment or otherwise, on the real estate, or any part thereof, of A— B— : Form of such notice.

In pursuance of a decree of the circuit court of — county, made in a cause therein pending, to subject the real estate of the said A— B— to the satisfaction of the liens thereon, you are hereby required to present all claims held by you and each of you against the said A— B—, which are liens on his real estate, or any part of it, for adjudication to me, at my office, in the county (or city, town or village, as the case may be,) of —, on or before the — day of —.

Given under my hand this — day of —.
C— D—, *Commissioner.*"

Such notice shall be published once in each week, for four successive weeks, in some newspaper printed in the county, or if none be printed therein, in some newspaper of general circulation in the county, and posted at the front door of the court house of such county at least four weeks How such notice published and posted

Effect of such publishing and posting	before the day mentioned in the notice; and such publishing and posting of such notice shall be equivalent to the personal service thereof on all persons holding liens on any such real estate, unless the court shall in the decree directing such notice to be so published and posted otherwise order.
Report of commissioner; when made and what to contain.	The commissioner to whom the case is referred by such decree shall as soon as possible after the said notice is published and posted as aforesaid, or served in such manner as the court may order, proceed to ascertain and report all the liens on the real estate or any part thereof of the judgment debtor, the holders of such liens, the amount due to each, and the priorities thereof, and such other matters and things as the court by its decree may direct, and the same proceedings shall be had on such report as in other suits in chancery. When the report of any such commissioner is confirmed, if the claims therein reported (if any) be not paid, the court shall decree that the real estate of the judgment debtor, subject to such lien or liens, so far as may be necessary, shall be rented or sold, and the proceeds thereof distributed among the several lien holders who have appeared and proved their liens and claims, according to their several priorities (if any); which decree shall be a bar to the claim of any lien holder who has not appeared and presented his claim to said commissioner, as required by said notice; except that if a surplus remain after the payment of the claims so presented and proved, and confirmed by the court, the lien holder so failing to appear may share in such surplus, upon proving his claim at any time before a final decree in the case, in such manner as the court shall direct. But if he fail to present his claim before such final decree, he shall be forever barred of all right to participate in the proceeds of such real estate, so far as the other creditors of said judgment debtor, holding liens on his real estate, who have not so failed, are concerned, and so far as the creditors at large of such judgment debtor are concerned. If, pending any such suit, a judgment at law be recovered by any person against such judgment debtor, such person may present his claim to the commissioner and have it adjudicated and allowed in the same manner and to the same extent as if the judgment had been obtained before the institution of such suit. And he may present such claim to the court after the report is made, and before the entering of a decree distributing the proceeds of the sale of such real estate, and have the same adjudicated and passed upon by the court, and if found to be correct, and a lien upon such real estate, the court shall allow and confirm the same, and provide for the payment thereof in the decree of sale and distribution. If after the commencement of such suit any lien holder commence any other suit or proceeding in or out of court to enforce a lien claimed by him on the real estate, or any part thereof, of the judgment debtor, upon which a lien is sought to be
What proceedings had.	
When court to decree that the real estate of judgment debtor be rented or sold. How proceeds distributed.	
Effect of such decree as to lien holders who have not appeared, etc.	
Lien holders failing to appear may share in any surplus, etc.; when and how. Failure of lien holder to present his claim before final decree; to what extent barred.	
Right of person obtaining judgment at law during pendency of such suit to have his claim adjudicated and allowed; how. Such claim may be presented after report is made, etc., and be allowed, etc.	
If after commencement of suit to enforce judgment liens, lien holder commence any	

enforced by such suit, the court, or the judge thereof in vacation may enjoin him from so doing, and require him to come in and assert his lien in such suit or make such order or decree in relation thereto as to such court or judge may seem right and proper to protect the interests of all parties having such liens.

other suit, etc., to enforce his lien, he may be enjoined, etc.

In What Order Real Estate to be Subjected to the Satisfaction of Liens in Certain Cases, etc.

8. Where the real estate liable to the lien of a judgment is more than sufficient to satisfy the same, and it, or any part of it, has been aliened, as between the alienees for value, that which was aliened last shall, in equity, be first liable, and so on with other successive alienations until the whole judgment is satisfied. And as between alienees who are volunteers under such judgment debtor, the same rule as to the order of liability shall prevail. But any part of such real estate retained by the debtor himself shall be first liable to the satisfaction of the judgment.

Priority of lien as between alienees.

Real estate of debtor first liable.

9. Where two or more judgments are rendered against the same person, and the lien thereof on his real estate commences on the same day, the creditors having such judgments shall be entitled to satisfaction out of said real estate ratably.

When judgment creditors share ratably.

Limitations of Proceedings to Enforce Judgments.

10. On a judgment, execution may be issued within two years after the date thereof, or if none be so issued, the court in which the judgment was rendered may thereafter, and within ten years from the date of the judgment, upon ten days notice to the party against whom the same is, order an execution to issue thereon for such sum as remains unpaid. Where execution issues within two years as aforesaid, other executions may be issued on such judgment without notice, within ten years from the return day of the last execution issued thereon on which there is no return by an officer, or which has been returned unsatisfied. And an action, suit or *scire facias* may be brought upon a judgment on which no execution issued within the said two years, or where there has been a change of parties by death or otherwise, at any time within ten years next after the date of the judgment. But if such action, suit or *scire facias* be against a personal representative of a decedent, it shall be brought within five years from the qualification of such representative.

Limitation of Proceedings to enforce judgments

11. No execution shall issue, nor any action, suit or *scire facias* be brought on any judgment in this state after the time prescribed in the preceding section, except that in computing the time, the period mentioned in the fourth

Further provisions as to limitation of proceedings to enforce judgments.

section of chapter one hundred and thirty-six of this code, and any time during which the right to sue out execution on the judgment is suspended by the terms thereof, or by legal process, shall be omitted from the computation; and the sixteenth, seventeenth, eighteenth and nineteenth sections of chapter one hundred and four of this code shall apply to the right to bring such action, suit or *scire facias*, in like manner as to any right, action, suit or *scire facias* mentioned in those sections; and except that when the judgment is for the penalty of a bond, but to be discharged by the payment of what is then ascertained, and such sums as may be afterwards assessed or found due upon a *scire facias* on the judgment, assigning a further breach of the bond, such *scire facias* may be brought within ten years after such breach.

Limitation of motion for officer's failure to return execution.

12. A motion against an officer or his sureties, or his or their representatives, for a failure to return an execution, shall be made within ten years from the return day thereof and not after.

Notice of Lis Pendens.

Lis pendens; notice of, to be filed with and recorded by clerk of county court; otherwise purchasers without notice not affected. What memorandum to set forth.

13. The pendency of an action, suit, attachment, or proceedings to subject real estate to the payment of any debt or liability, upon which a previous lien shall not have been acquired in some one or more of the methods prescribed by law, shall not bind or affect a purchaser of such real estate, for a valuable consideration, without notice, unless and until a memorandum, setting forth the title of the cause; the court in which it is pending; the general object of the suit, attachment or other proceeding; the location and the quantity of the land, as near as may be, and the name of the person whose estate therein is intended to be affected by the action, suit, attachment or proceeding, shall be filed with the clerk of the county court of the county in which the land is situated. The clerk of every such county court shall without delay record the said memorandum in the deed book, and index the same in the name of both the parties.

Acts Repealed.

Acts repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent with the provisions thereof, are hereby repealed.

[Approved March 28, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXXVII.

AN ACT to amend and re-enact chapter one hundred and forty-one of the code of West Virginia, as amended and re-enacted by chapter two hundred and eighteen of the acts of one thousand eight hundred and seventy-two and seventy three.

[Passed March 25, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter one hundred and forty-one of the code of West Virginia, as amended and re-enacted by chapter two hundred and eighteen of the acts of one thousand eight hundred and seventy-two and seventy-three, be amended and re-enacted so as to read as follows:

Code amended; chapter 141 of, as amended by acts 1872.3.

CHAPTER CXXLI.

MEANS OF ENFORCING RECOVERIES OF MONEY OTHERWISE THAN BY LEVYING A WRIT OF FIERI FACIAS.

1. No writ of *capias ad satisfaciendum* shall hereafter be issued.

No ca. sa. to issue hereafter.

2. Every writ of *feri facias* shall, in addition to the effect which it has under chapter one hundred and forty of this code, be a lien, from the time it is delivered to the sheriff or other officer to be executed, upon all the personal estate of which the judgment debtor is possessed, or to which he is entitled, and upon all which he may acquire on or before the return day thereof, although not levied on nor capable of being levied on under that chapter, except in the case of a husband or parent, such estate as may have been listed and set apart as exempt from distress and levy under the provisions of law, and except that as against an assignee of such estate, for valuable consideration, or a person making a payment to a judgment debtor, the lien by virtue of this section shall be valid only from the time that he has notice thereof, and as to all property upon which a lien is hereby given, the said lien shall continue after the return day of the execution. But a purchaser of such property, for value and without notice, after the return day of the execution, shall not be affected by the lien acquired under chapter one hundred and forty, or under this chapter, unless the execution be docketed as herein-after provided, and if docketed, it shall be an abiding and continuing lien as against such purchaser upon the property owned by the judgment debtor, in the county at the time the execution was placed in the hands of the sheriff or other officer, or acquired by him on or before the return day thereof, from the time it was docketed, and shall have preference over such purchaser. The clerk of the

How lien acquired on debtor's whole personal estate.

Exceptions.

Lien to continue after return day of execution. Execution not a lien against purchaser, for value and without notice, unless docketed. Effect of docketing execution.

Execution docket; clerk to keep Clerk's duty to docket executions therein; when.

His fee.

What to be stated in abstract and docket, and how

What lien not impaired by this section.

How lien terminated.

Judgment debtor; how compelled to discover his estate. Interrogatories, etc., to be filed with commissioner.

Summons thereon.

Answers, and proceedings thereon.

county court of every county shall keep in his office in a well-bound book an execution docket, in which he shall docket without delay, any execution in this state, when he shall be required so to do by any person interested, on such person delivering to him an authenticated abstract of it, for which he shall be entitled to the same fee as for docketing a judgment. In such abstract and docket there shall be stated in separate columns:

I. The full name of the plaintiff or plaintiffs, and of the defendant or defendants, and if the defendants are sued as partners, the name of the partnership.

II. The amount of the execution.

III. The date of the execution.

IV. The day and hour when received by the sheriff or other officer.

V. When returnable.

VI. The date of docketing.

This section shall not impair a lien acquired by an execution creditor under chapter one hundred and forty of the code.

3. The lien acquired under the preceding section shall cease whenever the right of the judgment creditor to levy the writ of *feri facias*, under which the said lien arises, or to levy a new execution on his judgment, ceases or is suspended by a forthcoming bond being given and forfeited, or by an appeal or otherwise.

How Debtor Compelled to Discover and Surrender His Estate.

4. To ascertain the estate on which a writ of *feri facias* is a lien and to ascertain any real estate in or out of this state, to which a debtor named in such *feri facias* is entitled, the judgment creditor may file interrogatories to the debtor, and a copy of the judgment, with a commissioner of the court wherein the judgment is, or of the circuit court of the county in which the defendant resides or may be found, who shall issue a summons directed to the sheriff of his county, commanding him to summons the defendant to answer said interrogatories, at a time and place within the county, to be therein specified, not exceeding sixty days from the date of the summons. A copy of the interrogatories shall accompany the summons, and be served therewith on the defendant. The debtor served with such summons and interrogatories shall, within the time prescribed therein file answers upon oath to such interrogatories. If he fail so to do, or file any answers which are deemed by the commissioner to be evasive, the commissioner, after the service and return day of a notice to, or rule upon, the debtor issued by such commissioner, and returnable to a day and place indicated in the process, to

show cause against it, may issue an attachment against such debtor, returnable before him on a day and place certain, set out in it, to compel such debtor to answer before the commissioner the interrogatories aforesaid, or any others which he may deem pertinent. But the said commissioner shall enter in his proceedings and report to the court, in which the judgment was rendered, any and all objections taken by such debtor against answering such interrogatories, or any or either of them; and if the court shall afterwards sustain any one or more of such objections, the answers given to such interrogatories, as to which objections are sustained, shall be held for naught in that or any other cause.

Attachment
issuable to com-
pel answers.

Report to court
by commission-
er.

5. Any real estate out of this state, to which it may appear by such answers the debtor is entitled, shall be forthwith conveyed by him to the officer to whom was delivered the said *feri facias*; and any money, bank notes, securities, evidences of debt, or other personal estate, which it may appear by such answers are in the possession or under the control of the debtor, shall be delivered by him, as far as practicable, to the same officer, or to such other, and in such manner as may be ordered by the court, when the answers are in court, or by the commissioner when the answers are not in court. Unless such conveyance and delivery be made, a writ shall be issued by the court's order, or if the answers be not in court, by the commissioner, directed to the sheriff of any county requiring such sheriff to take the debtor, and keep him safely until he shall make such conveyance and delivery. Upon doing which, he shall be discharged by the court under whose order the writ issued, or, if the answers were not in court, by the court by which the commissioner was appointed, or, in either case if the court be not sitting, by the commissioner.

How compelled
to surrender his
estate.

Arrest of debtor
to compel con-
veyance and
delivery of
property.

6. The commissioner shall return the interrogatories and answers filed with him, and a report of the proceedings under the two preceding sections, to the court in which the judgment is, or if the judgment be of a justice, to the circuit court of the county.

Report of com-
missioner to
court.

7. Where a debtor named in a writ of *feri facias*, after being served with a summons issued by a commissioner, shall fail within the time prescribed therein, to file answers upon oath to said interrogatories, or shall file answers which are deemed by the commissioner to be evasive, if the judgment creditor shall, by affidavit, show to the satisfaction of the commissioner that there is probable cause for believing that the said debtor is about to quit this state, unless he be forthwith apprehended, a writ shall be issued by the commissioner, directed to the sheriff of any county, requiring such sheriff to take the debtor and keep

How judgment
debtor about to
quit state may
be arrested and
held to answer.

him safely until such answers to the interrogatories as the commissioner deems proper shall be filed, and such conveyance and delivery as he deems proper shall be made, or until a circuit court or a circuit judge shall direct the debtor's discharge.

As to Recovery, Sale and Application of Debtor's Estate.

What court may take order for sale and proper application of debtor's estate.

8. Any order may be made by such court which it may deem right, as to the sale and proper application of the estate conveyed and delivered under sections five and six.

Duty of officer as to sale, collection and distribution of debtor's estate.

9. Real estate conveyed to an officer under this chapter shall, unless such court direct otherwise, be sold, after giving at least thirty days notice, by posting the same at the door of the court house of his county and some other conspicuous place, near the residence of the owner, if he resides in the county, or if a newspaper be published in the county, such notice shall be inserted therein at least once a week for four successive weeks, and be conveyed to the purchaser by the officer or his deputy. An officer to whom there is a delivery under this chapter, when the delivery is of money, bank notes, or any goods or chattels, shall dispose of the same as if levied on by him, under a writ of *feri facias*, and when the delivery is of evidence of debts (other than such bank notes) may receive payment of such debts within sixty days after such delivery. Any evidence of debt or security remaining in his hands at the end of sixty days shall be returned by him to the clerk's office of such court. And the court shall make such order to enforce payment of such debt, or other security as is deemed best. For a failure to make such return, he may be proceeded against as if an express order of said court for such return had been disobeyed.

When evidence of debt to be returned to clerk's office; what order court to make.

How clerk proceeded against for failure.

Suggestion by judgment creditor; when and how summons may be sued out against person mentioned in suggestion.

10. On a suggestion by the judgment creditor that, by reason of the lien of his writ of *feri facias*, there is a liability on any person other than the judgment debtor, a summons may be sued out of the office of the clerk of the circuit court of the county in which such other person resides, upon an attested copy of said execution being filed with said clerk, to be preserved by him in his office, or if he be a non-resident of the state, in the county in which he may be found, against such person, to answer such suggestion, the return day of which summons may be the next term of said court.

Return day of such summons.

How such person examined.

11. The person summoned shall be examined on oath in open court, unless the judgment creditor consent that his sworn answer in writing may be filed. If it appear on such examination or answer, that there is any such liability on him at the time of the service of the summons, or at any time thereafter, and before the time of answering, or the return day of the execution, whichever comes first,

the court may order him to pay any debts or deliver any estate for which there is such liability, or pay the value of such estate, to any officer whom it may designate; and the levy of an execution on such order shall be valid, although levied by such officer.

Court's order on such examination.

Levy of execution thereon.

12. If such person after being served with the summons twenty days, fail to appear, or it be suggested that he has not fully disclosed his liability, the court may either compel him to appear or bear proof of any debt due by him to, or effects in his hands of, the debtor, and make such orders in relation thereto, as if what is so proved, had appeared on his examination or answer, or if it is suggested by the creditor, that the person so summoned has not fully disclosed the debts due by him to, or effects in his hands of the execution debtor, the court shall cause a jury to be empaneled without any formal pleadings to enquire as to such debts or effects and shall proceed in respect to any such found by the jury in the same manner as if they had been confessed by the person so summoned.

If person summoned fail to appear or to disclose his liability, proceedings thereupon.

13. Any person summoned under the tenth section may, before the return day of the summons, deliver and pay to the officer serving it what he is liable for; and the officer shall give a receipt for, and make return of, what is so paid and delivered. And if it be also suggested as provided for in the tenth section of this chapter, that there is a certain sum due from such person to the judgment debtor, and if such person, after being served with the summons twenty days, fail to appear and contest the same, or answer the suggestion, the court may give judgment against him in favor of the judgment creditor for the amount so suggested.

Person summoned may before return day of summons deliver to or pay officer.

Duty of officer in such case. If certain sum be suggested, and person summoned fail to appear, etc., what judgment court to give.

14. Unless such person appear to be liable for more than is so delivered and paid, there shall be no judgment against him for costs. In other cases judgment under the eleventh and twelfth sections may be for such costs and against such party as the court may deem just.

Judgment for costs.

15. For the recovery of any estate, real or personal, on which a writ of *fiery facias* is a lien under this chapter, or on which the judgment on which such writ issues is a lien, or the enforcement of any liability in respect to any such estate, a suit may be maintained either at law or in equity, as the case may require, in the name of the officer to whom such writ was delivered, or in the name of any other officer who may be designated for the purpose by an order of the court in which the judgment is, or if the judgment be of a justice, by an order of the circuit court of the county. No officer shall be bound to bring such suit unless bond with sufficient security be given him to indemnify him against all expenses and costs which he may incur or become liable for by reason thereof. But any per-

Proceedings for recovery of estate, etc., on which writ of *fiery facias* is a lien.

Officer not bound to bring such suit unless indemnified.

But any person interested may bring suit, etc. son interested may bring such suit at his own costs and in the officer's name.

Return of officer receiving money; when and where.

Liability for failure

What he may deduct from proceeds in his hands.

To pay balance; his liability therefor.

Other executions may be issued by judgment creditor without impairing his lien.

16. An officer receiving money under this chapter shall, within thirty days after receiving it, make return thereof to the court or to the clerk's office of the court in which the judgment is, or if it was rendered by a justice to the circuit court of the county, and for failing so to do, shall be liable as if he had acted under an order of said court. After deducting from said money, commissions allowed by law, and his necessary expenses and costs including reasonable fees to counsel, he shall within thirty days pay the net proceeds to the parties entitled thereto, and he and his sureties and their representatives shall be liable therefor in like manner as if the same had been made under a writ of *feri facias*.

17. Although a judgment creditor avail himself of the benefit of this chapter, he may nevertheless (without impairing his lien under it) from time to time issue other executions upon his judgment until the same be satisfied, subject to the limitations prescribed by law.

Acts Repealed.

Acts repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent with its provisions, are hereby repealed.

[Approved March 30, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXXVIII.

AN ACT amending and re-enacting sections one, two, three, four, five, six and seven of chapter one hundred and sixty of the code of West Virginia.

[Passed March 24, 1882.]

Be it enacted by the Legislature of West Virginia :

Code amended; certain sections of chapter 160 of

Bill of exceptions in criminal cases, etc., when and how taken.

1. That sections one, two, three, four, five, six and seven of chapter one hundred and sixty of the code of West Virginia, be and the same are hereby amended and re-enacted so as to read as follows :

1. A party in a criminal case or proceeding for contempt, for whom a writ of error lies to a higher court, may except to an opinion of the court, and tender a bill of exceptions

which (if the truth of the case be fairly stated therein,) the judge shall sign, and it shall be part of the record.

2. If a person, sentenced by a circuit court to death or confinement in the penitentiary, ask for a writ of error, the said court shall postpone the execution of its sentence until a reasonable time beyond the first day of the next term of the supreme court of appeals. In any other criminal case, wherein judgment is given by a circuit court, and in any case of judgment for a contempt, to which a writ of error lies, the court giving such judgment may postpone the execution thereof for such time and on such terms as it deems proper. The clerk of the court of appeals shall as soon as possible after the granting of the writ of error in any such case, have the record printed at the expense of the state, and the case shall be heard by the supreme court of appeals at its first term held in any part of the state after the record is so printed, and no notice of such hearing need be given.

How executions of sentence suspended.

Clerk of supreme court to have record printed; when.

When case heard.

No notice need be given.

3. A writ of error shall lie in a criminal case, to the judgment of a circuit court, from the supreme court of appeals. It shall lie in any case for the accused, and if the case be for the violation of a law relating to the revenue, it shall lie also for the state.

In what cases writ of error lies.

4. To the judgment of a circuit court, for a contempt of court, other than for the non-performance of, or disobedience to, a judgment, decree or order, a writ of error shall lie from the supreme court of appeals.

Idem.

5. In the vacation of the supreme court of appeals, a writ of error may be awarded by any judge thereof.

May be awarded by judge in vacation.

6. A writ of error, awarded under this chapter to any judgment, shall operate as a stay of proceedings in the case, until the decision of the court of appeals therein.

Writ operates as a stay of proceedings.

7. The court from which a writ of error lies shall affirm the judgment, if there be no error therein, and reverse the same, in whole or in part, if erroneous, and enter such judgment as the court whose error is sought to be corrected ought to have entered, or remand the cause and direct a new trial; affirming in those cases where the court is equally divided.

Judgment on writ of error.

[Approved March 28, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CXXIX.

AN ACT to revive and amend chapter one hundred and thirty-seven of the code of West Virginia, and to repeal chapters ten and fifty-one of the acts of eighteen hundred and seventy-two and seventy-three.

[Passed March 21, 1832.]

Be it enacted by the Legislature of West Virginia :

Chapter 137 of
code amended.

1. That chapter one hundred and thirty-seven of the code of West Virginia, be, and the same is hereby revived, amended and re-enacted so as to read as follows :

CHAPTER CXXXVII.

OF THE FEES OF OFFICERS.

Secretary of State.

Fees of sec'y of
state.

1. The secretary may charge for services rendered in his office the following fees, to be paid by the person to whom the service is rendered, at the time it is done :

For a testimonial	\$1 50
For a copy of any paper, if one sheet.....	1 00
And for each sheet after the first	75
For issuing a commission to a commissioner in any other state.....	5 00
For issuing a commission to each notary public.....	2 50
For making out a requisition for a fugitive from justice demanded of the executive authority of another state.....	2 00
For issuing a warrant for the arrest of a fugitive from justice demanded by the executive authority of another state.....	2 00

Other Officers.

2. Each of the other officers mentioned in this chapter may, for services performed by virtue of his office, demand and receive the fees hereinafter provided for.

A Surveyor.

Of surveyor of
lands.

3. For all surveying actually done, (unless by special contract), for the first one hundred poles, or any less distance, long measure, per pole.....	01
After the first one hundred poles, long measure, per pole.....	0½

For tracing and examining old surveys to ascertain the true bearing of lines, their distances and courses, or for doing surveying in and about any mines, cities, towns and villages, the surveyor may charge three dollars for every day necessarily so employed, in lieu of charging by the

pole; *Provided*, That nothing in this section shall prevent any party having surveying done, making a contract for a different compensation. Fees of surveyor

For calculating the quantity of less than six courses or lines.	50
When land is divided, for calculating each division if less than six courses.....	50
For every course or line of more than six	03
For making a plat of six courses or less... ..	50
For every course more than six.....	03
For recording a plat and certificate, if not more than six courses.....	50
For any course above six.....	03
For a copy of a plat and certificate, where there are not more than six courses.....	50
For every course above six.....	03
For a copy of an entry.....	50
For every search, where no copy is required.. ..	25
For giving receipt for any paper.....	15
For traveling to the place of surveying, and returning, per mile.....	05

If surveying be done at different places, on the same tour, the mileage shall be apportioned among the different surveys according to their distance from the residence of the surveyor or deputy and each other, so that the surveyor shall not receive more than five cents a mile for going and returning for any one trip His mileage, if surveying be done at different places; how apportioned.

A Notary Public.

4. When there is a protest by him, for the record thereof, making out instrument of protest under his official seal, and notice of dishonor to one person besides the maker of a note or acceptor of a bill.....	1 00	Fees of a notary public.
For every additional notice	10	
For taking and certifying the acknowledgment of any deed or writing, or taking and certifying the privy examination and acknowledgment of a married woman.....	50	
For administering and certifying an oath, unless it be the affidavit of a witness	25	
For taking and certifying affidavits or depositions of witnesses (except as provided in chapter sixty-six of this code) at the rate for each hour actually employed in taking the same, of	75	
For other services, the same fees as are allowed by law to the clerk of the circuit court for similar services.		

Commissioners of Courts.

5. For any service, such fees as the court of which he is commissioner may from time to time prescribe, (except as Of commission-ers in chancery.

	Fees of clerk of county court.
For swearing the witnesses, and entering in the order or minute book all orders in relation to the proof of a will which is admitted to record without contest, and copying such order on the will or on a paper annexed thereto, when fully proved and but one order.....	75
If but partially proved on one day, for the order and entering the same on the will or paper annexed thereto.....	50
And for each subsequent order and entering the same on the will or paper annexed thereto.....	50
For the same services where there is a contest.....	2 00
For recording a will and the matter recorded therewith in the will book, at the option of the clerk, three cents for every thirty words, or a specific fee of.....	50
For entering orders and transmitting papers in case of an appeal.....	75
If there be an order committing a decedent's estate to an officer, for entering and copying such order and the orders of appraisement.....	50
If any personal representative or guardian qualify, for administering necessary oaths, making out bond, entering and copying on the will order granting probate or administration, making out copy of such order for personal representative or guardian, entering and copying orders of appraisement.....	1 00
If several personal representatives qualify on the same estate at the same time or term, only the same fee shall be charged as if one had qualified, to-wit:.....	1 00
For entering and copying an order granting a license to keep a hotel or tavern where spirituous liquors are not sold.....	1 00
For entering and copying an order granting a license to keep a hotel or tavern where spirituous liquors are sold, administering oath and taking bond.....	2 00
On application for a marriage license, for administering and writing certificate of oath, issuing and registering license and recording and giving receipt for certificate of marriage.....	1 00
For a search for anything in his office over a year's standing.....	25
For recording a certificate and posting a copy thereof under the second section of chapter sixty-one of the code.....	50
For docketing, under chapter one hundred and thirty-nine of this code, a judgment, decree, bond or recognizance.....	35
For re-docketing the same when required.....	35

Fees of clerk of county court.

For making out a transcript of the record and proceedings in any case in due form, so that the same may be used in an appellate court, for every thirty words, three cents; and for making out in any other manner than copying, any paper to go out of the office which is not otherwise provided for, the same; or in lieu thereof, if the clerk elect, a specific fee of.....	50
For any copy, if it be not otherwise provided for, three cents for every thirty words, or in lieu thereof, if the clerk elect, a specific fee of.....	35
For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying it, and writing certificate for president of the court or judge, if the clerk be required to do so.....	50
For recording and filing an inventory or sale bill, three cents for every thirty words, or at the option of the clerk, a specific fee of.....	50
For entering an order confirming the report of a fiduciary	50
For recording such report and the matter recorded therewith, for every thirty words, three cents; or in lieu thereof, if the clerk elect, a specific fee of	50
For recording any bond required by law to be recorded, including the certificate or other evidence of its execution	50
For recording a mechanic's lien, three cents for every thirty words; or at the option of the clerk, a specific fee of.	50
For recording a certificate of real estate claimed as a homestead.....	50
For administering any oath not before provided for, and writing certificate thereof where the case requires one.....	15

A Clerk of Circuit Court.

Fees of the clerk of the circuit court.

8. For issuing an attachment, or a summons to answer a bill, with an endorsement thereon of an injunction, or order of attachment, and recording the same	75
Every order of publication, including the taking of the necessary affidavit thereof, delivering the same to the printer, posting copy at the door of the court house, and the making of the affidavit thereof.....	1 00
For process for which no other fee is allowed.....	40
For each copy of a process which goes out of the office (with such process) to be used in serving it, one half the fee for issuing such process.	

For issuing summons for witnesses.....	25
For every copy of such summons	15
For noting in the process book any decree, order or process, and taking receipt therefor.....	25
For postage paid by the clerk on any decree, order or process, and putting in or taking out of the post-office the same, three times the amount of such postage.	
For entering in any suit, or in a motion for judgment for money, all the attorneys for each party, or the appearance in proper person of a party having no attorney, who so appears.....	10
For endorsing and filing each petition, declaration, bill, answer, or other written pleading, each bill of exceptions, each written notice of the defense relied on in ejectment, or of a motion for judgment for money, and each report of a commissioner	15
If when a bill, answer or report of a commissioner is filed, there be filed therewith any exhibit in which the clerk is required by law to endorse the names of the parties and the day it is filed, and he does so endorsed them, for every such exhibit.....	10
For endorsing and filing all the depositions and affidavits of witnesses filed on the same side, or all written interrogatories from one party to another, or all the answers filed to such interrogatories, or the exceptions filed by either party, to a commissioner's report.....	60
If papers be filed on the side of the plaintiff, for which no particular fee is allowed, a fee (not for each, but for the whole) of.....	25
So also, if papers be filed on the side of the defendant, for which no particular fee is allowed, a fee (not for each, but for the whole of such papers), of.....	25
For issuing a <i>scire facias</i> and recording the return, where proper to do so.....	75
For issuing an attachment, with a copy of the rule or order for the same (if sent out therewith), and recording the return thereof, where proper to do so.....	50
For entering in the rule book the return of all process returnable the same day, a fee (not for each defendant named therein, nor for every such process, but for the whole of the defendants named in all such process) of.....	50
For all the rules entered in any case on the same side at the rules for one month, when anything is done on such side at said rules, besides entering or filing a pleading or continuing the case.....	50

Fees of clerk of
circuit court.

Fees of clerk of
circuit court.

Where no proceedings are had in any case during any rules, except to continue it, the fee shall be at the rate of twenty-five cents for every quarter of a year the case is so continued, and no more.	
For docketing and continuing a cause at each term in which there is no other order, except to continue the cause, or where a cause is continued by operation of law.....	50
Where a jury is impaneled, for swearing the jury and witnesses.....	75
Where no jury is impaneled, if witnesses be examined by the court, for swearing such witnesses for either party.....	25
Where a witness claims for his attendance, for administering an oath to him, and certifying such attendance....	30
For all judgments, decrees, orders and proceedings, (except entries of pleadings and matters otherwise provided for), at the election of the clerk, three cents for every thirty words actually written in the order book, or a specific fee in each case, of.....	50
For taxing costs in any case, on one side... ..	20
And if the case has been pending more than one year, then for every additional year.....	10
For issuing an execution, the entry in the execution book and the record of the return	50
For making out a transcript of the record and proceedings in any case in due form, so that the same may be used in an appellate court, for every thirty words, three cents; and for making out in any other manner than copying, any paper to go out of the office, which is not otherwise provided for, the same; or in lieu thereof, if the clerk elect, a specific fee of.....	50
For any copy, if it be not otherwise provided for, three cents for every thirty words, or in lieu thereof, if the clerk elect, a specific fee of....	40
For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying it, and writing certificate for the judge of the court, if the clerk be required to do so.....	50
For a writ of <i>supersedeas</i> or other writ issued on an appeal to the circuit court.....	50
For making out the bond, if one be required, upon issuing such writ, administering oaths and taking proper affidavits.....	50
Upon any such writ, for endorsing and filing the petition therefor, or when the writ is returned, for filing it with the return thereof.....	20

	Fees of clerk of circuit court.
When the clerk of the court of appeals issues process on an appeal, writ of error or <i>supersedeas</i> , for making out the bond, administering necessary oaths, and writing proper affidavits, and endorsing on the process a certificate of the execution of the bond, and of the names of the sureties therein.....	1 00
After a decision by the circuit court or court of appeals as an appellate court, for issuing an execution, making entry thereof in the execution book, and recording return.....	75
For taxing the damages to which a party may be entitled by reason of an injunction, appeal, writ of error or <i>supersedeas</i>	50
For making out an injunction bond, administering all the necessary oaths, and writing the certificates thereof, and endorsing on the summons that such bond is given.....	1 00
For making out any bond under the provisions of chapter one hundred and six of this code, administering the oaths and writing the certificates in relation thereto, and for all that is necessary to be done in relation thereto.....	1 00
For making out any other bond not otherwise provided for, administering all necessary oaths and writing certificates thereof.....	50
For any service not before provided for the same fees as a clerk of a county court for similar services.	

Clerks of Courts of Limited Jurisdiction.

9. The clerks of courts of limited jurisdiction created in incorporated cities, towns and villages, shall have the same fees for their services as clerks of the circuit courts for similar purposes.

Clerk of the Court of Appeals.

10. For filing the record upon an appeal..	1 00	Fees of the clerk of the court of appeals.
For docketing an appeal, to be charged but once.....	1 00	
For entering judgment on an appeal, for every thirty words, three cents, or the clerk may charge a specific fee of.....	1 50	

For all other services not herein provided for, the clerk shall have the same fees as the clerk of a circuit court for similar services.

Sheriffs.

	Of sheriff.
11. For serving on any person a declaration in ejectment, or an order, notice, summons or other process where the body is not taken, and making return thereof.....	75
Except that the fee for summoning a witness shall be	25

Fees of sheriffs.	For serving on any person an attachment or other process under which the body is taken.....	1 00
	For levying an attachment on real estate and making his return	3 00
	For making any other levy	1 00
	For carrying a prisoner to or from jail, for each mile of necessary travel either in going or returning...	05
	For taking any bond.....	60
	When a jury is sworn in court, for summoning and impaneling such jury.....	1 00
	For serving a writ of possession.....	1 50
	For serving a writ of distringas on a judgment or decree for personal property, if the specific thing be taken.....	1 50

For keeping and supporting any live stock distrained or levied on as follows:

For a horse or mule, if well fed on grain and hay or fodder, thirty-five cents per day; but if the same be kept on pasture, twelve cents per day, or such other sum in either case as the county court may from time to time prescribe. But if a mare so levied on and kept have a sucking colt, no fee shall be allowed for keeping the colt.

For a hog, five cents per day.

For each head of cattle, five cents per day.

For sheep and goats, each, one and one-half cents per day.

The officer shall be repaid any necessary expense incurred by him in keeping property not before mentioned or in removing any property; and when, after distraining or levying, he neither sells nor receives payment, and either takes no bond or takes one which is not forfeited, he shall, if guilty of no default, have (in addition to the sixty cents for a bond, if one was taken,) a fee of three dollars, unless this be more than half of what his commission would have amounted to if he had received payment; in which case he shall, (whether a bond was taken or not) have a fee of sixty cents at the least, and so much more as is necessary to make the said half of his commissions.

The commission to be included in a forthcoming bond (when one is taken) shall be five per centum on the first three hundred dollars of the money for which the distress or levy is made, and two per centum on the residue of said money; but such commission shall not be received in whole or in part, except as hereinbefore provided, unless the bond be forfeited, or the amount (including the commission) be paid to the plaintiff.

An officer receiving payment in money, or selling property, shall have the like commission of five per centum on the first three hundred dollars of the money paid or proceeds from such sale, and two per centum on the residue, except that when such payment or sale is on an execution

Sheriff's commission, etc.

or a forthcoming bond, his commission shall be only half what it would be if the execution were not on such bond.

Fees of Justices.

	Fees of justices in civil cases.
12. Every justice of the peace shall be entitled to charge and receive the following fees, viz :	
For summons to commence a suit.....	20
For every copy thereof.....	10
For every additional summons in same action.....	15
For a copy thereof	10
For docketing an action commenced by appearance and agreement.....	20
For issuing order of arrest, order of commitment, or order of attachment.....	25
For every subpoena for witness.....	10
For order of arrest against delinquent witnesses or jurors, or in any case of contempt, and for trial and judgment in such case.....	75
For swearing each witness, arbitrator or party.....	05
For taking and certifying any affidavit in writing, twenty cents, or ten cents per hundred words, at the option of the justice.	
For every continuance.....	10
For appointing a guardian for the suit of an infant plaintiff or defendant.....	10
For appointing special constables at request of either party.....	25
For settling and allowing interrogatories.....	25
For entering agreement for arbitration.....	10
For summons to arbitrators.....	15
For every bond filed in the suit.....	25
For venire for jury, including the drawing for the same.....	25
For trying a jury case.....	75
For trying a case without a jury.....	50
For entering judgment	25
For abstract of judgment for docketing in the office of the clerk of the county court.....	25
For transferring a judgment on docket.....	25
For entering satisfaction of judgment.....	10
For issuing execution and entering return thereof on his docket	40
For issuing every additional execution.....	20
For entering stay of execution... ..	20
For trying right of property levied on or attached ..	50
For taxing costs.	20
For every process or order not otherwise provided for.....	25
For transcript from docket, and other writings and copies not otherwise provided for, twenty-five cents, or ten cents per hundred words, at the option of the justice.	

<i>Fees of justices.</i>	For transmitting or delivering papers to clerk of the circuit court in case of an appeal.....	50
	For taking and certifying acknowledgment of deed, or other instrument of writing.....	25
	If executed by a married woman, twenty-five cents in addition for certifying her examination and acknowledgment.	
	For taking depositions of witnesses, if done in an hour or less.....	75
	If not done in an hour, for any additional time, at the rate per hour of.....	75
	For taking an inquest on a dead body, to be audited and paid from the treasury of the county.....	5 00

Fees of Constables.

<i>Fees of constables in civil cases.</i>	13. For removing a person by virtue of a warrant issued under the thirteenth section of chapter forty-six, to be charged to the county court of the county, five cents for each mile of necessary travel, going and returning.	
	For service and return of summons to commence a suit, and for every additional summons.....	40
	For serving and returning order of attachment, twenty cents for each garnishee summoned, and one dollar for taking property, including inventory and appraisement, besides the reasonable expenses of removing, securing and keeping the property attached.	
	For subpœna, for each person served therewith.....	25
	For summoning a jury and return of venire.....	75
	For levying an execution on personal property and return.....	30
	For posting notices of sale.....	40
	For money made under execution or attachment and paid to the party entitled thereto five per cent.	
	For serving and returning other writs and notices not specified in this section, each.....	50
	For executing a writ of possession under section two hundred and thirty-five of chapter fifty.....	2 00
	For summoning a jury and witnesses for inquest on a dead body, to be audited and paid from the treasury of the county.....	3 00
	For services not otherwise provided for, the same fees as sheriffs for similar cases.	

Fee Bills of Justices and Constables.

<i>Fee bills of justices and constables, and provisions in relation thereto.</i>	14. Except where it is otherwise provided, the fee bills of justices and constables shall be chargeable to the persons at whose instance or request the services were rendered. Such officers may issue their fee bills against the person so chargeable, and place them in the hands of any constable of the county in which the persons against whom	
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they are issued respectively reside. The officer collecting the same may retain for his compensation ten per cent on the amount collected and paid over to the officer entitled thereto. The succeeding sections of this chapter, as far as they are applicable, shall govern as to making out and collecting fee bills issued by a justice or constable.

15. If any justice or constable issue a fee bill for any service against any person not chargeable therewith, or for a greater amount than the law allows, he shall pay to the person against whom the same is issued four times the amount so unlawfully charged, which may be recovered by such person before any court or any justice, not interested, having jurisdiction.

Penalty on justice or constable for charging illegal fees.

16. For any service rendered by virtue of his office, for which a fee is allowed by law, except fees chargeable to the state or county, the justice or constable may require the proper fee to be paid before the service is rendered.

May require fees in advance, except, etc.

17. The justice shall keep a feebook, or a memorandum or account upon his docket, so as to show underneath the title of each suit, the costs made by each party, separately, for services rendered at the instance or request of such party; and also, to whom the same are due, whether to himself, the constable, witnesses, or other persons; and shall note, from time to time, which of the items are paid, so far as the facts may come to his knowledge.

Feebook kept by justice; what to show.

18. The costs to be included in the judgment or execution are those made only by the party in whose favor the judgment is rendered, and which have been paid by him, or which he is bound to pay, if the same be not collected from the adverse party. But the costs made by the party against whom the judgment is rendered, and which he is bound to pay, may be separately endorsed or noted on the execution, which shall then, as far as such costs are concerned, be equivalent to a fee bill. When costs are included in an execution or endorsed or noted thereon, it shall show the same due each person, whether justice, constable, witness, or other person; and the costs so noted on the execution shall be collected and accounted for by the officer in whose hands the execution is, at the same time and in the same manner as the costs included in the execution.

Costs included in judgment to be only those made by prevailing party.

Costs made by party against whom judgment is, may be endorsed on execution.

Fees of Justices in Criminal Cases.

19. Every justice shall be entitled to the following fees in criminal cases and proceedings before him, to be charged and recovered as provided by the two hundred and twenty-seventh and two hundred and twenty-ninth sections of chapter fifty:

Fees of justices in criminal cases; how paid.

Fees of justices in criminal cases; how paid.	For every recognizance or bond to keep the peace, or be of good behavior.....	50
	For every warrant of arrest, or commitment.....	30
	For docketing case on return of warrant of arrest executed.....	30

For all services rendered at the instance of the defendant, the same fees shall be charged as are allowed for similar services in civil cases.

For trial before a jury	75
For trial without a jury	50
For every subpoena for one or more witnesses	20
For every copy thereof	10
For every warrant to summon a jury	50
For swearing a jury	25
For swearing witnesses, ten cents each.	
For entering his judgment on his docket, and taxing the costs.	50
For issuing execution	25
For granting an appeal, including taking the bond or recognizance, making and certifying a transcript of his docket, and transmitting the same and the papers in the case to the clerk of the circuit court, ten cents for every hundred words, or in lieu thereof a specific fee of	75

In all other cases the fees allowed in civil cases by law to other county officers for similar services.

Fees to be audited and paid by county court.

20. A justice shall be entitled in cases not otherwise provided for, to the following fees, which shall be audited and paid by the county court as other claims against the county.

For the warrant to arrest the person or persons accused, and take him before a justice for examination, including the summoning of witnesses	25
For the examination of witnesses to ascertain whether such warrant ought to be issued, and against whom.....	50
For the examination when the accused is apprehended and brought before him.....	50
For recognizance of bail, warrant of commitment, or discharge of the accused.....	50
For recognizance of witnesses, each.....	10
For a search warrant.....	50

Fees of Constables in Criminal Cases.

Fees of constables in criminal cases.

21. For an arrest in case of felony.....	1 00
For an arrest in case other than felony.....	60
For serving a subpoena.....	20
For executing a search warrant.....	1 00
For services not otherwise provided for, the same fees as allowed to sheriffs.	

In cases of search warrants, and proceedings under chap-

ter one hundred and fifty-six of this code, the fees of constables shall be chargeable to the county, and shall be audited and paid as other claims of like nature by the county court. In criminal cases, other than felony, such fees shall be charged and paid as provided in sections two hundred and twenty-seven and two hundred and twenty-nine of chapter fifty of this code. How paid.

Fees of Jailers in Both Civil and Criminal Cases.

22. For receiving a person in jail, twenty-five cents, and the like sum for discharging him therefrom. Fees of jailors
 For keeping and supporting a person confined in jail, for each day..... 50

Upon the affidavit of the jailor the county court shall allow him out of the county treasury the amount actually paid for fuel necessary in heating the jail. To be allowed fuel for jail.

For attendance upon the circuit and county courts, and acting as janitor of the court-house, he shall be allowed not exceeding one hundred and fifty dollars per annum, to be ascertained and fixed by the county court and paid out of the county treasury. Allowance to jailor for services as janitor.

In cases of felony, the fees of the jailor shall be paid out of the state treasury; in cases of misdemeanor they shall be paid out of the county treasury, and in civil cases by the party at whose instance a person is committed to jail. How fees paid.

Payment to Officers Out of the Treasury.

23. There shall be paid out of the treasury to clerks and sheriffs, the following fees, after the same are duly certified to the auditor, viz: Payments to officers out of state treasury.

To a clerk of a circuit court for services rendered the state in a civil case, such fees as would be chargeable for the like services of an individual.

To a sheriff or other officer, for an arrest for felony, one dollar; and for conveying any person, charged with or convicted of felony, to jail, or from one jail to another, or to the penitentiary, for each mile in going and returning, ten cents. The officer shall also be allowed for the support of the prisoner during the removal, and for assistance to make the arrest or effect the removal, such charge as may have been necessarily incurred by him, to be shown by his own affidavit, if living, or if he be dead, by the affidavit of some credible person; and where he has assistance, by the affidavit also of each person employed by him, or by such of them as may be alive and within the jurisdiction of the court, and if none of them be alive, or within the jurisdiction of the court, the court may allow such claim upon his own affidavit; such charge for assistance not to exceed, where it is in making an arrest, one dollar per day for each person employed to assist him; and not to exceed, where it is in conveying a prisoner,

ten cents per mile going and returning, for each guard; for impaneling a jury in case of felony, one dollar; and for executing a sentence of death, five dollars in addition to the expenses actually incurred by the officer in its execution.

How Fees are Charged and Fee Bills Made Out.

How fees are charged and fee-bills made out. 24. The fees mentioned in this chapter shall be chargeable to the party at whose instance the service is performed; except the fees for entering and certifying the attendance of witnesses and proceedings to compel payment for such attendance, shall be charged to the party for whom the witness attended, and except also, as follows:

Clerk not allowed fees in certain cases.

No clerk shall charge for taking bond from, administering oaths to, or copying orders as to the appointment or qualification of any county, school or district officer, or for filing the bonds or oaths of any such officer, nor for making or copying orders as to county levies or grand juries and administering the necessary oaths.

Sheriff not to charge for services in certain cases.

No sheriff shall charge for serving such or any other public orders, nor for summoning and impaneling grand juries.

Not paid out of state treasury except where allowed by law.

No clerk or sheriff shall receive payment out of the treasury for any service rendered in cases of the state, except where it is allowed by law.

Clerk to keep a fee book.

25. Every clerk of a court shall keep a fee book, wherein shall be entered the fees for every service performed by him, and the fact of such fees being paid, or of a bill being made out therefor, whichever shall happen first. The fee books of a clerk shall be submitted to the inspection of commissioners appointed to examine the clerk's office.

To be submitted to inspection of commissioners.

No person compelled to pay fee bill unless fee bill presented to him, etc. Fee bill not to be made out for service not previously performed; exception.

26. No person shall be compelled to pay any fees before mentioned, until there be produced to him a fee bill signed by the officer to whom the fees are due, expressing the particulars for which such fees are charged. And no such fee bill shall be made out for any service not previously performed, except as hereinafter provided, unless a person desire to pay before such performance, in which case there shall be mentioned in such fee bill the nature of the service, and the fact that it is to be performed. Nor shall an officer, for any service, make out a fee bill for more than is allowed therefor. Nor shall he, for the same service, attempt to obtain payment a second time; nor ever make out a fee bill a second time, unless he endorse the fact and swear that the former bill remains unpaid. For each item in which an officer shall violate this section, he shall forfeit five dollars to any person prosecuting therefor, and the circuit court of the county in which an officer resides, may on motion, after reasonable notice to him, quash any fee bill made out by him contrary to law. But any officer may

Fee bill to be made out for true sum due. Officer not to attempt to obtain payment a second time, or make out fee bill a second time, etc. Penalty for violation.

demand his fees in advance for any particular service required to be performed by him for any person not residing in his county, and if such fees be not paid or secured to him, the officer may refuse to perform the service until they are paid or secured. In such cases the fee bill shall state the nature of the service, and that it is to be performed.

May demand fees in advance from non-residents.

How Bills Are Made Out for Fees Due a Deceased Clerk.

27. When a clerk dies, his successor shall charge in the fee books of the clerk's office such lawful fees as do not appear to have been charged therein, for services performed by the decedent, and make out fee bills for such fees, and also for any fees charged on the said books by the decedent for which he does not appear to have made out fee bills in his lifetime; except that such of those as appear to said successor, to be for more than is allowed by law, shall be reduced by him so far as in his judgment is necessary to make them legal.

Fee bills due deceased clerk; how made out.

28. The fee bills made out under the preceding section shall show on their face that they are for fees due the decedent, and shall be signed by his successor, and delivered to the personal representative of such decedent, as soon as practicable. Such successor shall receive for his services, under this and the preceding section, such compensation as the court, whereof he is clerk, shall adjudge to be reasonable, which shall be paid by said personal representative, or by the officer who may collect said fee bills, out of the first proceeds of said collection.

Shall show that they are for fees due decedent. To whom to be delivered.

How Fee Bills Are Collected and Accounted For.

29. Any officer mentioned in this chapter, or the personal representative of a deceased clerk may, on or before the first day of July in any year, deliver fee bills, duly signed, to any sheriff or collector of the public taxes, who shall receive and endeavor to collect the same. A sheriff or collector may distrain therefor, or for any fee bills due himself, such property of the person to whom the fees are charged as might be levied on under a writ of *fiery facias* against him, except as hereinafter mentioned, and the twelfth, thirteenth and fourteenth sections of chapter thirty of this code shall apply to such fee bills in like manner as to taxes.

How fee bills collected and accounted for.

30. Every sheriff or collector to whom such fee bills are so delivered, shall, on or before the first day of January next after such delivery, account therefor with the officer or the personal representative entitled thereto, by returning such as he may not have collected, with the endorsement thereon, of the words, "No property found;" and by paying to such officer or his legal representative, the

When sheriff to account for collection.

Judgment may be obtained against sheriff in default for collection of fee bills.

How judgment obtained.

Limitation upon fee bills.

How officer or witness may collect fees out of costs of suit, etc.

amount of all not so returned. If he fail so to do, judgment may be obtained, on motion, against said sheriff or collector, and his sureties, and his and their personal representatives, or against any deputy who may have signed the receipt for said fees, or his personal representative, for the amount with which such sheriff, collector or deputy is chargeable, and damages thereon, not exceeding fifteen per centum per annum, from the said first day of January till payment. Such judgment may be on motion in the circuit court of the county in which said sheriff or collector resides, and if the fees be due to the clerk of the court of appeals, it may be in the circuit court of the county in which the seat of government may be. On such motion any receipt for fees mentioned in the notice as signed by any person, shall be deemed to be his signature, unless an affidavit be filed denying it, and shall be *prima facie* evidence of the collection of all the fees mentioned therein, not returned as aforesaid.

31. No fee shall be collected by distress or suit after two years from the end of the year in which the service was performed that is charged therein; unless within two years before the institution of such proceeding it was returned by an officer, with endorsement thereon (properly dated) as is mentioned in the preceding section.

32. An officer or witness to whom, for fees or attendance, anything is due that is taxed in the costs for which there is judgment or decree, may, within ten days after such judgment or decree, lodge in the clerk's office of the court wherein the same is rendered, his fee bills for such fees, or certificate for such attendance. The amount due each officer or witness, for what is so lodged, shall, and the amount due the clerk himself for fees so included, may, within the said ten days, be noted in the margin of the order or execution book, opposite the entry of the case. An officer or witness, whose fees or certificate may be so noted, shall be paid the same out of the costs, by the person against whom the judgment or decree is; and the right to such payment shall be valid against any assignee of the judgment or decree. When the clerk issues execution in such case, he shall endorse thereon how much of said costs is for each officer or witness whose fees or certificate may be so noted; and the officer collecting said costs shall pay the same accordingly, to those entitled thereto. No officer mentioned in this chapter shall be obliged to perform services for any person out of his county, unless payment of his fees for said service be made or secured; nor to perform services for any person against whom he has had fee bills returned, which remain unsatisfied, unless he be secured payment of his fees for the services desired, or performance of said services be directed by a court.

33. In all criminal cases, other than felony, search warrants and proceedings under chapter one hundred and fifty-six of this code, the fees of justices and constables shall be charged to the county, and audited and paid as other claims against the county, except, that if there is no conviction before the circuit court, then the person making the complaint before the justice shall pay said fees, and the county shall in no event, unless there is a conviction as aforesaid, and the fine and costs be collected therein, be liable for or pay any such fees.

What fee paid by the county.

Where no conviction had before circuit court, fees to be paid by person making complaint.

Acts Repealed.

2. Chapters ten and fifty-one of the acts of eighteen hundred and seventy two and three, and all acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Acts repealed.

[Approved March 30, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXXX.

AN ACT amending and re-enacting chapter thirty-one of the code of West Virginia, as amended and re-enacted by chapter one hundred and seventeen of the acts of one thousand eight hundred and seventy-two and seventy-three.

[Passed March 24, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter thirty-one of the code of West Virginia be, and the same is hereby amended and re-enacted so as to read as follows:

Chapter 31 of code amended.

CHAPTER XXXI.

SALE OF REAL ESTATE FOR TAXES; FORFEITURE FOR NON-PAYMENT AND NON-ASSESSMENT OF TAXES; TRANSFER OF TITLE VESTED IN THE STATE; REDEMPTION THEREOF; DEED TO PURCHASER.

Lien for Taxes; Record of Delinquent Land; How Taxes Thereon May be Paid.

1. There shall be a lien on all real estate for the taxes assessed thereon from the day fixed by law for the commencement of the assessment of such taxes in each year,

Lien for taxes.

and the interest upon such taxes at the rate of six per cent. per annum from the first day fixed by law for the payment of such taxes into the treasury until payment.

Auditor to ascertain all real estate returned delinquent for the non-payment of taxes since March 10, 1832, etc.

Exception.

2. The auditor, under the direction of the governor, and at the expense of the state, shall adopt proper measures to obtain accurate and authentic returns (where he is not already in possession of such returns,) of all real estate in this state which, since the tenth day of March, one thousand eight hundred and thirty-two, has been returned delinquent for non-payment of taxes to the state of Virginia, or this state; except real estate which before the twentieth day of June, one thousand eight hundred and sixty-three was returned delinquent for the non-payment of taxes to the state of Virginia, where the taxes, exclusive of interest or damages, do not exceed twenty dollars.

Record thereof to be kept in auditor's office.

May be redeemed before sale.

3. Of the real estate mentioned in the preceding section, except as therein excepted, and of all real estate hereafter returned delinquent for non-payment of taxes, a record shall be kept by the auditor in his office. And until a sale thereof as hereinafter directed, any person having a right to redeem the same may pay into the treasury the taxes on any such real estate as hereinafter provided.

Of the Proceedings for the Sale of Delinquent Land.

Proceedings for the sale of delinquent lands. Lists to be made out and delivered to sheriffs.

What lists to specify.

Rate of interest to be charged.

Lands sold for taxes shall not be again sold for taxes due for a previous year.

Exception.

4. On or before the first day of November, in the year one thousand eight hundred and eighty-three, and in every second year thereafter, the auditor shall cause to be delivered to the sheriff or collector of the taxes for every county two lists of the real estate therein, which, at the time said lists are made out, shall have been returned delinquent for the non-payment of the taxes thereon for any previous year and not previously sold therefor, and on which the taxes and interest, or any part thereof, shall remain then unpaid and not released or otherwise discharged, with a statement of the several amounts due for state and state school taxes; county taxes for all purposes; school district and independent school district taxes; other district taxes for all purposes; and municipal corporation taxes for all purposes, on each tract or lot for each year, with interest on each amount from the twentieth day of January in the year succeeding that in which such taxes were levied, until the first day of November in the year such lists are delivered as aforesaid to the sheriff or collector, at the rate of twelve per centum per annum added thereto. But if the real estate has been sold for the non-payment of taxes, the same shall not be charged with, or again sold on account of any tax for any year previous to that for the taxes of which the sale was made; except, that if for any cause a previous sale of real estate purchased by or in behalf of the state, has been or shall

be set aside by any court, and the taxes for which it was or shall be sold, have not been paid, the auditor shall include in such lists all such real estate, and the same shall be sold for the taxes and interest due thereon for the years for which it was previously sold, in like manner and with like effect as the other real estate mentioned in said lists.

5. When by the formation of a new county or the change of the boundary between two counties, any tract or lot returned delinquent for non-payment of taxes in one county shall, after such return, be included in another, the clerk of the county court of the county, in which such land was included, shall certify the same to the auditor before the first day of June, in the year one thousand eight hundred and eighty-three, and before the same day in every second year thereafter, in order that the same may be entered in the list to be delivered, pursuant to the preceding section, to the sheriff or collector of the county in which the said tract or lot is situated.

When lands are transferred by the formation of a new county.

Duty of the clerk of the county court in relation thereto.

6. Within ten days after receiving such lists, the sheriff or collector shall cause such list to be published at least once in each week for four successive weeks in some newspaper printed in the county, prior to the day of sale, with a notice appended thereto, that the real estate mentioned in such list, or so much thereof as shall be sufficient to satisfy the taxes, with the interest on the same, and a commission of five per cent. on the whole amount to the sheriff or collector, will be sold at public auction, between the hours of ten in the morning and four in the afternoon on the first day of the next November or December term of the circuit or county court of the said county, whichever may be held first after the posting of said list and the publication of said notice as herein required, or if no term of either court be held in said county in November or December, then on the second Monday in December next thereafter, unless the said taxes, interest and commissions are sooner paid to the sheriff or collector, or into the treasury of the state. He shall also as soon as such list is published the first time in a newspaper as herein required, post one of the copies thereof received from the auditor on the front door of the court house with a like notice appended thereto. If the lists herein named be not received by the sheriff in time to publish such notice and make such sale in the month of November or December, as herein provided for, said sale shall be commenced on the first day of a circuit or county court for such county, whichever may be held first in the succeeding year next after the publication of such notice of sale, which notices shall state the time and place of sale in such succeeding year. For each tract of land with the name of the owner, and the other particulars in relation thereto, which are stated in said lists delivered by the auditor to the sheriff, which is correctly printed in such news-

List of delinquent lands to be published prior to sale.

Notice to be appended to list.

When lands to be sold.

List to be posted at court house.

When sale to be postponed for certain causes.

Fee for publishing notice of sale in newspaper.

To be fixed by county court.
To be charged against each tract.
When tract purchased by state, fees to be paid by auditor

Tracts not correctly printed not to be paid for.

Mistake in publication or posting not to affect validity of sale.

If no newspaper published in county, or publisher unwilling to accept compensation, sheriff to post notice.
How posted in such case.

Taxes, interest, costs, etc., may be paid to sheriff before sale.

Taxes, interest, etc., presumed to be paid when real estate not sold.

If taxes, interest, etc., be not paid, sheriff to make sale.

paper, the proprietor of such paper shall receive not exceeding the sum of one dollar to be fixed by the county court and added to the sum for which such tract is sold, and the same shall be paid from the proceeds thereof by the sheriff or collector making the sale, except that when any tract sold at such sale is purchased by the state, the sum due for such publication shall be paid out of the treasury of the state upon the certificate of the auditor of the amount so due. But if any one or more of the tracts or lots of land are, in any respect, not printed in such newspaper as the same is stated and set out in the list furnished by the sheriff for publication no compensation shall be paid for the publication of such tract, and no sale of any such real estate as is sold by such sheriff, as aforesaid, or deed therefor to the purchaser thereof, shall be, in any way or manner affected by reason of any mistake in the publication or posting of such list or notice, or of the notice mentioned in section forty-nine of this chapter, in any newspaper in which the same is published, or by the sheriff or collector posting the same, as to the name of the owner, the quantity or location thereof, the amount for which it is to be sold, the year or years for which it is delinquent, or otherwise.

If there be no newspaper published in the county, or if no newspaper therein will publish said list and notice for the compensation herein provided, then the sheriff shall set up one of the lists so received by him as aforesaid at the front door of the court house of his county, with the notice of sale therein provided for attached thereto, at least four weeks before the time stated in such notice, at which such sale will commence, and shall post a written or printed copy of such notice (but not of such delinquent list), at some public place in each magisterial district of his county, at least twenty days before said sale. In such case the notice shall state that the delinquent list has been posted at the door of the court house of the county. Such taxes, interest, costs of publication and commissions may be paid to the sheriff or collector at any time before such sale, and he shall make a list of the real estate within the county, the taxes on which were paid to him as aforesaid, and return the same to the auditor. After such sale as in the succeeding section is mentioned, if any such real estate be not sold as therein required, it shall be presumed that such taxes, interest and commissions were paid, in the absence of proof to the contrary.

7. If the said taxes, interest, costs of publication and commissions be not previously paid, the sheriff or collector shall proceed to make said sale, and if the same be not completed on the day named in the notice thereof, it shall be continued from day to day (Sundays excepted), between the hours aforesaid until it shall be completed.

When it shall appear to any sheriff or collector that any real estate inserted in the lists delivered to him as aforesaid, ought not to be sold for the amount stated therein, he shall suspend the sale thereof and report his reasons therefor to the auditor, who shall thereupon make such order in relation thereto as may be just. If the real estate, the sale of which is suspended as aforesaid, ought to be sold for the same or a greater or less amount, it shall be inserted in the next list delivered to the sheriff, charged with the proper amount of taxes, interest and commissions due thereon, and sold therefor in like manner as the other real estate contained in said list.

When sheriff to suspend sale.

8. The sale shall be of each tract of land, or city, village or town lot, or of such separate quantities or parts of such tract, or of such undivided interest in such lot as shall be sufficient to satisfy the whole of the taxes, interest and commissions mentioned in the fourth section of this chapter, remaining unpaid, and the proceeds of such sales shall be accounted for and disposed of as follows: That portion thereof which was assessed for state and state school purposes, or for any other state purpose, with the interest thereon, shall be paid into the state treasury within sixty days after said sales are closed, and added to the irreducible school fund; and that portion thereof assessed for county, school district, independent school district, and other district purposes, shall be accounted for and paid over by the sheriff or collector as other county, school district, independent school district and other district taxes are accounted for and paid by him; and the part thereof assessed for municipal purposes shall be accounted for and paid over to such officer or person as the council of the city, village or town to which they belong shall direct.

What to be sold. How proceeds of sale disposed of.

9. No sheriff, deputy sheriff, collector or other officer, who shall return any real estate delinquent for the non-payment of the taxes thereon, or who shall receive a list thereof under the provisions of the fourth section of this chapter, or who shall sell by himself, his deputy or agent, or who shall be the deputy of any officer making such sale, shall directly or indirectly purchase any real estate so sold, or be in any way directly or indirectly interested with any other person in such purchase. Every person violating this section shall forfeit one hundred dollars for each offense, and the sale shall be absolutely void, and the title to the real estate sold shall remain in the person in whose name the same was sold.

Sheriff or other officer making return or sale, not to become purchaser of real estate sold.

Penalty.

Receipt for Purchase Money—Return of Sales.

10. The sheriff or collector on receiving from any purchaser the amount of purchase money shall grant to him a receipt for the same to the following effect:

Sheriff to give receipt for purchase money.

“Memorandum of real estate sold in the county of —
Form of receipt. on this — day of — eighteen —, for the non-
 payment of taxes charged thereon, in the said county, for
 the year (or years) eighteen — :

Name of person charged with taxes.	Quantity of land charged in the county, in all the districts therein.	In what district or districts charged with taxes	Estate held therein.			Amount of county taxes due thereon, including same.	Amount of school dist. and independent school dist. taxes due thereon, including same.	Amount of other district taxes due thereon, including same.	Amount of municipal taxes due thereon, including same.	Quantity of land sold	Name of purchaser.	Whole amount paid for purchase-money; fee for receipt and costs of publication.
			For the year.....	For the year.....	For the year.....							

Received of — the above sum of —, it being the whole amount paid by him for the purchase money of the real estate mentioned in this memorandum, including costs of publication and the fee for this receipt.

A— B—, *Sheriff (or Collector.)*”

Fee for receipt. 11. For the receipt provided for in the next preceding section the sheriff or collector shall be entitled to a fee of twenty-five cents, to be paid by the purchaser.

List of Sales to be Returned by Sheriff, etc.

List of sales to be returned by sheriff, etc. 12. The sheriff or collector who made the sale, shall forthwith make out a list of sales so made, with a caption thereto in form or effect as follows:

Form of return. “List of real estate sold in the county of — in the month (or months, as the case may be,) of — eighteen —, for the non-payment of the taxes charged thereon, in the said county, for the year (or years, as the case may be), eighteen —.” Underneath shall be the several columns mentioned in the tenth section of this chapter, with a like caption to each column.

Affidavit to be Appended to List—Recordation of Same.

13. There shall be appended to such list an affidavit in form or effect as follows :

Affidavit to be appended to return.

"I, A— B—, sheriff (or collector or deputy for C— D—, sheriff or collector), of the county of—, do swear that the above list contains a true account of all the real estate within my county which has been sold by me during the present year, for the non-payment of taxes thereon for the year —, and that I am not directly or indirectly interested in the purchase of any of said real estate. So help me God." Which oath shall be subscribed and taken before some person authorized to administer oaths.

Form of affidavit.

14. The list, with the certificate of oath attached shall, within thirty days after the completion of such sale, be returned to the clerk of the county court, who shall within twenty days thereafter, record the same in a well bound book, and transmit the original to the auditor. And if any sheriff or other officer whose duty it is to make out and return such list, shall fail or refuse to do so as herein required, he shall be guilty of a misdemeanor and fined not less than fifty nor more than five hundred dollars; and he and his securities in his official bond shall be liable in an action on said bond for all such damages as may be sustained by any person by reason of such failure; and such sheriff or other officer may, upon the petition of any person interested, be compelled by mandamus to make out and return such list, and the proceedings thereon shall be at his costs.

List to be recorded by clerk of county court.

Original to be transmitted to auditor.

Penalty for failure of sheriff to make and return list.

Subject to action for damages.

May be compelled by mandamus to make and return list.

When and How Land Sold May be Redeemed.

15. The owner of any real estate so sold, his heirs or assigns, or any person having a right to charge such real estate for a debt, may redeem the same by paying to the purchaser, his heirs or assigns, within one year from the sale thereof, the amount specified in the receipt mentioned in the tenth section of this chapter, and such additional taxes thereon as may have been paid by the purchaser, his heirs or assigns, with interest on said purchase money, and taxes, at the rate of twelve per centum per annum from the time the same may have been so paid.

How and when lands sold may be redeemed.

16. What is authorized to be paid by the preceding section may be paid by such person as is mentioned therein, within the said one year, to the clerk of the county court of the county, in any case in which the purchaser, his heirs or assigns, may refuse to receive the same, or may not reside, or cannot be found in the county; and a receipt therefor, showing when and by whom the payment was made, and the amount paid, shall be signed by the said clerk and a duplicate thereof filed by him in his of-

Payment may be made for redemption to clerk of county court in certain cases.

Receipt to be given by clerk.

Proceedings when purchaser disputes the right of redemption.

Notice to be given.

How served.

Circuit court to hear and determine right of redemption.

When money to be returned to original owner.

When land redeemed, duplicate receipts to be given to person redeeming.

Penalty for refusing or failing to give receipt of redemption.

Proviso as to when the right to redeem, determined by the circuit court. One of the receipts to be filed with clerk of county court; when. Clerk to endorse date of filing on each of receipts. If not filed, redemption void as to creditors, etc.

lice; but if the purchaser, his heirs or assigns, dispute the right of any one so paying money to the clerk, to redeem the real estate, for the redemption of which such money is paid, he or they may, within one year after such payment, give to such person, or to his heirs, executors or administrators, a notice in writing of such dispute, and requiring him or them to appear before the circuit court of the county on a day to be named in the notice, and prove his or their right to redeem the said real estate. Such notice shall be served at least ten days before that on which it is returnable, and if the party served therewith fail to appear, or if he appear and fail to prove to the satisfaction of the court that he has the right to redeem the said real estate under the provisions of the next preceding section, the court shall make an order according to the facts, and also directing the clerk of the county court to execute to the purchaser, his heirs or assigns, a deed for the said real estate in the manner hereinafter required; and it shall be the duty of the clerk to execute such deed in the same manner and within the same time as if the money aforesaid had not been paid him. In every such case the clerk shall pay the money so received by him to the person paying it, or to his legal representatives, on demand; but if the decision of the court be that such person has the right to redeem such real estate, the clerk shall pay said money to the purchaser or his legal representatives. When the owner of real estate sold for the non-payment of taxes thereon, or any other person having the right to redeem the same, shall pay the amount mentioned in section fifteen of this chapter, the purchaser, his heirs or assigns to whom such payment is made, shall sign and give to the owner or other person redeeming, duplicate receipts showing when and by whom payment is made, and the amount paid; or duplicate certificates or statements that the former owner or other person having such right redeemed the real estate. If such purchaser or other person, to whom such amounts are actually paid, shall refuse or fail to sign and give such receipts when lawfully required to do so, he shall pay to the person making such payment twice the amount thereof, which may be recovered by action on the case in any court having jurisdiction. *Provided*, That no such recovery shall be had in case of a decision of the circuit court against the right of such person to redeem such real estate as herein provided. One of said duplicate receipts or writings shall be filed with the clerk of the county court of the county in which the real estate was sold, on or before the day on which the right to redeem the same will expire under the provisions of the said fifteenth section of this chapter, and the clerk shall endorse on both such duplicates the fact and time of such filing. If the same be not so filed, such redemption shall be void as to creditors and subsequent assignees of the

benefit of the purchase of such real estate, from the purchaser thereof, his heirs or assigns, for a valuable consideration without notice, at any time before the same is so filed. If such receipt or writing be filed after the time herein required, it shall operate as a notice to all persons from and after the date of such filing. This section shall not be deemed applicable to a redemption of real estate under the provisions of section thirty of this chapter. The clerk of the county court of every county shall in the month of June in each year in which real estate is required to be sold for the non-payment of taxes thereon, make a list of all real estate redeemed as aforesaid, not before included in a similar list, and certify the same to the auditor. If the taxes on any such real estate charged to the owner thereof for the year in which the sale was made be not paid, such real estate shall be included in the lists of real estate which the auditor shall cause to be delivered to the sheriff of the proper county, and may be sold for any unpaid taxes thereon for any year previous to that in which it was sold as aforesaid and subsequent to the year or years for the taxes of which it was sold, or for that year, as if such former sale and redemption had not been made.

Receipt when filed to operate as notice.

Not to apply to section thirty.

Clerk to make annual list of land redeemed and certify to auditor.

Land to be sold for taxes due for prior or subsequent years.

Lands Sold and Not Redeemed.

17. The purchaser of a part, or an undivided interest of any tract or city, town, or village lot of land, so sold and not redeemed within one year as aforesaid, his heirs or assigns, before obtaining a deed therefor shall, at his or their expense, have the quantity or undivided interest so purchased, surveyed and laid off at his or their expense; the said quantity so laid off to be bounded in part by either or any of the lines of the tract, at the option of the purchaser, his heirs or assigns, so as not to include the improvements on the same, (if it can be avoided), and to be in one body, the length whereof shall not be more than double the breadth, where that is practicable. A plat and description thereof shall be returned to the clerk of the county court of the county in which the sale was made, and said clerk shall record the same in the deed book along with the deed to the purchaser, his heirs or assigns, if one be made.

Lands sold and not redeemed.

To be surveyed.

Plat and description to be returned to clerk of county court, and by him recorded.

18. The purchaser of an entire tract of land so sold and not redeemed within the said one year, his heirs or assigns, shall, at his or their expense, have a report or a survey, at his option, made, showing and specifying the mores and bounds of such tract, as far as the same can be ascertained. If a survey be made, a plat thereof as provided in the next preceding section shall be returned to the clerk of the county court, and be by him recorded as provided in said section. If a report, only be made, it shall be to said clerk and shall, in addition to what is hereinbefore prescribed,

Purchaser to have survey and report made; what to show.

Plat to be returned and recorded.

What report to contain. give such description of the tract sold, as will identify the same, and the clerk shall record such report in the deed book as provided in said next preceding section. The survey or report made in pursuance of this and the next preceding section, shall be made by the surveyor of the county in which the sale is made, or if he be interested, or if for any reason it be improper for him to act, or if there be no such surveyor, then by some competent and proper surveyor appointed by the county court of the county in which the real estate was sold, for the purpose, who shall take an oath that he will faithfully discharge the duties of his appointment to the best of his skill and judgment; which oath may be taken in open court, or before any person authorized by law to administer oaths, and a certificate of his having so taken said oath shall be filed with the clerk of the county court. If the purchase be of an entire city, village or town lot, no survey or report thereof need be made.

Survey and report to be made by clerk of county court.

Where no county surveyor, to be done by competent surveyor. Oath to be taken by such surveyor.

Deed to Purchaser, etc.; Form Of.

Deed to purchaser.

By whom made.

In case of death of purchaser, deed to be made to his heirs, etc.

19. After the expiration of the said one year, and the making of the survey or report mentioned in the seventeenth and eighteenth sections of this chapter, where the same is required, the purchaser of any real estate so sold and not redeemed as aforesaid, may obtain from the clerk of the county court of the county in which such sale was made, a deed of conveyance for the same. Such deed shall be made to the purchaser himself, or to such person as he may direct, either in writing acknowledged as a deed is required to be acknowledged, or by his joining therein; and if the purchaser has died, the same shall be made to his heir at law or devisee, or if he assigned his purchase during his lifetime, by a writing such as is hereinbefore mentioned, it shall be made to such assignee, or to his heir at law or devisee. Such deed may be in form or effect as follows:

Form of deed.

"This deed made this — day of —, eighteen —, by —, clerk of the county court of the county of —, West Virginia, (or by —, a commissioner appointed by the circuit court of the county of —, West Virginia, or by —, a commissioner appointed by the judge of the circuit court of the county of —, West Virginia, in vacation, as the case may be,) of the first part and — of the second part.

WHEREAS, In pursuance of the statute in such case made and provided, —, sheriff, (or —, deputy of —, sheriff, or —, collector, or —, deputy of —, collector, as the case may be,) of the said county, did in the month of —, in the year eighteen —, commence the sale of the real estate charged with taxes in said county, and returned delinquent therein for the non-payment of the taxes so charged thereon; and

WHEREAS, At said sale so commenced, continued and

completed according to law, the said _____ (or one _____, ^{Deed to purchaser.} if the grantee in the deed be not the purchaser), became the purchaser of a tract of land (or _____ acres, part of a tract of land, or the one undivided _____ part of a tract of land, as the case may be), charged with taxes in the said county as a tract (or part of a tract, as the case may be), of _____ acres, in the name of _____, for the year (or years, as the case may be), eighteen _____; for the sum of \$ _____, that being the taxes, interest and commissions due thereon at the date of such sale, and the costs of publication, and fee for the receipt for the purchase money; and

WHEREAS, More than one year has elapsed since the time of the said sale and purchase, as appears by the sheriff's (or collector's) receipt for the purchase money, and the said real estate not having been redeemed as provided for by law; and

WHEREAS, After the expiration of the said one year, to-wit: on the _____ day of _____, eighteen _____, the said _____ caused a survey and plat and description of the real estate so purchased to be made and filed with the clerk of the county court, (or caused a report to be made to the clerk of the county court specifying the metes and bounds of the real estate so purchased, and giving a description thereof sufficient to identify the same, as the case may be), as required by law. (If the purchaser has assigned his purchase by such writing as is hereinbefore stated, or joins in the deed to his assignee, or has died, and the grantee in the deed be, the assignee of the purchaser, or his heir, (or heirs), at law or devisee, here recite the facts showing why the deed is not made to the purchaser, and the fact that the purchaser joins in the deed, if he does so.)

Now, therefore, this indenture witnesseth that the party (or parties, if the purchaser, his heirs or devisees join in the deed) of the first part, for and in consideration of the premises, and in pursuance of the statute in such case made and provided, has (or have) granted, bargained and sold, and by these presents doth (or do) grant, bargain, sell and convey to the party of the second part his heirs and assigns forever all the real estate so purchased as aforesaid, situate in the county (or counties, if it be situated in more than one county), of _____, bounded and described as follows, to-wit: Beginning at (here give the boundaries and description of the real estate purchased substantially as shown by the survey and plat, or report hereinbefore mentioned), containing _____ acres, be the same more or less. To have and to hold the said real estate, with its premises and appurtenances, unto the said _____ his heirs and assigns forever.

Deed to purchaser.

Witness the following signature and seal (or signatures and seals):

_____, *Clerk of the County Court*, [Seal].
or _____, *Commissioner*, [Seal]."

Deed as to town lot, etc.

If the purchase was of a city, town or village lot, or a part thereof, or an undivided interest therein, the above form must be varied according to the facts.

Deed to pass legal and equitable title.

Fee for executing deed.

20. Every such deed in form or substance as prescribed in the next preceding section, shall be valid, and sufficient to pass to the grantee therein, the legal and equitable title to the real estate therein mentioned, as provided for in section twenty-five of this chapter. For every deed executed under the provisions of this chapter, the clerk or commissioner executing the same, shall be entitled to a fee of five dollars to be paid by the grantee therein, on the delivery of the deed.

Provision as to when clerk of county court and circuit court is same person, and is the purchaser. Deed to be made by commissioner.

21. Where the clerk of the county court is himself the purchaser, the deed for the land purchased by him shall be executed by the clerk of the circuit court; and where the clerk of the county and circuit court is the same person, the deed shall be made to him by a commissioner appointed by the circuit court of the county, or the judge thereof in vacation, for the purpose.

How the Execution of a Deed May be Compelled.

How clerk compelled to execute deed.

Application by petition to circuit court.

Ten days' notice to be given.

Proceedings thereon.

22. If the clerk of the county court fail or refuse to make the deed provided for in section nineteen of this chapter when lawfully required to do so, or if he execute an insufficient deed and fail or refuse thereafter to execute a good and sufficient deed to the person entitled thereto, when called on to do so, the person entitled to such deed may apply by petition to the circuit court of the county in which the real estate was sold, or to the judge thereof in vacation, to compel the making thereof by such clerk, or for the appointment of a commissioner to make the same. But of every such application ten days previous notice in writing must be given to such clerk. If upon the hearing of such application the court or judge be of the opinion that the applicant is not entitled to such deed, the petition shall be dismissed at his costs; but if the court or judge be of the opinion that he is entitled to such deed, an order shall be made by such court or judge directing the same to be made and acknowledged for record by such clerk, or a commissioner may be appointed for the purpose, as the court or judge shall determine. The order, if made in vacation, shall be filed with the clerk of the court and entered by him in the chancery order book thereof. If it appear to the court or judge making such order that the failure or refusal of the clerk of the county court to make such deed was without any reasonable cause, judg-

ment shall be given against him for the costs of the proceedings, otherwise the costs shall be paid by the applicant.

Effect of Deed Made by a Commissioner.

23. Every deed executed by a commissioner under any of the provisions of this chapter shall have the same force and effect, in all respects, as if made by the clerk of the county court of the proper county.

Effect of deed made by a commissioner.

When one Deed May be Made for Several Tracts, etc.

24. Where two or more tracts, or parts of tracts, or city, town or village lots, charged to the same person, or persons, with taxes, for the same year, or years, shall have been sold for taxes and purchased by the same person at such sale, the purchaser thereof, or his heirs, devisees or assigns may obtain from the clerk of the county court several deeds for each tract or part of a tract, and city, town or village lot, or undivided interest therein, or for any number of them less than the whole, or he may obtain one deed for the whole of them, as he may prefer; but every such deed shall describe each tract and part of a tract, and each lot and undivided interest in a lot separately; and such deed when so made for several tracts, and parts of tracts, and several lots and undivided interests in several lots, shall be as valid and effectual to pass to the grantee therein the title, legal and equitable to every such tract, and part of a tract, and to every such lot and undivided interest in a lot, as a separate deed for each would have been if such separate deed had been made to such grantee. If no deed or order therefor, of a court or judge be made under the provisions of this chapter within one year after the right to redeem the real estate sold as afore said, shall expire as hereinbefore provided, the former owner, his heirs or devisees, may after such year, and before such deed or order is made, redeem the real estate so sold by paying to the purchaser, his heirs, devisees or assigns, the amount of the purchase money, including the fee for receipt, and such additional taxes and interest thereon as is mentioned in the fifteenth section of this chapter, together with the costs of a survey or report, and interest thereon, if any such survey or report has been made. But no such deed shall be made or obtained after five years from the date of the sale of such real estate, except that on computing the said period of five years any time during which proceedings are pending to compel the execution of such deed as provided in the twenty-second section of this chapter, or during which the making of such deed is enjoined or stayed by any legal process or proceeding, shall not be computed.

When one deed may be made for several tracts, etc.

Purchaser must obtain deed in one year, or original owner may redeem.

No deed to be made after five years from sale, except, etc.

What Title Conveyed by Deed When Made.

25. When the purchaser of any real estate so sold, and not redeemed as aforesaid, his assignee, or heirs or devisees, shall have obtained a deed therefor according to the provisions of this chapter and caused the same to be admitted to record in the office of the clerk of the county court of any county in which such real estate or any part thereof may be, such right, title and interest in and to said real estate, as was vested in the person or persons charged with the taxes thereon for which it was sold, at the commencement of, or at any time during the year or years for which said taxes were assessed, and all such right, title and interest therein of any other person or persons having title thereto who have not in his or their own name been charged on the land books of the proper county or assessment district, with the taxes chargeable on such real estate for the year or years for the taxes of which the same was sold, and have actually paid the same as required by law, shall be transferred to and vested in the grantee in such deed, notwithstanding any irregularity in the proceedings under which the same was sold, not herein provided for, unless such irregularity appear on the face of such proceedings of record in the office of the clerk of the county court, and be such as materially to prejudice and mislead the owner of the real estate so sold, as to what portion of his real estate was so sold, and when and for what year or years it was sold, or the name of the purchaser thereof; and not then, unless it be clearly proved to the court or jury trying the case, that but for such irregularity the former owner of such real estate would have redeemed the same under the provisions of this chapter. When there are more than one such owner of such real estate, or person charged with taxes thereon, who are co-tenants thereof, or otherwise jointly interested therein, if the same be charged with taxes to one of them alone, or one, or more of them and others, without naming the others, such right, title, interest and estate as was vested in all, or any, or either of them, shall pass to and be vested in the grantee in such deed, and where the real estate so sold is charged to the heirs, or to the devisees of a decedent, without giving their names, or to the estate of a decedent, or to a deceased person in his or her own name, such right, title, interest and estate as was vested in the decedent at the time of his or her death in such real estate, shall pass to and be vested in the grantee in such deed. If more than one tract of land be charged as one, or the quantity thereof, or the residence of the party charged with taxes thereon, or the location of the real estate sold, or the district in which it is charged with taxes, be misstated, all such right, title, interest and estate therein as is hereinbefore mentioned, shall nevertheless pass to and

What estate vested in purchaser by deed.

As to the person charged with the taxes for which sold. Also the interest of any other person,

Deed not affected by irregularity in sale and return, etc.

As to joint owners of land sold.

As to lands charged and sold in name of a decedent, etc.

As to quantity, location, etc., of land sold.

be vested in the grantee in such deed. No irregularity, mistake or overcharge as to the amount of taxes, interest and commissions due on any such real estate, and for which it is sold, nor any payment of a part of such taxes, interest or commissions, shall invalidate or affect the sale of such real estate, except as to such part of said real estate proportioned to the whole thereof, as such part of said taxes, interest and commissions, so improperly charged against such real estate, and for which it was sold, bears to the whole sum for which it was sold. If the real estate sold as aforesaid be charged to a trustee by name, either with or without the addition of "trustee," or if there are more than one trustee, and it be charged to one of them, or to one or more of them, and others, without naming the others, and with or without the addition of trustee, or trustees, or if it be charged to the trustees of _____, without naming any of the trustees, all the right, title, interest and estate vested in such trustees, and each of them, and vested in each and every person for whom, or for whose use the said real estate was held in trust by such trustee or trustees, shall pass to and be vested in the grantee in such deed. If at the time of such sale the real estate sold be under a mortgage or deed of trust, or there be any other lien or encumbrance thereon, and the mortgagee, trustee, *cestui que trust* or person holding any such lien or encumbrance shall fail to redeem the same within the time proscribed by the fifteenth section of this chapter, then all the right, title and interest of such mortgagee, trustee, *cestui que trust*, and of the person or persons holding any such lien or encumbrance on the real estate so sold and not redeemed, shall pass to and be vested in the grantee in such deed; and his title to the premises shall in no way be affected or impaired by any such mortgage, deed of trust, lien or encumbrance. And no irregularity, error or mistake in the delinquent list or the return thereof, or in the affidavit thereto, or in the list of sales filed with the clerk of the county court, or in the affidavit thereto, or in the recordation of such list or affidavit, or as to the manner of laying off any real estate so sold, or in the plat, description, or report thereof made by the surveyor or other person, shall, after the deed is made, invalidate or affect the sale or deed. And if the deed be valid under the sale for the state taxes, it shall not be affected or impaired by any irregularity in the proceedings or sale for the county, district or other taxes, or any of them. If the sale be made for the taxes of two or more years, and be valid as to one or more of such years, but invalid as to the other year or years, and a deed or deeds therefor be made to the purchaser, or to his heirs, devisees or assigns, such sale or deed, for the year or years for the taxes of which the sale is valid, shall not in any way be affected or impaired by reason of the sale of the real estate conveyed

As to lands charged to a trustee, etc.

As to a mortgage, deed of trust, etc.

No irregularity, error or mistake in delinquent list, etc., to affect deed.

Deed valid under sale for state taxes, not affected by irregularity in sale for other taxes.

by such deed being invalid for any other year or years for which it was so sold. And no deed for any real estate sold under the provisions of this chapter shall be vacated or set aside in whole or in part by reason of any mistake or irregularity in the proceedings of record as aforesaid, unless and until the person entitled to have the same so set aside shall pay or tender to the purchaser, or his heirs, devisees or assignee, or the person holding under him, or some one or more of them, the purchase money paid for the said real estate at the time of the sale thereof, and all the taxes since paid thereon for any year or years for which such person so claiming, or those under whom he claims, have not paid taxes thereon, and the costs of the survey or report made as hereinbefore required, with interest on each sum from the date of the payment thereof to the time of such payment by the person so claiming. When any such sale is set aside in part, the court shall cause a partition of the real estate conveyed by the deed, if the same be necessary, between the person so claiming said real estate and the holder thereof under such sale and deed, according to their respective interests therein. And when any such sale or deed is set aside in whole or in part by reason of any mistake or irregularity in the proceedings of record in the office of the clerk of the county court, the officer whose misconduct, neglect, mistake or default caused the same to be set aside, and his sureties in his official bond (if he has given such bond), shall be liable in an action on such bond, or in an action of trespass on the case, to any party injured thereby for all such damages as he may sustain by reason of the setting aside of such sale and deed, or either. But no sale or deed of any such real estate under the provisions of this chapter shall be set aside, or in any manner affected by reason of the failure of any officer mentioned in this chapter to do or perform any act or duty herein required to be done or performed by him after such sale is made, or by the illegal or defective performance, or attempt at the performance, of any such act or duty after such sale, or by reason of the conveyance by the deed hereinbefore mentioned and prescribed, of a less quantity of real estate than that mentioned in the list of sales made out and returned as provided in the twelfth, thirteenth and fourteenth sections of this chapter, if the real estate so conveyed by such deed be, in fact, the same which was sold as delinquent.

Proceedings Where it is Alleged that the Taxes for Which the Sale was Made Were Not in Arrear.

26. If it be alleged in any suit or proceeding that the taxes for non-payment of which the real estate was sold were not in arrear, the party making such allegation must establish the truth thereof by proving that the taxes were paid as provided in the next section.

Party alleging payment of taxes, etc., must prove it.

27. If the owner of any real estate sold for the non-payment of the taxes thereon, his heirs or assigns, claim that the taxes on account of which the sale was made were not in arrear, he may, within five years after the deed shall have been obtained and admitted to record, institute a suit in equity against the purchaser, his heirs or assigns, alleging the payment of the taxes, and seeking to have the sale and deed declared void; or he may, within such time, in any suit or action pending relative to the real estate in which the payment is not alleged, give to the purchaser, his heirs or assigns, parties thereto, notice in writing of his purpose to prove the fact of such payment, or file such notice in the case at least thirty days before the trial or hearing thereof; and having done so, may in such suit or action prove that such taxes were paid. But unless he shall within said five years institute such suit, or give or file such notice in a suit or action pending relative to such real estate, he shall not prove such fact, or on such account in any way question the validity of the sale or deed.

When and how suit instituted to set aside deed.

When notice for that purpose filed in pending suit.

28. When a part of a tract of land or town lot has been sold, the residue thereof, or any part of such residue, may be subsequently sold on account of the taxes on the whole for the year in which the sale was made. The purchaser of a part of a tract or lot may pay a part of the taxes charged on the whole for any year subsequent to that in which the sale was made, proportioned to the whole as the quantity or part of the real estate purchased by him is to the whole, in discharge of the taxes on such part, and the residue of such real estate may be sold on account of the residue of the taxes remaining unpaid thereon. But when only a part of such tract or lot has been sold, if the purchaser does not make such payment, the whole tract or lot, or any part thereof, may be subsequently sold on account of taxes for the year in which the sale was made, and any subsequent year or years together, or when the whole tract or lot has been sold, and no one has paid the taxes thereon for the years subsequent to that in which the sale was made, the same, or any part thereof, may be sold on account of such tax or taxes, and the purchaser may have the same laid off, or a report made, and obtain a deed and have it recorded in the same manner and with like effect as if the former sale had not been made.

Sale of a part of a tract or lot, when residue sold.

Payment of part of taxes by purchaser, etc.

29. In all cases in which a question shall arise as to any such sale or deed, or the effect thereof, such deed shall be *prima facie* evidence against the owner or owners, legal or equitable, of the real estate at the time it was sold, his or their heirs and assigns, and all other persons who might have redeemed the same within said one year, as hereinbefore provided, and conclusive evidence against all other persons, that the person named in the deed as clerk of the county court was such, that the sheriff or other officer who

Effect of deed as evidence.

made the sale was such sheriff or officer as stated in such deed, that the material facts therein recited are true, and that such estate as is mentioned in the twenty-fifth section of this chapter vested in the grantee in the deed.

Saving as to Persons Under Disability.

Saving as to persons under disability.

Undivided interests: how redeemed.

Value of improvements made on land to be paid before redemption.

Proceedings where parties cannot agree as to the value of improvements.

30. Any infant, married woman or insane person, whose real estate may have been so sold during such disability may redeem the same by paying to the purchaser, his heirs or assigns, within one year after the removal of the disability, the amount for which the same was sold, with the necessary charges incurred by the purchaser, his heirs or assigns, in obtaining the title under the sale, and such additional taxes on the estate as may have been paid by the purchaser, his heirs or assigns, and interest on the said items at the rate of six per centum per annum from the time the same were paid. If any such person own an undivided interest in real estate so sold, he may redeem such interest in like manner, and within the same time, by paying such proportion of the purchase money, charges, taxes and interest, as his interest in the premises is to the whole tract or part sold; but he shall not have the right to redeem more than his own undivided interest. Upon such payment, within one year after the removal of such disability, the purchaser, his heirs or assigns, shall at the cost of the original owner, his heirs or assigns, convey to him or them, by deed, without warranty, the real estate so redeemed, except as follows: If improvements have been made on the said real estate since the date of the deed therefor, and before the offer to redeem the same under the provisions of this section, the original owner shall pay to the person holding the legal title to said real estate at the time of such offer the then value of all such improvements, after deducting therefrom the value of the use of said real estate without the improvements, from the date of said deed to the date of such offer. If the parties cannot agree on the amount to be paid, either of them may file his petition, after ten days notice in writing to the other of his intention to do so, in the circuit court of the county in which the real estate is, to have the proper account taken by a commissioner to ascertain the amount, if any, to be paid by such original owner. Upon the filing of such petition the court shall make an order referring the same to a proper commissioner, who shall, with all reasonable dispatch, ascertain and report to the said court what sum, if any, such original owner must pay to redeem the said real estate, which report, if confirmed, shall be final between the parties. Upon the payment or tender of the sum, if any, so ascertained by the commissioner, to the person then holding the legal title to said real estate, he shall, as hereinbefore provided, convey the same to the said original owner; and upon his failure or refusal to do

so, the court may appoint a commissioner to execute such deed, who shall execute the same accordingly. *Provided*, Provide as to separate property of a married woman. That if the real estate of a married woman, sold for the non-payment of taxes thereon, be at the time of such sale her sole and separate property, she may redeem the same within the time specified in section fifteen of this chapter, and not after; and all provisions of said section and of section sixteen of this chapter shall be applicable to such cases.

Lands Purchased by State for Taxes.

31. When any real estate is offered for sale as aforesaid, and no person present bids the amount of taxes, interest and commissions due thereon, the sheriff or collector shall purchase the same on behalf of the state for the taxes thereon, and the interest on the same, and shall make out a list thereof under the following caption: Lands purchased by the state for taxes.

"List of real estate charged with taxes and sold in the county of —, in the month (or months) of —, one thousand eight hundred and —, for the non-payment of taxes due thereon for the year (or years) —, and purchased for the State of West Virginia." List to be made and how disposed of.

Underneath shall be the several columns mentioned in the tenth section, with a like caption to each column, omitting, however, the column headed "name of purchaser." The officer making out the said list shall make oath that it contains a true account of all the real estate within his county purchased by him for the state during the year —, and return the list with a certificate of the oath attached, to the clerk of the county court within ten days after such sale, who shall within twenty days after such return record the same in a well bound book and transmit the original to the auditor. Upon receiving said list the auditor shall credit the sheriff or collector with the amount for which the real estate therein specified was purchased, but not with any commission thereon.

32. The auditor shall cause all the lists received in his office under the preceding section to be recorded in a well bound book, and all such estate, right, title and interest in the real estate mentioned in such lists as would have vested in an individual purchaser thereof at such sale who had obtained proper deeds therefor and caused them to be admitted to record in the proper office, shall be by the sale and the purchase on behalf of the state vested in the state, without any deed or other conveyance therefor to the state; subject, however, to the right of redemption mentioned in the next section. List to be recorded in the auditor's office. What title vests in the state.

33. The previous owner of any real estate so sold and purchased for the state, his heirs or assigns, or any person having a right to charge it for a debt, may within one When owner, etc., may redeem real estate sold for

taxes and
purchased by
state.

year from the sale thereof, redeem the same by paying into the state treasury the amount of all state, state school, county, school district, independent school district and other district taxes, and all municipal corporation taxes, with the interest due on each class of taxes at the time of such purchase, including such taxes as were or should have been assessed thereon for the year in which the same was sold and the cost of publication of such real estate in the delinquent list, together with such additional sums as would have accrued thereon for all of such taxes if the same had not been purchased for the state, with interest thereon at the rate of twelve per cent. per annum from the twentieth day of January in the year following that in which the same would have accrued.

How county,
district and
corporation
taxes, for which
land sold, paid.

34. When such county, school district, independent school district and other district taxes, and municipal corporation taxes, or any of such taxes and interest are paid into the treasury as aforesaid, the auditor shall draw his warrant upon the treasury, payable to the sheriff of the proper county, for all the taxes so paid in for county, school district, independent school district, and other district purposes, specifying the amount due for each of such purposes, and to the proper collecting officer of every such municipal corporation for the corporation taxes so paid into the treasury; and every such sheriff and collecting officer of such corporation shall account for and pay over such taxes and interest in the same manner as the other taxes coming to his hands by virtue of his office.

Auditor's fee
for certificate of
redemption of
land sold for
taxes and pur-
chased by the
state.

35. For every certificate of redemption issued by the auditor he shall be paid by the person procuring the same, if the amount of tax delinquent does not exceed five dollars, a fee of one dollar; if the amount exceed five dollars and be not more than twenty dollars, a fee of one dollar and fifty cents; and if the amount exceed twenty dollars, a fee of two dollars.

How a Less Quantity than the Whole may be Redeemed.

How a less
quantity than
the whole may
be redeemed.

36. Any person having a right to redeem any tract or part of a tract of land purchased by the state at a sale thereof for the non-payment of the taxes thereon, who may desire to redeem a less quantity than the whole amount sold, may have the part, or parts thereof which he desires to redeem surveyed and laid off by notes and bounds, and shall return a plat and description thereof to the clerk of the county court of the county in which the same was so sold who shall record the same in the deed book in his office together with the affidavits thereto attached, required by the next succeeding section.

Survey and plat
to be made,
showing part to
be redeemed.
Plat and survey
to be recorded.

Affidavit to be
appended to

37. To every such plat and description there shall be an affidavit appended by the surveyor or person making the

same, that such plat and description and the quantity of land mentioned therein is, as he verily believes correct; and the clerk shall give to the person filing the same, a certificate of the fact of the filing of such plat or plats, and of the quantity of land contained therein, and if there be more than one such plat the quantity contained in each.

plat; what to contain.

Clerk to issue certificate of filing, etc.

Upon the presentation of such certificate to the auditor, and the payment into the treasury of the proper proportion of the taxes and interest due on such part or parts of the land so sold, as the quantity so proposed to be redeemed bears to the whole tract or part of a tract sold and purchased by the state as aforesaid, the auditor shall issue his certificate of redemption as hereinbefore provided for the part or parts of such real estate so redeemed. If such real estate be redeemed in separate parcels, the same shall be entered and charged with taxes on the land books of the proper county in separate parcels, as contained in the plats and descriptions thereof filed and recorded in the office of the clerk of the county court as aforesaid.

Certificate to be delivered to Auditor and tax paid into treasury.

Auditor to issue certificate of redemption.

38. When real estate so purchased is so redeemed, the auditor shall certify the fact of such redemption to the proper clerk of the county court, and it shall thereupon be the duty of such clerk to re-enter the same upon the land books of the county or district in the name of the former owner thereof, or in case the same has been conveyed by deed to any other person to enter the same in the name of the grantee in such deed. But such redemption shall not prejudice any claimant of such land, or any part thereof, who may have acquired the state's right thereto by the constitution or former laws of the state.

Auditor to certify real estate redeemed to clerk county court. Clerk to re-enter same on land books.

Lands not Entered in the Assessor's Books Forfeited.

39. It shall be the duty of every owner of land to have it entered on the land books of the county in which it or a part of it is situated, and to cause himself to be charged with the taxes thereon and pay the same. When for any five successive years after the year one thousand eight hundred and sixty-nine, the owner of any tract of land containing one thousand acres or more, shall not have been charged on such books with a state tax on said land, then by operation of law, and without any proceeding therefor, the land shall be forfeited and the title thereto vested in the state. But if for any one or more of such five years the owner shall have been charged with state tax on any part of the land, such part thereof shall not be forfeited for such cause. And any owner of land so forfeited, or of any interest therein, at the time of the forfeiture thereof, who shall then be an infant, married woman or insane person, may, until the expiration of three years after the removal of such disability, have the land, or such interest therein, charged on such books, with all

Owners of land to cause same to be entered on land books.

When lands not entered forfeited to the state.

Not to apply to lands owned by infants, married women, etc., until three years after removal of disability.

state and other taxes that shall be, and but for the forfeiture would be chargeable on the land or interest therein for the year one thousand eight hundred and sixty-three, and every year thereafter with interest at the rate of ten per centum per annum, and pay all taxes and interest thereon for all such years, and thereby redeem the land or interest therein or any part thereof; *Provided*, Such right to redeem shall in no case extend beyond twenty years from the time such land was forfeited. And when for any five successive years since the ninth day of April, one thousand eight hundred and seventy-three, the owner of any tract or lot of land, less in quantity than one thousand acres, shall not have been charged on such books with state tax on said land, then by operation of law and without any proceedings therefor the land shall be forfeited and the title thereto vested in the state. But if for any one or more of such five years the owner shall have been charged with state tax on any part of the land, such part shall not be forfeited for such cause. If the owner of any such tract or lot of land, or any person having an interest therein, shall at the time of the forfeiture thereof be an infant, married woman or insane person, he may redeem the said land or interest therein, or any part thereof, in the same manner and within the same time as is herein provided in regard to tracts of one thousand acres or more. A record of all real estate so forfeited which shall come to the knowledge of the auditor shall be kept in his office, in which shall be shown the name of some former owner or supposed owner, the quantity or supposed quantity, and local or other description of the real estate, for what years the owner was not charged with the taxes, and when the real estate became forfeited. Such record shall be *prima facie* evidence that the owner was not for such years charged with the taxes on such real estate, and that he did not cause it to be entered and charged with such taxes as aforesaid, and that the real estate was forfeited and vested in the state at the time specified. In order to enable the auditor to make such record, it shall be the duty of the clerk of the county court of each county in which such real estate ought to have been entered and charged with taxes as aforesaid, upon discovering any such failure, to certify to the auditor all the facts in relation thereto.

When Forfeited Title Enures to the Benefit of Occupants, Junior Claimants, etc.

40. All title to lands in this state heretofore forfeited, or treated as forfeited, waste and unappropriated or escheated to the state of Virginia, or this state, or purchased by either of said states at sales made for the non-payment of taxes and become irredemable, or hereafter forfeited or treated as forfeited or escheated to this state, or purchased by it and become irredemable, not redeemed, re-

Right to redeem shall not extend beyond twenty years.

Tracts of less than 1,000 acres.

When title vested in state absolutely.

Record of forfeited land to be kept by auditor; what to show.

Duty of clerk of county court in relation to such lands.

To certify facts to auditor.

When forfeiture enures to benefit of occupants, junior claimants, etc.

leased or otherwise disposed of, vested and remaining in this state, shall be and is hereby transferred to and vested in any person (other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees), for so much thereof as such person has or shall have had actual continuous possession of, under color or claim of title for ten years, and who, or those under whom he claims, shall have paid the state taxes thereon for any five years during such possession; or if there be no such person, then to any person (other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees), for so much of said land as such person shall have title or claim to, regularly derived mediately or immediately from or under a grant from the commonwealth of Virginia, or this state, not forfeited, which but for the title forfeited would be valid, and who, or those under whom he claims, has or shall have paid all state taxes charged or chargeable thereon for five successive years after the year one thousand eight hundred and sixty-five, or from the date of the grant, if it shall have issued since that year; or if there be no such person as aforesaid, then to any person (other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees), for so much of said land as such person shall have had claim to and actual continuous possession of, under color of title, for any five successive years after the year one thousand eight hundred and sixty-five, and have paid all state taxes charged or chargeable thereon for said period.

Sale of Forfeited and Escheated Lands, etc.

41. All lands in this state, waste and unappropriated, or heretofore or hereafter for any cause forfeited, or treated as forfeited or escheated to the state of Virginia, or this state, or purchased by either and become irredeemable, not redeemed, released, transferred, or otherwise disposed of, the title thereto shall remain in this state till such sale as is hereinafter mentioned be made shall, by proceedings in the circuit court of the county in which the lands, or a part thereof, are situated, be sold to the highest bidder.

Title to forfeited and escheated lands to remain in state until sold.

To be sold to highest bidder.

42. The former owner of any such land shall be entitled to receive the excess of the sum for which the land may be sold over the taxes charged and chargeable thereon, or which if the land had not been forfeited, would have been charged or chargeable thereon since the formation of this state, with interest at the rate of twelve per centum per annum, and the cost of the proceedings, if his claim be filed in the circuit court that decrees the sale within two years thereafter.

Former owner to receive excess over taxes, etc., or which land is sold.

Claim therefor to be filed within two years.

43. The real estate embraced in the lists which the audi-

When real estate embraced in lists delivered to sheriff deemed sold, etc.

When proceeds of sale to be paid into the treasury.

tor shall cause to be delivered to any sheriff or collector shall be deemed to have been sold and the proceeds thereof shall be deemed at least equal to the sums to be satisfied therefrom, unless a list of such thereof as may be purchased for the state be received by the auditor, according to the thirty-first section of this chapter, and then the proceeds shall only be deemed so much less as the credit on such list shall amount to.

Sheriff's Commissions on Sales, etc.

Sheriff's commissions on sales, etc.

44. Every sheriff or collector shall be allowed a commission of seven and a half per cent. on the said sales, (other than to the state), if he shall punctually pay into the treasury within the time prescribed by the preceding section, the amount with which he is chargeable on account of such sales; but in case he shall fail to pay the same as so required, he shall only be allowed a commission of two and a half per cent. on the same.

How sheriff proceeded against for default.

45. In case of a failure to pay, proceedings shall be had according to the thirty-fifth chapter of this code.

Penalty on Clerk for Neglect of Duty.

Penalty on clerk county court for failing to perform duty.

46. If a clerk of the county court fail to perform any duty required by this chapter, he shall for every such offense, forfeit fifty dollars. For services rendered by him under this chapter, and not otherwise herein provided for, he shall be entitled to the same fees as for similar services in other cases.

Certain General Provisions.

Mistakes in list of sales returned by sheriff, within what time and how corrected.

47. If any sheriff or collector shall, in his list of sales under this chapter, omit therefrom any tract or lot of land sold by him for the non-payment of the taxes thereon and purchased by the state, or by any person, or has or shall state therein the name of any purchaser of a tract or lot of land incorrectly, or has or shall state that any tract or lot of land sold by him was purchased by one person, when in fact it was purchased by another, within six months after the sale, upon the petition of such sheriff or collector, or of any person interested, to the county court of the county in which the sale was made, stating any such mistake, and upon satisfactory proof thereof the court shall make an order permitting such sheriff or collector to file with the clerk of said court an "amended list," in the form required by said section, made out according to facts proven and stated in said petition, which list, together with the order of the court permitting it to be filed, shall be recorded by said clerk within ten days thereafter in the book mentioned in section fourteen of this chapter, and the original, together with a copy of said order, shall within ten days

Amended list.

thereafter be transmitted by said clerk to the auditor. But the person named by mistake in such list as such purchaser, if found within the county, must have at least ten days' notice of the filing of such petition before it is acted on.

Notice to be given.

48. The purchaser of any tract or lot of land as is mentioned in the next preceding section, his heirs or assigns, may obtain a deed therefor in the same manner and within the same time as is provided in sections seventeen and twenty-two inclusive of this chapter.

How purchaser to obtain deed.

49. It shall be the duty of the sheriff or other officer making sales of lands by virtue of this chapter, within one month after such sales are closed, to cause to be published in some newspaper in his county (if one be printed therein) a list of all the sales made by him as aforesaid, describing the tracts as well as the quantity of land sold, and to whom sold, once in each week for four successive weeks, which publication shall be made, in all respects, subject to the provisions of section six of this chapter, and the sheriff shall include in the costs of publication to be paid by the purchaser, the costs of such publication as fixed by the county court not exceeding fifty cents for each tract. If there be no newspaper published in the county, or if no newspaper therein will publish such notice for the compensation herein provided, it shall be the duty of the sheriff to post in the most public place in each magisterial district in his county a list of all sales by him so made, describing the tracts as well as the number of acres sold and to whom sold.

Sheriff to publish list of sales of land for taxes.
How published

Costs of publication to be paid by purchaser.

If no newspaper, etc., notice of sale to be posted, etc.

50. Any person owning or claiming any tract of land which has not been entered on the land books of the proper county, or if so entered, has from any cause thereafter been omitted therefrom, may have any part thereof entered on the books of the proper assessor and assessed with taxes thereon, and pay the same, as he might do as to the whole tract, specifying the part of the said land so entered and assessed, or on which the taxes are so paid by having the same surveyed and laid off and a plat and description thereof returned to and recorded by the clerk of the county court, as provided in sections thirty-seven and thirty-eight of this chapter. Any such assessment and payment as to such part of any land shall have the like effect as to the same as if it had applied to the whole tract. But such entry, assessment or payment shall not prevent a sale or forfeiture of such residue for the failure to cause the same to be entered on the land books and charged with taxes.

Lands omitted from books may be entered and back taxes charged.

51. When real estate has been or shall be entered on the land books of the commissioner of the revenue or assessor of any county or district for any year, and thereon

When tax on lands not included in lists delivered

to sheriff
presumed paid.

charged with taxes and does not appear in the list of lands and lots or real estate in such county delinquent for non-payment of taxes thereon for such year, upon proper evidence thereof, in the absence of rebutting evidence it shall be presumed that such tax was paid before the time when such list was required to be made.

Penalty on
sheriff for
failure to make
return of
sales.

For benefit
of general
school fund.

52. If any sheriff or collector shall fail to make the returns of sales of delinquent lands required by this chapter, within the time herein required, he shall forfeit and pay not less than fifty nor more than five hundred dollars, to be recovered by a motion in the circuit court of his county, which forfeiture shall be for the benefit of the general school fund, and moreover he and his securities shall be liable, under his official bond, to any person aggrieved thereby, for all damages which such person shall suffer by reason of such failure.

Deeds for Lands Heretofore Sold.

Deeds for lands
heretofore sold.

53. Deeds for real estate sold for the non-payment of the taxes thereon, before this chapter as amended takes effect, shall be made and real estate heretofore sold shall be redeemed under, and be governed in all respects, by the provisions of this chapter as amended.

Acts Repealed.

Acts repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

[Approved March 30, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXXXI.

AN ACT to prevent certain animals from going at large and to provide that they may be taken up and sold.

[Passed March 17, 1882.]

Be it enacted by the Legislature of West Virginia:

Certain animals
not to run
at large.

1. That no person shall allow any stallion, jack, or bull over one year old, buck sheep over four months old, nor boar over two months old, owned or kept by him, to go or run at large on any of the highways, commons or unenclosed lands of this state; and it shall be lawful for any person finding any such animal so at large, or in an enclosure in his possession or under his control, to take up such animal and securely keep it subject to the provisions

May be taken
up, etc.

hereinafter contained. If the owner of such animal is known to the person taking it up, notice shall be promptly given to the owner of the time his animal was taken up, the place where kept, and that if the expenses of keeping and serving and posting notices as herein provided are not paid, that sale will be made at a time fixed in the notice, which shall not be less than ten days from the time such notice is served; but if such owner is not known, the sale may be made after twenty days' notice, in either case the notice shall fully describe the animal, and shall be posted at three public places in the neighborhood where the animal was taken up; if the owner is known, for ten days; if not, for twenty days. The person taking up such animal or animals shall be allowed for keeping the same the amount allowed a sheriff for keeping similar property, distrained or levied on by him; he shall also be allowed fifty cents for serving and posting the notices herein provided for. If the owner shall appear at or before the time appointed for the sale and pay the allowances aforesaid, the animal shall be delivered to him; but if he shall not so appear and pay, the person who took up the animal shall, at the time and place mentioned in the notice, sell the same at public auction, to the highest bidder, for cash, and of the proceeds of sale he shall deduct the amounts allowed as aforesaid and pay the residue, if any, to the owner of such animal within six months, if it shall be applied for by him. If no such application be made, the residue shall be paid into the county treasury within ten days, to be credited to the school fund of the district where the sale was made.

How and when such animals may be sold.

Allowance for keeping such animals.

Also for posting and serving notices. When such animals delivered to owners.

When sold.

Proceeds of sale; how disposed of.

2. Any person failing to pay any money into the treasury as required by the preceding section, shall forfeit double the amount thereof, which may be recovered in an action before a justice having jurisdiction

Forfeiture by person failing to pay as required; how recovered.

3. If any person shall forcibly take possession of any animal taken up under the first section without paying the amount therein allowed to the person so taking it up, he shall be deemed guilty of a misdemeanor and fined not less than fifty dollars.

Taking forcible possession of animal taken up; punishment for.

4. But so much of this act as relates to bulls over one year old, buck sheep over four months old, and boars over two months old, shall not take effect or be of force in any county until the same be adopted by a vote of the people of such county in the manner provided for in the next section.

What provisions of act not to take effect, etc., until adopted by vote of people, etc.

5. The county court of any county shall, on the petition of one hundred voters of such county being filed in such court asking a vote to be taken upon the question, order such vote to be taken at the next succeeding general or school election to ascertain the sense of the voters of such

When and how certain provisions of act submitted to vote of people of county.

county upon the adoption of so much of this act therein.

Ballots. The ballots used in taking said votes shall be the same as those used in voting for the officers to be elected at said elections, and shall have printed or written on them the words, "For running at large" or "Against running at large," as the voter may elect, which vote shall be certified and returned and the result thereof ascertained in the same manner as provided by law in relation to county officers, except that the commissioners of election at each place of voting in such county shall make and return to the clerk of the county court a separate certificate of the result of said vote within five days after the same has been taken.

How vote certified, returned, etc. The clerk of the county court shall lay the same before the county court at the next session after said election, and the court shall ascertain and declare the result of said vote in the county and enter the same of record. If a majority of the votes cast at said election be "Against running at large," then this act shall be in force in such county from and after the day on which the result is declared.

Duty of clerk of county court.

Majority vote necessary to put act in force.

E. W. WILSON,
Speaker of House of Delegates.

A. E. SUMMERS,
President of Senate.

STATE OF WEST VIRGINIA, }
OFFICE OF SECRETARY OF STATE, }
WHEELING, March 29, 1882. }

I certify that the foregoing act, having been presented to the governor for his approval, and not having been returned by him to the house of the legislature in which it originated within the time prescribed by the constitution of the state, has become a law without his approval.

RANDOLPH STALNAKER, JR.,
Secretary of State.

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXXXII.

AN ACT to amend and re-enact chapter one hundred and twenty-two of the code, as amended and re-enacted by chapter thirty-three of the acts of one thousand eight hundred and seventy-five.

[Passed March 20, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter one hundred and twenty-two of the code

as amended and re-enacted by chapter thirty-three of the acts of one thousand eight hundred and seventy-five, be amended and re-enacted so as to read as follows:

Code amended, chapter 132 of, as amended by acts 1875.

CHAPTER CXXII.

Of Changing a Person's Name—Adoption of Children.

1. Any person desiring a change of his own name, or that of his child or ward, may apply therefor to the circuit court of the county in which he resides; and thereupon such court, in its discretion, may order a change of the name, and thenceforth the new name shall be in place of the former.

Changing person's name; how.

Adoption of Children.

2. It shall be lawful for any person not married, or any husband, with his wife's consent, or any wife, with her husband's consent, or any husband and wife jointly, to petition the circuit court of the county wherein he, she or they may reside, for permission to adopt any minor child, and also to petition for a change of name of such child; *Provided*, That if such child be of the age of fourteen years, or over, the written consent of such child to such adoption, duly acknowledged, must be obtained and presented with the petition, and also the written consent of the parent or parents, if living, and not insane; if both parents should be dead, or unknown, or insane, or shall have abandoned the child sought to be adopted, then, and in such case the written consent, acknowledged as aforesaid, must be obtained from the legal guardian of such child. And if there be no legal guardian then such consent must be obtained from some discreet and suitable person appointed by the court to be the next friend of such child sought to be adopted.

Adoption of children by petition to circuit court.

What written consent must be obtained and presented.

3. Such petition shall specify the name, age and place of residence of the petitioner or petitioners, and of the child, and the name by which the child shall be known; whether such child be possessed of any property, and the full description of the same, if any; whether such child has either father or mother, or both, living; in case he, she or they are alive, then the name or names, and place of residence of such father and mother must be given, unless proven to be unknown to the petitioner or petitioners; the persons petitioning as aforesaid shall be at least fifteen years older than the child sought to be adopted, and the petition shall be duly verified according to law.

What such petition to specify; and how verified.

How much older petitioner must be than child.

4. Upon the presentation of such petition to the court, the same shall be ordered filed with the clerk of said court, and the court shall appoint a day for the bearing of said petition and the examination under oath of the parties

Proceedings to hear petition and examine witnesses.

in interest, not less than ten nor more than twenty days from the filing of the petition. And the court may adjourn the hearing of said petition or the examination of the parties in interest from time to time, as the nature of the case may require; and if it shall be necessary under the provisions of this act, that a discreet and suitable person shall be appointed, as the next friend to the child sought to be adopted, then and in that case the court shall order a notice of the petition and of the time and the place when and where the appointment of next friend will be made, to be published in some newspaper of general circulation in the county where said court is located, once a week for four successive weeks; and at the time and place so named, and upon due proof of the publication of such notice, the court shall make such appointment, and shall thereupon assign a day for the hearing of said petition and examination of the parties interested, not more than twenty days from the time of appointing the next friend, and upon the day so appointed the court shall proceed to a full hearing of the petition and examination of the parties in interest, under oath; and if the court, from the testimony, shall be of the opinion that the facts stated in the petition are true, and if upon examination the court is satisfied that the petitioner, or petitioners, is, or are of good moral character and of respectable standing in the community, and of ability to properly maintain and educate the child sought to be adopted, and that the best interests of the child would be promoted by such adoption, then and in such a case, the court shall make a decree reciting the facts at length and the name by which the child shall thereafter be known; declaring and adjudging that from the date of such decree the rights, duties, privileges and relations theretofore existing between the child and his or her parent or parents, shall be in all respects at an end, excepting the right of inheritance; and that the rights, duties, privileges and relations between the child and his or her parent or parents by adoption, shall thenceforth in all respects be the same, including the right of inheritance, as if the child had been born to such adopted parent or parents in lawful wedlock, except only as otherwise provided in this chapter. Petitions, decrees, testimony and proceedings shall be recorded in a book kept for that purpose, and the clerk shall receive the same fees as for the recording of a deed, and upon the entry of such decree of adoption, the parents of the child if living, shall be divested of all legal rights and obligations due from them to the child, or from the child to them, and the child shall be free from all legal obligations of obedience or otherwise to the parents, and the adopting parent or parents of the child shall be invested with every legal right in respect to obedience and maintenance on the part of the child, as if said child had been born to them in law-

The decree of
the court.

Petitions,
decrees, etc.,
to be recorded;
how
Fees of clerks.
Effect of
decree of adop-
tion after
entry thereof.

ful wedlock; and the child shall be invested with every legal right, privilege, obligation and relation in respect to education, maintenance, and the rights of inheritance in the estate of such adopting parent or parents as if born to them in lawful wedlock; except that said child shall not be capable of taking property expressly limited to the heirs of the body of the adopting parent or parents, nor property coming from the collateral kindred of such adopting parent or parents by right of inheritance; *Provided*, That on the death of the adopting parent or parents and the subsequent death of the child so adopted, without issue, the property of such adopting deceased parent or parents shall descend to, and be distributed among the next of kindred of said parent or parents, and not to the next of kin of the adopted child. *Provided, also*, that if such adopting parent or parents, shall have other child or children, theirs by birth, then and in that case the adopted child shall share the inheritance with the child or children born to the adopting parent or parents, in which case, he, she or they, shall respectively inherit from and through each other as if all had been children of the same parents born in lawful wedlock.

Child adopted not capable of taking property limited to heirs of body, etc. of person adopting.

Who to inherit property of adopting deceased parents, if adopted child die without issue.

Proviso where adopting person have children.

5. A parent or guardian of a minor, when a minor is adopted under the provisions of this chapter, who had no notice of the proceedings, may, at any time within a year after receiving notice, apply by petition to the circuit court in which the petition mentioned in the second section was filed, praying that the adoption may be vacated. The court applied to shall give notice of a hearing, and shall hear the petitioner and all parties interested, and may vacate or affirm the adoption in its discretion. Any party interested may appeal from the decision of the said court in the matter, as in other cases of appeals in matters of probate. If the person thus adopted is adopted while a minor he may, within one year after becoming of age, sign, seal and acknowledge before proper authority in the county in which the instrument of adoption was filed a dissent from such adoption. Such instrument of dissent shall be recorded in such county court clerk's office, and upon the filing of the same the adoption shall be void.

How and when adoption may be vacated by parent or guardian.

Notice of hearing. May vacate or affirm adoption.

Appeal in such case.

How and when person adopted may file dissent from such adoption. Effect of such filing.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXXXIII.

AN ACT to amend and re-enact chapter one hundred and twenty of the code of West Virginia, concerning the attorney general and other attorneys for the state, as amended and re-enacted by chapter fifty-four of the acts of one thousand eight hundred and seventy-two and seventy-three, and chapter one hundred and two of the acts of one thousand eight hundred and seventy-five.

[Passed March 23, 1882.]

Be it enacted by the Legislature of West Virginia:

Code amended; chapter 120 of, as amended by acts 1872-3, and 1875.

1. That chapter one hundred and twenty of the code of West Virginia, as amended and re-enacted by chapter fifty-four of the acts of one thousand eight hundred and seventy-two and seventy-three, and chapter one hundred and two of the acts of one thousand eight hundred and seventy-five, be, and the same is hereby revived, amended and re-enacted so as to read as follows:

CHAPTER CXX.

OF THE ATTORNEY GENERAL AND OTHER ATTORNEYS FOR THE STATE.

Duties of attorney general.

1. The attorney general shall give his opinion and advice in writing, whenever required to do so by the governor or other officers at the seat of government, or by the board of public works.

His further duties.

2. He shall appear as counsel for the state in all cases, in which the state is interested, depending in the supreme court of appeals, or in the circuit court of the county in which the seat of government may be.

His annual report to governor.

3. He shall annually, on or before the first day of November, deliver to the governor a report of the state and condition of the several causes, in which the state is a party, pending in the said courts.

His fees; how certified and paid.

4. On the final determination of any cause in either of the courts mentioned in the second section in which the attorney-general appeared for the state, the clerk thereof shall certify to the auditor the fee of the attorney-general which was taxed in the bill of costs against the defendant, and in case the said fee shall be paid into the treasury, the auditor shall issue his warrant on the treasury in favor of the attorney-general for the amount thereof.

Duty of attorney general as

5. It shall be the duty of the attorney general of this state to appear and protect the interests of the citizens of

this state in all actions, suits and other proceedings that are now, or shall hereafter be, instituted in any court of record in this state, in favor of or against any railroad company whose road passes through any portion of the territory of this state, whenever such action, suit or proceeding involves the right to assess or collect taxes upon the property, real or personal, of said railroad by any authority in this state authorized to levy taxes, whenever said attorney general shall be requested by said authority to do so; for which appearance and services he shall receive a reasonable fee, to be paid by the authority requesting his appearance as aforesaid. But no compensation shall be paid him therefor by the state, except his salary and actual traveling expenses incurred.

to suits, etc., in favor of or against railroad companies involving the right to assess or collect taxes.

His fee in such case; by whom paid. No fee from state, except, etc.

Prosecuting Attorney.

6. It shall be the duty of every prosecuting attorney in this state to attend to the criminal business of the state in the county in which he is elected and qualified, and also to civil cases in which the state is interested in such county, when required by and under the direction of the auditor; and when he has information of the violation of any penal law committed within his county, shall institute and prosecute all necessary and proper proceedings against the offender, and may in such case issue or cause to be issued a summons for any witness he may deem material. He shall also represent the county in all suits and proceedings for and on behalf of or against the county, or county court, overseers of the poor, or other public authorities of the county, and carefully look after and give attention to the general interests of the county. And no allowance or compensation shall be made for such services, except his annual salary and the allowance provided for in chapter one hundred and thirty-eight of this code.

Duties of prosecuting attorney.

No additional compensation allowed, etc.

7. Any prosecuting attorney may, with the assent of the circuit court of his county entered of record, appoint one practicing attorney to assist him in the discharge of his official duties for and during his term of office, and such assistant shall take the same oath of office and may perform the same duties as his principal; and he may be removed from office as such assistant by the circuit court in which he was appointed, for any cause for which his principal might be so removed. The compensation of such assistant shall be paid by the principal from the income of the office. The prosecuting attorney and his said assistant, (if he have one), shall manage and control all prosecutions for crimes and misdemeanors tried in the circuit court of any county for which such prosecuting attorney was elected or appointed. *Provided*, That in any case in which it would in the opinion of the court, be, im-

Assistant prosecuting attorney; how appointed.

His oath, duties and removal.

His pay.

His further duties.

When court may appoint attorney to prosecute.

His pay.

Proviso as to employment by others of attorneys to prosecute.

Assessors and other officers to give information of violations of law.

Attorney's duties thereon.

proper for the prosecuting attorney and his said assistant, (if he have one), to act, such court shall appoint some competent practicing attorney to prosecute such case, and upon the performance of the service for which he was appointed, said court shall certify that fact, with its opinion of what would be a reasonable allowance to such attorney for the service rendered, to the county court of the county, and such sum or a different sum when allowed by the county court shall be paid out of the county treasury. *Provided*, further, that nothing in this section shall be construed to prohibit the employment, by any person, of competent attorneys to assist in the prosecution of any person charged with crime.

8. Every assessor, sheriff, constable or other officer shall give information of the violation of any penal law to such attorney, who shall forthwith institute and prosecute all necessary and proper proceedings in such case, whether in the name of the state, or of the county or of the county court, and may in such case issue or cause to be issued a summons for any witness he may deem material, to give evidence before the court or grand jury.

Acts Repealed.

Acts repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXXXIV.

AN ACT amending and re-enacting section thirty of chapter one hundred and forty-seven of the code of West Virginia.

[Passed March 23, 1882.]

Be it enacted by the Legislature of West Virginia:

Code amended; section 30 of chapter 147 of.

1. That section thirty of chapter one hundred and forty-seven of the code of West Virginia, be, and the same is hereby amended and re-enacted so as to read as follows:

Obstructing justice by threats or force, etc.; deemed a misdemeanor.

30. If any person by threats, force, or otherwise, intimidate or impede, or attempt to intimidate or impede any judge, justice of the peace, juror, witness, arbitrator, umpire, or an officer or member of any court in the discharge

of his duty as such, or by any means obstruct or impede, or attempt to obstruct or impede the administration of justice in any court, he shall be guilty of a misdemeanor, and unless otherwise provided by law he shall be fined not less than twenty-five nor more than two hundred dollars, and be imprisoned in the county jail not exceeding six months.

Punishment prescribed.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXXXV.

AN ACT amending and re-enacting section seven of chapter one hundred and forty-eight of the code of West Virginia, and adding additional sections thereto for the punishment of unlawful combinations and conspiracies to injure persons or property.

[Passed March 24, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That section seven of chapter one hundred and forty-eight of the code of West Virginia be, and the same is hereby, amended and re-enacted so as to read as follows :

Code amended; section 7 of chapter 148 of.

7. If a person carry about his person any revolver or other pistol, dirk, bowie knife, razor, slung shot, billy, metallic or other false knuckles, or any other dangerous or deadly weapon of like kind or character, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than two hundred dollars, and may, at the discretion of the court, be confined in jail not less than one, nor more than twelve months; and if any person shall sell or furnish any such weapon as is hereinbefore mentioned to a person whom he knows, or has reason, from his appearance or otherwise, to believe to be under the age of twenty-one years, he shall be punished as hereinbefore provided; but nothing herein contained shall be so construed as to prevent any person from keeping or carrying about his dwelling house or premises any such revolver or other pistol, or from carrying the same from the place of purchase to his dwelling house, or from his dwelling house to any place where repairing is done, to have it repaired, and back again. And if upon the trial of an indictment for carrying any such pistol, dirk, razor or bowie knife, the

Deadly weapons; penalty for carrying.

Selling certain weapons to minors; penalty. Acts of persons to which sections do not apply.

Upon trial of indictment for carrying deadly

sealed weapons, when jury to find accused not guilty.

defendant shall prove to the satisfaction of the jury that he is a quiet and peaceable citizen, of good character and standing in the community in which he lives, and at the time he was found with such pistol, dirk, razor or bowie knife, as charged in the indictment, he had good cause to believe and did believe that he was in danger of death or great bodily harm at the hands of another person, and that he was, in good faith, carrying such weapon for self defense and for no other purpose, the jury shall find him not guilty. But nothing in this section contained shall be construed as to prevent any officer charged with the execution of the laws of the state from carrying a revolver or other pistol, dirk or bowie knife.

Provisions of section not to apply to officers of the law.

Additional sections added.

2. That the said chapter be and the same is hereby amended by adding thereto the following additional sections, as parts thereof, to-wit :

Combinations or conspiracies to injure, etc., persons and property, deemed a misdemeanor.

9. If two or more persons under the name of "Red Men," "Regulators," "Vigilance Committee," or any other name or without a name, combine or conspire together for the purpose of inflicting any punishment, or bodily injury upon any other person, or persons, or for the purpose of destroying, injuring, or taking and carrying away any property, real or personal, not their own, every such person, whether he has done any act in pursuance of such combination or conspiracy or not, shall be guilty of a misdemeanor and fined not less than fifty, nor more than five hundred dollars, and may, at the discretion of the court, be confined in jail not less than one, nor more than twelve months.

Penalty.

Injury, etc., inflicted by such combination, etc., upon any person or property, deemed a felony. Punishment. When such combination or conspiracy to be presumed.

10. If any person, in pursuance of such combination or conspiracy as is mentioned in the next preceding section, shall inflict any punishment or bodily injury upon another person, or shall destroy, injure, or take and carry away, any property, real or personal, not his own, he shall be guilty of a felony, and confined in the penitentiary not less than two nor more than ten years. And if, on the trial of an indictment under this section it be proved that two or more persons, the defendant being one, were present, aiding and abetting in the commission of the offense charged therein, it shall be presumed that such offense was committed in pursuance of such combination or conspiracy, in the absence of satisfactory proof to the contrary. And all persons who shall be present, aiding and abetting, at the commission of any offense mentioned in this section shall be deemed conspirators within the meaning of this, and the next preceding section.

Aiders and abettors deemed conspirators.

No witness excused from answering, because such answers would,

11. No person called as a witness for the state on the trial of any person for an offense mentioned in either of the two next preceding sections, shall be excused from answering any question which may be asked him as such

witness, and which would be otherwise legal and proper, on the ground that the answer to such question would or might degrade him, or expose him to punishment; but no such witness, who shall fully and truly answer all such questions as may be asked him touching his connection with, or knowledge of such combination or conspiracy, or of the commission of the offense charged in the indictment, in pursuance of such combination or conspiracy, shall thereafter be prosecuted or punished for the same offense mentioned in the indictment upon which the accused is being tried.

etc., degrade him or expose him to punishment.
Such witness answering truly and fully exempted from prosecution, etc., for same offense, etc.

12. Persons offending against any of the provisions of the ninth and tenth sections of this chapter, may be indicted therefor, either jointly or separately.

May be indicted jointly or separately.

13. If the death of any person shall result from the commission of any offense mentioned in the tenth section of this chapter, every person engaged in the commission of such offense shall be guilty of murder of the first degree, and punished as in other cases of murder of the first degree.

If person die conspirators guilty of murder of first degree.

14. If any person by force, or other unlawful means, shall release or rescue, or attempt to release or rescue a person in prison or other custody, charged with, or convicted of an offense under the provisions of the ninth or tenth section of this chapter, he shall be guilty of felony and confined in the penitentiary as provided in said tenth section.

To release or rescue, or attempt to release, etc., person charged, etc., with an offense under sections 9 and 10 a felony. Punishment.

15. If any person shall, by threats, menaces, or otherwise, intimidate, or attempt to intimidate, a witness for the state in any prosecution under the ninth, or any succeeding section of this chapter, for the purpose of preventing the attendance of such witness at the trial of such case, or shall in any way or manner prevent, or attempt to prevent, the attendance of any such witness at such trial, he shall be guilty of felony and confined in the penitentiary not less than one, nor more than ten years, or he may, at the discretion of the court, be confined in the jail of the county not less than three, nor more than twelve months, and fined not less than one hundred, nor more than five thousand dollars.

Intimidating, etc., witness, a felony. Punishment.

16. The governor is hereby authorized, whenever in his opinion it is proper to do so, to offer rewards, and employ special policemen and detectives, and to employ any and all means in his power, including the employment of any portion of the military forces of the state, to secure the apprehension of any and all persons belonging to any such unlawful combination, or who shall be charged with the commission of any offense mentioned in the tenth, or any succeeding section of this chapter.

Governor to employ any and all means, etc., to secure arrest of persons belonging to such unlawful combinations, etc.

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CXXXVI.

AN ACT amending and re-enacting chapter one hundred and fifty-four of the code of West Virginia, concerning inquests on dead bodies.

[Passed March 24, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter one hundred and fifty-four of the code of West Virginia, be and the same is hereby amended and re-enacted so as to read as follows:

Code amended;
chapter 154 of.

CHAPTER CLIV.

Of Inquest Upon Dead Bodies—Coroner; When and by Whom Appointed, &c.

Coroner; when
and how
appointed.
Term of office
and oath.

Duty of coroner
or justice upon
being notified of
death by violence,
etc.

Warrant to
issue; to whom
directed and
what to command.

Witnesses to be
summoned.

1. It shall be the duty of the county court of every county, from time to time, to appoint a coroner for such county, who shall hold his office during the pleasure of said court, and shall take the oath of office prescribed for other county officers. It shall be his duty, or if he be absent, or unable to act, or the office be vacant, the duty of any justice of the peace, upon being notified the dead body of a person, whose death is supposed to have been caused by violence or other unlawful act, and not by casualty, is within his county, to forthwith issue his warrant directed to a constable thereof who shall proceed to execute and make return of the same, commanding such constable to summon twelve suitable residents of the county to be in attendance on such coroner or justice, as jurors, at a place and on a day and hour to be designated in the warrant, to make inquisition, upon the view of the body of the person named therein, or of a person unknown, as the case may be, how such person came to his death; and may, by indorsement on such warrant, or by subpœna, command the officer to whom the same is delivered, to summon such witnesses as the coroner or justice may designate, or as the constable may be informed, or have reason to believe, have knowledge of the circumstances attending such death, to be in attendance upon the said inquest at such time as may be designated in such indorsement or subpœna. In case of the inability or failure of

the coroner or such justice or constable to act, any other justice or constable of the county may perform the respective duties imposed by this and the succeeding section, and be entitled to the same fees and be subject to the same penalties.

When any justice or constable of county may act.

2. Any such constable to whom the warrant or subpoena may be delivered, shall forthwith execute it, and make return thereof to the coroner or justice who issued the same, at the time and place named therein. If he fails so to execute and return the same he shall forfeit twenty dollars; and if any person summoned as a juror, fail to attend as required, without sufficient excuse, he shall forfeit ten dollars.

Warrant and summons; how executed.

Penalty on constable or witness for failure of duty.

3. If twelve jurors do not attend, the coroner or justice may require the constable or any other person to summon others. When the full number of twelve have appeared, the coroner or justice, in view of the body, shall administer to them the following oath: "You swear that you will diligently enquire, and true presentment make, when, how and by what means the person whose body here lies dead, came to his death, and return a true inquest thereof, upon your own knowledge and the evidence before you. So help you God."

Jury formed.

Oath of jurors.

4. Witnesses on whom the summons before mentioned is served, may be compelled by the coroner or justice to attend and give evidence, and shall be liable in like manner as if the summons had been issued by a justice in a criminal case. They shall be sworn by the coroner or justice before giving evidence to the inquest, and their evidence shall be reduced to writing by the coroner or justice, or under his direction, and subscribed by them respectively.

How witnesses compelled to attend.

How evidence taken.

Inquisition.

5. The jury, after hearing the evidence and making all needful enquires, shall deliver to the coroner or justice their inquisition, wherein they shall state the name of the deceased (if it be known), the material circumstances attending his death, and if they find that he came to his death by violence or other unlawful act, who were guilty thereof, either as principals or accessories. The inquisition may be to the following effect:

Duties of jury; what to state in their inquest.

" ———, ——— County, to-wit:

An inquisition taken at ———, in the county of ———, on the ——— day of ——— in the year ———, before ———, coroner of the said county of ——— (or before ——— a justice of the said county, as the case may be), upon the view of the body of ——— (or a person unknown), there lying dead. The jurors sworn to enquire when, how, and by what means the said ——— (or person), came to his death, upon

Form of inquest

their oath do say : (Then insert when, how, and by what person, means, weapon, or instrument he was killed, and any material circumstances). In testimony whereof, the said justice and jurors hereto set their hands."

Inquisition, evidence, etc., returned; witnesses recognized.

6. The coroner or justice shall return to the circuit court of his county the inquisition, written testimony, and recognizances by him taken; and if the jury find that murder, manslaughter, or assault had been committed on the deceased, shall require such witnesses, as he thinks proper, to give recognizance to appear and testify at such court when it sits for the trial of the accused.

Coroner or justice to issue warrant for arrest of accused if not in custody

7. If the person charged with the offense by the inquest be not in custody, the coroner or justice, shall issue a warrant for his arrest, returnable before such coroner or justice, or before some other justice, and be proceeded on as directed by chapter one hundred and fifty-six of this code.

If deceased a stranger, body to be buried, etc.

8. If the dead person be a stranger, whether an inquest be taken or the coroner or justice, called on to view the body, thinks it unnecessary to have an inquest, he shall cause the body to be decently buried. If the coroner or justice certify that he believes the deceased has not sufficient estate in this state to pay the expenses of the burial, the coroner's and justice's fees, and the expenses of the inquest, if one was taken, they shall, when allowed by the county court of the county, be paid out of the treasury of such county. In other cases, all such charges shall be paid out of the estate of the deceased, or if it prove insufficient, out of the treasury of the county, unless the inquest be on the body of a convict in the penitentiary, in which case the same shall be paid out of the state treasury, after being allowed by the executive. Each juror summoned and impaneled as herein provided shall receive for his services two dollars per day for each day he shall be necessarily engaged in holding the inquest and making a return thereof, to be allowed and paid as aforesaid.

Costs; how paid.

Pay of jurors.

9. In taking an inquest, the coroner or justice may summon and require one or more physicians to attend, and give information and render services, incident to his profession, useful to the jury; and reasonable compensation therefor shall be allowed as part of the costs of the inquest.

Physicians may be required to attend inquest.

Compensation allowed.

Penalty on coroner or justice for neglect of duty.

10. If a coroner or justice fail to perform any duty herein required of him, he shall forfeit one hundred dollars.

Inquest may be held on Sunday.

11. Under this chapter, proceedings may be had for summoning a jury and witnesses, and an inquest may be held, as well on Sunday as on any other day.

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXXXVII.

AN ACT to amend and re-enact sections seven, nine, twelve, thirteen, seventeen and twenty-three of chapter forty-three of the code of West Virginia, as revived, amended and re-enacted by chapter fourteen of the acts of one thousand eight hundred and eighty-one.

[Passed March 25, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That sections seven, nine, twelve, thirteen, seventeen and twenty-three of chapter forty-three of the code of West Virginia, as revived, amended and re-enacted by chapter fourteen of the acts of one thousand eight hundred and eighty-one, be amended and re-enacted so as to read as follows:

7. Every surveyor of roads shall perform the following duties within his road precinct, that is to say: He shall superintend the county roads and bridges, cause the same to be put in good order and repair, of the proper width, well drained, and to be cleared and kept clear of rocks, falling timber, land slides, carcasses of dead animals, and other obstructions, and remove all dead timber standing within fifty feet thereof. He shall cause to be opened and made, all new county roads and alteration of former roads ordered by proper authority. He shall cause to be placed and kept at the forks or crossing of every county road a guide-board, on which shall be stated in plain letters, the most noted place to which each road leads. Across every stream, where it is necessary and practicable, he shall cause to be placed and kept a sufficient bridge, bench or log, for the accommodation of foot passengers. Where any more important bridge is necessary, and it is practicable for him to have it made with the money and labor which is at his disposal, by virtue of his office, he shall cause it to be made safe and convenient, and at least twelve feet broad, with a railing not less than three feet high on each side. He shall notify or cause to be notified all persons, who are liable by law to work on the roads, of the time and place at which they are required to attend for that purpose, and shall direct and superintend their work. When a county road is suddenly obstructed at any time of the year by the falling of rock or timber, land slides or other

Code amended; certain sections of, as amended by acts 1881.

Certain duties of surveyors of roads.

To superintend repair of roads, etc.

Open new roads.

Guide boards.

Foot and other bridges.

Notify persons liable to work on roads.

Duty as to roads suddenly obstructed.

cause, or a county bridge is from any cause rendered unsafe, he shall immediately order out such number of persons liable to work on the roads as may be necessary (notwithstanding such persons may have performed their full number of days' work on the roads), and without avoidable delay cause such obstruction to be removed from the road, or the bridge to be made safe. Any person failing to obey such order, shall be fined as provided in section twelve of this chapter.

What labor or money to be expended by surveyor; when and for what purpose.

When not to receive commutation.

Annual report; when made and what to contain.

Also to deliver all uncollected assessments.

Who to work on roads. Notice when work to be done

To work at least two days, if necessary.

Duty of county court if two days be insufficient.

9. He shall, before the first day of September in each year, unless otherwise ordered by the county court, expend upon the roads of his precinct, all the labor under his control, or the money received as commutation (provided for in section twelve), or so much thereof as may be necessary to repair and alter old established roads, and to open new roads duly authorized by law. He shall refuse to receive the commutation provided for in section twelve, after the first day of September in each year. The surveyor shall also report annually, to the county court, at the session thereof at which the county levy is laid, or at such other session as the county court may direct, the condition of the roads and bridges in his precinct, the amount of money and labor expended thereon during the year ending on that day, and from whom and on what account such money was received, and to whom and for what purpose it was paid; the improvements, alterations and new works finished during the year or in progress; and shall recommend in such report any improvements, alterations or new works which he thinks ought to be made, stating the probable cost thereof. He shall also deliver to the county court with such report all assessments named in section thirteen, returned to him uncollected, in whole or in part, by constables.

12. Every male person not under twenty-one nor over fifty years of age, who resides in any road precinct, and is not a pauper, having had at least three days notice, shall between the first day of April and the first day of September in each year, attend in person or by sufficient substitute with proper tools, and work on the county road in such precinct under the direction of the surveyor thereof, at such places and on such days during the said period as the said surveyor may appoint, at least two days, if that number be necessary. And the county court of every county in which the said two days work shall be insufficient to open, construct and keep in good repair the roads and bridges thereof, shall at a session of said court held prior to the first day of May in each year, prescribe by order of the court the manner in which the same shall be done, after expending thereon the two days work aforesaid, whether entirely by a tax on property, entirely by labor, or partly by tax and partly by labor; and it shall pre-

scribe, provide for and lay a sufficient amount of tax or labor, or both, as the case may be, to open, construct and keep in good repair the roads and bridges in their county during each year; *Provided*, That not more than four days work by any person shall be required in any year, and if said four days work are not sufficient, with or without the tax imposed, to put and keep the roads and bridges in any county in good repair, the court shall levy a sufficient tax for the purpose as aforesaid. Every person required by the county court under the provisions of this section to work on roads, shall perform such additional number of days work thereon, as may be prescribed by such order, not exceeding however, two days. But any person required to perform labor under the provisions of this section may commute therefor by paying to the surveyor such sum per day for every days' work so required of him, as shall be fixed by the county courts, not less than seventy-five cents nor more than one dollar and twenty-five cents. The county court shall have power to transfer and require the surveyor and hands of any road precinct to work upon the roads of another precinct in the same district, in cases of emergency, or of the opening of new roads, and any surveyor or hands failing to work on the roads of the precinct to which they may be, by order of the court transferred, shall be subject to the same penalties as if they had failed to work on the roads of their own precinct when lawfully required to do so.

Not more than four days' labor required in any year. If four days not sufficient, what then.

Duty of person to perform additional labor prescribed.

Commutation for labor. Amount to be fixed by court, and within what limits.

Power of court to transfer hands from one precinct to another.

Penalty for failure to obey order of court.

13. Every person failing to attend and perform the labor required by the next preceding section, or to pay the commutation mentioned in said section, or if he attend at the day and place required, and shall refuse to obey any lawful order or direction of the surveyor, or spend the time in idleness or inattention to the work assigned him, shall be proceeded against as follows: The surveyor of roads for his precinct shall, in a book to be kept by him for that purpose assess him with a road tax of one dollar and twenty-five cents for each day he shall fail as aforesaid, to work as required and for which he shall not have paid the commutation aforesaid, in form or effect as follows: "A— B—, to road precinct No. —, in the district of —, in the county of —, Dr., To road tax for failing to perform — days work on roads, at one dollar and twenty-five cents per day, \$—," and shall place a duplicate of such assessment in the hands of a constable in the county for collection within ten days after the first day of September in each year and take his receipt therefor. Such receipt shall be in form or effect as follows: "Received this — day of — - eighteen— of A— B—, surveyor of roads of precinct No. —, district of —, assessments of road tax for collection as follows, namely: Against C— D—, for — days' work, \$—; against

How person proceeded against for failure to perform labor, etc.

To be assessed \$1.25 for each day's delinquency, etc.; how and by whom.

Form of assessment.

Duplicate of such assessment to be given to constable by assessor, when.

Constable's receipt therefor.

Duty of surveyor as to such receipt, etc.	E— F—, for — days' work, \$—," and so on, reciting the names of each person, the number of days charged against him and the amount thereof. The surveyor shall file such receipt among the papers of his office, and shall enter the amounts thereof against such constable in a book to be kept for that purpose. If said tax be paid to the constable he shall write thereon the words: "received payment," and sign the same in his official character and deliver it to the person so charged with such tax or other person paying the same. But if said tax be not paid on demand, the constable may collect the same by distraint or otherwise, in the same manner as a sheriff may distrain for and collect county and state taxes; and said constable shall have and may exercise all the powers of a sheriff in such cases. Any person claiming to be improperly assessed with such tax may apply to the county court at its first or second session after the same comes to his knowledge but not afterwards, to have it corrected; but he must give to the surveyor of roads of the precinct at least five days notice in writing of such application. If the court upon the hearing of such application, be satisfied that the applicant has been improperly assessed with such tax, or any part thereof, it shall correct the assessment accordingly; otherwise it shall confirm the same. The application shall be heard and determined without costs. If the constable be unable to collect such tax in whole or in part within sixty days after the same is placed in his hands, and after the use of due diligence, he shall return said duplicate to the surveyor of roads, from whom he received it, or to his successor in office, with an endorsement thereon showing whether the whole or any part thereof remains unpaid, and for what reason. And any constable who shall falsely return such tax uncollected in whole or in part, shall be fined ten dollars. All moneys received by a surveyor of roads or constable under the provisions of this and section twelve of this chapter, shall constitute a road fund and be applied by the surveyor to the construction, improvement and repair of the roads and bridges in the precinct to which it belongs. The constable shall receive the same commissions on any money collected by him under this section as for money collected by him on execution, and shall pay the residue of such money, after deducting his commissions, to the surveyor and take his receipt therefor and for the amount of uncollected assessments returned.
Duty of constable when such tax is paid.	
If such tax be not paid on demand, how collected. Powers of constable in such case. Application to correct taxes improperly assessed.	
Notice to surveyor in such case. Court to correct or affirm.	
No costs in such case. Duty of constable if unable to collect such tax.	
Penalty for making false return. Moneys received to constitute a road fund.	
How applied.	
Commission for collecting.	
Residue; to whom paid.	
Extra labor in any year to be credited on any subsequent year	17. If any person, under the direction of the surveyor, perform or commute for more labor on the county roads of his precinct in any year than is due from him the surveyor shall give him a certificate specifying the amount of extra labor so performed, which certificate shall be received for the amount specified in discharge of any labor or road

tax within the same precinct due any subsequent year from the person to whom such certificate was given. Certificate in such case.

23. If any person assessed with any road tax desire to pay the same, or any part thereof in labor, he shall work on the county roads or bridges in his district, if the same constitute but one road precinct, at such times and places as shall be appointed by the surveyor, or if there be more than one such precinct in the district, at such times and places as the county court may direct. *Provided*, That in case there be more than one road precinct in the district, and there be a necessity for the expenditure of such tax, in the precinct where such person resides, then such labor shall be performed in that precinct. Such labor shall be performed in all cases under the direction of the surveyor, and the price thereof shall be such as may have been fixed by the county court, at a session thereof held prior to the first day of April in each year, and it shall be the duty of the county court at such session to fix the price of such labor, at a sum not less than seventy-five cents, nor more than one dollar and twenty-five cents. When any such labor is performed, by or on behalf of any person assessed with such road tax, the surveyor within whose precinct such labor is performed, shall give the person performing such labor a certificate setting forth the number of days and fractional parts of days' labor performed by such person, together with the money value thereof, as ascertained at the price so fixed by the county court. The sheriff shall receive such certificate in discharge of any road tax with which such person may be charged, to the amount specified in said certificate, and the amount of such certificate shall be allowed to the sheriff in his settlement for the collection of the road tax. Any surveyor knowingly giving a certificate to any person charged with road tax for a greater amount than the labor actually performed by such person, shall amount to, at the price fixed as aforesaid, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than ten nor more than one hundred dollars. *Provided, further*, That any county court may, when there is a necessity for doing so, as to any district, direct that not exceeding one-third of the amount levied under the preceding section or the whole amount so levied shall be collected in money, and paid into the county treasury to the credit of the road fund. When and how person assessed with road tax may discharge same in labor.

Proviso.

How such labor performed, and price thereof.

When such labor has been performed, surveyor to give person certificate. What such certificate to show.

Amount to be allowed by sheriff in settlement.

Penalty on surveyor for giving false certificate.

Court to direct what amount of road tax levied shall be collected in money, etc.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CXXXVIII.

AN ACT to amend and re-enact chapter one hundred and fifty-seven of the code of West Virginia, concerning grand juries.

[Passed March 24, 1882.]

Be it enacted by the Legislature of West Virginia :

1. Chapter one hundred and fifty-seven of the code of West Virginia, of grand juries, is hereby amended and re-enacted so as to read as follows :

CHAPTER CLVII.

Of Grand Juries.

1. There shall be a grand jury at each term of a circuit court, except that the circuit court of any county by an order entered of record, or the judge thereof in vacation by a written order to the clerk of the court at least twenty days before the term, may dispense with the grand jury for one of the three terms required by law to be held in said county annually, and in such case no grand jury shall be drawn or summoned to attend such term, until ordered either by the court or the judge thereof in vacation. Any circuit court may at a special or adjourned term thereof, whenever it shall be proper to do so, order a grand jury to be drawn and summoned to attend such term. A grand jury summoned to attend a special or adjourned term may consider any offenses against the laws, whether the same shall have been committed before the next preceding term of the court or not and whether the accused shall have been held for trial or not prior to the next preceding regular term.

Grand juries for circuit courts, to attend each term. When and how dispensed with.

May be summoned at special or adjourned term. Offenses considered at such terms.

List to be prepared by county court, when. Number chosen and how.

Who qualified.

How list disposed of.

Who clerk to strike from list. Ballots; how prepared.

2. The county court of each county shall at the levy term thereof annually, and at any other time when ordered by the circuit court, prepare a list of not less than one hundred nor more than one hundred and fifty freeholders of their county, chosen from the respective magisterial districts thereof as near as may be in proportion to the population of the districts, who are in other respects qualified to serve as jurors and are not constables, keepers of hotels or taverns, surveyors of roads, nor owners or occupiers of steam or water grist mills. The list so prepared shall be delivered to the clerk of the circuit court to be by him safely kept, subject only to the inspection of the court or of the clerk of the county court, as hereinafter prescribed, and the clerk shall strike from such list the name of any person who has been convicted of any scandalous offense or been guilty of any gross immorality. At the time such list is made out the county court shall

also cause all the names upon the same to be fairly written, each on a separate paper or ballot, and shall fold or roll up the ballots so as to resemble each other as near as may be, and so that the name written thereon shall not be visible on the outside, and shall enclose the ballots for each magisterial district in a separate envelope endorsed with the name of the district and the number of ballots enclosed, and shall deposit all the ballots so enclosed in a secure box, to be prepared for the purpose, which shall be delivered to and safely kept by the clerk of the circuit court and shall be opened only by order of the court, or by the clerk of the county court, or a justice as hereinafter proscribed.

Where deposited, and by whom kept and opened.

3. All grand jurors shall be selected by drawing ballots from the said box in the manner prescribed in this chapter, and the persons whose names are written on the ballots so drawn, shall be returned to serve as grand jurors. The clerk of every circuit court shall at least thirty days before any term of such court at which a grand jury may be wanted, and at any other time when ordered by the circuit court, issue a writ of *venire facias* for sixteen grand jurors. Such writ shall require the attendance of the grand jurors on the first day of the court, or on such other day thereof as the court or judge may order. At the time of issuing such *venire* the clerk shall issue a summons in the name of the state, requiring the clerk of the county court of the county to attend at the clerk's office of the circuit court of such county, on a day named in such summons, which shall not be less than twenty days before such term, for the purpose of drawing the ballots for the number of grand jurors mentioned in said writ. If the clerk of the circuit court be also clerk of the county court, the summons shall require a justice to attend for such purpose. The writ of *venire facias* and summons shall be served as provided in section nine of chapter one hundred and sixteen of this code, and the said officer shall attend and cause the proper number of grand jurors to be drawn from the box, and a list thereof to be delivered as provided in said section. The drawing and summoning of grand jurors shall be according to sections nine, ten, eleven, twelve and thirteen of said chapter one hundred and sixteen, so far as they are applicable, except that the ballots shall be drawn from the several envelopes in proportion as near as may be to the numbers endorsed thereon, but so that at least one ballot shall be drawn from each envelope.

How grand jurors selected from list.

Writs *facias*; when and how issued.

Clerk of county court summoned to draw ballots; when.

When a justice summoned for such purpose.

How writ and summons served.

Proceedings in drawing ballots.

4. Any fifteen or more of the grand jurors attending shall be a competent grand jury. If a sufficient number do not attend, the court shall direct the sheriff to forthwith summon as many others as may be necessary, whether their names are in such list or not, but who shall in other respects be qualified to act as grand jurors.

What number necessary to compose grand jury. If those summoned fail to attend, others may be summoned, etc.

Foreman
selected.
Oath of foreman

5. From among the persons so summoned, who attend, the court shall select a foreman, who shall be sworn as follows: "You shall diligently enquire and true presentment make of all such matters as may be given you in charge or come to your knowledge touching the present service. You shall present no person through malice, hatred or ill will, nor leave any unpresented through fear, favor, partiality or affection; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth. So help you God." The other grand jurors shall afterwards be sworn as follows: "The same oath that your foreman has taken on his part, you and each of you shall observe and keep on your part. So help you God."

Oath of other
members of
jury.

To be charged
by judge.

6. The grand jury, after being sworn, shall be charged by the judge, and shall then be sent to their room.

Duties of grand
jury.

7. The grand jury shall enquire of and present all felonies, misdemeanors, and violations of penal laws, committed in the jurisdiction of the court wherein they are sworn, except that no presentment shall be made of a matter for which there is no imprisonment, but only a fine, where the fine is limited to an amount not exceeding two dollars. They shall appoint one of their number as clerk, who shall write down the name of each witness examined by them, and the substance of the evidence given by him, and furnish the same to the prosecuting attorney.

How indictment
found,
etc.

8. At least twelve of the grand jurors must concur in finding or making an indictment or presentment. They may make a presentment or find an indictment upon the information of two or more of their own body; and when a presentment or indictment is so made, or on the testimony of witnesses called on by the grand jury, or sent to it by the court, the names of the grand jurors giving the information, or of the witnesses, shall be written at the foot of the presentment or indictment.

Indictment
ignored may be
sent before
same or another
grand jury.

9. Although a bill of indictment be returned not a true bill, another bill of indictment against the same person for the same offense may be sent to and acted on by the same or another grand jury.

When another
foreman may be
sworn on another
jury summoned.

10. If the foreman or any grand juror be unable or fail to attend, after being sworn, another may be sworn in his stead. And when one grand jury has been discharged, another may, by order of the court, be summoned to attend at the same term.

Penalty on
officer of court
failing in his
duty.

11. A court whose officer shall fail, when it is his duty, to summon a grand jury and return a list of their names, shall fine him twenty dollars. A person summoned, and failing to attend court as a grand juror, shall be fined by

said court ten dollars, unless after being summoned to show cause against the fine, he give a reasonable excuse for his failure. Penalty on juror for failing to attend.

12. No presentment or indictment shall be quashed or abated on account of the incompetency or disqualification of any one or more of the grand jurors who found the same. Incompetency of juror not to affect validity of indictment, etc.

13. The grand jury for any term of the circuit court of a county, which shall commence before the end of forty days after the adjournment of the next levy term of the county court of such county, shall be summoned according to the laws in force on the day before this act takes effect. How summoned

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed. Acts repealed.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CXXXIX.

AN ACT to revive, amend and re-enact chapter five of the code of West Virginia, concerning offenses relating to elections.

[Passed March 25, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter five of the code of West Virginia be and the same is hereby revived, amended and re-enacted so as to read as follows: Code amended; chapter 5 of.

CHAPTER V.

OFFENSES RELATING TO ELECTIONS.

Neglect or Malconduct of Officers of Elections.

1. If an officer fail to perform any duty required of him in relation to an election, and there is no other penalty or punishment imposed for such failure, he shall forfeit not less than five nor more than fifty dollars for every such offense. Elections; officers of, failing to perform duty; penalty for, etc.

2. If a commissioner or canvasser of election shall fail or

Commissioner, etc., of, failing, etc., to attend; penalty for.

refuse, without sufficient cause, to attend at the proper time and place for holding any election, which it is his duty to assist in holding, he shall forfeit not less than five nor more than thirty dollars for every such offense.

Officer, etc., present at election, etc., who refuses or fails to hold same, etc., or who neglects to deliver ballots, poll books, etc.; penalties for.

3. If an officer, or person, whose duty it is to assist in holding an election, being present at the time and place for holding the same, refuse to do so when required by a candidate or voter; or, if any person or officer neglect to deliver the ballots, poll books, or certificates as required by law, or to make returns in the manner or at the time prescribed by law, he shall forfeit for every such offense not less than ten nor more than one hundred dollars; or if any officer or person refuse to deliver the ballots, poll-books, or certificates at the time prescribed by law, he shall forfeit for every such offense not less than fifty, nor more than two hundred dollars, and be confined in the county jail not less than thirty nor more than ninety days.

Penalty on officers of election for false count, certificate or return, etc.

4. If a commissioner or canvasser of election, or any person acting as such, or as clerk or writer at any election, make, or procure to be made, or assist in making any false count, certificate or return concerning an election, knowing the same to be false, he shall be guilty of a felony, and upon conviction confined in the penitentiary not less than one nor more than two years.

Voting Twice—Procuring Bad Votes to be Admitted, or Good Ones Rejected, etc.

Illegal voting prohibited.

5. If any person knowingly vote when not legally entitled; or vote more than once in the same election; or knowingly vote or attempt to vote more than one ballot for the same office, or on the same question; or procure, or assist in procuring a bad vote to be admitted, or received at an election, knowing the same to be bad; or a good vote to be rejected, knowing the same to be good; or with intent to deceive any voter, alter the ballot of such voter by marking out the name of any person for whom such person desires to vote; or with like intent write the name of any person on such ballot other than those directed by the voter, he shall be punished as hereinafter provided. And when any political party shall in convention assembled nominate the full number of persons to be voted for at the ensuing election for state or county officers or for representatives in the congress of the United States and shall print and circulate, or cause to be printed and circulated ballots to be used in voting at such election, containing all the names of the persons so nominated, printed in Roman letters and with black ink, with a heading showing the name of such political party, it shall be unlawful for any person to print or circulate, or to furnish to any voter, or other person to be used in voting at such

Procuring bad votes to be admitted or good ones rejected.

Deceiving voter by altering ballot, etc.

Ballots issued, etc., by political party containing names of persons nominated in convention, for county and state officers, etc.; unlawful to print or circulate, etc.; any printed ballot similar to appearance, etc.

election, any printed ballot with the same heading, and similar in appearance of, and to the ballot printed as aforesaid, containing the names of such nominees, with any name or names printed thereon other than those so nominated as aforesaid, unless the other name or names so printed thereon be printed in italics, and in such style or manner as shall be easily distinguishable by a voter from said first named ballot. It shall also be unlawful for any person to paste or place the printed name of any person other than that of one of the nominees of such convention on or upon such ballot so printed as aforesaid, unless the name so pasted or placed thereon be printed in red ink. And it shall also be unlawful for any person to print or circulate, or cause to be printed or circulated any ballot purporting to be such ballot as is hereinbefore mentioned, and purporting to contain the names of the persons so nominated as aforesaid, but omitting therefrom the names of any one or more of such nominees, unless a blank space be left on such ballot of at least one third of an inch in width and extending across the said ballot from one side to the other, for the name of every such nominee omitted therefrom. Any person who shall knowingly violate any of the provisions of this section shall be guilty of a misdemeanor, and for each offense be fined not less than twenty nor more than one hundred dollars; and may, at the discretion of the court, be confined in the county jail not less than one nor more than six months.

If another name be printed on such ballot, how to be printed.

Unlawful to paste or place name of any person on or upon such ballot, other than nominee, unless printed in red ink.

Unlawful to print or circulate, etc., such ballot, etc., omitting therefrom name of any nominee, unless blank space be left, etc.

Punishment for violation provisions of section.

Tampering, etc., with Ballot-box, Destroying or Injuring Poll Books, Ballots, etc.

6. If any person shall unlawfully open any ballot-box before the ballots therein have been counted as required by chapter three of this code, or shall unlawfully take therefrom any ballot deposited therein, or alter, deface or destroy any such ballot, before said ballots have been counted as aforesaid, or if any person shall wilfully and unlawfully destroy, deface or alter any poll book kept at any place of voting, he shall be guilty of a felony, and upon conviction confined in the penitentiary not less than one nor more than two years.

Tampering, etc., with ballot box; destroying, etc., poll books and ballots.

Punishment for.

The Use of Force or Intimidation at Elections.

7. Any person who shall, by force, menace, fraud or intimidation, prevent or attempt to prevent any officer whose duty it is by law to assist in holding an election, or in counting the votes cast thereat, and certifying and returning the result thereof, from discharging his duties according to law; or who shall by violence, threatening gestures, speeches, force, menace or intimidation, prevent or attempt to prevent an election being held; or who shall in any manner obstruct or attempt to obstruct the hold-

Using force or intimidation, etc., at election, in what way.

ing of an election, or who shall by any manner of force, fraud, menace or intimidation, prevent or attempt to prevent any voter from attending any election, or from freely exercising his right of suffrage at any election at which he is entitled to vote, shall be guilty of a misdemeanor, and fined not less than one hundred nor more than five hundred dollars for every such offense, and at the discretion of the court may be imprisoned in the county jail not more than three months; and any corporation which shall, by its officers, agents, or otherwise, prevent or attempt to prevent any voter in its employ from attending any election, or from freely exercising his right of suffrage at any election at which he is entitled to vote, by any threat direct or indirect, express or implied, to discharge or deprive such voter from its employment, or shall discharge, or deprive such voter from its employment because of any vote he may cast, or refuse to cast, at any election at which he is entitled to vote, it shall be guilty of a misdemeanor, and shall upon conviction be fined not less than five thousand dollars nor more than twenty thousand dollars for every such offense, at the discretion of the jury.

Punishment for.

Penalty on any corporation for preventing, etc., voter in its employ from voting, etc., or for discharging employe because of vote he may give, etc.

Bribery.

8. If any person, directly or indirectly accept or take any gift, reward or profit, or any promise, bond covenant, engagement or security of any kind for reward or profit, under an agreement express or implied, or with the intent that, at any election, he will vote for a particular candidate; or that he will give his vote in any particular manner or upon any particular side of any question, to be decided at such election; or that he will make or procure to be made, or assist in making or procuring to be made, any false count, certificate, return or declaration concerning any election, such person, and the person who shall make such gift or pay such reward or profit, or make such promise, bond covenant, engagement or security, or aid or abet another in so doing, shall each be confined in the penitentiary not less than one nor more than three years; or at the discretion of the court, he may be fined not less than one hundred nor more than five hundred dollars, and be confined in the county jail not less than three nor more than twelve months. And any corporation which shall, by its officers, agents or otherwise, offer, give or use, or cause to be offered, given or used, or place or cause to be placed, in the possession, under the control or at the disposal of another, to be offered, given or used, directly or indirectly, money or other thing of value, for the purpose of influencing any voter or voters, to vote for a particular candidate, or in any particular manner, or upon any particular side of any question to be decided at any such election, or to influence the result of any such election, it shall be guilty of a misdemeanor and shall upon

Bribery in election by any person.

Punishment for

Bribery in election by any corporation.

Punishment for.

conviction he fined not less than five thousand dollars, nor more than twenty thousand dollars for every such offense, at the discretion of the jury. Any person called as a witness in relation to any offense specified in this chapter, shall be compelled to testify against any person other than himself, notwithstanding he may be implicated in the offense, but in case he does so testify in relation to such offense fully, no prosecution for the same offense shall thereafter be maintained against him.

Person called as witness, compelled to testify.

Effect of his so testifying.

Betting on Elections.

9. If any person bet or wager money or other thing of value on any election held in this state, he shall forfeit the value of such money or other thing and fifty dollars in addition thereto for every such offense.

Betting on election.

Forfeiture.

Treating Voters.

10. If any person who is a candidate for any office under the constitution and laws of this state shall, himself or by another, offer to, give or distribute among the voters any intoxicating drink on the day of the election, he shall, if elected, forfeit his office, and on proof of the fact be removed therefrom. And if any person, whether a candidate or not, offer, give or distribute any intoxicating drink to any voter on the day of an election, he shall forfeit not less than ten nor more than fifty dollars.

Treating voters on election day by candidates; forfeiture.

Treating voters on election day by any person; forfeiture.

Places Where Intoxicating Drinks Sold to be Kept Closed on Day of Election; Selling or Offering Such Liquors for Sale, &c.; Drunkenness at Elections.

11. Every place at which intoxicating liquors are sold, shall be kept closed on the day of election, and if any person (whether licensed to sell intoxicating liquors or not) shall, on the day of any election, sell or offer, or expose for sale such liquors, or shall on said day at any time keep open any place in his possession or under his control, where such liquors are usually sold, or shall permit any person to drink any intoxicating liquor on the day of an election, at any place in his possession at or under his control, he shall be guilty of a misdemeanor, and fined not less than fifty, nor more than one hundred dollars for every such offense. *Provided*, That this section shall not be so construed as to require any person licensed to sell intoxicating liquors who is engaged in any other business in connection therewith, to close his place of business as aforesaid, except the part thereof in which such liquors are usually sold.

Places at which liquor sold to be closed on election day.

No liquor to be sold, etc., on said day.

Penalty.

What part of premises where liquor sold not to be closed.

Drunkenness at or Near the Place of Election.

12. If any person be drunk at or near the place of holding an election on the day the same is held, he shall be

Drunkenness at or near place of voting punishable; how.

guilty of a misdemeanor and fined not less than ten nor more than fifty dollars, and shall, moreover, be required to give security for his good behavior for six months. If he fail to give such security, he shall be imprisoned not less than five nor more than twenty days.

Acts Repealed.

Acts repealed. 2. All acts and parts of acts coming within the purview of this chapter, and inconsistent therewith, are hereby repealed.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXL.

AN ACT to amend and re-enact sections six, seven, eight and nine of chapter seventy-two of the code of West Virginia, relating to forms of deeds and covenants, and to sales under deeds of trust.

[Passed March 25, 1882.]

Be it enacted by the Legislature of West Virginia:

Code amended; 1. That sections six, seven, eight and nine of chapter **certain sections** seventy-two of the code of West Virginia, be, and the same **of chapter 72 of** are hereby amended and re-enacted so as to read as follows:

Trustee in any 6. The trustee in any such deed shall, whenever required **deed to sell** by any creditor secured, or any surety indemnified by the **property; when** deed, or the personal representative of any such creditor or surety, after the debt due to such creditor or for which such surety may be liable, shall have become payable, and default shall have been made in the payment thereof, or any part thereof, by the grantor, sell the property conveyed by the deed, or so much thereof as may be necessary, at public auction upon the following terms, to-wit: one-third of the purchase money cash in hand, one-third thereof, with interest, in one year, and the residue thereof, with interest, in two years from the day of sale, taking from the purchaser his notes, with good security, for the deferred payments, and retaining the legal title as further security, unless a different provision as to the terms of sale has been inserted in the deed, and, if so, upon such terms as are therein mentioned, having first given notice

Terms of such
sale.

of such sale as hereinafter prescribed, and shall apply the proceeds of sale, first, to the payment of expenses attending the execution of the trust, including a commission to the trustee of five per centum on the first three hundred dollars, and two per centum on the residue of the proceeds, and then, *pro rata* (or in the order of priority, if any, prescribed by the deed), to the payment of the debts secured, and the indemnity of the sureties indemnified by the deed, and shall pay the surplus, if any, to the grantor, his heirs, personal representatives or assigns. Every such notice of sale shall show the following particulars: 1. The time and place of sale; 2. The names of the parties to the deed under which it will be made; 3. The date of the deed; 4. The office and book in which it is recorded; 5. The quantity and description of the land, or other property, or both, conveyed thereby.

How proceeds of sale applied, and trustee's commission.

Notice of sale; what to contain.

7. When any property is about to be sold under a deed of trust, the trustee shall, unless it be otherwise provided in the deed of trust, or in the opinion of the trustee the property to be sold be of less value than three hundred dollars, publish a notice of such sale in some newspaper published in the county, if there be one which will publish the notice at the rates prescribed by law. Such notice shall be published at least once a week for four successive weeks preceding the day of sale, and a copy of such notice shall be posted at the front door of the court-house for a like period; but if there be no newspaper published in the county, or if there be none that will publish such notice at the rates prescribed by law, or if in the opinion of the trustee the property be of less value than three hundred dollars, such notice of sale shall be posted at least thirty days prior thereto on the front door of the court-house of the county in which the property to be sold is, and at three other public places, at least, in the county, one of which shall be as near the premises to be sold (in case the sale be of real estate) as practicable; and in all cases, whether the notice be published or not, a copy of such notice shall be served on the grantor in the deed, or his agent or personal representative, if he or they be within the county, at least twenty days prior to the sale.

Notice of sale; when and how published and where posted.

Copy of notice served on grantor, etc.; when.

8. Every deed for real estate sold under a deed of trust may be made in the following form, or to the same effect:

"This deed, made the — day of —, between A — B —, trustee, of the first part, and C — D —, of the second part: WHEREAS, The said trustee, by virtue of the authority vested in him by the deed of trust hereinafter mentioned (or by an order of the circuit court of the county of —, made on the — day of —, as the case may be) did sell, as required by law, a certain tract (or lot as the case may be), of land, situate in the county (or city,

Form of trustee's deed for real estate sold.

town or village, as the case may be), of —, conveyed by E— F— to the said A— B—, trustee (or to G— H— trustee, as the case may be), by deed bearing date the — day of —, and recorded (if it be recorded) in deed book —, on page —, in the office of the clerk of the county court of the county of —, and bounded and described therein as follows: (here insert the description and quantity as set forth in the deed of trust, and any further description deemed necessary). And whereas at such sale the said C— D— purchased the said property for the sum of — dollars. Now therefore this deed witnesseth that the said A— B—, trustee as aforesaid, doth grant unto the said C— D—, the said real estate hereinbefore described. Witness the following signature and seal.

A— B—, *Trustee* [L. s]."

Deed of Sheriff or Special Commissioner.

Form of deed of sheriff or special commissioner for real estate sold under decree, etc.

9. The deed of a sheriff or special commissioner for real estate sold under the decree, judgment or order of a court, may be made in the following form, or to the same effect: "This deed, made this — day of —, between A— B—, sheriff of the county of — (or special commissioner as the case may be), of the first part, and C— D—, of the second part; whereas, the said sheriff (or commissioner), in pursuance of the authority vested in him by a decree, (judgment or order as the case may be), of the circuit court of the county of —, made on the — day of —, in a suit in chancery (or an action at law, or otherwise, as the case may be) therein pending, in which E— F— was plaintiff, and G— H— was defendant, did sell the real estate hereinafter mentioned and conveyed, according to the terms and conditions required by said decree (judgment or order), at which sale the said C— D—, became the purchaser for the sum of — dollars. And whereas, the said court by a subsequent decree (or order), made in the case on the — day of —, confirmed the said sale, and directed a deed for the said real estate to be made to the said C— D—, by the said sheriff (or commissioner). Now, therefore, this deed witnesseth: that the said A— B—, sheriff (or special commissioner) as aforesaid doth grant unto the said C— D—, a certain parcel of real estate situate in the county of —, and bounded and described as follows, (here insert the boundaries, description and quantity, as near as may be). Witness the following signature and seal:

A— B— *Sheriff (or Special Commissioner)*, [L. s]"

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXLII.

AN ACT to amend and re-enact section ten of chapter one hundred and fifty-two of the code of West Virginia, concerning crimes and punishments.

[Passed March 25, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That section ten of chapter one hundred and fifty-two of the code of West Virginia be amended and re-enacted so as to read as follows :

10. A prosecution for committing or procuring another person to commit perjury shall be commenced within three years next after the perjury was committed. And a prosecution for a misdemeanor shall be commenced within one year next after there was cause therefor, except that a prosecution for petit larceny may be commenced within three years after the commission of the offense. Provided, That whenever the indictment in any case shall be stolen, lost or destroyed, a new indictment may be found for the same offense mentioned in the former indictment at the first term of the court after such theft, loss or destruction is discovered, or at the next term thereafter, and as often as any such new indictment is stolen, lost or destroyed, another indictment for the same offense may be found at the first term of the court after such theft, loss or destruction is discovered, or at the next term thereafter ; and the court shall, in every case where any such indictment has been stolen, lost or destroyed enter such fact on its record. Whenever such new indictment is found, the clerk shall add to the entry of the finding thereof, the following : "This is the second (or third, etc., as the case may be) indictment found against the said _____ for the same offense;" and the same proceedings shall be had in all respects on any such new indictment as might have been had on the first indictment if it had not been stolen, lost or destroyed. And if the offense mentioned in any such indictment is barred by any statute of limitations the time between the finding of the first and last of such indictments shall not be computed or taken into consideration in the computation of the time in which any such indictment, after the first, should have been found.

Code amended; section 10 of chapter 162 of.

Prosecution for perjury; when to commence.

For misdemeanor or petit larceny.

New indictment may be found if former be stolen, lost or destroyed; when

What fact to be entered on record.

When new indictment found, what clerk to add to entry of such finding.

What proceedings had on new indictment.

If offense barred, what time not computed.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CXLII.

AN ACT to amend and re-enact sections one and five of chapter one hundred and thirty-two of the code of West Virginia.

[Passed March 25, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That sections one and five of chapter one hundred and thirty-two of the code of West Virginia be amended and re-enacted so as to read as follows :

Code amended; sections 1 and 5 of chapter 132 of

Decree or order of sale; how made.

Special commissioner to make sale. When he must give bond.

How punished for failure.

Liability of clerk for taking bond with insufficient security. No sale by commissioner until bond and security given. What certificate clerk to append to notice of sale.

How and when trustee may be appointed in place of another.

Appointed trustee; to what rights, powers, etc., substituted

1. A court, in a suit properly therein, may make a decree or order for the sale of property in any part of the state, and may direct the sale to be for cash, or on such credit and terms as it may deem best; and it may appoint a special commissioner to make such sale. No special commissioner appointed by a court shall receive money under a decree or order until he give bond with good security, before the said court or its clerk, and any special commissioner violating the provisions of this section by receiving money before executing bond as aforesaid, shall be deemed guilty of a contempt of court, and shall be punished by fine and imprisonment, or either, at the discretion of the court. If the clerk takes bond with insufficient security, he and his securities upon his official bond shall be responsible for any loss or damage sustained by any person injured thereby. And no sale shall be made by such commissioner until such bond and security has been given and approved by the clerk; and every notice of such sale shall have appended to it the certificate of such clerk that bond and security has been given by the commissioner as required by law.

5. In a suit in equity in which it appears that a trustee has died, although the heirs of such trustee be not parties to the suit, yet if his personal representative and the other persons interested be parties, the court may appoint another trustee in the place of him who has died, to act either alone or in conjunction with any surviving trustee, as the case may require; and in any case, when a trustee, or where there is more than one, all the trustees in any deed of trust, shall have died or removed beyond the limits of the state, or shall decline to accept the trust, or refuse to act, any person interested in the execution of the deed may apply by motion to the circuit court of any county in which such deed is recorded, which may appoint a trustee or trustees in the place of the trustee or trustees named therein; and the trustee or trustees so appointed and accepting the same shall be substituted to all rights, powers, duties and responsibilities of the trustee named in said

deed; provided the grantor in said deed, his heirs or personal representatives, the creditor, or surety, or other persons intended to be secured thereby, or their personal representatives, shall have ten days' notice of such motion, the mode of serving which shall be as prescribed in the first and second sections of chapter one hundred and twenty-one.

Proviso as to notice to be given.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXLIII.

AN ACT to amend and re-enact chapter thirteen of the code of West Virginia.

[Passed March 25, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter thirteen of the code of West Virginia be, and the same is hereby amended and re-enacted so as to read as follows:

Code amended; chapter 13 of.

CHAPTER XIII.

OF THE PROMULGATION, PROOF, COMMENCEMENT AND CONSTRUCTION OF LAWS; EFFECT OF THE COMMON LAW AND ANCIENT STATUTES.

Distribution of the Session Acts.

1. In addition to the five hundred copies of the acts and joint resolutions of each session of the legislature, and matters directed by law to be published therewith, to be distributed as the session progresses among the members of the legislature, pursuant to the ninth section of chapter sixteen, the two thousand copies which, according to the said section, are to be delivered to the secretary of state, shall be by him distributed and disposed of as follows: One copy to every judge and clerk of a court in this state; one copy to every prosecuting attorney, sheriff, assessor, county superintendent of free schools, surveyor of lands, each commissioner of the county court and justice; to the governor, secretary of state, treasurer, auditor, attorney-general, state superintendent of free schools and adjutant-general, one copy each; five copies to the clerk of the senate, one for his own use, and the others to be kept in his office for the use of the senate, and ten copies to the clerk of the house of delegates, one for his own use, and the others to be kept in his office for the use of the house; ten

Acts of the legislature; how distributed and disposed of, and by whom.

copies to every member of the legislature, one for his own use, and the others for distribution; one copy to every public library in the state, and one copy each to the West Virginia hospital for the insane, the institution for the deaf, dumb and blind, the penitentiary, the West Virginia university, and the state normal schools; three copies to the librarian of congress, whereof one shall be for the library and one for each house of Congress; one copy to every senator and representative in congress from this state; three copies to the secretary of state of the United States, one for his own office, one for the president and one for the attorney-general of the United States; to the judge, clerk, attorney and marshal of the district court of the United States for the district of West Virginia, one copy each; and one copy to the governor of every state and territory. The said copies shall be sent by mail, express or otherwise, as the secretary of state may deem best. The acts to which the officers of a county may be entitled shall be forwarded to the clerk of the county court thereof, and shall be delivered by him to the officers who are entitled to receive them. The clerk, upon the reception of the said acts by him, shall forward his receipt therefor to the secretary of state, specifying the number received. And he shall require each person receiving a copy of said acts from him to sign a receipt therefor in a book to be kept by him for that purpose in his office. The residue shall be sold, under the direction of the secretary of state, at the actual cost of the same to the state, and the proceeds of such sales shall be paid into the treasury.

How sent.

Acts for county officers; to whom sent.

Receipt of clerk for same.

Receipt to clerk by officer.

Residue to be sold; where proceeds paid.

Printed Copies of Statutes to be Received as Evidence.

2. The printed copies of the acts and resolutions of the general assembly of Virginia and of the statutes and codes of that state, with the supplements to and continuation of the same, and the ordinances of the convention which assembled at Wheeling on the eleventh day of June, one thousand eight hundred and sixty-one, shall continue to be received in evidence within this state, in like manner as they were receivable within the same when it was part of the state of Virginia.

3. The printed copies of the acts and resolutions of the legislature of this state, which have been, or shall hereafter be, published by authority thereof, shall be received as evidence for any purpose for which the original acts and resolutions could be received and with as much effect.

Laws of other States and Countries.

4. Whenever in any case it becomes material to ascertain what the law, statutory or other, of another state or country or of the United States, is, or was at any time, the court, judge or magistrate shall take judicial notice

Printed copies of statutes, etc., of Virginia, to be received as evidence.

Printed copies of acts, etc., of this state received as evidence.

Laws of other states, etc., how ascertained.

thereof, and may consult any printed book, purporting to contain, state or explain the same and consider any testimony, information or argument that is offered on the subject.

The Common Law and Ancient Statutes.

5. The common law of England, so far as it is not repugnant to the principles of the constitution of this state, shall continue in force within the same, except in those respects wherein it was altered by the general assembly of Virginia before the twentieth day of June, one thousand eight hundred and sixty-three, or has been or shall be altered by the legislature of this state.

Common law of England, except wherein altered, etc., in force in this state.

6. The right and benefit of all writs, remedial and judicial, given by any statute or act of parliament made in aid of the common law prior to the fourth year of the reign of James the First of a general nature, not local to England, shall still be saved so far as the same may be consistent with the constitution of this state, the acts of the general assembly of Virginia passed before the twentieth day of June, one thousand eight hundred and sixty-three, and the acts of the legislature of this state.

How far benefit of writs, remedial and judicial, given by statutes of England in aid of common law, saved.

Certain Acts and Ordinances Declared Void.

7. All ordinances, orders and resolutions of the convention held in Richmond during the year one thousand eight hundred and sixty-one, and all acts, orders and resolutions passed after the sixteenth day of April, one thousand eight hundred and sixty-one, by any assembly at Richmond, calling itself the general assembly of Virginia, are declared void, and are of no force or effect whatever within this state.

Certain acts and ordinances, etc., of Va. declared void.

When Acts of the Legislature Take Effect.

8. No act of the legislature shall take effect until the expiration of ninety days after its passage, unless the legislature shall by a vote of two-thirds of the members elected to each house, taken by yeas and nays otherwise direct.

When acts of the legislature to take effect.

Certain Rules for the Construction of Statutes.

9. The repeal of a law, or its expiration by virtue of any provision contained therein, shall not affect any offense committed, or penalty or punishment incurred before the repeal took effect, or the law expired, save only, that the proceedings thereafter had, shall conform as far as practicable to the laws in force at the time such proceedings take place, unless otherwise specially provided; and that if any penalty or punishment be mitigated by the new law, such new law may with the consent of

Effect of repeal or expiration of a law as to crimes previously committed.

the party affected thereby, be applied to any judgment pronounced after it has taken effect.

Effect of repeal of repealing act.

10. When a law which has repealed another, is itself repealed, the former law shall not be revived without express words for the purpose.

Affirmation equivalent to an oath.

Oath, etc., what to include.

11. A solemn affirmation shall be equivalent to an oath in all cases, unless otherwise expressly provided, and the word "oath" shall be deemed to include an affirmation, and the word "swear" or "sworn," to be complied with if the person referred to make solemn affirmation.

Computation of time in which an act is to be done
Not to affect bills of exchange, etc.

12. The time within which an act is to be done shall be computed by excluding the first day and including the last; or if the last be Sunday, it shall also be excluded; but this provision shall not be deemed to change any rule of law, applicable to bills of exchange, or negotiable notes.

When Sunday no day in law.

When court to be held next day.

13. When a proceeding is directed to take place, or any act to be done, on a particular day of the month, if that day happen to be on Sunday, the next day shall be deemed to be the one intended, and when the day upon which a term of the circuit court is directed by law to commence, happens to be Saturday or Sunday, the following Monday shall be deemed to be the day intended. When an adjournment is authorized from day to day, an adjournment from Saturday to Monday will be legal.

Meaning of words "month" and "year."

14. In a statute the word "month" shall mean a calendar month, and the word "year" a calendar year; and the word "year" alone be equivalent to the expression "year of our Lord."

Seal; when scroll may be used as.

15. When the seal of the state, or of a court, officer or corporation is to be affixed to any paper, an impression of such seal upon the paper shall be sufficient. When the seal of a natural person is required to a paper, he may affix thereto a scroll by way of seal, or adopt as his seal and scroll, written, printed or engraved, made thereon by another.

What acts may be done by agent or deputy.

16. When a statute requires an act to be done by an officer or person, it shall be sufficient if it be done by his agent or deputy, unless it be such as cannot lawfully be done by deputation.

Specific rules for construction of statutes.

Words imparting singular or plural number; how applied.

17. The following rules shall be observed in the construction of statutes, unless a different intent on the part of the legislature be apparent from the context:

First. A word importing the singular number only may be applied to several persons or things, as well as to one person or thing; a word importing the plural number only, may be applied to one person or thing as well as to

several; and a word importing the masculine gender only may be applied to females as well as males.

Word importing masculine gender; how applied.

Second. Words purporting to give a joint authority to three or more persons, confer such authority upon a majority of them, and not upon any less number.

Words purporting to give joint authority to three or more; how construed.

Third. The words "written" or "in writing" include any representation of words, letters or figures, whether by printing, engraving, writing or otherwise. But when the signature of any person is required it must be in his own proper hand-writing, or his mark attested, proved or acknowledged.

Words "written" or "in writing;" what to include. Signature of person must be written by himself.

Fourth. The words "preceding," "succeeding" or "following" used in reference to any section or sections of a chapter or statute, means next preceding, next succeeding or next following that in which such reference is made, unless a different interpretation be required by the context.

Words "preceding," "succeeding," etc., used in reference to any section, etc.; how construed.

Fifth. An officer shall be deemed to have qualified when he has done all that the law required him to do before he proceeds to exercise the authority and discharge the duties of his office.

When officer deemed to have qualified.

Sixth. The words "the governor" are equivalent to "the executive of the state" or "the person having the executive power."

Words "the governor;" equivalent to what.

Seventh. The word "justice" is equivalent to the words "justice of the peace" and the word "notary" to "notary public."

Words "justice," "notary;" equivalent to what.

Eighth. The word "state" when applied to a part of the United States and not restricted by the context, includes the District of Columbia and the several territories, and the words "United States" also include the said district and territories.

Words "state," "United States;" what to include.

Ninth. The word "person" includes corporations if not restricted by the context.

Word "person;" what to include.

Tenth. The words "personal representative" include the executor of a will, the administrator of the estate of a deceased person, the administrator of such estate, with the will annexed, the administrator *de bonis non* of such estate whether there be a will or not, the sheriff or other officer lawfully charged with the administration of the estate of a deceased person, and every other curator or committee of a decedent's estate for or against whom suits may be brought for causes of action which accrued to or against such decedent.

Words "personal representative;" what to include.

Eleventh. The word "will" embraces a testament, a codicil; an appointment by will or writing in the nature of a will in exercise of a power, also any other testamentary disposition.

Word "will;" what to embrace.

Twelfth. The word "judgment" includes decrees and also orders in chancery for the payment of money and bonds or recognizances, having the force of judgments.

Word "judgment;" what to include.

Words "under disability; what to include." *Thirteenth.* The words "under disability" include married women, except as otherwise provided by law, persons under the age of twenty-one years, insane persons, and convicts while confined in the penitentiary.

Words "insane person; what to include." *Fourteenth.* The words "insane person" include every one who is an idiot, lunatic, *non compos* or deranged.

Word "land" or "lands," etc.; what to include. *Fifteenth.* The word "land" or "lands" and the words "real estate" or "real property" include lands, tenements and hereditaments, and all rights thereto and interests therein except chattel interests.

Words "personal property;" what to include. *Sixteenth.* The words "personal estate" or "personal property" include goods, chattels real and personal, money credits, investments and the evidences thereof.

Word "property" or "estate;" what to embrace. *Seventeenth.* The word "property" or "estate" embraces both real and personal estate.

Word "offense;" what to include. *Eighteenth.* The word "offense" includes every act or omission for which a fine, forfeiture or punishment is imposed by law.

The expression "laws of the state;" what to include. *Nineteenth.* The expression "laws of the state" includes the constitution of the state and the constitution of the United States and treaties and laws made in pursuance thereof.

Fines or forfeitures to accrue to state. How applied. *Twentieth.* Unless otherwise specially provided, every fine or forfeiture imposed by or under an act of the legislature shall accrue to the state, and be applied to the support of free schools, pursuant to the fifth section of article twelve of the constitution.

Words "town" and "council;" what to include. *Twenty-first.* The word "town" shall include a city, village or town, and the word "council," any body or board, whether composed of one or more branches, who are authorized to make ordinances for the government of a city, town or village.

Ordinances, etc., of city, etc., must be consistent with laws of state. *Twenty-second.* When the council of a town, city or village, or any board, number of persons or corporation, are authorized to make ordinances, by-laws, rules, regulations or orders, it shall be understood that the same must be consistent with the laws of this state.

Words "county court," "county commissioners," etc.; what to include. *Twenty-third.* The words "county court" include any existing tribunal created in lieu of a county court; the words "commissioner of the county court" and "county commissioner" shall be construed to mean, and have reference to the commissioners, or one of them, composing the county court, in pursuance of section twenty-two of article eight of the constitution as amended, or any existing tribunal created in lieu of a county court.

Acts Repealed.

2. All acts and parts of acts coming within the purview

of this act, and inconsistent therewith, are hereby re-^{Acts repealed.}pealed.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXLIV.

AN ACT to amend and re-enact chapter fourteen of the code of West Virginia, concerning powers and duties of the governor and the subordinate officers of the executive department, and the officers of all public institutions of the state-

[Passed March 25, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter fourteen of the code of West Virginia ^{Code amended;} be amended and re-enacted so as to read as follows: ^{chapter 14 of.}

CHAPTER XIV.

CONCERNING CERTAIN POWERS AND DUTIES OF THE GOVERNOR AND THE SUBORDINATE OFFICERS OF THE EXECUTIVE DEPARTMENT, AND THE OFFICERS OF ALL PUBLIC INSTITUTIONS OF THE STATE.

Power to Order Out the Militia.

1. The governor shall have power to call out the militia ^{Power of gov-} to repel invasion, suppress insurrection and enforce the ^{ernor to order} execution of the laws. And whenever in any part of the ^{out militia; for} state a combination, too powerful to be suppressed by the ^{what purposes.} civil authorities, shall endanger the peace and safety of the people, or obstructs the execution of the laws, the governor may use the military force of the state to suppress such combination.

2. When the governor calls out the militia he shall issue ^{Orders and} such orders and take such measures as to him may seem ^{appointments of} best, for mustering, arming, subsisting and transporting ^{governor when} the several detachments, and may appoint such quartermasters, commissaries and staff as he shall deem proper. ^{militia called} out.

3. His orders shall be sent to such officers and in such ^{How orders sent} manner as he may think expedient, with notice of the ^{to officers; their} place of rendezvous; and the officers to whom they are ^{duty.} sent shall proceed immediately to execute the same.

4. When a detachment is called into service, the officers

Who to command troops called into service.

to command the same shall be detailed from the division, brigade or regiment from which such detachment is taken. When separate companies are called out or offer themselves and are accepted for the service, they shall be under the command of their respective company officers; but the governor may organize them into battalions and regiments, and appoint the necessary field officers therefor. When several regiments are ordered out or volunteers and are accepted for the service, they shall remain under the command of their respective regimental and company officers; but the governor may appoint or detail one of the brigadier generals or major generals to the command. If such officers as the governor deems necessary do not attend at the place of rendezvous, or he be satisfied they will not attend, he may appoint in their stead such officers as he may deem best.

Apprehending Suspicious Persons in Time of War.

Governor may apprehend, etc., suspicious persons, when.

5. The governor may cause to be apprehended and imprisoned, or may compel to depart from this state, all suspicious subjects, citizens, agents or emissaries of any foreign state or power at war with the United States.

Further provision authorizing governor to apprehend and imprison suspicious persons; when.

6. He may also cause to be apprehended and imprisoned all who, in time of war, insurrection or public danger, shall wilfully give aid, support or information to the enemy or insurgents, or who, he shall have just cause to believe, are conspiring or combining together to aid or support any hostile action against the United States or this state.

Information in such cases; how obtained.

7. In order to obtain information in such cases the governor may send for the person and papers of any one whom he shall believe to be subject to the last two sections.

How warrant on order of governor or directed; powers of officer in executing same.

8. Any warrant or order of the governor under the three preceding sections may be directed to any sheriff or other officer, civil or military, and shall be executed according to the terms thereof by such officer, who shall have all the powers necessary for the purpose, either in or out of his county.

Persons so apprehended; how discharged.

9. Any person so apprehended or imprisoned may, at the discretion of the governor, be discharged upon giving bond with satisfactory security to leave the state and not return thereto for such period, to be stated in the bond, as the governor may prescribe; or he may be discharged on such other terms or conditions, or without condition as to the governor shall seem right and proper.

Fugitives from Foreign Nations.

Fugitives from foreign nations; when delivered over, etc., upon requisition.

10. The governor, whenever required by the executive authority of the United States pursuant to the constitution and laws thereof, shall deliver over to justice any per-

son found within this state who shall be charged with having committed any crime without the jurisdiction of the United States.

11. The governor, though not so required, may in his discretion deliver over to justice any person found within this state, who shall be charged with having committed, without the jurisdiction of the United States, any crime, except treason, which by the laws of this state, if committed therein, would be punishable by death or imprisonment in the penitentiary. The governor shall require such evidence of the guilt of the person so charged, as would be necessary to justify an indictment against him, had the crime charged been committed in this state. The expense of the apprehension and delivery shall be defrayed by those to whom the delivery is made.

When such fugitive delivered over without requisition.

Evidence required.

Expenses; how paid.

Fugitives from Justice.

12. The governor, in any case, authorized by the constitution of the United States, may, on demand, deliver over to the executive of any other state or territory any person charged therein, with treason, felony or other crime committed therein, and he may on application appoint an agent to demand of the executive authority of any other state or territory any offender fleeing from the justice of this state; *Provided*, That such demand or application is accompanied by sworn evidence that the party charged is a fugitive from justice, and that the demand or application is made in good faith for the punishment of crime, and not for the purpose of collecting a debt or pecuniary mulct, or of removing the alleged fugitive to a foreign jurisdiction with a view there to serve him with civil process; and also by a duly attested copy of an indictment, or a duly attested copy of a complaint made before a court or magistrate authorized to take the same, such complaint to be accompanied by affidavits to the facts constituting the offense charged, by persons having actual knowledge thereof, and such further evidence in support thereof as the governor may require. The governor may pay out of the civil contingent fund any reasonable expenses incurred under this section.

Fugitives from other states of the Union; when and how delivered up.

Governor may, on application, appoint agent to demand of executive of another state, etc., offender fleeing from justice in this state.

What evidence to accompany such application

What else must accompany such application

Expenses; how paid.

13. Whenever any person shall be found within this state, charged with treason, felony or other crime committed in any other state, any justice may, upon complaint on oath, or other satisfactory evidence that such person committed the offense, issue a warrant to bring the person so charged before the same or some other justice within the state; and the officer to whom such warrant may be directed may execute the same in any county in the state, and bring the party, when arrested before any justice of the same or any other county.

Arrest of fugitive charged with an offense committed in another state, upon complaint to justice.

Warrant in such case; how and by whom executed.

Duty of justice before whom such fugitive is brought.

14. If it shall appear to the justice before whom the person charged may be brought that there is reasonable cause to believe that the complaint is true, he shall if he would have been bailable by a justice, in case the offense had been committed in this state, be required to recognize, with sufficient sureties, in a reasonable sum, to appear before the circuit court of the county at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court; and if such person shall not so recognize he shall be committed to prison, and be there detained until such day. The recognizance, if any, shall be returned to the said court without delay; and if the person so recognizing shall fail to appear, according to the condition of his recognizance, he shall be defaulted, and the like proceeding shall be had, as in the case of other recognizances entered into before a justice; but if such person would not have been bailable by a justice in case the offense had been committed in this state, he shall be committed to prison, and there detained until the day so appointed for his appearance before the court.

Justice to apprise governor if such fugitive be bailed or committed.

15. The justice by whom such person may be so recognized or committed, shall immediately, by letter, apprise the governor of the fact, who shall thereupon communicate the same to the executive of the state where the crime is charged to have been committed.

When such person so committed, etc., to be discharged.

Such person may at all times be arrested upon warrant of governor. Such arrest to discharge recognizance.

16. If the person so recognized or committed shall appear before the court upon the day ordered, he shall be discharged, unless he shall be demanded by some person authorized by the warrant of the governor to receive him, or unless the court shall see cause to commit him, or to require him to recognize anew for his appearance at some other day; and if, when ordered, he shall not so recognize, he shall be committed and detained as before. But whether the person so charged shall be recognized, committed or discharged, any person authorized by the warrant of the governor may, at all times, take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

Who answerable for expenses in such case. Jailor may discharge prisoner; when.

17. The complainant in each case shall be answerable for all the actual costs and charges, and for the support in prison of any person so committed; and if the charge for his support in prison shall not be paid when demanded, the jailor may discharge such person from prison.

When Fugitives are to be Detained Here.

When fugitive to be detained in this state and not delivered up.

18. No person under prosecution for any offense alleged to be committed within this state shall be delivered up to the executive authority of another state, or of the United States, until such prosecution shall have been determined and the person prosecuted shall have been punished, if

condemned; nor shall any person under recognizance to appear as a witness in any such prosecution be so delivered up until said prosecution shall be determined. Nor shall any person who was in custody upon any execution, or upon process in any suit, at the time of being apprehended for a crime charged to have been committed without the jurisdiction of this state, be so delivered up without the consent of the plaintiff in such execution or suit, until the amount of such execution shall have been paid, or until such person shall be otherwise discharged from such execution or process.

Rewards for Persons Charged with Offenses.

19. The governor may offer a reward for apprehending and securing any person convicted of an offense, or charged therewith, who shall have escaped from prison, or for apprehending and securing any person charged with an offense, who, there is reason to fear, cannot be arrested in the common course of proceeding. But no such reward shall be paid to any sheriff or other officer who may arrest such person by virtue of any process in his hands to be executed. And the governor may employ any person to aid in the detection of persons charged with, or suspected of crime, and pay the person so employed out of the contingent fund at his disposal.

Governor may offer rewards for persons charged with crime, etc.

Not to be paid to sheriff, etc., in certain cases

May employ person to aid in detection of person charged, etc., with crime. How paid.

Power to Remit Fines and Penalties, Grant Reprieves and Pardons, etc.

20. The governor shall have power to remit fines and penalties, in such cases, and under such regulations as now are, or may be prescribed by law; to commute capital punishment, and, except where the prosecution has been carried on by the house of delegates, to grant reprieves and pardons, after conviction; but he shall communicate to the legislature, at each session, the particulars of every case of fine or penalty remitted, of punishment commuted, and of reprieve or pardon granted, with his reasons therefor. In any case wherein the governor has power to grant a pardon, instead of granting the same unconditionally, he may, after sentence, grant it upon such conditions as may be deemed proper by him, and be assented to by the person sentenced; and for the purpose of carrying into effect such conditional pardon, the governor may issue his order or warrant directed to any proper officer, which shall be obeyed and executed, instead of the sentence that was originally awarded. Especially it shall be the duty of the superintendent of the penitentiary to receive and confine therein, according to such order or warrant, any person convicted of a crime punishable with death, who shall be pardoned on condition of being confined in the penitentiary. And in any case in

Power to remit fines, etc., to commute punishment, to grant pardons, etc.

His report to legislature.

Power to grant conditional pardons; when and how.

How such pardons carried into effect.

In case of commutation of capital punishment.

which the governor shall exercise the power conferred on him by the constitution to commute capital punishment, he may, to carry such commutation into effect, issue his order or warrant, to be obeyed and executed in like manner.

Power to Surrender Prisoners for Exchange.

Power of governor to surrender prisoners for exchange.

21. The governor may deliver to the military authorities of the United States, to be exchanged for any person held as a prisoner by a public enemy or armed insurgents, any person who may be in custody of any officer of this state for a criminal offense, whether convicted thereof or merely held for trial; and for this purpose may issue his order and warrant, directed to the proper officer, which shall be obeyed and executed.

Remission of Fines and Penalties.

Governor may remit fines and penalties; when.

22. The governor shall not remit in whole or in part any fine or penalty assessed or imposed by a court of record, court martial, or other authority, except as follows:

First. When judgment has been rendered against any person for a contempt of court, other than for non-performance of, or disobedience to, some order, decree or judgment; or when any fine or penalty is imposed by the sentence of a court martial, the governor may pardon the offense and remit the fine or penalty, either in whole or in part.

Second. When any fine has been imposed, if the same or any part thereof, when collected, would be payable to the state, and has not been so paid, the governor may, on good cause shown by affidavit, or on the recommendation of the judge or a majority of the jury who tried the case, remit so much as is payable to the state and has not been so paid, or a less amount, either unconditionally, or upon such terms and conditions as may seem to him right and proper.

Order of governor in such cases to be recorded and reported to legislature.

23. Every order of the governor made pursuant to the preceding section shall be recorded in the journal of executive proceedings and reported to the legislature at its next session.

Returns Upon Warrants of the Governor.

Returns upon warrants of governor; to whom.

24. Every officer to whom any order or warrant of the governor is directed, shall make return thereof to the secretary of state, who shall preserve the same in his office.

Civil Contingent Fund.

Civil contingent fund; what payments to be made out of, and how.

25. Out of the sum annually appropriated as a civil contingent fund there may be paid all expenses incurred in the execution of any law for which there is no special ap-

propriation, and any other sums which the governor may deem necessary or proper. No payments shall be made out of the civil contingent fund except on the requisition of the governor, directed to the auditor.

Temporary Loans.

26. The governor may raise, from time to time, by temporary loans, not having over eighteen months to run, nor bearing a greater interest than two cents per hundred dollars per day, so much as may be needed to supply the wants of the treasury.

Governor may raise temporary loans.

Messages and Reports to be Sent to the Legislature.

27. Of the biennial messages hereafter submitted by the governor, and any documents which he may deem essential to accompany the same, he shall cause two thousand copies to be printed, if practicable, before the beginning of the session, of which two hundred and fifty copies shall be delivered to the clerk of the senate, and six hundred and fifty copies to the clerk of the house of delegates, for the use of those houses of the legislature respectively; five hundred copies shall be disposed of as the governor may direct, and the remainder to be disposed of as directed in the next two following sections.

His message and reports to the legislature. Number to be printed, and how disposed of

28. The biennial reports of public officers, boards and institutions required by law, to be transmitted by the governor to the legislature, shall include the two preceding years, and be furnished to the governor as soon as practicable after the close of the last fiscal year, or at least ten days preceding each regular session of the legislature. The governor, (with the assistance of the secretary of state) shall select such portions of each report as may be necessary to be communicated for the information of the legislature, omitting all unimportant or improper matter so as to reduce the printed report to a reasonable length and proper form, and shall cause six hundred copies to be forthwith done up in pamphlet form, with paper covers, (each pamphlet to contain a copy of the biennial message of the governor), of which pamphlets, one hundred shall be disposed of as the governor may order, and one hundred and forty-four to be delivered to the clerk of the senate, and three hundred and sixty to the clerk of the house of delegates for the use of their respective houses.

Biennial reports of public officers, boards and institutions, what to include and when to be furnished to governor.

Duty of Governor as to such reports.

Number of such reports to be done up in pamphlet form.

How disposed of

Documents to be Transmitted to certain Officers of other States and of the United States.

29. Of the copies of the journal of the senate and house of delegates, and of the messages and reports mentioned in the last two sections, which are placed at the disposal of the governor, he shall transmit one to the governor of

Documents to be sent by governor to officers of other states and of United States

each of the other states, one to the secretary of state of the United States and three to the librarian of congress, whereof one shall be for the library and one for each house of congress.

Reports to the Governor.

Accounts to be kept by certain state officers, and their semi-annual reports to governor; what to contain.

Officer making false report deemed guilty of perjury.

Subordinate officers of executive department, etc., to report to governor; when. Such reports transmitted to legislature. Governor may at any time require information of such officers; how and what.

30. The subordinate officers of the executive department and the officers of all public institutions of the state shall keep an account of all moneys received or disbursed by them respectively from all sources, and for every service performed, and make a semi-annual report thereof to the governor on the first day of April and the first day of October of each year, under oath or affirmation, and any officer who shall wilfully make a false report shall be deemed guilty of perjury.

31. The subordinate officers of the executive department, and the officers of all public institutions of the state, shall, at least ten days preceding each regular session of the legislature, severally report to the governor, who shall transmit such report to the legislature; and the governor may at any time require information in writing, under oath, from the officers of his department, and all officers and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices.

Acts Repealed.

Acts repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXLV.

AN ACT to amend and re-enact sections twenty-six, thirty-one, one hundred and twenty-four, one hundred and fifty-two, one hundred and sixty-four, two hundred and two, two hundred and eleven, two hundred and twelve, two hundred and eighteen, two hundred and nineteen, two hundred and twenty, two hundred and twenty-nine and two hundred and thirty of chapter fifty of the code, as revised, amended and re-enacted by chapter eight of the acts of one thousand eight hundred and eighty-one.

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That sections twenty-six, thirty-one, one hundred

tended to be... in a case where an order of arrest is issued pursuant to the provisions of this chapter the summons may be made returnable and be served at the same time as the order of arrest, and a trial may be had at any time after execution of the order of arrest and service of the summons.

for any defect, if, etc.
In case of order of arrest, when summons served and returned.
When trial.

Appointment of Special Constables.

31. The justice shall note such appointment on his docket, and shall, with his sureties, be liable on his official bond for any neglect of duty, default or misconduct of such person in the matter for which he was appointed. And the person so appointed shall have all the powers, perform all the duties, and be subject to the same penalties in relation to such process as if he were a constable duly elected and qualified and had received said process as such constable.

Justice to note appointment of special constable on docket; liability, powers, etc., of such constable.

**Claim of prop-
erty, levied on
by third party;
proceedings in
such case.**

**What order
justice may
make to prevent**

152. Or the claimant in such cases, without giving the bond mentioned in the preceding section, may apply to any justice of the county in which the levy or attachment was made, for an order to notify both the creditor and debtor to appear and show cause why the property should not be discharged from the levy, order of sale or attachment. Such order shall be returnable in five days or less from the date thereof, and be served and returned according to the command thereof, and if it be returned served, the justice, on the return day thereof, or at such reasonable time thereafter as he may appoint for the purpose, shall hear the parties, or such of them as attend, and dismiss the claim, or order the officer to deliver the property to the claimant, as the right shall appear, and the party prevailing shall recover his costs. The justice

may also make any order necessary to prevent the prop-^{erty} from being sold before the right thereto is deter-^{mined}, as aforesaid.

Appeals.

164. The appeal shall not be granted by the justice unless, within ten days after the judgment is rendered or revived, bond with good security, to be approved by the justice, in a penalty double the amount of the judgment, is filed with him, with condition to the effect that the person proposing to appeal will perform and satisfy any judgment which may be rendered against him by the circuit court on such appeal, or if he does not wish to stay the execution on such judgment with condition to pay the costs on such appeal if the judgment appealed from be affirmed. In case there be judgment before the justice against the plaintiff for costs only, and the plaintiff desires to appeal, the bond shall be for costs, conditioned as aforesaid, and in a penalty not exceeding one hundred dollars. In suits for the forcible or unlawful entry upon land, or for the unlawful detention of real estate, if judgment be rendered for recovery of possession of the premises, either with or without damages for detention, the bond shall be in a penalty double the amount of the damages where judgment has been rendered for damages for the detention, together with an amount sufficient, in the opinion of the justice, or of the circuit court or judge thereof, when the appeal is granted by such court or judge, to cover one year's rent of the premises. In such suits where the judgment is not for damages for detention, the bond shall be in a penalty equal to an amount sufficient, in the opinion of the justice, or of the circuit court or judge thereof, when the appeal is granted by such court or judge, to cover one year's rent of the premises, and an additional sum of not less than fifty, nor more than one hundred dollars.

Appeals from judgments of justices; within what time. Bond, and conditions of.

In case of judgment for costs only. Bond, and conditions of.

Appeal bond in suit for forcible and unlawful entry upon land, etc., with or without damages; penalty of such bond.

Attachment of Defendant's Property and Claims.

202. When the summons in the action has been served on the defendant against whom an order of attachment is issued, or such defendant appears to answer the action, the plaintiff may proceed to trial and judgment against him as in other actions before justices. But if the summons be not served on the said defendant, and he do not appear to answer the action, a second summons shall be issued against him, returnable in not less than one nor more than two months after its date, stating that property or claims of the said defendant have been attached to answer the plaintiff's demand; and the officer to whom such second summons is delivered to be served, shall forthwith cause copies thereof to be posted at the front door of the court house and two other public places in the county where the action is pending, and shall serve the same on the said defendant, if he be found in the county, on or be-

Attachment; when and how plaintiff may proceed to trial in case of.

When second summons may issue; how posted and served.

When plaintiff may proceed to trial in such case.

If judgment be for defendant, for what costs plaintiff liable.

Right to sue out attachment may be contested; when quashed,

Plea in abatement; when and how tried.

New trial in such case.

Judgment to be for defendant; when. To recover his costs.

Case reheard; when and how.

In what cases Proceedings had before justice to recover possession of real estate; when and by whom.

fore the return day thereof. If such second summons be returned served upon the said defendant, or he appear to answer the plaintiff's action, or if it be returned that the said defendant could not be found in the county, and that copies were posted as aforesaid, the plaintiff may proceed to trial and judgment against such defendant. If judgment be rendered in favor of such defendant the plaintiff shall be liable for the costs of the order of attachment and proceedings under the same, as well as of the principal suit. The right to sue out an attachment may be contested, and when the justice is of opinion that the facts stated in the affidavit were not sufficient to authorize the issuing thereof, or that the affidavit is otherwise insufficient, judgment shall be entered that the attachment be quashed. If the defendant desire to controvert the existence of the grounds for the attachment stated in the affidavit, he may file a plea in abatement, denying the existence of such grounds, and the issue on such plea shall be tried by a jury, unless the same be waived by the parties. The affirmative of such issue shall be with the plaintiff; and if he fail to prove to the satisfaction of the jury or justice, if a trial by jury be waived, the existence of the grounds denied by the defendant, the verdict shall be for the defendant, and judgment shall be entered that the attachment be abated; but the justice may grant new trials as in other cases. When the attachment is properly sued out, and the case heard upon its merits, if the justice be of opinion that the claim of the plaintiff is not established, final judgment shall be given for the defendant. In either case the defendant shall recover his costs, and there shall be an order for the restoration to him of the attached effects. If any such judgment be rendered without the service of process on the defendant, he or his personal representative, if he be dead, may appear and have the case re-heard in the manner provided for in section one hundred and twenty-four of this chapter; and all the provisions of said section as to the re-hearing therein provided for shall be applicable to a re-hearing under this section.

III. Unlawful Detainer of Real Estate.

211. If any forcible or unlawful entry be made upon land, or if, when the entry was lawful, the tenant detain possession of land after his right has expired, without the consent of him who is entitled to the possession, the party so turned out of possession, no matter what right or title he had thereto, or the party against whom such possession is unlawfully detained, may commence suit to obtain possession of the land and damages for its deteation, within two years after the cause of action accrues, before any justice of the county in which such land, or the greater part thereof is situated.

212. At the instance of the party so turned out of possession, as against whom possession is unlawfully detain-

ed as aforesaid, the justice shall issue a summons commanding the officer to summon the defendant to appear before the said justice, at a time and place therein specified, to answer the action of the plaintiff for unlawfully withholding from the plaintiff the premises in question, (describing them,) and damages for their detention (if any are claimed). The place at which the defendant is to appear must be within the county, and the time must be not less than three nor more than ten days from the delivery of the summons to the officer to be served. No such summons shall be quashed or held insufficient for any defect in the description of the premises therein mentioned, if the description be such as to enable a person of common understanding to know what is intended thereby. And if in the opinion of the justice such description is not sufficient under the provisions of this section, the plaintiff may amend the summons so as to make the description sufficient.

Summons in such case, when issued and what specified.

Where and when defendant to appear.

For what such summons not to be quashed, etc.

Summons may be amended.

218. The justice may set aside the verdict of the jury, or his own judgment, and grant a new trial as in other cases; and the laws relating to civil actions and proceedings before justices, so far as they are applicable and consistent with the seven preceding sections, shall regulate the actions provided for in those sections, and the process to be issued or proceedings had in such actions. Appeals shall lie to the circuit court from the judgment of justices in such actions within the same time as in other cases, upon the party desiring to appeal giving such bond as is required by the one hundred and sixty-fourth section, and such appeal shall be subject to the same regulations as in other cases in so far as such regulations are not changed as to such appeal by the provisions of this section. Upon the trial of such appeal in the circuit court, if the verdict of the jury, or the finding of the court when the case is tried without a jury, be that the defendant before the justice unlawfully withholds the premises in controversy, or any part thereof, (describing the part), from the plaintiff before the justice, such verdict shall further assess the amount of such plaintiff's damages, if any, for being kept out of possession of the premises unlawfully withheld, accruing up to the date of the verdict, or if the appeal is tried by the court in lieu of a jury, the court shall find the amount of such damage, if any, accruing up to the date of its judgment, and judgment shall be rendered in favor of such plaintiff, where he is the appellant, that he recover possession of the premises, or of the part so described, together with such damages where any are assessed by the jury in their verdict, or found by the court with interest thereon from the date of the verdict or from the date of the judgment where the case is tried by the court in lieu of a jury, and his costs both before the justice and in the circuit

New trial in such case. Laws regulating actions for unlawful detainer, etc.

Appeals.

If verdict of jury or finding of court be for plaintiff upon trial of appeal, what damages may be assessed, etc.

Against whom judgment of court to be.

court. The judgment in the circuit court, if in favor of the appellee, and such appellee has been the defendant before the justice, shall be against the appellant and those who signed the appeal bond. The judgment in the circuit court, if in favor of the appellee, and such appellee has been the plaintiff before the justice, shall be against the appellant for possession of the premises and against the appellant and those who signed the appeal bond for the damages assessed by the jury in their verdict, or found by the court, with interest thereon as aforesaid and said costs. Executions may issue separately for possession of the premises and for such damages and costs, or they may be included in the same execution, at the option of the party in whose favor the judgment has been rendered.

How executions may issue.

Proceedings Before Justices on Behalf of the State.

What offenses justice has jurisdiction of, committed in his county, etc.

219. A justice shall have jurisdiction of the following offenses committed in his county, or on any river or creek adjoining thereto:

Assault and battery.

First—In cases of assault and battery, unless the offense was committed on a sheriff or other officer of justice, or riotously or with intent to commit a felony, and no compromise with the party injured shall affect or prevent the trial of such offense by the justice.

No compromise in such case.

Trespass.

Second—In cases of trespass to personal property, and if a defendant be convicted, either upon his own confession or upon a trial by the justice, with or without a jury, for either of the offenses hereinbefore mentioned, he shall be fined not less than five dollars, nor more than fifty dollars.

Fine.

Violation of section 19 of chapter 149 of code.

Third. In cases for the violation of section nineteen of chapter one hundred and forty-nine of this code, and upon the conviction of the defendant for a violation of any of the provisions of said section, he shall be fined not less than five, nor more than fifty dollars, and may, at the discretion of the justice or jury trying the case, be imprisoned in the county jail not exceeding ten days.

Fine, etc.

Adultery and fornication, etc. Fine.

Fourth. In cases of adultery and fornication and any other case where the punishment is limited to a fine not exceeding ten dollars, or to imprisonment not more than ten days. But in cases of conviction for adultery or fornication the defendant shall be fined twenty dollars.

Circuit court to have concurrent jurisdiction as to such offenses; except, etc.

220. The circuit court for the county, wherein the offense was committed of which a justice has jurisdiction, shall have concurrent original jurisdiction of such offense, except when imprisonment is imposed for contempt, pursuant to the one hundred and ninety-first section. Where any person has been convicted in the municipal or police court of any incorporated town or city such conviction

Conviction in police court bars proceedings

shall be a bar to any criminal proceeding before a justice for the same offense. before justice for same offense.

229. All fines which accrue to the state, collected or paid in any proceeding under this chapter before a justice, shall immediately be paid by the justice receiving the same to the sheriff of the county. If any justice fail therein, he shall forfeit twenty dollars for every such offense. The sheriff shall enter the sums so paid to him to the credit of an account to be kept by him under the heading "general school fund." All claims by justices, constables, jailors and others, for fees due them in like proceedings in the county, where the accused is acquitted or when such fees could not be collected on execution or fee bills, by the exercise of proper diligence, shall be audited and examined by the county courts, and if found correct, the court shall cause orders to be issued therefor on the sheriff, to be paid out of such fund, if sufficient, and charged to said account. The sheriff, during the month of January or February annually, shall render under oath to the auditor a true statement of the said account, and pay into the treasury of the state the net proceeds of the said fines as exhibited by the said account, to be appropriated as directed by the fifth section of article twelve of the constitution. If any sheriff fail herein, he shall forfeit twenty dollars, and moreover, he and his sureties, his and their personal representatives, shall be liable to the state in the same manner and to the same extent as for other moneys in his hands due the state. Every justice shall, annually, in the month of January, certify to the clerk of the county court of his county a list of all fines imposed by him during the preceding year, and stating therein such as have been paid to him, and such as remain uncollected by him; and he shall also state in such list for which of such fines (if any) executions have not been returned, or returned unsatisfied, and for which (if any) executions have been returned satisfied and the money not paid to him, with the name of the officer or person so failing to return or pay, and such as have been paid by him to the sheriff, and if he fail to do so, he shall be fined not less than fifty nor more than one hundred dollars, and the clerk of every county court shall, upon receiving such certificate of the justice, certify to the auditor the amount of money appearing thereby to have been paid to the sheriff; and if he fail to do so, he shall be fined not less than twenty nor more than fifty dollars.

Justice to pay fines accruing to state to sheriff; when. Penalty for failure.

To what fund credited.

What claims of officers to be paid out of such fund, and how.

Statement made by sheriff to auditor; when; where proceeds paid.

Penalty and liability for failure.

List to be certified by justice to clerk; when and how.

Penalty for failure.

Duty of clerk as to such certificate.

Penalty for failure.

230 Every person sentenced to imprisonment under this chapter by the judgment of a justice, or to the payment of a fine of ten dollars or more, (and in no case shall a judgment for a fine of less than ten dollars be given by a justice if the defendant, his agent or attorney, object thereto), shall be allowed an appeal to the circuit court of the county, upon entering into a recognizance before the justice,

Person imprisoned or fined by justice may appeal to circuit court; how.

What papers
delivered to
clerk of court.

How tried, etc.

What costs
included if
judgment be
against accused.

with surety deemed sufficient, to appear before the said court on the first day of the next term thereof, to answer for the offense wherewith he is charged, and not depart thence without leave of the court. If such appeal be taken, the warrant of arrest (if there be any), the transcript of the judgment, the recognizance and other papers of the case shall be forthwith delivered by the justice to the clerk of the court, and the court shall proceed to try the case as upon indictment or presentment, and render such judgment, without remanding the case, as the law and the evidence may require. If the judgment be against the accused, it shall include the costs incurred in the proceedings before the justice as well as in the said court, including a fee of ten dollars to the prosecuting attorney, and the jailer's fees, if any.

Acts Repealed.

Acts repealed.

2. Chapter two hundred and twenty-six of the acts of eighteen hundred and seventy-two and seventy-three, entitled, "an act to reduce into one the laws defining the jurisdiction, powers and duties of justices of the peace and constables," and all other acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXLVI.

AN ACT to amend and re-enact chapter one hundred and thirty-eight of the code of West Virginia, as amended and re-enacted by chapter seventy-eight of the acts of one thousand eight hundred and seventy-five, and by chapter seventy-two of the acts of one thousand eight hundred and seventy-seven.

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia :

Code amended;
chapter 138 of,
as amended by
acts 1876 and
1877.

1. That chapter one hundred and thirty-eight of the code of West Virginia, as amended by chapter seventy-eight of the acts of one thousand eight hundred and seventy-five, and by chapter seventy-two of the acts of one

thousand eight hundred and seventy-seven, be amended and re-enacted so as to read as follows:

CHAPTER CXXXVIII.

OF COSTS GENERALLY.

Privilege Extended to Poor Persons.

1. A poor person may be allowed by a court to sue or defend a suit therein without paying fees or costs, whereupon he shall have, from any counsel which the court may assign him, and from all officers, all needful services and process, and also the attendance of witnesses, without any fees to them therefor, except what may be included in the costs recoverable from the opposite party.

Privilege of poor person to sue without costs, etc.

Security for Costs.

2. In any suit (except where such poor person is plaintiff) there may be a suggestion on the record in court, or if the case be at rules, on the rule docket, by a defendant or any officer of the court, that the plaintiff is not a resident of this state, and that security is required of him. After sixty days from such suggestion, the suit shall by order of the court be dismissed, unless before the dismissal the plaintiff be proved to be a resident of the state, or security be given before said court, or the clerk thereof for payment of the costs which may be awarded to the defendant, and of the fees due, or to become due, in such suit, to the officers of the court. The security shall be by bond payable to the state; but there need only be one obligor therein, if he be sufficient. The court before whose clerk such bond is given, may on motion by a defendant or officer, give judgment for so much as he is entitled to by virtue of said bond.

Security for costs required of non-resident plaintiffs; when.

Suit dismissed unless security be given, etc.; when.

Security to be by bond, etc.

Remedy thereon

3. On motion of an obligor in such bond, after reasonable notice to the plaintiff, his attorney-at-law or agent, the court may order a new bond to be given, with sufficient security, in a penalty equal to the penalty of the former bond. If the bond required under this section be not given within such time as the court may prescribe, it may order the suit to be dismissed. If such new bond be given, the surety in the former one shall be relieved from any liability he might have incurred because of having executed or acknowledged the same. After the notice has been given to the plaintiff, his attorney or agent, no further proceedings shall be had in said cause, until such new bond is given with sufficient security, or a sufficient excuse is given for not executing the same.

Court may order new bond to be given, when.

When suit dismissed.

Effect of new bond.

After notice for new bond, no further proceedings had until such bond be given, etc.

Cases Wherein Costs are Recovered.

4. Upon any motion, (other than for a judgment for

Discretion of court as to costs in certain cases.

Costs in new trials.

Failure to pay if required, order set aside and judgment entered on verdict.

When court may award execution for costs of continuance.

When plaintiff not to recover costs, unless, etc

Power of court to give or withhold costs in certain cases.

Prevailing party to recover costs unless otherwise provided.

money) or upon any interlocutory order or proceeding, the court may give or refuse costs, at its discretion, unless it be otherwise provided. It may, when a demurrer is sustained to a plea in abatement, give judgment for the plaintiff for his full costs to the time of sustaining it, and when any part of the proceedings is adjudged insufficient, order all costs occasioned by such insufficient pleading to be paid by him who committed the fault.

5. New trials may be granted upon the payment of costs, or with the costs to abide the event of the suit, as to the court may seem right. If the party who is to pay the costs of the former trial fail to pay the same at or before the next term after the new trial is granted, the court may, on the motion of the opposite party, set aside the order granting it, and proceed to judgment on the verdict, or award execution for said costs, as may seem to it best. Where a case is continued at the costs of a party against the consent of the opposite party, the court may, in its discretion, award an execution for the costs of such continuance.

6. In any personal action not on contract, which might be brought and prosecuted to judgment in a justice's court, if a verdict be found for the plaintiff, on an issue or otherwise, for less damages than fifty dollars, he shall not recover, in respect to such verdict, any costs, unless the court enter of record that the object of the action was to try a right besides the mere right to recover damages for the trespass or grievance in respect of which the action was brought, or that the said trespass or grievance was willful or malicious.

7. In any personal action on contract, wherein it is ascertained that not more is due the plaintiff than fifty dollars, exclusive of interest, judgment shall be given for the defendant, unless the court enter of record that the matter in controversy was of greater value than fifty dollars, exclusive of interest; in which case it may give judgment for the plaintiff for what is ascertained to be due him, with or without costs, as to it may seem right.

8. Except where it is otherwise provided, the party for whom final judgment is given in any action, or in a motion for judgment for money, whether he be plaintiff or defendant, shall recover his costs against the opposite party; and when the action is against two or more, and there is a judgment for or discontinuance as to some but not all of the defendants, unless the court enter of record that there was reasonable cause for making defendants those for whom there is judgment, or as to whom there is such discontinuance (and order otherwise) they shall recover their costs.

9. When a suit is in the name of one person for the benefit of any other, if there be a judgment for the defendant's cost, it shall be against such other. Beneficiary party liable for costs.

10. The laws of costs shall not be interpreted as penal laws; nor shall anything in this chapter take away or abridge the discretion of a court of equity over the subject of costs, excepts as follows: Laws of costs how interpreted Discretion of courts of equity.

11. In every case in an appellate court, costs shall be recovered in such court by the party substantially prevailing. In appellate court by whom costs recovered.

How and What Costs are to be Taxed.

12. The clerk of a court wherein a party recovers costs shall tax the same. Clerk to tax costs.

13. He shall include in the costs to the prevailing party: What included for attorney fees. In action at law.

I. In an action at law, not less than two and a half nor more than ten dollars, as the court may prescribe.

II. In a chancery cause, not less than fifteen nor more than twenty dollars, as the court may prescribe. In chancery cause.

To the party prevailing in the court of appeals, thirty dollars. In court of appeals.

In civil cases in a municipal court, the same fees as are allowed in a circuit court for like cases. In civil cases in municipal court

14. The clerk shall tax in the costs all fees of officers which the said party appears to be chargeable with, in the case wherein the recovery is, except that where, in any court on the same side, more than one copy of anything is obtained or taken out, in which may be included a copy of any pleading in a pending case, there shall be taxed only the fee for one copy of the same thing. He shall also tax fifty cents for each legal notice from such party therein, served in this state, and not otherwise taxed. What else clerk to tax in costs.

15. The price for publishing all advertisements and publications required to be made by law, or by the order of a court, in any cause or proceeding therein, or by any provision of a deed of trust, or where any publication is made pursuant to law and no price is named, shall not exceed one cent and a quarter for each word for the first insertion, and the half of one cent for each word for every subsequent insertion required to be made; and if no newspaper in which such publication may be made will insert the same for the time required, or the price aforesaid, then the notice shall be posted, by the person whose duty it is to have the publication made, at the front door of the court house of the county in which the cause is pending, or the proceedings had, at least four weeks prior to the time fixed for executing the order, decree or deed, or for the accom- Legal advertisements; price for publishing. If no paper will insert for such price, how and when such notice to be posted.

plishment of the purpose of said publication, and copies of said notice shall be posted at, at least, four other public places in said county at the same time, and a copy of the same shall be sent by the person whose duty it is to post, by mail, postage paid, to each party interested in such publication, directed to such person at his last known post-office. In any case the price paid for such publication or posting and postage shall be taxed in the bill of costs, and an affidavit shall be filed by the person posting the notice, showing the fact that the notice was posted as required by this section, and the further fact that no newspaper published in the county, or having a general circulation therein, would publish the notice upon the terms mentioned above, and the same facts shall be stated in the decree or order entered under the notice thus posted.

Copy of such notice to be sent to each party interested; how. Costs to be taxed in bill of costs. Affidavit to be filed by person posting; what to show.

Same facts stated in decree.

Fees included for prosecuting attorney.

Not to be paid out of state or county treasury

Taxation in cases of the state

To whom and by whom paid.

Acts repealed.

16. The clerk shall include in the costs, for fees of the prosecuting attorney, the following: In cases of misdemeanor, or an action upon a bond for a violation of the license laws, ten dollars. In a case of bastardy, ten dollars. In a suit or proceeding upon a forfeited recognizance upon behalf of the state, five per cent. upon the amount recovered and paid into the treasury. In cases of felony, thirty dollars. In any other case of the state, if a different fee is not prescribed, ten dollars. But such fees shall not in any case be paid out of the county or state treasury.

17. In a case wherein there is judgment or decree, on behalf of the state, for costs, there shall be taxed in the costs, the charge actually incurred to give any notice, although it be more than fifty cents and mileage, and the fees of attorneys and other officers for services, and allowances for attendance, as if such fees and allowances were payable out of the treasury. What is so taxed for fees of, or allowances to, any person shall be paid to him by the sheriff or officer who may receive said costs, unless such person shall previously have received payment thereof, in which case the same shall be paid into the treasury.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent with its provisions, are hereby repealed.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXLVII.

AN ACT to amend and re-enact sections seven, twenty-seven, twenty-nine and thirty of chapter forty-five of the code of West Virginia, as amended and re-enacted by chapter fifteen of the acts of one thousand eight hundred and eighty-one.

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That sections seven, twenty-seven, twenty-nine and thirty of chapter forty-five of the code of West Virginia, as amended and re-enacted by chapter fifteen of the acts of one thousand eight hundred and eighty-one, be amended and re-enacted so as to read as follows:

Code amended; certain sections of, as amended by acts 1881.

Board of Education a Corporation, and as Such Succeed to the Rights, etc., of District Boards of Education

7. The board of education of each district and independent school district shall be a corporation by the name of "the board of education of the district or independent school district of _____, in the county of _____," and as such may sue and be sued, plead and be impleaded; and as such corporation, shall succeed and be substituted to all the rights of the former township and district boards of education; and may prosecute and maintain any and all suits and proceedings now pending, or which might have been brought and prosecuted in the name of any such former board of education for the recovery of any money or property, or damage to any property due to or vested in such former board. The said board shall also be liable in its corporate capacity for all claims legally existing against the board of education of which it is successor. Said board shall receive, hold and dispose of according to the rules of law and the intent of the instrument conferring title, any gift, grant, devise or bequest, made for the use of any free school or schools under their jurisdiction; and without any transfer or conveyance, shall be deemed the owner of the real and personal property of their district, and the property of the former township or district for which their district was substituted. Process and notice may be served on said corporations by delivering a copy thereof to the secretary, or any two members of the board. And all suits or proceedings now pending in any of the courts of the state, in the name of the board of education of any district for any demand or claim in favor of the board of education of any township or district, are hereby made valid.

Board a corporation.

Powers of such board.

Liability of.

Further powers of such board.

Process, etc.; how served.

Certain suits, etc., now pending in name of board, etc., made valid.

Examination of Teachers—Fee Therefor—Certificates to be Given—No Teacher to be Employed Without.

27. There shall be in every county for the purpose of examining and certifying teachers, a county board of examiners, to be composed of the county superintendent, who shall be *ex officio* president, and two experienced teachers, each of whom shall have received a number one teacher's certificate, or its equivalent, to be nominated by the county superintendent and appointed by the presidents of the district boards of education, at a meeting for that purpose to be held at the county seat on the first Tuesday in June of every year, at which meeting a majority of said presidents, or any three thereof, shall constitute a quorum. It shall be the duty of the county superintendent to attend such meeting. The board of examiners shall each receive a compensation of three dollars per day for each day actually and necessarily spent in conducting the examinations, and for one day at each of the two stated examinations required in section twenty-eight of this chapter, to be spent in consultation and preparation for their duties. This compensation shall be paid out of the fees received from the teachers examined, and shall in no case exceed the amount thereof. The county superintendent shall collect from every person who applies for examination a fee therefor of one dollar, out of which he shall pay the *per diem* of the board of examiners, and the expenses of the notice required by the twenty-eighth section of this chapter, and the balance, if any, he shall pay to the sheriff, to be placed to the credit of the distributable fund of the county received from the state, and distributed with it. He shall, at the end of each school year, make and return to the clerk of the county court, and also to the state superintendent, a detailed and certified account of the names of all applicants for examination; the amount of the fees received by him for the same; the amount paid out to the members of the board of examiners, and the balance, if any, placed to the credit of the distributable fund of the county as aforesaid.
29. The following regulations shall be observed by boards of examiners with regard to examinations and granting teachers' certificates:
- First.* No applicant shall be admitted to an examination unless the board shall have reasonable evidence that he or she is of good moral character and temperate habits.
- Second.* No college diploma or certificate, or recommendation from the president or faculty of any college, normal school or academy, shall be taken to supersede the necessity of examination by the board of examiners; nor shall a certificate be granted to any applicant except after
- County board of examiners for examining teachers, of whom composed; when and how appointed.
- County superintendent to attend. Compensation of board.
- How paid.
- Fees for examination, by whom collected; how disposed of.
- Report to be made by county sup't to clerk of county court and state sup't.; what to contain.
- Regulations to be observed by board of examiners.
- Applicant to be of good character, etc.
- No diploma, etc. to supersede necessity of examination.

a careful examination upon each branch of study and upon the art of teaching.

Nor certificate granted except after careful examination. To state teachers grade in each branch.

Third. Boards of examiners and others herein authorized to confer certificates shall state the teacher's grade of proficiency in each branch in which he is examined.

Fourth. They shall grade the certificates granted according to the following scheme, numbering them, according to the merit of the applicant, from one to three: A number one certificate shall indicate a grade of merit from

Certificates to be graded from one to three.

eighty-seven to one hundred per cent.; a number two certificate a grade of seventy-seven to eighty-seven per cent.;

Merit of each grade.

a number three certificate a grade of sixty-seven to seventy-seven per cent. No teacher shall be employed in any free school of the state unless he shall hold at least a number three certificate; and each applicant in order to obtain a number one certificate shall make a general average on all of the branches taught in the free schools of the state of at least eighty-seven per cent., and shall not fall below seventy-five per cent. on any one branch taught;

No teacher employed who is graded less than No. 3

to entitle the applicant to a number two certificate he shall make a general average of seventy-seven per cent., and shall not fall below sixty per cent. on any one branch of study taught; to entitle the applicant to a number three certificate he shall make a general average of sixty-seven per cent, and shall not fall below fifty per cent. on any one branch taught.

Maximum and minimum average for each certificate.

School Register—School Month—Institutes.

30. Every teacher shall keep a daily register, and make monthly reports to the secretary of the board of education of his district. He shall also keep a term register, in which shall be entered the date of the commencement and termination of every term of the school; the name and age of every scholar who attended the school during such term; the daily attendance, distinguishing between males and females; the branches taught, and the number of scholars engaged in each month in the study of each branch, and such other particulars as are necessary to enable the secretaries of the boards of education, or directors, to make the reports required of them. The state superintendent of free schools shall prescribe such forms and regulations respecting the register to be kept, and reports to be made by the teachers, as shall seem to him necessary.

Teacher's daily register and monthly reports Term register; what to be entered therein.

At the close of each term the register thereof shall be returned by the teacher to the office of the secretary of the board of education for the district, who shall file the same, and unless such register be properly kept and returned, the teacher shall not be entitled to demand payment of the balance due on his salary. Teachers shall be paid monthly, and by orders on the sheriff or collector, signed by the secretary and president of the board. Where any teacher

State sup't to prescribe forms, etc.

Where register filed, and when.

Penalty on teacher for failure. When and how teacher paid.

has taught according to his contract, for one month, the trustees for the sub-district in which he has so taught, shall certify the fact to the secretary of the district board, whereupon he shall receive from said secretary an order upon the sheriff or collector of the county, signed by the secretary and president of the board of education, for one month's salary; but in no case shall such order be given unless the monthly report containing the facts required in the preceding part of this section, to be shown in the term register, be first duly made out and returned to the secretary. The school month shall consist of twenty-two days, excluding Saturdays, all of which shall be devoted to teaching the school contracted for. As a means of improving the teachers and fitting them for more effective service in the free schools of the state, teachers' institutes shall be held annually throughout the state, one or more in each county; they shall be held at such times and places as the state superintendent shall, with the advice of the county superintendent, direct, and shall continue each for one week of five days; they shall be conducted by experienced and skillful institute instructors, who shall be appointed by the state superintendent, but it shall be a part of the duty of the county superintendent, under the instructions of the state superintendent, to make all proper arrangements for the institutes, and to assist in conducting them. The instructors whom the state superintendent shall employ, as herein provided, shall each receive for his services, not more than twenty-five dollars for each institute he may instruct, to be paid out of the general school fund, on a proper order of the state superintendent, but the aggregate amount of such compensation for the whole state shall not exceed five hundred dollars. At the close of the institutes, as herein provided, and during the week following, the county board of examiners shall hold one of the two examinations prescribed in section twenty-eight. It shall be the duty of the state superintendent to prescribe the course of instruction of the institutes and the methods of conducting them, together with such other details connected therewith as he shall deem conducive to their usefulness and efficiency. Any teacher who shall fail or refuse to attend at least one institute annually, held under the provisions of this section, unless such teacher shall have an excuse therefor, sufficient in the judgment of the board of examiners to which such teacher may apply for examination, shall not be entitled to examination during the year within which such failure or refusal may have occurred.

Teacher not paid unless monthly report made, etc.

School month; how many days.

Teachers' institutes; when and how held.

How long held and by whom conducted.

Duty of county sup't as to such institutes.

Pay of instructors; how paid.

Aggregate am't limited.

Board to hold examination for teachers at close of institutes.

State sup't to prescribe course of instruction, etc., of institutes.

If teacher fail to attend institute, board to refuse to examine him, unless, etc.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-

thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER CXLVIII.

AN ACT amending and re-enacting sections five, six, seven, eight, nine, eleven, twelve, twenty-three, twenty-five, twenty-seven, twenty-eight and twenty-nine of chapter one hundred and forty-five of the code of West Virginia.

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That sections five, six, seven, eight, nine, eleven, twelve, twenty-three, twenty-five, twenty-seven, twenty-eight and twenty-nine of chapter one hundred and forty-five of the code of West Virginia be, and the same are hereby amended and re-enacted so as to read as follows :

Code amended;
certain sections
of chapter 145 of

5. If a person maliciously burn any pile or parcel of wood, boards or other lumber, or any barn, stable, cow-house, tobacco-house, stack of wheat, or other grain, or of fodder, straw or hay, he shall, if the thing burnt, with the property therein, be of the value of twenty dollars or more, be confined in the penitentiary not less than two nor more than five years; and if it be of less value, he shall be so confined not less than one nor more than three years, or, in the discretion of the court, in jail not more than one year, and be fined not exceeding five hundred dollars.

Offenses against
property; malici-
ously burning
pile, etc., of
wood, boards,
lumber, barn,
stables, etc.;
fodder, etc.;
punishment for.

6. If a person maliciously burn any building, the burning whereof is not punishable under any other section of this chapter, he shall, if the building with property therein be of the value of one hundred dollars or more be confined in the penitentiary not less than three nor more than ten years; and if it be of less value, be so confined not less than two nor more than five years, or in the discretion of the court, in jail not more than one year, and be fined not exceeding five hundred dollars.

Maliciously
burning any
building, not
punishable un-
der any other
section of chap-
ter 145 of code;
punishment for.

7. If a person maliciously burn any bridge, lock, dam, or any ship, boat or other vessel, of the value of one hundred dollars or more, he shall be confined in the penitentiary not less than three nor more than ten years; and if the value be less than one hundred dollars, he shall be so confined not less than two nor more than five years, or, in the discretion of the court, in jail not exceeding one year, and fined not exceeding five hundred dollars.

Burning bridge,
lock, dam or
vessel, etc.,
punishment for.

8. If any person unlawfully and maliciously set fire to

Maliciously, etc. setting fire to woods, fences, straw, etc., capable of spreading fire; punishment for.

Unlawfully, but not maliciously, setting fire to woods, fences, straw, etc.; penalty for.

Burglary; how punished.

What acts deemed burglary; punishment for.

Breaking and entering, or entering without breaking, any office, store house, railroad car, etc., with intent to commit murder, rape or robbery; deemed felony; punishment for. What counts indictment for burglary may contain.

False pretenses and tokens, etc.; punishment for.

any woods, fence, grass, straw, or other thing capable of spreading fire on lands, he shall be fined not exceeding one hundred dollars, and confined in jail not less than two nor more than twelve months, and shall moreover be liable to any person injured thereby, or in consequence thereof, for double the amount of damages sustained by such person.

9. If any of the acts mentioned in the next preceding section be done unlawfully but not wilfully or maliciously, the person guilty thereof shall be fined not exceeding fifty dollars, and shall moreover be liable to any person injured thereby, or in consequence thereof for all such damages as may be sustained by such person.

Burglary, Housebreaking, Larceny, Embezzlement, etc.

11. Any person who shall be guilty of burglary shall be confined in the penitentiary not less than five nor more than fifteen years, and if a person break and enter the dwelling house of another in the night time with intent to commit larceny, he shall be deemed guilty of burglary, though the thing stolen, or intended to be stolen, be of less value than twenty dollars. If any person shall, in the night time, enter without breaking the dwelling-house, or out-house adjoining thereto, or occupied therewith, of another, with intent to commit a felony, he shall be deemed guilty of burglary, and if such intent be to commit larceny, he shall be deemed guilty of burglary, though the thing stolen, or intended to be stolen, be of less value than twenty dollars.

12. If a person shall at any time break and enter, or shall enter without breaking, any office, shop, storehouse, warehouse, banking house, or any house or building other than a dwelling-house or out-house adjoining thereto, or occupied therewith, or any railroad car, steamboat, or other boat or vessel within the jurisdiction of any county in this state, with intent to commit murder, rape, robbery or larceny, he shall be guilty of felony and confined in the penitentiary not less than three nor more than ten years. An indictment for burglary may contain one or more counts for breaking and entering, or for entering without breaking, the house or building mentioned in the count for burglary under the provisions mentioned in this section.

23. If a person obtain by any false pretense or token from any person, with intent to defraud, money or other property which may be the subject of larceny, he shall be deemed guilty of the larceny thereof; or if he obtain, by any false pretense or token, with such intent, the signature of any person to a writing, the false making whereof would be forgery, he shall be confined in the penitentiary not less than one nor more than five years, or, at the discretion

of the court, be confined in jail not more than one year and be fined not exceeding five hundred dollars.

25. If a person maliciously administer poison to, OR expose it with intent that it should be taken by any horse, cattle, or other beast, of another person, or if any person maliciously maim, kill, or cause the death of any horse, cattle, or other beast, of another person, of the value of twenty dollars or more, he shall be confined in the penitentiary not less than one nor more than five years; and if of less value than twenty dollars, he shall be confined in jail not more than three months, and fined not more than fifty dollars, in the discretion of the court. *Provided,* That this section shall not be construed to include dogs.

Poisoning horse, cattle, etc., of another; punishment for.

Not to include dogs.

27. If any person unlawfully, but not feloniously, take and carry away, or destroy, injure, or deface any property, real or personal, not his own, he shall be guilty of a misdemeanor and fined not exceeding one hundred dollars, and may, at the discretion of the court, be confined in jail not exceeding sixty days. An indictment for any such offense shall be sufficient if it be in form or effect as follows:

Unlawfully, but not feloniously, taking, etc., or injuring, etc., real or personal property; punishment for.

"State of West Virginia, — county, to-wit:

The grand jurors of the State of West Virginia, in and for the body of the county, of —, upon their oaths present, that A— B—, on the — day of —, eighteen —, in the county aforesaid, did unlawfully, but not feloniously, * take and carry away, destroy, injure and deface the following personal property, not his own, to-wit: (Here describe the property; or if it be real property, after the star say 'destroy, injure, and deface the following real property, not his own, to-wit:.' Here describe it.) Against the peace and dignity of the state."

Form of indictment in such case.

And if any person shall break down, destroy, injure, deface or remove any monument erected for the purpose of designating the boundaries of a town, tract or lot of land, or any tree marked for that purpose, he shall be guilty of a misdemeanor and fined not less than twenty nor more than two hundred dollars, and may, at the discretion of the court, be confined in jail not less than one nor more than six months.

Injuring, etc., boundary monuments, etc.; punishment.

28. If any person shall, without the consent of the owner or occupier thereof, enter into the enclosed lands of another, and do any damage thereon, or shall, without such consent, pull down in whole or in part, or injure, any fence of another, he shall be guilty of a misdemeanor, and fined not exceeding one hundred dollars. He shall, moreover, be liable to the party injured for the damages sustained by such injury; and it shall be no defense to any prosecution or suit under this section, that such fence was not a lawful fence.

Entering, without consent, enclosed lands and doing damage, or injuring etc., any fence; punishment for.

Liability for damages. No defense if fence be not a lawful one.

Larceny of Skiffs, Boats and Timber.

Larceny of skiffs boats and timber.

29. If any person unlawfully take and carry away or convert to his own use, any skiff, boat or timber, whether the same be afloat or not, he shall be deemed guilty of the larceny thereof, and if the value of the skiff, boat or timber be of ten dollars or more, he shall be deemed guilty of grand larceny.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES].

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXLIX.

AN ACT to amend and re-enact chapter seventy-three of the code of West Virginia, concerning the authentication and record of deeds and other writings.

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia :

Code amended; chapter 83 of.

1. Chapter seventy-three of the code of West Virginia is hereby amended and re-enacted so as to read as follows :

CHAPTER LXXIII.

Of the Authentication and Record of Deeds and other Writings.

Power of attorney; where recorded.

1. A power of attorney may be admitted to record in any county.

When and by whom deeds and other writings admitted to record.

2. The clerk of the county court of any county in which any deed, contract, power of attorney, or other writing is to be, or may be recorded, shall admit the same to record in his office as to any person whose name is signed there-to, when it shall have been acknowledged by him or proved by two witnesses as to him, before such clerk of the county court.

Upon what certificate such deeds, etc., may be admitted to record.

3. Such clerk of the county court shall also admit any writing to record as to any person whose name is signed thereto, upon the request of any person interested therein, upon a certificate of his acknowledgment before a justice, notary public, recorder, prothonotary or clerk of any court within the United States or commissioner appointed within the same by the governor of this state, written or annexed to the same, to the following effect, to-wit: "State (territory or district) of _____, county of _____, to-

Form of certificate, to be writ-

wit: I, _____, a commissioner appointed by the governor of the state of West Virginia, for the said state (or territory or district) of _____; (or I, a justice of the county aforesaid, and district or township of _____; or I, _____, recorder of said county; or I, _____, a notary of said county; or I, _____, a prothonotary, or clerk of the _____ court of said county), do certify that _____, whose name (or names) is (or are) signed to the writing above, (or hereto annexed), bearing date on the _____ day of _____, has (or have) this day acknowledged the same before me in my said _____. Given under my hand this _____ day of _____;” or, upon a certificate so written or annexed under the official seal of any minister plenipotentiary, *charge d'affaires*, consul general, consul, deputy consul, vice consul, consular agent, vice consular agent, commercial agent, or vice commercial agent, appointed by the government of the United States to any foreign country, or of the proper officer of any court of such country, or of the mayor or other chief magistrate of any city, town or corporation therein, that the said writing was acknowledged by such person, or proved as to him by two witnesses, before any person having such appointment, or before such court, mayor or chief magistrate. If the acknowledgment be before a notary without the state, he shall certify under his seal.

ten or annexed thereto.

Notary without state to certify under his seal.

As to a Married Woman.

4. When a husband and his wife have signed a writing purporting to convey real estate, she may appear before a clerk of a county court authorized to admit such writing to record, in his county, and if, on being examined privily and apart from her husband by such clerk of the county court, and having such writing fully explained to her, she acknowledge the same to be her act, and declare that she had willingly executed the same, and does not wish to retract it, such privy examination, acknowledgment and declaration shall then be recorded by such clerk of the county court in his office; or she may appear before a justice, notary public, recorder, or prothonotary or clerk of any court within the United States, or a commissioner appointed within the same by the governor of this state, and such justice, notary public, recorder, prothonotary, clerk or commissioner may so examine her; and if, after such examination, she make such acknowledgment and declaration, shall certify the same on, or annexed to the said writing, to the following effect, to-wit:

How deed of married woman acknowledged, certified and recorded.

“State (or territory or district) of _____ County of _____ to-wit:

“I, _____, a commissioner appointed by the governor of the state of West Virginia for the said state (or territory or district) of _____, (or I, _____, a justice for the county aforesaid, and district, (or township) of _____; or I, _____, a notary public for the county aforesaid; or I, _____, re-

Form of certificate of married woman.

order of said county; or I, —, prothonotary (or clerk) of the — court of said county) do certify that —, the wife of —, whose names are signed to the writing above (or hereto annexed) bearing date on the — day of —, personally appeared before me in the county aforesaid (or, if it be a commissioner, in the state, territory or district aforesaid; or if it be a justice, in the township (or district) aforesaid) and being examined by me privily and apart from her husband, and having the said writing fully explained to her, she, the said —, acknowledged the said writing to be her act, and declared that she had willingly executed the same and does not wish to retract it. Given under my hand this — day of —." Or if the wife be without the United States, she may appear before any minister plenipotentiary, *charge d'affaires*, consul general, consul, deputy consul, vice-consul, consular agent, vice-consular agent, commercial agent or vice-commercial agent, appointed by the government of the United States to any foreign county, or before any court of any such country or the mayor or other chief magistrate of any city, town or corporation therein, who shall examine her, and make such explanation as is required where the wife is in the United States; and if then she make such acknowledgment and declaration as is so required, the person having such appointment, or such mayor, or chief magistrate, or the proper officer of such court, shall give a certificate, under his official seal, of the examination, explanation and declaration, to the effect required where the wife is in the United States, and upon or annexed to said writing in like manner. If the acknowledgment be before a notary without the state, he shall certify under his seal.

If wife be without United States, before whom such acknowledgment taken.

Notary to certify under his seal; when.

Such certificate to be recorded with deed.

Effect of acknowledgment, etc., of wife.

5. Such certificate, either where the wife is without or within the United States, shall be admitted to record at the time of admitting the writing to which it is annexed or on which it is.

6. When the privy examination, acknowledgment and declaration of a married woman shall have been so taken and recorded in the office of the clerk of the county court; or when the same shall have been so taken and certified as aforesaid, and the writing to which such certificate is annexed, or on which it is, shall have been delivered to the proper clerk of the county court, and admitted to record as to husband as well as wife, such writing shall operate to convey from the wife her right of dower in the real estate embraced therein, and pass from her and her representatives all right, title and interest of every nature which, at the date of such writing, she may have in any real estate conveyed thereby, as effectually as if she were, at said date, an unmarried woman; and such writing shall not operate any further upon the wife or her representatives by means of any covenant of warranty therein con-

tained. If the deed be executed by a married woman who, at the time of its execution and acknowledgment, is living separate and apart from her husband, and such deed be for real estate which is her sole and separate property, such facts shall be recited in the deed, and if her husband has not joined therein, no person authorized by the provisions of section four of this chapter to take such acknowledgment shall take and certify the same until it is proved to his satisfaction that such real estate is the sole and separate property of such married woman, and that she was, and is, living separate and apart from her husband at the date of such deed and the acknowledgment thereof; and it shall be stated in the certificate of such acknowledgment that all of the said facts were shown to the satisfaction of the person taking the same. Such certificate shall, in all cases where the validity of any such deed comes in question, be *prima facie* evidence of the facts therein stated. If any person shall falsely make any such certificate contrary to the true facts in the case, he shall be guilty of a misdemeanor, and, upon conviction thereof, be fined and imprisoned at the discretion of the court.

Certificate where deed conveys her sole and separate property.

Effect of such certificate as evidence.

Penalty on person making such certificate falsely.

Clerk's Duty as to Recording and Making Index and List of Writings.

7. Every writing so admitted to record shall, with all certificates of privy examination or acknowledgment, and all plats, schedules and other papers thereto annexed or thereon endorsed, be recorded by, or under the direction of the clerk of the county court, in a well-bound book, to be carefully preserved; and there shall be an index to such book as well in the name of the grantee as of the grantor. After being so recorded such writing may be delivered to the party entitled to claim under the same. If there appear upon such writing or any paper or certificate annexed thereto, any interlineation, erasure or alteration of which no memorandum is contained in the writing, paper or certificate, the clerk shall append to the record thereof a memorandum describing as accurately as may be such interlineation, erasure or alteration; and such memorandum shall be copied into every certified copy of such writing, paper or certificate. Every such memorandum or a duly certified copy thereof shall be *prima facie* evidence of what is therein stated.

Duty of clerk of county court as to recording deeds, etc., and papers annexed thereto; also to index, etc.

As to interlineations, etc.

Memorandum to be made by clerk; when.

Effect of memorandum as evidence.

8. If it be proper for such writing to be admitted to record in another county, and the same before being admitted to record in such other county be lost or mislaid, on affidavit of this fact, the clerk of the county court of such other county may admit to record a copy of such writing from the records of another county, certified by the clerk of the county court thereof; and the copy so admitted shall have the same effect as if the original had been ad-

When original is lost, how copy may be recorded.

Effect of such record.

What copies clerk of any county court to admit to record.

mitted to record at the time of the copy being admitted. The clerk of the county court of any county shall also admit to record such copy of a record or paper as is mentioned in section seven of chapter one hundred and thirty of this code.

Duty of clerk as to setting up lists of deeds recorded; when and where.

9. The clerk of the county court of every county shall, on the first day of every county court, set up, early in the day, at the door of the court house, a list of all writings admitted to record under this chapter on or since the first day of the preceding term of the county court, specifying in such list the date and nature of every such writing, the names of the parties thereto, and the day it was admitted to record, and also describing the property, which is the subject thereof. A duplicate of such list shall on the same day be inserted by the clerk of the county court in his order book. Any clerk of the county court violating this section shall forfeit one hundred dollars.

What to be specified.

Duplicate where recorded.

Penalty for failure.

When and how clerk to record paper not acknowledged, etc., for preservation.

10. If any writing which it is lawful for a clerk of the county court to admit to record, on proper acknowledgment or proof, has been or shall be lodged in his office, and has remained or shall remain therein six months without being acknowledged or proved, so that it can be duly admitted to record, the clerk of the county court shall, for the preservation thereof, when required by any person interested, copy the same into a book separate from those in which writings so admitted are recorded, and keep an index to such book, as in the case of writings duly admitted to record. In case of the loss or destruction of any such writing, such copy shall be *prima facie* evidence of the contents thereof.

Index to such record.

Effect of such copy.

Former defective acknowledgment cured.

11. Where the acknowledgment of any deed or other writing, or the privy examination of a married woman respecting the same has been heretofore taken by a notary public, whether he used an official seal or not; by two justices of the peace in any county in the state of Virginia prior to the re-organization of the state government thereof; or by any justice out of his district or township, or it does not appear by the certificate of the justice that such acknowledgment or privy examination was taken within his district or township; the same shall nevertheless be sufficient, unless there be other lawful objection.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CL.

AN ACT amending and re-enacting section three of chapter forty-two of the code of West Virginia, as revised, amended and re-enacted by chapter eighteen of the acts of one thousand eight hundred and eighty-one.

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That section three of chapter forty-two of the code of West Virginia, as amended and re-enacted by chapter eighteen of the acts of one thousand eight hundred and eighty-one, be and the same is hereby amended and re-enacted so as to read as follows: Code amended; section 3 of chapter 42 of, as amended by acts 1881.

3. In any case in which real estate may be lawfully taken for a purpose of public utility, application may be made to the circuit court of the county in which the estate is situated, to appoint commissioners to ascertain a just compensation to the owners of the estate proposed to be taken. If a tract lie partly in one county and partly in another, the application in relation thereto may be made in either county. And when the judge of the court to which the application is made is so situated as to render it improper for him to act thereon, and no judge to act in the case can be agreed on by the parties, and it be found for any reason impracticable to elect a judge to act in the case, as provided for in chapter one hundred and twelve of the code of West Virginia as amended by chapter three of the acts of one thousand eight hundred and eighty-one, the application may be withdrawn, and a like application may be made to the circuit court of some county in an adjoining circuit, as near to the county in which the application is first made as practicable, whether any part of such real estate is situated therein or not; and such last named court shall have and possess all the powers and jurisdiction in relation to such application, and to try, hear and determine the same possessed by the circuit court of the county in which the real estate is situated. Taking private property for public use; to what court application made. Where land lies in different counties. When such application may be made to court in adjoining circuit. Powers and jurisdiction of such court as to such application, etc.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CLI.

AN ACT amending and re-enacting sections seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two and twenty-eight of chapter one hundred and fifty-two of the code of West Virginia.

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia:

Code amended; certain sections of chapter 152 of
 1. That sections seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two and twenty-eight of chapter one hundred and fifty-two of the code of West Virginia be, and the same are hereby amended and re-enacted so as to read as follows:

When person convicted of felony not a competent witness.

When competent. Person convicted of perjury forever incompetent.

No witness excused from answering any legal or pertinent question; when.

How far witness so testifying protected.

When accused competent witness in trial for felony, etc. When husband or wife may testify. Failure to so testify not to create any presumption against, etc.

17. Except where it is otherwise expressly provided, a person convicted of felony shall not be a witness, unless he has been pardoned or punished therefor; but a person convicted of felony and sentenced therefor, except it be for perjury, may by leave of the court, be examined as a witness in any criminal prosecution, though he has not been pardoned or punished therefor, but a person convicted of perjury shall not be a witness in any case, although he may have been pardoned or punished.

18. No person called and examined as a witness for the state in any prosecution for an offense punishable under any of the provisions of chapter thirty-two, one hundred and forty-seven and one hundred and fifty-one of this code, shall be excused from answering any pertinent and legal question which may be asked him as such witness, upon any ground whatever, if the court in which he is so examined be of the opinion that the ends of justice may be promoted by requiring him to answer such question, and shall require him to do so, but no person against whom such witness shall so testify, shall be competent as a witness for the state in any prosecution against such witness for the same offense or matter as to which such witness so testified, or for any like offense committed by such witness before the commencement of the prosecution in which he is examined as such witness.

19. In any trial or examination in or before any court or officer for a felony or misdemeanor, the accused shall, at his or her own request, (but not otherwise), be a competent witness on such trial and examination. The wife or husband of the accused shall also, at the request of the accused, but not otherwise, be a competent witness on such trial and examination. But a failure to make such request shall not create any presumption against him or her, nor shall any reference be made to nor comment upon

such failure by any one during the progress of the trial in the hearing of the jury.

20. In a criminal prosecution, other than for perjury, evidence shall not be given against the accused of any statement made by him as a witness upon a legal examination. Evidence not given against accused of any statement made by him as witness; when.

21. The term of confinement in the penitentiary or jail, in the case of conviction for felony, where that punishment is prescribed, shall be ascertained by the court. Court to ascertain term of imprisonment in cases of felony; when.

22. The term of confinement in jail of a person found guilty of a misdemeanor, where that punishment is prescribed, shall, unless otherwise provided, be ascertained by the court, and the amount of the fine, where the punishment is by fine, shall, except where it is otherwise provided, be assessed by the court so far as the term of confinement and the amount of the fine are not fixed by law. Also, in cases of misdemeanor, and to fix fine; when.

28. No criminal prosecution against a citizen of this state who aided or participated in the late war between the government of the United States and a part of the people thereof, on either side, shall be maintained in any court in this state because of any act done by any such person in the prosecution of said war according to the usages of civilized warfare. No prosecution allowed for acts done in late war, on either side, if done according to usages of civilized warfare.

Acts Repealed.

All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed. Acts repealed.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLII.

AN ACT to amend chapter one hundred and twelve of the code of West Virginia as amended and re-enacted by chapter three of the acts of one thousand eight hundred and eighty-one, by adding a section regulating appeals from county courts.

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter one hundred and twelve of the code of

Code amended; chapter 112 of, as amended by acts 1881.

West Virginia as amended and re-enacted by chapter three of the acts of one thousand eight hundred and eighty-one, be amended by inserting therein as section fourteen, the following:

Appeals from the County Court.

Appeals from county court to circuit court regulated.

When petition must be presented, and what to accompany it.

If appeal allowed, what order to specify.

Copy of such order to be served on opposite party; when appeal docketed, etc.

If petition refused, the refusal to be endorsed thereon. May then be presented to judge of court of appeals: in what case. Appeal may be allowed or refused, etc.

After decision of appeal by circuit court, how cause disposed of.

Repealing section of chapter 8, acts 1881, amended.

14. In any case in which an appeal lies under section forty-seven of chapter thirty-nine of this code, as amended, on behalf of a party to a controversy in a county court, such party may present to the circuit court of the county in which the judgment, order or proceeding complained of was rendered, made or had, or in the vacation of such court to any judge of a circuit court, the petition of such party for an appeal. Such petition must be presented within one year after such judgment, order or proceeding was rendered, had or made. With such petition there shall be a transcript of the record and proceedings in the county court, and the petition shall assign errors. If the appeal be allowed, the order of allowance shall specify what bond, if any, is required, before such appeal shall take effect, and the papers shall be filed with the clerk of the circuit court, first mentioned in this section. A copy of the order of allowance shall be served upon the opposite party, and upon proper return of such service and the execution of the required bond the appeal shall be docketed and proceeded with in the circuit court. If the petition be refused the refusal shall be endorsed on the petition which may then be presented to a judge of the court of appeals; if the matter be one in which an appeal would be to that court from a judgment of the circuit court affirming the action of the county court, such judge may in such case allow or refuse the appeal, and in case of allowance by him, the like proceedings shall be had as if the allowance was by a circuit judge. After the decision of the appeal by the circuit court the cause or matter shall be remanded to the county court or be retained in the circuit court and there proceeded with as the circuit court may determine and order.

2. That the repealing section of chapter three of the acts of one thousand eight hundred and eighty-one, and there numbered fourteen, be amended and re-enacted so as to read as follows:

2. All acts and parts of acts coming within the purview of this chapter, and inconsistent therewith, are hereby repealed.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLIII.

AN ACT to amend and re-enact chapter one hundred and ten of the code of West Virginia, formerly concerning prohibition, now concerning prohibition and *certiorari*.

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia:

1. Chapter one hundred and ten of the code of West Virginia is hereby amended and re-enacted so as to read as follows: Code amended; chapter 110 of.

CHAPTER CX.

Of the Writs of Prohibition and Certiorari; Of the Writ of Prohibition.

1. The writ of prohibition shall lie, as matter of right, in all cases of usurpation and abuse of power, when the inferior court has not jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers. It shall not be necessary to file a suggestion on any application for a writ of prohibition, but the same may be applied for on affidavit only; and in case the party applying be directed to declare in prohibition, before writ issued, the declaration shall be expressed to be on behalf of such party only, and not on the behalf of the party and of the state, and shall contain and set forth in a concise manner, so much only of the proceeding as may be necessary to show the ground of the application, without alleging the delivery of a writ or any contempt, and shall conclude by praying that a writ of prohibition may issue; to which declaration the defendant may demur, or plead such matters, by way of traverse, or otherwise, as may be proper to show that the writ ought not to issue, and conclude by praying that such writ may not issue; and judgment shall be given that the writ of prohibition do or do not issue, as justice may require; and the party in whose favor such judgment is given, whether on verdict or otherwise, shall recover his costs; and in case a verdict shall be given for the plaintiff, the jury may assess damages, for which judgment shall also be given, but such assessment shall not be necessary to entitle the plaintiff to costs. A rule to show cause may be issued in vacation by a judge of a circuit court, or of the supreme court of appeals.

Writ of prohibition; when and in what cases it shall lie.

Not necessary to file suggestion, etc.

If party directed to declare, etc., what declaration to express, etc. What to contain, etc.

What defendant may plead, etc.

Judgment.

Costs.

Recovery of damages, etc.

Rule to show cause may be issued; when and by whom.

Of the Writ of Certiorari.

2. In every case, matter or proceeding in which a *certiorari* might be issued as the law heretofore has been, and in every case, matter or proceeding before a county court, council of a city, town or village, justice or other inferior

Writ of certiorari; cases in which such writ may issue to remove record of pro-

ceedings to circuit court; when.

Excepted cases.

When not to issue in cases of judgments of justices.

Who to certify evidence and sign bills of exceptions in cases where such writ lie.

To be part of record, etc.

What questions court may determine, and what judgment, etc., to render.

Writ may be awarded by judge in vacation.

When tried in vacation.
Writ of *habeas corpus* in aid of such writ.

Writ of *certiorari* not to operate to suspend judgment, etc., except in criminal cases, until bond be given. Where bond filed, etc.; penalty and condition of.

tribunal, the record or proceeding may, after a judgment or final order therein, or after any judgment or order therein abridging the freedom of a person, be removed by writ of *certiorari* to the circuit court of the county in which such judgment was rendered, or order made; except in cases where authority is or may be given by law to the circuit court, or the judge thereof in vacation, to review such judgment or order on motion, or on appeal, writ of error or *supersedeas*, or in some manner other than upon *certiorari*, but no *certiorari* shall be issued in cases of judgments rendered by justices in civil actions for not exceeding fifteen dollars, exclusive of interest and costs.

3. In every case, matter or proceeding before a county court, council, justice or other inferior tribunal, in which a writ of *certiorari* would lie according to the provisions of the preceding section, the majority of the commissioners composing the court, or the justice, or the officer or officers presiding over such council or other inferior tribunal, shall upon request of either party in a civil case, matter or proceeding, or of the defendant in a criminal case, matter or proceeding, certify the evidence, if any, which may have been heard, and sign bills of exceptions setting forth any rulings or orders which may not otherwise appear of record. Such certificate of evidence and bills of exceptions shall be part of the record, and as such be removed and returned to the circuit court. Upon the bearing, such circuit court shall, in addition to determining such questions as might have been determined upon a *certiorari* as the law heretofore was, review such judgment, order or proceedings of the county court, council, justice or other inferior tribunal, upon the merits, determine all questions arising on the law and evidence, and render such judgment or make such order upon the whole matter as law and justice may require.

4. Such writs may be awarded by the judge of such circuit court in vacation, and in case of an order abridging the freedom of a person, may be returned and heard and determined by the judge of such circuit court in vacation, if reasonable notice of such hearing shall have been given the other party, and such court or judge may grant a writ of *habeas corpus* in aid of such *certiorari*.

5. A writ of *certiorari* shall not operate to suspend the judgment, or order, removed thereby, or proceedings on such judgment or order, except in a criminal case, until the party applying therefor, or some one for him, shall file in the office of the clerk of the circuit court a bond payable to the state of West Virginia, with security approved by such clerk, in a penalty to be prescribed by the court or judge awarding the writ, conditioned to perform and satisfy such judgment or order as may be rendered or

made by the circuit court, and to pay all such damages and costs as may be awarded to any party by such court or judge, and with any further condition which such court or judge may prescribe.

6. When such bond as is mentioned in the next preceding section is filed, the writ of *certiorari* shall operate to stay all proceedings upon the judgment or order removed by the writ, and all further proceedings before the county court, justice or other inferior tribunal in the case, matter or proceeding in which it was awarded, until the final determination of the matter by the circuit court, except as to any order or sentence abridging the freedom of a person; but the court or judge may let such party to bail, as in other cases.

Effect of such bond when filed, and until when.

Excepted cases.

Such party may be bailed.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLIV.

AN ACT to amend and re-enact section twenty-five of chapter one hundred and sixty-three of the code of West Virginia, as amended and re-enacted by chapter eighty-one of the acts of one thousand eight hundred and seventy-one.

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That section twenty-five of chapter one hundred and sixty-three of the code of West Virginia, as amended and re-enacted by chapter eighty-one of the acts of one thousand eight hundred and seventy-one, be and the same is hereby amended and re-enacted so as to read as follows:

Code amended; section 25 of chapter 163 of.

25. The board of directors, in their discretion, may allow a convict ten cents per hour for all work done over and above the amount required of each convict, and on his discharge not exceeding thirty dollars, and if he need it, a suit of coarse clothes. All convicts sentenced to the penitentiary for a term of two years or more, and not for life, who may faithfully comply with all the rules and regulations of the penitentiary during his, or her, term of confinement, shall be entitled to a diminution of time from such sentence of five days per month during term of confinement. *Provided,* however, That any infraction of such rules and regulations

Convicts; what allowed to, for extra work; and what allowed on discharge.

Diminution of time from sentence for good behavior.

Deprivation of such diminution for infraction of

rules, etc.; to what extent.

Record to be kept by superintendent of infractions of rules, etc. His report of same.

by a convict shall, as to such convict, operate only as a deprivation of such diminution of time for the month in which such infraction of the rules and regulations occurs, and for as many of the preceding months of said convict's term of confinement as in the judgment of the superintendent will be equitable and just; and for the purpose of ascertaining such facts it shall be the duty of the superintendent to keep a record of all infractions of such rules and regulations, and to make an annual report of the same to the board of directors, who shall cause the same to be inserted in their annual report to the governor.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLV.

AN ACT to revive, amend and re-enact chapter three of the code of West Virginia, concerning elections by the people.

[Passed March 20, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter three of the code of West Virginia, be, and the same is hereby revived, amended and re-enacted so as to read as follows:

Code amended; chapter 3 of.

CHAPTER III.

ELECTIONS BY THE PEOPLE FOR STATE, DISTRICT, COUNTY AND OTHER OFFICERS.

Elections—When Held.

1. The general elections for state, district, county and other officers hereinafter named, shall be held on the second Tuesday in October until otherwise provided by law.

General elections; when held.

Officers to be Elected and When.

2. At the said election in the year one thousand eight hundred and eighty-two and in every second year thereafter there shall be elected delegates to the legislature, a senator for each senatorial district and a commissioner of the county court. And in the year one thousand eight hundred and eighty-four, and in every fourth year thereafter a governor, state superintendent of free schools, treasurer, auditor, attorney general and one or more judges

When members of the legislature, state and county officers, and judges, to be elected.

of the supreme court of appeals for the state; a prosecuting attorney, surveyor of lands, sheriff, the number of assessors prescribed by law for each county, and the number of justices and constables in each district in the county to which such district is entitled by law, to be from time to time ascertained and entered of record by the county court. And in the year one thousand eight hundred and eighty-four, and in every sixth year thereafter, a clerk of the circuit court. And in the year one thousand eight hundred and eighty-eight, and every eighth year thereafter, one judge for every judicial circuit, except the first, and for the first, two judges. *Provided*, That in the year one thousand eight hundred and eighty-eight, and in every twelfth year thereafter, two judges of the supreme court of appeals shall be elected.

3. Electors of president and vice president of the United States, for this state, shall be chosen by the voters of the state at elections to be held for the purpose on the Tuesday next after the first Monday in November in the year one thousand eight hundred and eighty-four, and every fourth year thereafter, and at least sixty days before every such election the governor by proclamation published in some newspaper in every county where a newspaper is printed, shall give notice of the time of such election, and the number of electors to be chosen. And on the Tuesday next after the first Monday in November, one thousand eight hundred and eighty-two, and in every second year thereafter, or until the Congress of the United States shall otherwise provide, there shall be elected a representative in the congress of the United States, for the term beginning on the fourth day of March next after the election, for every congressional district.

Electors for president and vice president; when elected.

Governor to give notice of such election by proclamation.

Members of Congress; when elected.

Magisterial Districts.

4. Each county shall be laid off by the county court into magisterial districts not less than three nor more than ten in number, and as nearly equal as may be in territory and population. There shall be elected in each of said districts containing a population of not exceeding twelve hundred, one justice of the peace and one constable, and if the population of any such district exceeds that number, two such justices and constables shall be elected therein. Such districts as they now exist in each county, shall remain until changed by the county court. The county court may, from time to time, increase or diminish the number of such districts, and change the boundary lines thereof, as necessity may require, in order to conform the same to the provisions of the constitution of the state. But before such districts shall be increased or diminished, or the boundary lines thereof changed, the said court shall cause a notice of its intention to do so to be posted

Magisterial districts; how laid off and how many.

Number of justices and constables for each district.

Existing districts to remain until, etc.

Number of districts may be increased or diminished, and boundary lines changed.

Notice in such case.

on the front door of the court house of the county and at some public place in each district affected thereby, for at least thirty days prior to the term of the court at which such action is proposed to be taken.

Places of Voting.

5. There shall be at least one place of voting in every magisterial district, and the elections provided for in this chapter shall be held at the places of voting therein which have been or shall be appointed for the purpose according to law. The county court on the petition of twenty or more voters residing in any such district, may by an order entered of record change or discontinue any place of voting therein, and appoint other or additional places of voting therein, and the clerk of said court shall immediately after the adjournment of the term at which such order is made, make and deliver to the sheriff, or one of his deputies, three certified copies of said order, and it shall be the duty of said sheriff, or deputy sheriff, to post the same at three of the most public places in the district at least four weeks before the succeeding election; or in lieu thereof, if a newspaper be printed in the county, a copy of such order may be published therein at least once in each week for four successive weeks prior to such election.

Places for holding elections.

May be changed or discontinued, etc.

Notice to begin on thereof, and how.

Commissioners of Elections.

6. The county court of each county shall before the general election in each year in which such election is held, appoint three voters, one of whom, at least, shall be of opposite politics to the others, to act as commissioners of the election at the court house, and the like number and in like manner to act as such commissioners at every other place of voting in the county, and it shall be the duty of the persons so appointed to attend at the place of voting for which they are so appointed, and to superintend the election, to be held at such place and return the result thereof as required by this chapter. *Provided*, That for each place of voting in any county at which five hundred or more votes were cast at the last preceding general election for state officers, said court shall appoint in addition three canvassers to canvass the vote given at such place of voting as hereinafter provided. Any one or more of said commissioners or canvassers in the absence or refusal, or inability of the others to act may call to his or their assistance any qualified voter or voters present to act as such commissioner or commissioners, canvasser or canvassers, and it shall be the duty of the person or persons so called upon, to act as such. The said commissioners for each place of voting shall appoint two clerks to assist in holding said election as hereinafter provided. And if none of the commissioners or canvassers so appointed attend at the place

Commissioners of elections; how and when appointed.

Duty of such commissioners.

Proviso, as to when three canvassers may be appointed.

If commissioner etc., refuse, etc., to act, how others may be called.

Clerks; who to appoint.

of voting for which they were appointed, or if in attendance all of said commissioners or canvassors fail or refuse to act, any three voters of the district may be appointed by the voters present to act as such commissioner or canvassors (as the case may be).

If all of commissioners, etc., fail or refuse to act, how provided for.

When Polls to be Opened.

7. At every election the polls shall be opened as soon as practicable after sunrise (but not before sunrise), and shall be closed at sunset.

When polls to be opened and closed.

Oaths of Commissioners, Canvassers and Clerks.

8. Every commissioner, canvasser and clerk so appointed as aforesaid shall, before entering upon the discharge of his duties, take and subscribe an oath to the following effect: "I, A—— B——, do solemnly swear that I will support the constitution of the United States, and the constitution of this state, and that in the election about to be held I will faithfully and impartially discharge the duties of my appointment to the best of my skill and judgment. So help me God." Said oath may be taken before any person authorized to administer oaths, but if no such person be present at any place of holding an election, it may be taken before and administered by any one of the commissioners so appointed, who in turn may take the same before another of said commissioners. The said oath shall appear properly certified on one of the poll books of every election, and in no case shall the votes taken at any place of voting be counted unless said oath so appears, or unless it be proved to the satisfaction of the commissioners of the county court, convened at the court house as hereinafter required, that said oath was taken before said commissioners, canvassors and clerks entered upon the discharge of the duties of their appointment.

Oath of officers of election.

Form of such oath.

By whom administered.

Oath must appear properly certified on one of poll books, or proved to have been taken, etc., or vote not counted.

Who Entitled to Vote.

9. The male citizens of the state shall be entitled to vote at all elections held within the counties in which they respectively reside; but no person who is a minor, or of unsound mind, or a pauper, or who is under conviction of treason, felony or bribery in an election, or who has not been a resident of the state for one year, and of the county in which he offers to vote for sixty days next preceding such election, and who is not, at the time of the election, an actual and bona fide resident of the district in which he offers to vote, shall be permitted to vote in such district while such disability continues. And no person in the military, marine or naval service of the United States shall be deemed a resident of this state by reason of his being stationed therein; nor shall any person in the employ of any incorporated company or of this state, be deemed a

Who entitled to vote, and where

Who cannot vote.

Who not deemed a resident of state, county or district

resident of any county, or of any district therein, by reason of being employed in said county or district.

Mode of Voting.

Mode of voting. 10. In all elections by the people, the mode of voting shall be by ballot; but the voter shall be left free to vote by either open, sealed or secret ballot, as he may elect.

Poll Books, Ballots and Ballot Boxes, &c.

Duty of clerk of county court as to preparation, etc., of poll-books, ballots and ballot boxes. 11. The clerk of the county court shall, at the expense of the county, provide and cause to be delivered in proper time, at every place of voting in the county, proper poll books, with the oaths of the commissioners and clerks written or printed thereon, or attached thereto, ballot boxes, tally papers for returns, and whatever else is necessary for holding the election and making due return thereof. And at every place of voting in his county, for which the county court shall appoint canvassers, as provided for in the sixth section, the clerk shall provide and deliver as aforesaid two ballot boxes.

How poll book headed and kept. 12. Every poll book shall bear on the first page thereof the following heading: "Names of all persons voting at _____ in the district of _____, and county of _____, this _____ day of _____." Two of such poll books with the names of all persons voting entered thereon shall be kept at every place of voting.

Manner of voting.
When ballot not received.
What ballot to contain.
What not to vitiate ballot.
Duty of commissioner receiving ballot; when ballot deposited in box.
Duty of clerk.
Duty of commissioners to see that ballot is single.

13. Every person offering to vote at an election shall present to one of the commissioners a single ballot, written or printed upon white paper, and if there be any mark, color or device visible on same intended to distinguish it from other ballots voted at the election, it shall not be received. The ballot shall contain the names of the persons for whom he wishes to vote, and designate the office he desires each of them to fill; but no error or mistake in the designation of the office or person shall vitiate any ballot, or cause it to be rejected from the count, if it be manifest that was intended by the voter. The commissioner who receives the ballot shall proclaim distinctly the name of the person offering it, and hand it to another of said commissioners, and if a majority of said commissioners are satisfied the ballot is single, and that the person offering it is entitled to vote at the said election, one of the commissioners shall deposit the ballot in the box, and the clerks shall enter the name of the voter on the poll books, numbering them in the order in which they vote. The commissioners may inspect every ballot before it is deposited in the box, to ascertain whether it is single, but without unfolding or unrolling it so as to disclose its contents.

14. The ballot box shall have an aperture in the lid or

top thereof to receive the ballots of the voters. While the polls are open it shall be kept where it may be seen by the voters, and after the polls are closed, until the votes are counted and the certificates of the result are signed, shall remain in the immediate custody of the commissioners, or any one of them, with the consent of the others. But it shall not be opened unless two of them at least be present, and if left at any time in the custody of one of the number, it shall be carefully sealed, so that it cannot be opened, or any ballot taken therefrom or entered therein, without breaking the seal, and the others shall write their names across the place, or places, where it is sealed.

Ballot box, construction of. Where kept.

How kept and in whose presence opened.

Prevention of Disorder at the Polls.

15. The commissioners shall preserve order at and in the vicinity of the polls, and keep the way to the polls open and free from obstructions; and may direct any disorderly person to be removed therefrom, and, if necessary and proper, to be taken and held in custody till sunrise of the next day, or for any shorter time, which may be done by any constable of the district or other person, or persons, designated by the commissioners, and no warrant or authority in writing shall be necessary, and the jail of the county may be used as the place of custody, but any person so arrested shall have an opportunity to vote, if he is entitled to do so, before he shall be committed to jail, if he so desire, and shall be prepared to do so promptly. And such offender, notwithstanding his having been in custody as aforesaid, shall be liable to any penalty or punishment for his offense prescribed by law, and any person who, being thereto commanded by the commissioners, either verbally or in writing, shall fail or refuse to assist to the utmost of his power, in whatever may be necessary or proper to prevent intimidation, disorder or violence at the polls, shall forfeit not less than five nor more than fifty dollars.

Preservation of order at the polls; duty of commissioners in relation thereto.

Person arrested may vote.

Penalty on offender.

Penalty on person for failing, etc., to assist in preservation of order, etc.

Duty of Commissioners in Reception and Rejection of Votes.

16. The commissioners holding the election at each place of voting shall permit all persons to vote entitled to do so, and reject the votes of all persons not entitled to vote at said election, and shall, in all respects, have the poll taken fairly according to law. They may swear and examine any person touching his right to vote at said election, whenever such right is questioned by said commissioners, or any of them, or by any other person. If the vote of any person offering to vote be rejected, his name if required by him, or by any candidate at said election, shall be entered on a separate list to be kept for that purpose; and if any person be permitted to vote whose vote is challenged, the word "challenged" shall be written on the poll book opposite his name.

Commissioners' duty in reception and rejection of votes.

17. No person shall vote more than once in the same election, although he may not have voted the first time for as many persons as he might have lawfully voted for.

No person to vote more than once.

Counting the Votes at the Several Places of Voting.

Counting votes at places of voting; when and how.

18. As soon as possible after the polls are closed at each place of voting for which no canvassers are appointed, the names entered on the poll books shall be counted by the commissioners and clerks, and the number thereof be set down in words at length at the foot of the lists, which shall then be signed by the inspectors and clerks, the ballot-box shall then be opened, and one of the commissioners taking therefrom one ballot at a time, in the presence of all the other officers, shall read therefrom the designations of the offices to be filled, and the names of the persons voted for, for each office, and hand the ballot to another of said commissioners, who, if satisfied that it was correctly read, shall string it on a thread. The contents of the ballots, as they are read, shall be entered by the clerks, under the supervision of the commissioners, on tally papers for the purpose, by suitable marks made opposite to or under the name of each person voted for, so as to show the number of votes received by every person for any office to be filled. The ballots shall be counted as they are strung upon the thread; and whenever the number shall be equal to the number of voters entered upon the poll books, the excess, if any, remaining in the ballot-box shall be immediately destroyed, without unfolding or unrolling the same, or allowing any one to examine or know the contents thereof.

Excess of ballots to be destroyed, etc.

Ballots folded together; when one to be counted; when all destroyed. Ballots containing more than proper number of names, not counted. When ballot for senator not to be counted.

Canvassers to canvass the vote; their duties in relation thereto

When to begin.

Duty of commissioners to deliver ballot box to such canvassers.

19. If two or more ballots be found folded or rolled together, and the names thereon be the same, all but one of them shall be destroyed; but if the names thereon be different they shall all be destroyed. And if any ballot be found to contain more than the proper number of names for any office, such ballot shall not be counted as to such office. In any election for senator, if a person be voted for on any ballot, who is not a resident of the proper county, as required by the fourth section of the sixth article of the constitution, the ballot shall not be counted for the said office. At a place of voting at which canvassers are appointed as aforesaid, the said canvassers, assisted by two clerks to be appointed by them, who shall take the same oath herein before proscribed, shall count the votes and perform all the duties in relation thereto proscribed by this and the preceding section, except that they shall commence said counting as soon as fifty votes are cast at said place of voting, and for this purpose the commissioners of election shall deliver to them the ballot-box containing the ballots and use the other box furnished as aforesaid, until the canvassers have finished counting the ballots in the

said box as hereinbefore required, and shall then deliver to said canvassers the other ballot-box containing the ballots cast during such counting, and take from said canvassers and use the box from which said ballots have been counted, until the ballots have been counted by the canvassers from the box last delivered to them, and so on till all the votes cast at said election have been taken and counted. But, before the box containing the last votes cast at said place of voting is opened for the purpose of counting said votes, the number of the names on the poll-books shall be counted and set down as aforesaid, and the ballots in said box shall then be counted, and the excess, if any, over the names on the poll-books shall be destroyed as hereinbefore prescribed. After the polls are closed the ballots in the last mentioned box may, if the canvassers so request be counted in whole or in part by the commissioners and their clerks.

When names on poll books counted, and excess of ballots destroyed.

Canvassers may request commissioners, etc., to count ballots; when.

Return of the Result of the Election at Each Place of Voting.

20. As soon as the results are ascertained, the commissioners, or a majority of them and the canvassers (if there be any), or a majority of them, at each place of voting shall make out and sign two certificates thereof in the following form or to the following effect: "We, the undersigned, who acted as commissioners and canvassers of the election held at —, in the district of —, and county of —, on the — day of —, do hereby certify, that having been first duly sworn, we have fairly and impartially held the said election according to law, and the result thereof is as follows: For the office of — (here designate the office, as for example, "delegate for the county of Barbour," or, "delegate for the first district," or, "senator for the first senatorial district," "judge for the first circuit," "representative in the congress of the United States for the first congressional district," "governor of the state," "judge of the supreme court of appeals," "justice of the peace of said district," and so forth as the case may be), A. B. received — votes, C. D. — votes and E. F. — votes," and so on throughout, stating, according to truth, the full name of every person voted for, for every office, and in words at length, the number of votes he received for the same; and concluding as follows: "Given under our hands this — day of —." The said two certificates shall correspond in all respects with each other, and each shall contain complete returns of the polls taken at the said place of voting for every office to be filled. When the said certificates are signed, the ballots shall be enclosed by the commissioners in an envelope, which they shall seal up, and write their names across the place or places where it is sealed, and endorse on the outside of the said envelope as follows: "Ballots of the election held at —, in the district of —, and coun-

Return of result of election; when and how made.

Form of certificate; to be in duplicate.

Such certificates to correspond; what to contain.

Ballots; how sealed up and endorsed.

ty of —, the — day of —.” The commissioners, or one of them, shall within four days, excluding Sundays, after the day on which the election was held, deliver the ballots so sealed up, one set of the poll-books, and one of the said certificates, to the clerk of the county court, and the other certificate and set of the poll-books to the clerk of circuit court.

When and to whom ballots, poll books, etc. to be delivered.

Meeting of Commissioners to Examine Returns.

21. The commissioners of the county court shall convene in special session at the court house on the fifth day (Sundays excepted) after every election held in their county, or in any district thereof, and the officers in whose custody the ballots, poll-books and certificates have been placed shall lay the same before them for examination. They may if deemed necessary, require the attendance of any of the commissioners or canvassers or other officers or persons present at the election, to answer questions under oath respecting the same and may make such other orders as shall seem proper to procure correct returns and ascertain the true result of the said election in their county. They may adjourn from time to time, and when a majority of the commissioners is not present their meeting shall stand adjourned till the next day, and so from day to day till a quorum be present. They shall, upon the demand of any candidate voted for at such election, open and examine any one or more of the sealed packages of ballots and recount the same, but in such case they shall seal up the same again, along with the original envelope, in another envelope, and the clerk of the county court shall write his name across the place or places where it is sealed, and endorse on the outside: “Ballots of the election held at —, the district of —, and county of —, the — day of —.” When they have made their certificates and declared the result as hereinafter provided, they shall deposit the sealed packages of ballots in the office of the clerk of the county court, and said clerk shall carefully preserve the certificates and poll-books deposited in his office. The sealed package of ballots and poll-books shall be preserved by him for one year, and if there be no contest pending as to any such election they shall then be destroyed without opening the sealed package of ballots, and if there be such contest pending, then they shall be destroyed as soon as said contest is ended. If the result of the election be not changed by such re-count, the costs and expenses thereof shall be paid by the party at whose instance the same was made.

Meeting of commissioners of county court to examine returns; when.

Their powers and duties in relation thereto.

Recount of ballots; when.

How packages of ballots resealed if opened; what to be endorsed thereon.

Where such packages deposited, and when.

Poll books, etc., to be preserved.

When ballots and poll books destroyed by clerk. When party requesting to pay costs of recount.

Certificate of election for state and county

Certificate of the Result in the County, etc.

22. When an election is held in the county or district for any of the following officers, that is to say: For governor, state superintendent of free schools, treasurer,

auditor, attorney general, judge of the supreme court of appeals, judge of a circuit court, delegate, senator, clerk of the circuit court, clerk of the county court, commissioner of the county court, prosecuting attorney, sheriff, surveyor of lands, assessor, justice of the peace, constable, representative in the congress of the United States, or electors of president and vice president of the United States, the commissioners of the county court, or a majority of them, under the regulations prescribed in the next preceding section, shall carefully and impartially ascertain the result of the election in their county, and in each district thereof, and make out and sign as many certificates thereof as may be necessary, in the following form or to the following effect: "The commissioners of the county court of the county of — having carefully and impartially examined the returns of the election held in said county in each district thereof, on the — day of —, do hereby certify that in said county, for the office of —, A— B— received — votes, C— D— received — votes, and E— F— received — votes. That at said election held in the district of —, in the said county, for the office of —, G— H— received — votes, and I— J— received — votes. In witness whereof we, the said commissioners, have hereto signed our names this — day of —." The said commissioners shall sign separate certificates of the result of the election within their county for each of the offices specified in this section which is to be filled: and in the said certificates shall be set forth, according to the truth, the full name of every person voted for, and in words at length the number of votes he received for any office.

officers, representatives and electors; when and how made out.

Form of such certificate.

Separate certificates to be signed for each officer.

What certificate to set forth.

Commissioners' Certificates; To Whom Sent; How Disposed Of; Proceedings Thereon.

23. The certificates of the commissioners, made pursuant to the preceding section, shall be by them disposed of as follows: Of the certificates respecting the election for delegate or delegates, they shall transmit one to the secretary of state, who shall submit the same to the house on the first day of the ensuing regular session, together with a list of the persons appearing thereby to be elected. The said commissioners shall also deliver one, if demanded, to each person appearing to them to have been elected as delegate. Of the certificates respecting the election of senator, they shall transmit one to the secretary of state, to be submitted by him to the senate on the first day of the ensuing regular session, together with a list of persons appearing thereby to be elected. One of the said certificates shall also be transmitted to each person voted for as senator. Of the certificates respecting the election for governor, state superintendent of free schools, auditor, treasurer and attorney general, they shall be sealed up and transmitted

Certificates of commissioners respecting delegates; to whom sent.

Duty of sec'y of state in relation thereto.

Respecting state senators; to whom sent. Duty of sec'y of state thereon.

Certificate to be sent to each person voted for as senator.

Certificates respecting governor and

other state officers; how and to whom sent.

Duty of sec'y of state in relation thereto. Speaker of house to open and publish same; when and how.

Who elected.

Tie vote; how determined.

Certificates respecting election of judges, congressmen and electors; to whom sent.

Duty of governor or in relation thereto. When and how such certificates to be transmitted by commissioners

Certificates of election of county officers; to whom delivered.

Decision, in case of equality of votes, by governor and county court.

County court to determine election, qualification, etc., of all county and district officers.

by said commissioners to the secretary of state, endorsed on the envelopes as follows: "Returns of the election for governor, state superintendent of free schools, treasurer, auditor and attorney-general." The secretary of state shall deliver the same, unopened, to the speaker of the house of delegates on the first day of the next session of the legislature; and the speaker shall, immediately after the organization of the house, and before proceeding to other business, open and publish the same in the presence of a majority of each house of the legislature, which bodies shall, for that purpose, assemble in the hall of the house of delegates. The person having the highest number of votes for either of said offices shall be declared duly elected thereto; but if two or more persons have an equal and the highest number of votes for the same office, the legislature shall, by a joint vote of the two houses, choose one of said persons for said office. Of the certificates respecting the election for judge of the supreme court of appeals, judge for a judicial circuit, representative in the congress of the United States, and electors of president and vice president of the United States respectively, the commissioners shall transmit one in each case to the governor, who shall ascertain who are elected and make proclamation thereof. In every case the said certificates shall be transmitted, as aforesaid, by mail, or some other safe and expeditious mode of conveyance, to the proper officer, or person, on or before the fifth day, Sundays excepted, after the result of the election is ascertained, in an envelope under seal, and one of said commissioners shall write his name across the place where it is sealed. That of the certificates respecting the election of each of the county and district officers aforesaid, one shall, in each case, be delivered to and kept by the clerk of the county court, and the other delivered to the person elected.

Decision in Case of an Equality of Votes.

24. When the governor or the commissioners of a county court are to declare the result of an election, and it appears to them that two or more of the persons voted for have received an equal number of votes, so that the election to the office is not decided by the returns, they shall decide the tie by electing one of said persons.

Declaring the Result of the Election for County and District Officers in Cases of Contest.

25. In all contested cases the county court shall be the judge of the election, qualification and return of its own members, and of all county and district officers.

Effect of Receiving Illegal or Rejecting Legal Votes.

26. Though illegal votes be received, or legal votes re-

jected at any place of voting, the returns of the votes taken at such place shall not be set aside for that cause, but it may be shown by proper evidence before the final judges of election for whom such illegal votes, or any of them, were cast, or for whom the legal votes which were rejected would have been given, and so far only as is so shown the returns shall be corrected.

Effect of receiving illegal or rejecting legal votes.

How far returns to be corrected.

Elections in Cities Voting at General Elections by Wards.

27. The corporate authorities of every city voting at general elections by wards shall perform the duties in relation to such elections required of county courts by the fifth and sixth sections of this chapter, and the provisions of said sections, so far as applicable, shall govern the said corporate authorities in their action, and the commissioners of elections appointed by them, in the discharge of their duties.

Elections in cities at general elections; how governed, etc.

Compensation of Commissioners, Canvassers and Clerks.

28. Every commissioner, canvasser and clerk, appointed under the provisions of this chapter, shall be allowed one dollar and fifty cents for each day he shall serve as such. Such allowance, as well as all other expenses attending the elections held in the county, shall be audited by the county court and paid out of the county treasury.

Compensation of officers of election.

How such allowance and expenses paid.

Acts Repealed.

2. All acts and parts of acts, inconsistent with the provisions of this chapter, are hereby repealed.

Acts repealed.

[Approved March 30, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLVI.

AN ACT to amend and re-enact chapter one hundred and thirteen of the code of West Virginia, concerning the supreme court of appeals, as amended and re-enacted by chapter sixteen of, the acts of one thousand eight hundred and seventy-two and seventy-three.

[Passed March 22, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter one hundred and thirteen of the code of West Virginia, as amended and re-enacted by chapter

Code amended; chapter 116 of,

as amended by acts of 1872-3.

sixteen of the acts of one thousand eight hundred and seventy-two and seventy-three be, and the same is hereby amended and re-enacted so as to read as follows :

CHAPTER CXIII.

SUPREME COURT OF APPEALS.

Court of appeals; consists of four judges. Quorum.

1. The supreme court of appeals shall consist of four judges, elected and qualified according to the constitution and laws, any three of whom shall be a quorum.

President of court. In his absence, who to preside.

2. They shall designate one of their body to be the president of said court. In the absence of the president any other judge designated by the judges present shall act as president.

Sessions of court; when and where held. How long to continue.

3. Three sessions of the supreme court of appeals shall be held every year. One in Charleston, in the county of Kanawha, commencing on the second Wednesday in January; one in Wheeling, in the county of Ohio, commencing on the first Wednesday in June, and one in Charleston, in the county of Jefferson, commencing on the first Wednesday in August, and continue until the business is dispatched.

Jurisdiction.

Original jurisdiction of court. Appellate jurisdiction in civil cases.

4. The original jurisdiction of the supreme court of appeals, shall extend to cases of *habeas corpus*, *mandamus* and prohibition. The appellate jurisdiction shall extend to civil cases when the matter in controversy, exclusive of costs, is of greater value or amount than one hundred dollars; in controversies concerning the title or boundaries of land, the probate of wills, the appointment or qualification of a personal representative, guardian, committee, or curator; or concerning a mill, road, way, ferry or landing; or the right of a corporation or county to levy tolls or taxes; and also in cases of *quo warranto*, *habeas corpus*, *mandamus certiorari* and prohibition, and in cases involving freedom or the constitutionality of a law. It shall have appellate jurisdiction in criminal cases, where there has been conviction for felony or misdemeanor in a circuit court, and where a conviction has been had in any inferior court and been affirmed in a circuit court, and in cases relating to the public revenue the right of appeal shall belong to the state as well as the defendant, and such other appellate jurisdiction, in both civil and criminal cases, as may be prescribed by law.

Appellate jurisdiction in criminal cases.

Clerk; appointment of. Crier and messenger; appointment of. How removed.

5. The supreme court of appeals, or judges thereof in vacation, may appoint a clerk who shall give bond as required by chapter ten of this code. They may also appoint a crier and messenger for each place of holding the said court. All of which said officers shall be removable at the pleasure of said court or judges. Vacancies in the

office of clerk occurring during vacation may be filled by appointment in writing, made by the judges of said court or any three of them.

Vacancy in office of clerk during vacation; how filled.

6. It shall be the duty of the clerk of the supreme court of appeals to attend in person, or by deputy, all the sessions of the said court, to obey its orders and directions in term time, and in vacation to take care of and preserve in an office, kept for the purpose, all the records and papers of said court, and to perform such other duties as may be required of him by the said court, or which shall be prescribed by law.

Duties of clerk.

7. The crier of the court of appeals shall attend the sessions of the court at the place for which he is appointed; shall keep order in the court and have its hall kept constantly clean, ventilated and supplied with fire and water when necessary; obey the orders and directions of the court, and in all respects be under its direction and authority, for which he shall be allowed the sum of four dollars per diem, to be paid out of the state treasury upon the certificate of the court.

Duties of crier of court.

His compensation, and how paid.

8. The messenger of the said supreme court of appeals shall constantly attend the sessions of the said court at the place for which he is appointed, and obey its orders and directions, for which he shall be allowed three dollars per diem, to be paid out of the state treasury upon the certificate of the court.

Duties of messenger.

His pay, and how paid.

9. The state shall be divided into three judicial grand divisions, as follows: The first grand division shall consist of the counties composing the first, second, third, fourth and fifth judicial circuits, of Gilmer and Calhoun of the sixth judicial circuit, and Upshur and Lewis of the eleventh judicial circuit. The second grand division shall consist of the counties composing the seventh, eighth, ninth and tenth judicial circuits, of Clay, Jackson and Roane of the sixth judicial circuit, and of Braxton, Nicholas and Webster the eleventh judicial circuit. The third grand division shall consist of the counties composing the twelfth and thirteenth judicial circuits. Each case shall be heard and determined in its own grand division, except by consent of parties, or their counsel, in writing, or unless the parties desiring the hearing shall have given written notice of at least thirty days before the commencement of the term to the opposite party, or his counsel, of his intention to insist on a hearing, when the same may be heard and determined out of its grand division. The mode of docketing and proceeding in said causes in the supreme court of appeals is regulated by chapter one hundred and thirty-five of this code.

State divided into three judicial grand divisions. First division.

Second division.

Third division.

Each case heard and determined in its grand division.

When case heard out of its grand division.

Mode of docketing and proceeding in such causes; how regulated.

Special Sessions, Etc.

10. Special terms of the supreme court of appeals may be held for the trial and decision of causes at any of the places now designated by law for holding the regular terms of said court, or which may hereafter be designated by law for holding such regular terms, at such time or place as the said court may designate, by an order entered on its record at a regular term of said court. And the said court by such order made at any regular term in one grand judicial division, may order and direct such special term to be held in the same or any other judicial grand division; and said court may at any special term, authorized by this chapter, decide any cause which may have been heard at a previous regular or special term.

Special sessions; when and where held.

What causes may be decided at special term.

11. Said court may at any regular or special term, adjourn from day to day, or from time to time, as the court may order, until its close.

Adjournment of court from day to day, etc.

12. The judges of said court, or a majority of such judges, may, by warrant signed by them, directed to the clerk of said court, appoint a special term of said court to be held for the trial and decision of causes, at any of the places now designated by law for holding the regular terms of said court, or which may hereafter be designated by law for holding such regular term of said court. The clerk of said court shall enter the said warrant in the order book of the court.

Special sessions; further provision as to; when and where held.

Duty of clerk as to warrant appointing special session.

13. At any special term of said court, any cause, the record of which has been previously printed may, in the discretion of said court, be heard and decided by consent of parties or their counsel, entered of record, or upon at least thirty days notice in writing, given by the parties desiring the hearing to the opposite party or his counsel, of his intention to insist on a hearing, when the same may, in the discretion of the court, be heard and determined with or without its grand division.

What causes may be heard and decided at any special term.

14. The said court may, at any regular or special term, decide any cause or proceeding, which may have been previously heard by the court at any regular or special term thereof.

Court at any special term may decide any case previously heard.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Acts repealed.

[Approved March 30, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLVII.

AN ACT to amend and re-enact chapter one hundred and thirty-five of the code of West Virginia, concerning appeals to the court of appeals, as amended and re-enacted by chapter seventeen of the acts of one thousand eight hundred and seventy-two and seventy-three and by chapter forty-four of the acts of one thousand eight hundred and seventy-seven.

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter one hundred and thirty-five of the code of West Virginia, as amended and re-enacted by chapter seventeen of the acts of one thousand eight hundred and seventy-two and seventy-three, and chapter forty-four of the acts of one thousand eight hundred and seventy-seven, be and the same is hereby amended and re-enacted so as to read as follows :

Code amended; chapter 135 of, as amended by acts of 1872-3 and 1877.

CHAPTER CXXXV.

Of Appeals to the Court of Appeals—In What Cases Taken.

1. A party to a controversy in any circuit court may obtain from the supreme court of appeals, or a judge thereof in vacation, an appeal from, or a writ of error or *superseas* to, a judgment, decree or order of such circuit court in the following cases :

In what cases an appeal may be taken from, or writ of error or *superseas* to, a judgment, decree, etc., of circuit court.

First. In civil cases, where the matter in controversy exclusive of costs, is of greater value or amount than one hundred dollars, wherein there is a final judgment or decree or order.

Second. In controversies concerning the title or boundaries of land, the probate of a will, or the appointment of a personal representative, guardian, committee or curator.

Third. Concerning a mill, road, way, ferry or landing.

Fourth. Concerning the right of a corporation, county or district to levy tolls or taxes.

Fifth. In any case of *quowarranto*, *habeas corpus*, *mandamus* or prohibition.

Sixth. In any case involving freedom or the constitutionality of a law.

Seventh. In any case in chancery wherein there is a decree or order dissolving or refusing to dissolve an injunction, or requiring money to be paid, or real estate to be sold, or the possession or title of the property to be changed, or adjudicating the principles of the cause.

Eighth. In any case where there is a judgment or order quashing or abating, or refusing to quash or abate an attachment.

Ninth. In any civil case where there is an order granting a new trial or re-hearing, and in such cases an appeal may be taken from the order without waiting for the new trial or re-hearing to be had.

Tenth. In any criminal case where there has been a conviction in a circuit court, or there has been a conviction in an inferior court, which has been affirmed in a circuit court.

Petition for appeal, writ of error, etc.; by whom and to whom presented, and in what cases.

2. Any person who is a party to such controversy wishing to obtain a writ of error, appeal or *supersedeas* in the cases named in the first section of this chapter, may present a petition therefor to the supreme court of appeals, or to a judge thereof in vacation.

In what cases such petition prohibited.

3. No petition shall be presented for an appeal from, or writ of error or *supersedeas* to, any judgment, decree or order, whether the state be a party thereto or not, nor to any judgment of a circuit or municipal court rendered in an appeal from the judgment of a justice which shall have been rendered or made more than five years before such petition is presented. If the judgment, decree or order mentioned in the petition has been given, rendered or made before this chapter as amended takes effect; but as to any judgment, decree or order given, rendered or made after this chapter as amended takes effect, no such petition shall be presented after two years from the date of such judgment, decree or order.

How person desiring to present such petition may procure suspension of execution.

4. At the instance of any person who desires to present such petition, the court in which the judgment, decree or order is may, during the term at which it is rendered or made, or if it be in a circuit court any circuit judge may, within twenty days after such term is ended, upon notice in writing to the opposite party, (in either case the court or the judge exercising a discretion), make an order suspending the execution of such judgment, decree or order (for a reasonable time, to be specified in such order) when such person shall give bond before the clerk of said court, in such penalty as the court or judge may require, with a condition reciting such judgment, decree or order, and the intention of said person to present such petition, and providing for the payment of all such damages as any person may sustain by reason of the said suspension, in case a *supersedeas* to such judgment, decree or order should not be allowed and be effectual within the time so specified.

Record exhibited with petition

5. With such petition there shall be a transcript of the record of so much of the case wherein the judgment, decree or order is, as will enable the court or judge to whom the

petition is to be presented, properly to decide on such petitions and enable the court, if the petition be granted, properly to decide the questions that may arise before it.

The person intending to petition shall notify the opposite party, or his counsel, of his intention, if any portion of the record not authorized in section six of this chapter is intended to be omitted therefrom.

Notice of intention to omit part of record, etc.

6. Unless the person so intending to petition direct otherwise, there shall not be copied in a chancery case, any of the process, returns or evidences of service, nor the commissions (if any) and notices to take depositions, the captions to such depositions, and certificates of their having been sworn to, except so far as may be necessary to the decision of exceptions taken to the reading of the depositions, but the name of each witness and the day of taking his deposition, shall be stated at the head thereof. If more than one copy of the same paper be filed in the case, only one copy of it shall be inserted. There shall not be copied an account reported by a commissioner, to which there is no exception, nor any printed document of which either party will furnish to the clerk a copy, but such duplicate shall be attached to what is copied; and when a case has before been in the supreme court of appeals, there shall only be copied the proceedings subsequent to the former appeal, writ of error or *supersedeas*. The bond filed, and the notice of appeal, if one has been served, shall be inserted in the record. *Provided*, That the clerk shall make out the whole record, or any additional part thereof, if either party to the appeal shall so direct.

How such record is made up.

When clerk to make out whole record, etc.

7. The appellate court, or the judge thereof, may, when a case has before been in such court, inspect the record upon the former appeal, writ of error or *supersedeas*. And such court may in any case award a writ of *certiorari* to the clerk of the court below, and have brought before it, when part of a record is omitted, the whole or any part of such record.

When court may inspect record of former appeal.

Power of court to award a *certiorari*.

8. A petition for appeal, writ of error, or *supersedeas*, shall assign errors, and it shall not be presented until some counsel or attorney of the appellate court shall certify that in his opinion it is proper that the decision should be reviewed by such court.

How petition prepared and certified.

9. The petition shall be presented to the supreme court of appeals or to a judge thereof.

To what court or judge petition presented

10. If upon a petition as aforesaid the appeal, writ of error or *supersedeas* to a judgment, order or decree of a circuit court or a court of limited jurisdiction within any incorporated town or city from which an appeal lies to the supreme court of appeals, be allowed, the appeal, writ of

Appeals, writs of error, etc., when docketed in court of appeals.

error or *supersedeas* shall be docketed in the supreme court of appeals.

In what case rejection of petition final. If petition rejected by judge in vacation, same may be presented to court when in session

11. In a case wherein the court shall deem the judgment, decree or order complained of, plainly right, and reject it on that ground, no other petition therein shall afterward be entertained. But the rejection of such petition by a judge in vacation, shall not prevent the presentation of such petition to the court when in session.

When appeal, writ of error, etc., allowed, court may stay proceedings, etc.

12. The court or judge to whom a petition is duly presented if of opinion that the decision complained of ought to be reviewed, may allow an appeal, writ of error or *supersedeas*, and may stay proceedings either in whole or in part.

In what court appeal, writ of error, etc., is docketed.

13. Every appeal, writ of error or *supersedeas* shall, when it is to or from a judgment, decree or order, of the circuit court of any county, or from any court within any incorporated city, town or village which has the right of appeal to the supreme court of appeals, be docketed in said court. The clerk of the court wherein it is docketed, shall in a case in which it is allowed, on petition, issue a summons against the parties interested, other than the petitioners, that they may be heard, and also issue any *supersedeas* which may be awarded, which summons, writ of error or *supersedeas* may be served upon the party in person or his attorneys in the court from which the appeal is taken.

What process clerk to issue.

Upon whom served.

Bond of appellants or petitioners.

Penalty of; by whom fixed.

Conditions of bond.

14. Except when an appeal, writ of error or *supersedeas* is proper to protect the estate of a decedent, convict or insane person, the same shall not take effect until bond is given by the appellants or petitioners, or one of them or some other person, in a penalty to be fixed by the court or judge, by or in which the appeal, writ of error or *supersedeas* is allowed or entered with condition: if a *supersedeas* be awarded to perform and satisfy the judgment, decree or order, or any part thereof, proceedings on which are stayed, in case the said judgment, decree or order, or such part be affirmed, or the appeal, writ of error, or *supersedeas* be dismissed, and also, to pay all damages, costs and fees, which may be awarded against or incurred by the appellants or petitioners; and if it be an appeal from an order or decree dissolving an injunction, or dismissing a bill of injunction, with a further condition, to indemnify and save harmless the surety in the injunction bond against loss or damage in consequence of his suretyship; and with condition when no *supersedeas* is awarded, to pay such specific damages, and such costs and fees as may be so awarded or incurred.

Endorsement on process as to

15. The clerk of the supreme court of appeals shall endorse on the summons or *supersedeas* that it is not to be

effectual until the bond with good personal security, be given before the clerk of the court below, who shall take said bond and endorse on the process that it has been given, and the names of the sureties therein, and forward to the clerk of the supreme court of appeals a certified copy of such bond.

such bond; by whom.
Who to take appeal bond.

Certified copy sent to clerk of supreme court.

16. On the motion of any surety in said bond, after reasonable notice, or a rule against his principal, the appellate court may order bond to be given in such time as it may prescribe, with a sufficient security to indemnify and save harmless such surety against all loss or damage in consequence of his suretyship, or upon motion of the appellee alleging the insufficiency of the sureties in such bond, the appellate court may order a new bond with sufficient security to be executed within such reasonable time as the court may prescribe, and if such order be not complied with, may order the appeal, writ of error or *supersedeas* to be dismissed.

How surety in such bond may obtain indemnity.

When court may order new bond to be given.

When appeal, etc., dismissed.

17. No process shall issue upon any appeal, writ of error or *supersedeas* allowed to or from a final judgment, decree or order, if when the record is delivered to the clerk of the appellate court there shall have elapsed five years since the date of such final judgment, decree or order, but the appeal, writ of error or *supersedeas* shall be dismissed whenever it appears that five years have elapsed since the said date before the record is delivered to such clerk, or before such bond is given, as is required to be given before the appeal, writ of error or *supersedeas* takes effect.

If record be delivered five years after final judgment or decree, no process to issue, but the case dismissed; so also if bond be not given in five years.

Printed Records—How Disposed Of.

18. There shall be eighteen copies of the record printed, containing the petition, so much of the record as the counsel for any party interested or the court may direct, and the table of contents, in octavo form, on book paper of good quality, long primer type, the title on the cover to be in the center, preserving on the margin of the printed record the paging of the record from the court below, which shall be used in printing and returned to the clerk's office of the supreme court of appeals. Of the printed records, the clerk shall deliver one to each judge, two to the counsel on each side, retain one in his office, transmit one to the clerk of the court below, (in which the case was originally decided) and shall deliver one copy to the reporter. The clerk shall have the record printed if the party obtaining the appeal, writ of error or *supersedeas* request him to do so, and shall deposit with him a sufficient amount to pay for said printing, which shall be twenty-two cents for every one hundred words printed, and the cost of printing said record shall be printed at the end of same, and no greater compensation shall be charged. The cost of such printing

Printed record; number of, and what to contain.

How printed.

How distributed.

When clerk to have record printed.

Price paid for printing, by whom paid.

Cost of printing; how taxed. unless otherwise ordered by the court shall be taxed against the opposite party, if the judgment, decree or order appealed from be reversed. And should the appellant or plaintiff in error fail for six months after his case has been docketed in the court of appeals to deposit with the clerk of said court of appeals a sufficient amount to pay for the printing of the record, or shall himself for six months fail to have the record printed and filed in the clerk's office of said court of appeals, he shall be deemed to have abandoned his appeal and the same shall be dismissed; but it may be renewed at any time within five or two years from the date of the judgment, order or decree appealed from, according to the provisions of section three of this chapter.

When appellant deemed to have abandoned his appeal and same dismissed. In every felony case the clerk shall have the usual number of records printed at a cost not exceeding the amount fixed by this section, and dispose of the same as in other cases, and upon the certificate of the president of the supreme court of appeals, stating that such record has been printed and the amount said clerk is entitled to, the costs of printing the same shall be paid to said clerk out of the treasury of the state.

Within what time appeal may be renewed.

Duty of clerk as to printing, etc., of records in felony cases.

How paid for.

19. If a party who has obtained an appeal, writ of error or *supersedeas* desires to have said record printed himself, he shall notify the clerk of the supreme court of appeals of such intention, and if the manuscript record is in possession of the said clerk it shall be his duty, when required by said party, to deliver said record to him, or, if he is directed to do so, he shall forward the said record to the said party by mail or express upon receiving a sufficient sum to pay the postage or express charges upon same, when the said party shall have the number of copies thereof printed as required by the preceding section, and in the manner therein set forth. After he shall have had said record printed, they shall be delivered by him to said clerk, to be disposed of and used by him as is provided in section eighteen of this chapter, together with the manuscript record, and the costs of printing said record shall be taxed in the costs recovered in case the judgment or decree appealed from be reversed; *Provided*, That said costs shall not exceed the amount fixed by the preceding section of this chapter; and *Provided, further*, if the record is imperfect and not printed in all respects as is required in this chapter, the court, in its discretion, is authorized to have the said record, or any part thereof, reprinted at the price hereinbefore fixed for the same at the expense of the party obtaining the appeal, writ of error or *supersedeas*. And, *Provided further*, That the clerk of the supreme court of appeals shall carefully compare the printed records filed in his office with the transcripts of records certified by the clerks of courts below, and mark upon each copy of the printed record all errors that may have been committed in

Party obtaining appeal, writ of error, etc., may have docket printed. Duty of clerk as to manuscript record, in such case.

How printed.

To whom delivered and how disposed of.

How costs taxed, etc.

What not to exceed.

Court may have same reprinted; when.

At whose expense.

Clerk to compare printed with certified records, and mark errors.

printing. For his services in this behalf he shall be on-
 titled to a fee of one cent for each thirty words of the
 printed record.

Fee for his services in this particular.

20. Before the commencement of each session of the
 supreme court of appeals, the clerk shall make out a
 docket of the causes then ready for hearing in the grand
 division where the session of the court is about to be held.
 They shall be numbered by figures and shall be docketed
 in the order in which the records were received. The
 docket shall be arranged in such order as the court may
 designate, except that all causes from a county as well as
 in each particular circuit, or part of a circuit, shall be
 together, and to each circuit, or part of a circuit, a suffi-
 cient portion of the term shall be assigned for the causes
 to be heard and submitted, and the causes in each circuit,
 or part of a circuit, shall be heard and submitted, or unless
 postponed or continued for good cause, before those as
 arranged on the docket for the next circuit, or part of a
 circuit, shall be called and taken up. Thirty days before
 the term is to commence the clerk shall cause to be printed
 on a sufficient number of slips, the order in which the
 circuits, or part of a circuit, are arranged, the causes for
 trial, and the days assigned to each circuit and part of a
 circuit, and mail one copy thereof to each judge of the
 supreme court of appeals, and to each judge of a circuit
 court, and ten copies to each clerk of a circuit court.

Docket to be made by clerk; when and how.

Causes to be heard in the order in which docketed, unless, etc.

Clerk to prepare arrangement of circuits, etc., when.

How disposed of.

21. No decision rendered by the supreme court of ap-
 peals shall be considered as binding authority upon any
 of the inferior courts of this state, except in the particular
 case decided, unless such decision is concurred in by at
 least three judges of the court.

No decision binding author-ity upon inferior courts, except in case decided, unless concurred in by three judges.

22. When a judgment or decree is reversed or affirmed
 by the supreme court of appeals, every point fairly
 arising upon the record of the case shall be considered and
 decided; and the reasons therefor shall be concisely stated
 in writing and preserved with the record of the case; and
 it shall be the duty of the court to prepare a syllabus of
 the points adjudicated in each case concurred in by the
 three judges thereof, which shall be prefixed to the pub-
 lished report of the case.

When judgment or decree is reversed or affirmed, what points must be considered and decided. Reasons concisely stated and preserved. Syllabus prepared of points adjudicated and published.

23. If at any time there be on the docket of the supreme
 court of appeals, at either place of session, a case in re-
 spect to which a majority of the judges of said court are
 so situated as to make it improper for them to sit on the
 hearing thereof, that fact shall be entered of record.

Cases in which majority of judges cannot sit; fact entered of record.

Parties—How Designated on Appeal.

24. The plaintiff in the court below shall be designated
 as plaintiff in the appellate court. The case shall be on-

Parties; how designated on appeal.

tered on the appeal docket as follows: "A— B—, plaintiff and appellee, (or appellant, plaintiff in error, defendant in error, as the case may be), vs. C— D—, defendant and appellant," (or appellee, plaintiff in error, or defendant in error, as the case may be).

Court not to hear parol testimony, except, etc.

25. The supreme court of appeals shall not hear parol testimony except in cases in which it has original jurisdiction.

Decision in appellate court; what judgment to be entered.

26. The supreme court of appeals shall affirm the judgment, decree or order, if there be no error therein, and reverse the same in whole or in part, if erroneous, and enter such judgment, decree or order as the court whose error is sought to be corrected, ought to have entered, affirming in cases where the court is equally divided. In the case of an appeal from an order granting a new trial, or rehearing, if the order be reversed, such final judgment, decree or order shall be rendered or made in the case as the appellant was entitled to in the court below.

What damages to be given on affirmance to appellee.

27. When any judgment, decree or order is affirmed in the supreme court of appeals, damages shall be awarded to the appellee. Such damages, when the judgment, decree or order is for the payment of money, shall be at the rate of six per centum per annum on the whole amount of the recovery, including interest and cost, from the time the appeal took effect, until the decision of the supreme court of appeals is entered in the order book of the court below; which damages shall be in satisfaction of all interest during that time. When the judgment, decree or order is not for the payment of any money, except costs, the damages shall be such specific sum as the supreme court of appeals may deem reasonable, not being more than one hundred dollars.

When clerk of supreme court to transmit its decision, and to whom. But prevailing party must first pay all fees, etc.

28. When any term of a supreme court of appeals is ended, or sooner, if the court so direct, the clerk thereof shall certify and by mail or otherwise transmit its decision to the clerk of the court below, except that it shall not be his duty to certify or transmit a copy of such decision unless the prevailing party shall have paid all fees due from him in the cause, and also an amount sufficient to pay the postage thereon. If any clerk shall fail to comply with this section for twenty days, except as aforesaid, he shall forfeit fifty dollars to any person aggrieved.

Penalty on clerk for failure.

Duty of clerk below on receiving decision of court of appeals. Duty of clerk if such decision be received in vacation.

29. The court from which any case may have come to the supreme court of appeals, shall enter the decision of the appellate court as its own, and execution thereon may issue accordingly. If such decision be received by the clerk of the court below in vacation, he shall enter it of record in his order book, and thereupon such execution may issue and such proceedings be had in the case as

would have been proper if the decision had been entered in court.

Appeals to the Supreme Court of the United States.

30. At the instance of any party to a controversy in the supreme court of appeals, who desires to present a petition to the supreme court of the United States for an appeal from, or writ of error or *supersedeas* to, a final decree, judgment or order therein, the supreme court of appeals during the term at which it is rendered or made, or any judge thereof, may, within sixty days after the term at which such decree, judgment or order is rendered or made, is ended, make an order (which shall be certified by him to the clerk of said last mentioned court, and be entered by him in the proper order book) suspending the execution of such decree, judgment or order for ninety days after the term is ended at which it is rendered or made, when such person shall give bond before the clerk of said last mentioned court, or the clerk of the circuit court, from which the case or cause was taken to the supreme court of appeals, in such penalty as the court or judge may require, with a condition reciting such decree, judgment or order, and the intention of said person to present such petition, and providing for the payment of all such damages as any person may sustain by reason of the said suspension, in case a *supersedeas* to such decree, judgment or order should not be allowed and be effectual within the time so specified.

Appeals to the supreme court of the United States; when and how.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

Acts repealed.

[Approved March 30, 1852.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CLXVIII.

AN ACT to amend and re-enact chapter one hundred and six of the code of West Virginia, concerning attachments and arrest of defendant.

[Passed March 24, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter one hundred and six of the code of West

Chapter 106 of

code amended,
and re-enacted.

Virginia be and the same is hereby amended and re enacted
so as to read as follows :

CHAPTER CVI.

OF ATTACHMENTS AND ARREST OF DEFENDANT.

Attachment—When and How Sued Out.

Attachment;
when and how
order of,
obtained.

1. When any action at law or suit in equity is about to be or is instituted for the recovery of any claim or debt arising out of contract, or to recover damages for any wrong, the plaintiff, at the commencement of the action or suit, or at any time thereafter, and before judgment, may have an order of attachment against the property of the defendant, on filing with the clerk of the court in which such action or suit is about to be or is brought, his own affidavit, or that of some credible person, stating the nature of the plaintiff's claim, and the amount at the least, which the affiant believes the plaintiff is justly entitled to recover in the action; and also, that the affiant believes that some one or more of the following grounds exist for such attachment:

Grounds there-
for.

First. That the defendant, or one of the defendants, is a foreign corporation, or is a non-resident of this state; or

Second. Has left, or is about to leave the state, with intent to defraud his creditors; or,

Third. So conceals himself that a summons cannot be served upon him; or,

Fourth. Is removing, or is about to remove his property, or a material part thereof, out of this state, with intent to defraud his creditors; or,

Fifth. Is converting, or is about to convert, his property, or a material part thereof, into money or securities, with intent to defraud his creditors; or,

Sixth. Has assigned or disposed of his property, or a material part thereof, or is about to do so, with intent to defraud his creditors; or,

Seventh. Has property or rights in action which he conceals; or,

Eighth. Fraudulently contracted the debt or incurred the liability for which the action or suit is about to be or is brought.

Material facts
to be stated in
affidavit.

And unless the attachment is sued out upon the first of such grounds, the affiant shall also state in his affidavit, the material facts relied on by him to show the existence of the grounds upon which his application for the attachment is based. The order shall be issued by the clerk, and may be in form or effect as follows :

"A — B —, plaintiff, }
 vs. } Order of attachment.
 C — D —, defendant, }

The plaintiff in this case having filed his affidavit as required by law, the sheriff of the county of —, or a constable of any district therein, to whom this order may come, is required, in the name of the state of West Virginia, to attach the estate of the defendant, C — D —, sufficient to pay the sum of —, (the amount affiant states the plaintiff is justly entitled to recover), and the costs of this suit, and make return of his proceedings under this order to the next term of the — court, (or at rules to be held for the — court, on the — day of —, naming in either case the court in which the action is brought.)

Form of order.

Witness E — — F — —, clerk of said court, this — day of —.

E — — F — —, Clerk."

And such attachment may be sued out in a court of equity for a debt or claim legal or equitable not due, upon any of the grounds aforesaid, but the affidavit in such case must show when it will become due. *Provided*, That an attachment shall not be sued out against a foreign corporation for a debt not due upon the ground alone that it is a foreign corporation, nor against a non-resident defendant for a debt not due unless the affiant show by his affidavit that he was a resident of this state when the debt was contracted, and that the plaintiff believed he would remain a resident of this state at the time he gave him credit.

May be sued out in court of equity; what affidavit must show.

Provide as to foreign corporations and non-resident defendants.

2. If the plaintiff at the time of suing out his attachment, or afterwards before judgment, give the bond and security required by the sixth section of this chapter, such order may be in form or effect as follows:

Form of order where bond given by plaintiff.

"A — B —, plaintiff, }
 vs. } Order of Attachment.
 C — D —, defendant, }

The plaintiff in this case having filed the necessary affidavit and bond, the sheriff of the county of —, or a constable of any district therein, to whom this order shall come, is hereby required, in the name of the state of West Virginia, to attach and take into his possession the estate of the defendant, C — D —, sufficient to pay the sum of — dollars, (the amount affiant states the plaintiff is justly entitled to recover), and the costs of this suit, and make return of his proceedings under this order to the next term of the — court (or at the rules to be held for the — court on the — day of —, naming in either case the court in which the action is brought).

Witness: E—— F——, clerk of said court, this — day of —.

E—— F——, Clerk."

An order of attachment under this or the preceding section may be issued and directed to the sheriff or a constable in any county of this state; and several such orders may be issued and delivered to different officers at the same or different times.

To what officer directed. Several such orders may be issued, etc., at same time.

When attachment for rent may be issued by justice; where returnable.

3. On complaint by any lessor or his agent to a justice, that any person liable to him for rent intends to remove, or is removing, or has within thirty days removed his effects from the leased premises, if such lessor, or his agent, make oath to the truth of such complaint to the best of his belief, and to the rent which is reserved (whether in money or other thing), and will be payable within one year, and the time or times when it will be payable, and all also make oath either that there is not, or he believes, unless an attachment issues, there will not be, left on such premises property liable to distress sufficient to satisfy the rent so to become payable, such justice shall, if the rent so claimed exceed fifty dollars, exclusive of interest, issue an order of attachment for the said rent against the personal estate of the person so liable therefor, returnable to the next term of the circuit court thereafter. The order of attachment in such case shall be in form or effect as follows:

"District of —, — County, to-wit:

Form of order of attachment therefor.

A—— B——, Plaintiff. }
 vs. } Order of Attachment.
 C—— D——, Defendant. }

The above named plaintiff having filed with me the affidavit required by law, the sheriff of the county of —, or any constable therein to whom this order may come, is hereby required, in the name of the state of West Virginia, to attach and take into his possession the personal estate of the defendant, C—— D——, sufficient to pay the sum of — dollars, (the sum affiant states will be due), and the costs of this attachment, and to make return of his proceedings under this order to the next term of the circuit court of the said county.

Given under my hand this — day of —.
 E—— F——, Justice."

Defense may be made by defendant; how. How proceeded in and tried.

Where affidavit returned.

The defendant in an attachment issued under this section may make defense thereto in the same manner and to the same extent as in other cases; and the same as to the rent claimed, shall be proceeded in, tried and determined, as if it were an original action brought in said court, and the affidavit and attachment shall take the place of a declaration in the case. And the affidavit in such case shall be returned to the clerk of the circuit court by the justice.

4. The officer to whom any attachment issued under this chapter shall be delivered for execution, shall execute and return the same as therein required, and if he fail to do so, he and his sureties in his official bond shall be liable to the plaintiff in the case for all damages he may sustain by reason of such failure.

Duty of officer to execute and return attachment.

Liability in case of failure.

5. Every attachment issued under the provisions of this chapter, may be levied upon any estate, real or personal, of the defendant named therein, or so much thereof as is sufficient to pay the amount for which it issues, except that an attachment issued under the third section shall be levied on personal estate only. The plaintiff may, by an endorsement on the order, designate any person as being indebted to, or having in his possession, the effects of the defendant, or one of the defendants; and in such case the clerk shall make as many copies of the order as there are persons designated, with an endorsement thereon that the person so designated is required to appear at the next term of the court in which the action or suit is pending, and disclose on oath in what sum he is indebted to the defendant, and what effects of the defendant he has in his hands; and it shall be sufficiently levied on such person by delivering him a copy of the order and endorsement, or by a service thereof upon him in the same manner as a notice may by law be served; and if the same be levied upon real estate, it shall be sufficiently served by an endorsement thereon, or upon a paper annexed thereto stating as near as may be, the quantity, or the supposed quantity, and the location thereof.

On what estate attachment may be levied.

Plaintiff may designate persons as garnishees, and how.

Duty of clerk in such case.

Service of order on garnishee; how made.

How levy made and returned on real estate.

Attachment Bond; Its Condition, etc.

6. But if the plaintiff shall, at the time of suing out such attachment, or afterwards, give bond with good security, approved by the clerk issuing the attachment, in a penalty of at least double the amount of the claim sworn to, with condition to pay all costs and damages which may be awarded against him, or sustained by any person by reason of the suing out of the attachment, and to pay to any claimant of any property seized or sold under or by virtue of said attachment, all damages which he may recover in consequence of such seizure or sale; and also to warrant and defend to any purchaser of the property such estate or interest therein as is sold, the said officer shall take possession of the property levied on by virtue of such attachment. If such bond be given, no action shall be maintained against the officer levying such attachment upon property or effects not belonging to the debtor, unless it shall appear that such levy was wilfully and knowingly made. If the plaintiff has sued out an order of attachment without giving such bond, and afterwards give the same as aforesaid, it shall be the duty of such clerk,

Attachment bond; its penalty and conditions.

Officer to take possession of property attached. No action maintained against officer for levying attachment on property, etc., not the debtor's, unless, etc. Where plaintiff sues out order of

attachment without giving bond, and afterward give one, duty of clerk in such case. When clerk to issue new order of attachment, etc. Duty of officer in such case.

Defendant may except to bond, etc.; if exception sustained, property returned, unless, etc.

Officer's return; how made and what to show.

When attachment may be issued and executed on Sunday

Lien of attachment on property, etc., of debtor; from what time.

When lien of attachment to cease, if no bond be given.

How attached property replevied, etc.

Bond; by whom taken; penalty of, etc.

whether the attachment has been levied or not, to certify the fact that such bond has been given to the officer who levied the same, or in whose hands it was to be levied, or if he be absent or out of office, to issue a new order of attachment and to place the same in the hands of some other proper officer; and it shall be the duty of any such officer to take the attached property into his possession and make return of such order in like manner as if said bond had been given before the issuing of the original attachment. The defendant may except to the said bond, or to the sufficiency of the security therein, and if the exceptions be sustained by the court, the attached property shall be returned to the defendant, unless the plaintiff give a proper bond, with sufficient security, to be approved by the court within such time as the said court shall direct.

7. The officer serving the attachment shall make return of the time and manner of service on each person designated as being indebted to, or having in his possession, the property of any such defendant; and shall also return a list and description of the property taken (if any) under such attachment, and likewise the date of the service, or execution thereof, on each person and parcel of property.

8. Such attachment may be issued or executed on Sunday if oath be made that the defendant is actually removing his effects on that day.

Attachment Lien; Replevying; Keeping or Selling Property.

9. The plaintiff shall have a lien, from the time of the levying of such attachment, or serving a copy thereof, as aforesaid, upon the personal property, choses in action, and other securities of the defendant against whom the claim is, in the hands of, or due from, any such garnishee on whom it is so served, and on any real estate levied on by virtue thereof, from the suing, out of the same. But if no bond be given by the plaintiff, and such personal property, choses in action, or other securities of the defendant, or any part thereof, be sold or disposed of for a valuable consideration, the lien of the attachment thereon shall cease and determine from the date of such sale or disposition.

10. Any property levied on or seized as aforesaid under any attachment, where the plaintiff has given bond, may be retained by, or returned to, the person in whose possession it was, on his giving bond, with condition to have the same forthcoming at such time and place as the court may require; or the defendant against whom the claim is may release from any attachment the whole of the estate attached, by giving bond, with condition to perform the judgment or decree of the court. The bond, in either case, shall be taken by the officer serving the attachment, with

security, payable to the plaintiff, and in a penalty, in the latter case, at least double the amount or value for which the attachment issued, and in the former, either double the same or double the value of the property retained or returned, at the option of the person giving it.

11. Every such bond shall be returned by the officer to, and filed by, the clerk of the court in which the suit is pending, or to which the attachment is returnable; and the plaintiff may, within thirty days after the return thereof, file exceptions to the same, or to the sufficiency of the security therein. If such exceptions be sustained, the court shall rule the said officer to file a good bond, with sufficient security, to be approved by it, on or before a certain day to be fixed by the court. If he fail to do so, he and his sureties in his official bond shall be liable to the plaintiff as for a breach of such bond. But the officer shall have the same rights and remedies against the parties to any bond so adjudged bad, as if he were a surety for them.

Bond given to be returned to clerk's office.

Plaintiff may except to the same, etc.

When new bond required, etc.

Liability of officer, etc., for failure.

Rights and remedies of officer in such case.

12. When any attachment is sued out, either at law or in equity (except against non-residents), on such affidavit as is mentioned in the first section of this chapter, although the property or estate attached be not replevied as aforesaid, the interest and profits thereof, pending the suit and before judgment or decree, may be paid to the defendant, if the court deem it proper; and at any time during such period the court, or in vacation the judge thereof, may discharge the attachment, as to the whole of the estate of the defendant against whom the claim is, on his giving bond, with security, payable to the plaintiff in a penalty double the value of such estate, with condition, if judgment or decree be rendered for the plaintiff in said suit, to pay the said value, or so much thereof as may be necessary to satisfy the same.

Interest and profits of attached estate may be paid to defendant; when.

Attachment may be discharged upon defendant giving bond, etc.

13. All property seized under any attachment, and not replevied or sold before judgment, shall be kept in the same manner as similar property taken under execution. But such as is expensive to keep, or perishable, may be sold by order of the court, or in vacation thereof, by order of the judge; such sale to be made in the same manner as if it were a sale under execution, except that where the claim for which the attachment was sued out is not yet payable, or the court or judge sees other reason for directing a credit, the sale under this, or any other section of this chapter, shall be on credit until the time it is payable, or such other time as the court or judge may direct, and for the proceeds of sale, bond with good security shall be taken, payable to the officer, for the benefit of the party entitled, and shall be returned by the officer to the court.

Property attached: how kept.

When it may be sold before judgment, etc., and how.

Proceedings Where There is a Garnishee.

Garnishee examined on oath.

What order to be made by court if he is indebted to defendant, etc.

Garnishee may give bond, etc., for payment of debt, etc.

14. When any garnishee shall appear he shall be examined on oath. If it appear on such examination, or by his answer to a bill in equity, that at or after the service of the attachment he was indebted to the defendant against whom the claim is, or had in his possession or control any goods, chattels, money, securities or other effects belonging to the said defendant, the court may order him to pay the amount so due by him, and to deliver such effects to such person as it may appoint as receiver; or such garnishee, with leave of the court, may give bond, with sufficient security, payable to such person and in such penalty as the court may proscribe, with condition to pay the amount due by him and have such effects forthcoming at such time and place as the court may thereafter require.

What order, etc., court may make if garnishee fail to appear.

15. If any garnishee summoned as aforesaid fail to appear in an attachment at law, the court may either compel him to appear or hear proof of any debt due by him to, or effects in his hands of, the defendant in such attachment, and make such orders in relation thereto as if what is so proved had appeared in his examination.

Upon suggestion that garnishee has not answered truly, in such attachment, the court shall cause a jury to be impaneled, etc. Proceedings.

When garnishee to recover his costs.

16. When it is suggested by the plaintiff in any attachment at law that the garnishee has not fully disclosed the debts due by him to, or effects in his hands of, the defendant in such attachment, the court shall cause a jury to be impaneled, without any formal pleadings, to inquire as to such debts and effects, and proceed in respect to any such found by the jury in the same manner as if they had been confessed by the garnishee. If the verdict be in favor of the garnishee, he shall have judgment for his costs against the plaintiff.

Order of Publication; Defense to the Attachment; Conflicting Claims and Judgment.

Order of publication; when to be made.

17. When any attachment, except under the third section, is returned executed, an order of publication, as prescribed in chapter one hundred and twenty-four, shall be made against the defendant against whom the claim is, unless he has been served with a copy of the attachment or with process in the suit in which the attachment issued.

Who may defend against the attachment.

18. Either the defendant in any such attachment, or any garnishee, or any party to any forthcoming or replevy bond given as aforesaid, or the officer who may be liable to the plaintiff by reason of such bond being adjudged bad, may make defense to such attachment, but the attachment shall not thereby be discharged or the property levied on released.

19. The right to sue out an attachment may be contested,

and when the court is of opinion that the facts stated in the affidavit were not sufficient to authorize the issuing thereof, or that the affidavit is otherwise insufficient, judgment shall be entered that the attachment be quashed. If the defendant desire to controvert the existence of the grounds for the attachment stated in the affidavit, he may file a plea in abatement denying the existence of such grounds, and the issue on such plea shall be tried by a jury, unless the same be waived by the parties. The affirmative of such issue shall be with the plaintiff; and if he fail to prove to the satisfaction of the jury the existence of the grounds denied by the defendant, the verdict shall be for the defendant, and judgment shall be entered that the attachment be abated. But the court may grant new trials as in other cases. When the attachment is properly sued out and the case heard upon its merits, if the court be of opinion that the claim of the plaintiff is not established, final judgment shall be given for the defendant. In either case the defendant shall recover his costs, and there shall be an order for the restoration to him of the attached effects.

The right to sue out attachment may be contested. When attachment quashed.

Plea in abatement; when.

How issue tried; affirmative with plaintiff; what he must prove; verdict and judgment.

New trial.

When judgment given for defendant.

To recover his costs, also attached effects.

20. If the claim of the plaintiff in any suit or proceeding under this chapter be established, judgment or decree shall be rendered for him, and the court shall order the sale of any real or personal estate levied upon under and by virtue of any such attachment, which shall not have been previously sold or replevied under this chapter, and direct the proceeds of the sale of such property and whatever else the attachment has been levied upon, including what is embraced by such replevy or forthcoming bond, to be applied in satisfaction of such judgment or decree. But no real estate shall be sold under such order until all other property and money so levied on as aforesaid has been exhausted, and then only so much thereof as is necessary to pay the judgment or decree.

Judgment for plaintiff; when and how rendered.

Application of proceeds of sale.

Real estate not sold, until personal estate is exhausted.

21. When a sale of real estate is so ordered, the court shall prescribe in the order the terms of such sale and the officer or person by whom it shall be made. The officer or person making such sale of real estate shall report to the court which ordered the sale, the real estate so sold by him, with the name of the purchaser, the sum for which it sold, and the time and place of such sale. The court for good cause, may refuse to confirm the sale, and order the property to be re-sold; but if good cause for setting the sale aside be not shown, the court shall confirm the same, and shall direct a deed of conveyance of the real estate so sold to be made to the purchaser thereof, by the officer or person who sold the same, or by a special commissioner appointed for that purpose, whenever the purchase money thereof, with its interest, shall have been fully paid. An officer heretofore or hereafter directed by the

Court to prescribe in order the terms of sale of real estate, etc. Report of sale; what to contain.

Court may refuse to confirm, and order resale. When to confirm. Deed to purchaser; by whom made and when.

Officer may make conveyance though his term of office has expired.

court to make such conveyance may make the same in his official character, notwithstanding his term of office shall have expired. And in case of the death, removal, inability, or failure or refusal to act, of the officer or person heretofore or hereafter appointed to make any such sale or conveyance, before the same is made, the circuit court of the county in which such judgment, decree or order was rendered or made, may appoint a special commissioner to make such sale or conveyance, or both, as required by such judgment, decree or order.

When and how special commissioner appointed to make sale or deed.

When Plaintiff must give Bond before Sale.

Bond to be given by plaintiff before sale of real estate, etc., where defendant has not been served with notice and did not appear. Penalty and condition of such bond.

22. But if the defendant whose real estate is attached has not appeared in the action or suit, or been served with a copy of the attachment sixty days before such judgment, decree or order, no sale of the real estate so attached shall be made until the plaintiff or some one for him, shall give bond, with sufficient security, in such penalty as the court shall approve, with condition that the plaintiff will perform such future order as may be made by the court in the action or suit, in case the defendant appear and make defense therein within the time prescribed by law; provided, that after the right of a defendant to appear and make defense in any such action or suit shall have expired by limitation or otherwise as prescribed in this chapter, a sale of such real estate may be made under the judgment, order or decree, whether such bond has been given or not. If personal property be levied upon, and ordered to be sold, where there has been no such appearance or service of the attachment as aforesaid, and no bond has been given by the plaintiff as provided in section six of this chapter, the court shall require such bond to be given by the plaintiff, and if the plaintiff, or some one for him, fail to give such bond within a reasonable time, the court shall dispose of such property, or the proceeds thereof, as to it shall seem just.

When sale may be made without such bond.

Bond also required before sale of personal property.

If not given, how such property disposed of.

Petition Disputing Plaintiff's Claim, etc.

When, how and by whom validity of attachment may be disputed; proceedings in such cases.

23. Any person interested may file his petition at any time before the property attached, as the estate of a defendant, is sold under the decree or judgment, or if the proceeds of the sale have not been paid over to the plaintiff, or his assigns, within one year after such sale, disputing the validity of the plaintiff's attachment thereon, or stating a claim thereon, or an interest in or lien on the same, under any other attachment or otherwise, and its nature, and upon giving security for costs, the court without any other pleading, shall impanel a jury to inquire into such claim, and if it be found that the petitioner has title to, or lien on, or any interest in such property or its proceeds, the court shall make such order as is necessary to protect his rights; the

cost of which inquiry shall be paid by either party, at the discretion of the court. Costs; by whom paid.

Priority of Attachments.

24. The attachment first served on the same personal property, or on the person having such property in his possession, shall have priority of lien; and the officer making the levy shall note on the order of attachment the day and hour at which the levy is made. *Provided*, That where two or more attachments are delivered to the same officer at different times to be served, he shall serve them in the order in which he receives them, and when they are delivered at the same time, they shall be served at the same time and be satisfied *pro rata* out of the proceeds of the attached property. Priority of lien of attachment as to each other.
Day and hour of levy to be noted
If delivered at different times, how levied.
How served and satisfied if delivered at same time

Rehearing After Judgment or Decree.

25. If a defendant against whom, on publication, judgment or decree has been or shall hereafter be rendered, in an action or suit in which an attachment has been or may be sued out and levied as provided in this chapter, or his personal representatives, shall return to or appear openly in this state, he may, within one year after a copy of such judgment or decree has been or shall be served upon him, at the instance of the plaintiff, or within five years from the date of such judgment or decree, if he be not so served petition to have the proceeding reheard. On giving security for the costs which have accrued and shall thereafter accrue, such defendant shall be admitted to make defense against such judgment or decree, as if he had appeared in the case before the same was rendered, except that the title of any *bona fide* purchaser to any property, real or personal, sold under such attachment, shall not be brought in question or impeached. But this section shall not apply to any case in which the petitioner, or his decedent, was served with a copy of the attachment, or with process in the suit wherein it issued, more than sixty days before the date of the judgment or decree, or to a case in which he appeared and made defense. When and how debtor may have case reheard.
Title of bona fide purchaser not to be affected.
To what cases this section not to apply.

Judgment or Decree on Rehearing.

26. On any rehearing or new trial had under the preceding section of this chapter, if the judgment or decree be for the defendant, the court may order the plaintiff in the original suit or his personal representative, to restore any money paid him under his judgment or decree therein, with interest from the date of such order, to the defendant, or his personal representative, entitled thereto, and may enter a judgment or decree against him therefor; and if the defendant, or his personal representative, fail to recover on such rehearing or new trial, the original judg- What judgment or order may be given or made on rehearing, etc

Prevailing party to recover costs ment or decree shall be confirmed; and in either case the cost shall be adjudged to the prevailing party.

Where Damages Against Plaintiff; or Appeal from Judgment; How Bonds are Given in Attachment Cases.

When plaintiff liable for damages.

27. If, upon defense being made in any case in which property is seized under an attachment, that the attachment was sued out without sufficient cause, it be found either by the court or by the jury, if one be impaneled, that the defense is well founded, judgment may be entered for the defendant against the plaintiff for the damages sustained by the defendant by reason thereof.

When appeal bond given, property to be discharged. Condition of such bond.

28. Where judgment or decree in favor of the plaintiff is rendered in any case in which an attachment is sued out, and on appeal therefrom an appeal bond is given with condition to prosecute the appeal with effect, or pay the debt, interest, costs and damages, as well as the costs of the appeal, the officer in whose custody any attached property may be shall deliver the same to the owner thereof.

By whom bond may be given.

29. Any bond authorized or required by any section of this chapter may be given either by the party himself or by any other person.

Arrest of Defendant.

Order for arrest of defendant; by whom made. Affidavit in such case; what to show.

30. An order for the arrest of a defendant in an action or suit may be made by the court in which the action is pending, or by the judge or clerk thereof in vacation, upon the affidavit of the plaintiff or any credible person, showing to the satisfaction of the court, or judge, or clerk thereof in vacation, the nature and justice of the plaintiff's claim, the amount which the affiant believes the plaintiff is entitled to recover in the action, and the existence of some one or more of the following grounds for the arrest of the defendant:

Upon what grounds such order may issue.

First—That the defendant has removed, or is about to remove, any of his property out of the state with intent to defraud his creditors; or

Second—That he has converted, or is about to convert, his property or any part thereof into money or securities with like intent; or

Third—That he has assigned, disposed of or removed his property or any part thereof, or is about to do so with like intent; or

Fourth—That he has property or rights in action which he fraudulently conceals; or

Fifth—That he fraudulently contracted the debt or incurred the liability for which the action or suit is brought; or

Sixth. That he is about to leave the state, and reside

permanently in another state or country, without paying the debt or liability for which the action or suit is brought.

31. When sufficient cause shall be shown for the arrest of a defendant as aforesaid, such court, judge or clerk shall make an order directing the defendant to be arrested, and held to bail for such sum as the said court, judge or clerk shall think fit, and the plaintiff shall thereupon deliver to the clerk of the court in which the action is pending, a bond in a penalty double the amount sworn to, executed by himself, or some person for him, with one or more sufficient securities, to the effect that the plaintiff will pay the defendant all damages he may sustain by reason of the arrest, should it thereafter appear that the order was wrongfully obtained.

When sufficient cause shown, order to be made. What order must direct to be done.

Bond in such case.

32. Upon the delivery of the bond mentioned in the preceding section, the clerk shall issue an order for the arrest of the defendant in form or in substance as follows:

When order of arrest to issue.

“A — B —, plaintiff,
 vs.
 C — D —, defendant, } Order of arrest.

To the sheriff of the county of —: You are hereby required in the name of the state of West Virginia, to arrest the defendant, C — D —, and commit him to the jail of the said county of —, to be there safely kept, unless or until he shall give a bond, with good security, in the penalty of — dollars, conditioned according to law, and that you return your proceedings under this order to the next term of the circuit court of said county. Witness E — F —, clerk of the said court, this — day of —.

Form of such order.

E — F —, Clerk.”

33. Under such order, the defendant against whom it issues shall be arrested and committed to jail, unless bond be given in the sum specified therein, with sufficient security, that in case there shall in the action or suit be any judgment, decree or order on which a writ of *feri facias* may issue, and within four months after such judgment, decree or order is rendered or made, interrogatories be filed under the fourth section of chapter one hundred and forty-one with a commissioner of the court wherein such judgment, decree or order is, the defendant will, at the time the commissioner issues a summons to answer such interrogatories, be in the county in which such commissioner may reside, and will, within the time prescribed in such summons, file proper answers upon oath to such interrogatories, and make such conveyance and delivery as is required by the said chapter, or in case of failure to file such answer and make such conveyance and delivery, that the said defendant will perform and satisfy the said judgment, decree or order.

Arrest and commitment of defendant, unless bond and security be given, etc. Conditions of such bond.

Proceedings to Obtain Discharge; Process to Compel Disclosure of Estate.

34. The defendant arrested under such order may, at any time pending the case, give bond to the officer making the arrest. Such bond shall be taken by said officer and returned by him to the clerk of the court from which the order issued, and the same shall be filed in said clerk's office.

35. If the defendant gives such bond, or be committed to jail for want of it, the court in which the case is pending, or the judge thereof in vacation, may, after reasonable notice to the plaintiff, or his attorney or counsel, quash the order and discharge the defendant from custody, or discharge the bond on being satisfied that the same was wrongfully obtained; and, whether the order was so obtained or not, may discharge him from custody when the plaintiff is cast in the action or suit.

36. While a defendant is in custody, whether under an arrest made heretofore or hereafter, the plaintiff, without having a judgment against the defendant, may file interrogatories to him in like manner as might be done under the fourth section of chapter one hundred and forty-one, if such judgment had been obtained and a *feri facias* thereon delivered to an officer. And the court wherein the case is pending, or a judge or a commissioner thereof, after reasonable notice to the plaintiff, or his attorney or counsel, may discharge the defendant from custody, unless interrogatories be filed within such time as the said court, judge or commissioner may deem reasonable; or, though interrogatories be filed, may discharge him when proper answers thereto are filed and proper conveyance and delivery made.

37. The officer making the arrest shall be the officer to whom the conveyance shall be made. The interrogatories, answers and report of the commissioner shall be returned to the court in which the case is pending, and filed in the papers of such case. And the said court may make such order as it may deem right as to the sale and proper application of the estate conveyed and delivered under the preceding section.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act, and inconsistent therewith, are hereby repealed.

[Approved March 30, 1852.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLIX.

AN ACT to amend and re-enact chapter forty-four of the code of West Virginia.

[Passed March 25, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That chapter forty-four of the code of West Virginia Code amended; chapter 44 of. be, and the same is hereby amended and re-enacted so as to read as follows:

CHAPTER XLIV.

FERRIES, TOLL BRIDGES, WATER COURSES AND MILLS.

Former Ferries to Continue; Discontinuance of Ferry by Disuse.

1. Every ferry established and not discontinued before this chapter takes effect may continue to be kept; and the rates of ferriage at every such ferry shall be according to the laws heretofore applicable thereto, so far as the same are not altered by or under some provision of this chapter, or some act of the legislature hereafter passed. Former ferries to continue. Rates of ferriage thereat. But if any such ferry, or any ferry that may be hereafter established, be disused for two years and six months, and any part of said time be after this chapter takes effect, it shall, by reason of such disuse, be *ipso facto* discontinued, without any judicial or other proceeding for that purpose. How ferries discontinued.

How a Ferry May be Established.

2. A person desiring to establish a ferry across any water course, whether it be a stream bounding the state or not, who owns or has contracted for the use of land at the point at which he wishes to establish the same, may present his application for the privilege to the county court of the county, or of either of the counties, in or from which he desires to establish such ferry. New ferries. how applied for. But notice of the application having been presented, or of the intention to present the same, must be posted at the front door of the court house and three other public places in the district in or from which such ferry is proposed, three weeks at least before the application is acted upon. Notice thereof, when and where posted.

3. The county court, after notice has been given as aforesaid, shall appoint two or more viewors, or a committee of their own body, to view the place and report the advantages and disadvantages which, in their opinion, will result, as well to individuals as to the public, from the proposed ferry, and the facts and circumstances that may be useful to enable the court to determine whether the ferry ought to be established or not. Viewors, etc., to be appointed, and report. The expenses of the proceeding shall be ascertained by the court and paid by the applicant. Expenses, how ascertained and paid. When proper, they shall cause no-

Notice, when. tice of the pendency of such application to be given, in such manner as they may direct, to the parties interested, or any of them.

Proceedings on report of view-ers,

Court to pre-scribe number of hands and boats and rates of ferrriage.

Proceedings where water course is divid-ing line between two counties.

4. Upon such report, and any other proper evidence, the court may reject the application, or may, unless the water-course at such place be the division line between two counties, grant leave to establish said ferry, and pre-scribe the number of hands and the number and kind of the boats to be kept, and the rates of ferrriage for persons and things at the same.

5. If, however, the said water-course be such division line, and the court be of opinion, that the application ought to be granted, they shall certify to the county court of the other county such opinion, with the number of hands and the number and kind of boats, and the rates of ferrriage which they deem proper at the same. The ap-plicant may then apply to the county court of such other county, after notice therein as prescribed in the second section, and said court, upon the report already made, and any other proper evidence, may reject the application or grant the same on the terms prescribed by the other court.

Penalty for Keeping Ferry Contrary to Law, etc.

Keeping ferry contrary to law; also, any boat, skiff, etc., for transporting any person, horse or thing, with or without compensation, over water course where ferry legally established, a misdemeanor.

Penalty on person so of-fending.

Penalty on owner, etc., of land for permit-ting same to be used as landing for such ferry, etc.

Liability of owner, etc., of such ferry, and owner of such land for dam-ages to owner, etc., of ferry legally estab-lished.

6. If any person or corporation shall, without having obtained the privilege to do so, as provided for in the four next preceding sections, establish, keep or maintain a ferry over any water-course, on or over which another ferry has been legally established, or shall keep a boat or other water craft with a hand or hands, generally ready to transport or carry any person, horse, carriage, wagon, cart or other thing, whether for reward or not, or shall for compensation, furnish, hire or loan to another any boat, skiff or other water craft, to be used for ferrying any per-son or thing over such water-course, every person so of-fending shall be guilty of a misdemeanor and fined for each offense not less than twenty-five nor more than two hundred dollars. And if the owner or occupant of any land bordering on any such stream, shall suffer or permit another person who is keeping or maintaining any such ferry, or who is keeping such boat or other water craft with such hand or hands with the object or for the purpose aforesaid, to use any part of the land so owned or occupied by him, as a landing for such ferry, boat or other water craft, he shall be guilty of a misdemeanor and fined as aforesaid. And the owner or keeper of every such ferry, not legally established as aforesaid, and every person who shall keep such boat or water craft as afore-said, and the owner or occupier of any such land as afore-said, shall moreover be liable to the owner or lessee of any ferry legally established over such water-course for all such damages as he may sustain by reason of the unlaw-

ful keeping or maintaining of any such ferry, boat or water craft on any such water-course. But no ferry privileges or franchises shall preclude the erection of bridges over any water-course, or entitle the owner of such privileges or franchises to damages in case of the erection of a bridge or bridges over any water-course.

Ferry privileges not to preclude erection of bridges, etc.

7. The preceding section shall not be construed to prevent a person from going across any water-course in his own boat, or taking therein his own property, or the members of his own family, or persons in his employment; nor to prevent a merchant or miller, from carrying across a water-course in his own boat, without reward therefor, any person *bona fide* engaged in the actual transportation to or from his store, mine or mill of grain, coal, timber, or other produce.

When and what persons not liable for ferrying without pay

8. In the case of a water-course over which there is a lawfully established ferry, if any person, his horse or carriage, be unlawfully transported for reward over such water-course, the person so transporting the same shall forfeit twenty dollars to the proprietor of such ferry over the said water-course as is nearest to the place of such transportation.

Forfeiture to owner of ferry for unlawful ferrying in certain cases.

Ferry Landings—Privilege to Ferry in both Directions.

9. The proprietor of every ferry shall have a convenient wharf or landing, made so as to be firm and dry; he shall also put up and maintain at or near each landing of his ferry, a good and sufficient bell, conveniently hung and provided with rope or other fixture for ringing the same; and he shall ferry persons or things from the point to which, as well as from the point from which the ferry is established, and receive therefor the rates established at such ferry.

Proprietor of ferry must have proper landing. Also, to keep a bell conveniently hung, etc.

Privilege to ferry both ways

Boats and Hands to be Kept at Ferries.

10. If any person to whom leave may be hereafter granted to establish a ferry shall not, within six months, have at such ferry the number and kind of boats, and the number of hands proscribed by the order granting such leave, he shall not, after the said six months, have any rights under said order.

Necessary boats and hands to be kept at ferry.

Privilege forfeited in case of failure.

11. The proprietor of every ferry shall keep at the same the number and kind of boats, and the number of competent hands proscribed by the order under which such ferry has been or shall be established. And it shall be unlawful for the proprietor of any ferry, or any person renting or leasing the same, at any ferry now established, or which may hereafter be established on the water courses of West Virginia or along the Ohio river, to engage in the business of a ferryman, until he shall have obtained a permit

Proprietor must keep number and kind of boats and number of competent hands proscribed. Unlawful to keep ferry without permit or license.

Qualifications and bond of applicant.

or liconso from the county court, city, village or town council, or other tribunal in lieu thereof, and before such permit or license shall be granted, the applicant shall present to the authorities vested with the power to grant the same, a certificate of good moral character, sober and temperate habits, with the requisite qualifications of a ferryman, together with a bond made payable to the state of West Virginia, in such penalty as the county court, city, village or town council, or other tribunal in lieu thereof may fix, and with good security to be approved by the same, conditioned for the faithful performance of all duties required by law of such ferryman. And he shall promptly obey the summons given him by the ringing of said ferry bell, and ferry all persons and property during the hours which the county court, city, village or town council, or other tribunal in lieu thereof, shall prescribe for the daily ferrying, and he shall also ferry any messenger going for a physician or surgeon, and ferry any physician or surgeon going to or returning from professional calls, also mail carriers and telegraph couriers, at all hours, whenever required so to do, when the rivers are in a condition to ferry over, for which night service, after the usual hours prescribed for daily ferrying, he shall be entitled to double the daily rate of compensation. The county court of the county or counties, or city, village or town council, or other tribunal in lieu thereof, in or from which any ferry has been or shall be established, may from time to time change the order as to the kind of boats and the number of boats and bands, as well as the hours prescribed for daily ferrying, and the proprietor, rentor or lessee shall govern themselves accordingly.

Duty of ferryman as to ferrying.

Rate for night service.

Order as to kind and number of boats, etc., may be changed.

Penalty on Proprietor for any Failure to Comply with the Law.

Additional liabilities imposed on proprietor or ferryman for violating provisions of this chapter.

12. Any proprietor of a ferry, or any ferryman, who shall violate any provision of this chapter, shall in addition to the foregoing liabilities imposed by law, pay a fine of not less than ten nor more than twenty dollars, to be recovered by indictment in the circuit court of the county wherein such violation was committed, and moreover, if the proprietor of any ferry fail in any respect to comply with any section of this chapter, the county court in which such ferry is established, may adjudge and declare all his privileges in respect to such ferry at an end, after first causing the said proprietor to be summoned to show cause against such order.

Rates of Ferriage.

Order to increase rates of ferriage; how obtained. Notice; how published. Order reducing

13. An order for increasing the rates at any ferry may be made on the application of the proprietor thereof, after notice of the intended application shall have been published in the manner mentioned in the second section. And an order for reducing the rates at any ferry may be

made after the proprietor thereof shall have had two weeks' notice to show cause why such reduction should not be made. Such order, either for increasing or reducing, may be made by the county court of the county in or from which the ferry is established, unless such ferry be over a water-course which is the division line between two counties; in which case, the orders shall not take effect until the county court of both counties concur therein.

rates; upon what notice.

By what court such order made.

14. The county court of any county in or from which a ferry is established may require the proprietor to keep conspicuously posted at each landing a list of the rates lawfully chargeable at such ferry.

Rates of ferrying; how and when posted.

Provisions Concerning Ferries from Another State.

15. Any person being the owner or occupier, or the agent of an owner or occupier, of a ferry on the shore of another state opposite to or within two miles of a ferry established under the laws of this state across the same river, who shall ferry from the shore of such river within this state, whether for or without reward, any person, horse, carriage, cattle, sheep, hogs or other stock, and carry the same across such river to the shore of such other state, without the consent of the proprietor of the ferry so established under the laws of this state, shall for every such offense forfeit to such proprietor ten dollars.

Ferries from another state not to ferry persons from this state in certain cases.

Forfeiture in such cases.

Of Toll Bridges.

16. When a certificate of incorporation is hereafter obtained for the erection of a toll bridge, if the work be not commenced within one year from the date thereof, or be not completed within five years after such commencement, or if, after its completion, there be an abandonment of the bridge or a failure for three successive years to keep it in good order, in each of those cases the privilege granted by the said certificate shall cease. There may be charged and collected on persons and things passing over any such bridge such reasonable tolls as the corporation may, by resolution, from time to time prescribe, subject, however, at all times to the control of the board of public works or the legislature.

Toll bridges; privilege to build; when forfeited.

Authority to charge and collect tolls. How controlled.

17. Every such bridge shall be so made as not to obstruct the navigation of the water-course over which it is erected at any ordinary stage of water.

Bridge not to obstruct navigation.

18. No toll shall be received for passing any such bridge heretofore erected, if it shall appear to the county court of the county wherein the same is that it is not in a safe condition for the passage of persons and property over it. And the county court upon complaint that it is not safe

No toll received when bridge not in safe condition

How right to demand toll on such bridge to be ascertained, and when.

How rates of toll fixed or changed.

shall ascertain whether it is so or not by appointing three disinterested freeholders to view it. If they report in writing that it is safe, and their report be confirmed by the county court the person authorized to erect it, his heirs or assigns, may continue to demand and receive, on persons and things passing the same, tolls at the rate fixed by the act authorizing it, or if none be so fixed, then at such rates as may from time to time be fixed by the board of public works or by law. Though rates of toll be specified in such act, they may from time to time be changed by law, unless in the said act it be otherwise expressly provided.

Rates on troops, etc. 19. The tolls on troops or persons in the military or naval service of this state, or of the United States, with their arms, munitions and baggage, shall not exceed on any such bridge one-fourth of the tolls on other persons.

Relating Both to Ferries and Bridges.

Toll may be required in advance. Penalty for exacting more than is lawful.

20. The proprietor of any ferry or bridge may require lawful ferriage or toll to be paid previously to a passage over his ferry or bridge. But if there be demanded at any such ferry or bridge more than is lawful, the proprietor shall forfeit to the party aggrieved so much as is illegally demanded and a further sum of not less than two nor more than fifteen dollars.

Penalty for failure to give passage over bridge or ferry in reasonable time. Keeper of toll bridge: when to leave gates open.

Duty of owner or lessee of ferry across river between any city, town, etc., and a railroad station.

21. If at any ferry or bridge there be a failure to give any person or property a passage over the same in a reasonable time, the proprietor thereof shall forfeit to such person not less than two nor more than twenty dollars. If the keeper of any toll-bridge shall absent himself therefrom without leaving any person in charge of the gates thereon, he shall leave the said gates open. And if the owner or lessee of any ferry across a river between any city, town or village and a railroad depot or station, whether his ferry boat be propelled by steam or not, shall, whenever it can reasonably be done, cause his said boat to be at the landing on the side on which such depot or station is on the arrival of each passenger train on such railroad, or within five minutes after such arrival, for the accommodation of passengers arriving on such train who may desire to cross such river, whether the arrival of such train be in the day or night, unless there be a bridge across such river at or near such ferry. He shall also, whenever it can reasonably be done, carry all persons desiring to take passage on any such train and their baggage across such river in time to enable them to do so before the departure of such train. Any keeper of a toll bridge, or owner or lessee of a ferry, who shall fail to comply with the requirements of this section shall be guilty of a misdemeanor and fined fifty dollars for every such offense. And

Penalty on keeper of such toll bridge or owner, etc., of ferry, for failure, etc.

any party injured by such failure shall be entitled to recover therefor from such keeper, owner or lessee, all damages sustained thereby. Their liability for damages.

Bridging the Ohio River.

22. Corporations may be formed under the provisions of the first twenty-four sections of chapter fifty-four of this code, for the purpose of bridging the Ohio river. Any such corporation, or any railroad corporation, is hereby authorized to construct and maintain a bridge across said river in the manner now, or which may hereafter be provided by the congress of the United States, and upon complying with the requirements, conditions and provisions so prescribed, and not otherwise; and such corporation is authorized to take tolls for the passage of persons, railroad cars, engines, vehicles and other things passing on and over such bridge. Any such corporation may obtain the real estate necessary for the construction of its bridge and the approaches thereto, under the provisions of chapter forty-two of this code, and may purchase from any other corporation which may have taken steps toward the erection of a bridge in the manner aforesaid, all the rights, franchises and property it may have acquired. Subscriptions to the stock or bonds of any such corporation may be made by counties, districts, and municipal corporations in the manner provided for in chapter thirty-nine of this code; and subscriptions may be made thereto by other corporations, including railroad corporations, with the assent of the holders of two-thirds of the stock of any such corporation, at any general or special meeting of its stockholders. The provisions of this section as to the building of a railroad bridge across the Ohio river, shall extend to and include the Great Kanawha, Big Sandy and Tug rivers; and no railroad bridge, except as has been, or may be provided by law, shall be built over either of said rivers in any way or manner than is or shall be prescribed by the congress of the United States as to the Ohio river.

Corporations may be formed for bridging Ohio river.

Authority to bridge the Ohio river; how and by whom.

Authority to collect tolls.

Authorized to obtain real estate necessary for construction of bridge and approaches thereto; how. May purchase rights, etc. of other corporations.

Subscriptions to stock, etc.; how and by whom may be made.

Provisions of section as to building railroad bridge across Ohio river to extend to certain other rivers.

What law to govern building of railroad bridge over such rivers.

23. Every bridge across the Ohio river hereafter erected or commenced, wholly or in part within the jurisdiction of this state, contrary to the provisions of the next preceding section, and every railroad bridge across the Great Kanawha, Big Sandy, or Tug river, hereafter erected or commenced, wholly or in part within the jurisdiction of this state contrary to the provisions of the next preceding section, shall be deemed a public nuisance, and so far as the same is within the said jurisdiction, may be abated, and the construction thereof prevented and enjoined by presentment, indictment, or bill in equity, in the name of the state, or other remedy appropriate to the case. And it shall be the duty of the attorney general as well as of the prosecuting attorney of the proper county, to cause

When bridge across Ohio river, and railroad bridge across certain other rivers, deemed nuisances, and may be abated.

How construction of prevented, etc.

Duty of attorney general in relation thereto.

proper proceedings to be instituted and prosecuted to abate, prevent and enjoin such work, as soon as they shall be credibly informed that the same has been or is about to be commenced.

Dams and Other Obstructions to Water-Courses.

Dams and other obstructions to water courses; when deemed nuisances.

24. Any dam or other thing in a water-course, which obstructs navigation or the passage of fish, shall be deemed a nuisance, unless it be to work a mill, manufactory, or other machine or engine useful to the public, and is or has been allowed by law or order of court, or by order of the supervisors of the county. And though a dam may have been so allowed in a water-course, yet if it cause such obstruction it shall not be rebuilt until leave for that purpose has been obtained under this chapter. For every twenty-four hours that a dam or other thing may remain in a water-course in violation of this section, the person causing or permitting such violation shall forfeit two dollars, whereof the informer shall have one-half.

Certain penalties in relation thereto.

Water course between two counties; how cleared of obstructions.

25. The county court of any county which is divided by a water-course from another county, or through any part of which a water-course may pass, may by themselves, or in conjunction with the county court of any other county or counties contract with any person, or order laborers to be hired, to clear such water-course of obstructions in such manner and to such extent as may seem to them proper; and there shall be chargeable on any county whatever the county court thereof may agree to pay for such purpose.

Power reserved to legislature to abate dams, etc., continued.

Certain rights of state and counties preserved

26. Whatever power is reserved to the legislature by any act heretofore passed to abate or remove any dam or other works in a water-course, or improve its navigation, shall continue in full force. And in no case shall the right of the state, or of any company incorporated for opening, improving, or extending the navigation of any water-course, to preference in the use of the water flowing therein for the purpose of such navigation be affected by any order of a court or board of supervisors which, since the first day of April, one thousand eight hundred and sixteen, has been made, or any order of a county court, hereafter made, granting leave to any person to erect a dam or other obstruction across, or in such water-course.

Limitation on power of county court to grant leave to erect dams on certain water courses. County court may declare any stream in county a public highway.

27. When a water-course or any part thereof is navigable or has been or shall be lawfully declared a public highway, no county court shall grant leave to any person to erect in that part of it any dam which will obstruct ordinary navigation or the passage of fish, and the county court of any county may, subject to such limitations as the court may proscribe not inconsistent with those herein contained, by an order entered of record, declare any stream therein or any part thereof to be a public highway,

with the same effect as if an act of the legislature had at the proper time been passed for that purpose. And where any law has been enacted for the opening, improving or extending the navigation of a water course, or where any certificate of incorporation has been or shall be obtained for that purpose, no county court shall, while such law or certificate is in force, grant leave to any person to erect any dam or other obstruction across or in such water course, which will in any way interfere with the navigation thereof, without the consent of the company incorporated to open, improve, or extend such navigation, or the express authority of the law. Any such dam shall, notwithstanding it may be built under such leave, be deemed a nuisance, and may be abated as such. Or such company, or the state, may make a lock or locks in such dam for the passage of vessels and boats without being required to make any compensation therefor.

Further limitation on county court as to erection of dams, etc.

Such dam a nuisance.

Locks in such dams, may be made without paying damages

28. The two preceding sections shall not be construed to give any greater or other right to any person who has erected or may erect any dam or other obstruction across or in any water-course than such person would have had if the said sections had not been enacted. And where the owner of a mill fails to keep in order his dam, or fails to build or keep in order such locks and sluices as any statute, or order of court, or board of supervisors, requires him to build or keep in order, at his own cost, and by reason thereof the navigation of the water-course is impeded, or injury done to the works of any navigation company, such company, or the prosecuting attorney for the county wherein the dam is, may give him notice in writing to do what he is required to do, or that it will be done by others at his expense. And at the end of three months from the time of such notice the company or the county may have the said work done, and recover the cost thereof from said owner, unless before such recovery he surrender to the said company, or to the state, all his right and interest in the said dam.

Provide as to two preceding sections.

How owner of mill compelled to keep his dam, etc., in good order, etc.

When repairs may be made at expense of owner.

Condemnation of Land for Mill Dam, etc.

29. A person having upon land owned by him on a water-course, or proposing to build on such lands, a water mill or other machine, manufactory, or engine, useful to the public, and desiring to erect a dam across or in such water-course (whether he own the lands on either side of the water-course, at the point where such dam is to be erected, or not), or to cut or enlarge a canal through lands above or below, or to raise a dam which may have been lawfully erected, may apply to the circuit court of any county wherein such mill, machine, manufactory, or engine stands, or is proposed to be built, to appoint commissioners, pursuant to the forty-second chapter of this code

Condemnation of lands for mill dams, etc.; application for and appointment of commissioners.

to ascertain a just compensation to the owners of the estate proposed to be taken.

Proceedings in such cases. Enquiry and report of commissioners; what report must contain.

30. Proceedings shall thereupon be had in conformity with the said chapter, except as hereinafter proscribed. The commissioners shall inquire and report whether, if the leave be granted, the mansion-house of any person, or the out-houses, yard, garden, or orchards thereto belonging, will be overflowed or taken; whether, and in what degree, ordinary navigation and the passage of fish or any public road will be obstructed; whether by any, and if any, by what means such obstruction may be prevented, and whether the health of the neighbors will be endangered by the stagnation of the waters or otherwise. They shall also describe by metes and bounds so much of the lands not owned by the applicant, as may be necessary for the canal or dam, not being (beyond what is in the bed of the water-course) more than one acre for a dam, nor more than one hundred feet in width for the canal, and shall say what will be a just compensation therefor. And any land which will probably be overflowed or deprived of water, or otherwise injured by such canal or dam, shall likewise be examined by the commissioners, who shall say what will be a just compensation to the several owners thereof for the damages to the same respectively.

In what case leave to build dam, etc., not to be granted.

31. If on the report, or on other evidence, it shall appear to the court that by granting such leave the mansion house of any person, other than the applicant himself, or the out-house, yard, garden, or orchards thereto belonging, will be overflowed and taken, or that the health of the neighbors will be endangered, the leave shall not be granted. But if it shall not appear, the court shall then grant or refuse the leave, as may seem to it proper. If it be granted, the court shall lay the applicant under such terms and conditions as shall seem to it right. It shall, in particular, provide that ordinary navigation and the passage of fish shall not be obstructed, nor the convenient crossing of the water-course impeded. And where bridges are necessary it shall require such bridges to be built by the applicant, as proscribed in section thirty-nine of chapter forty-three of this code. And where under such leave an existing mill, manufactory, machine or engine is to be supplied with water by a canal, the court shall proscribe a time within which the dam whereby water had before been supplied shall be abated, which time shall not be more than one year from the completion of the canal. Whenever such leave is granted, the tenant of any land through which any canal may be cut may cross it with such fencing and bridges, and erect such water gates as he may, from time to time, deem necessary, not obstructing the passage of the water to the mill, manufactory, machine or engine.

Discretion of court to refuse or grant leave. May impose conditions; what.

Privilege of tenant of land through which canal passes.

32. The applicant to whom any such leave may be granted shall, if no exceptions be taken to the report of the commissioners or to the compensation fixed by said report, upon paying to the several parties entitled thereto the compensation so ascertained, become seized in fee simple of the lands so described in said report by the commissioners, and be authorized to proceed according to such leave. But if a person entitled to such compensation shall except to the said report on the ground of such compensation not being sufficient, the amount to which he is entitled shall be ascertained as provided in chapter forty-two of this code.

When applicant seized in fee simple of land, etc.

If report of commissioners excepted to on ground of compensation allowed, how amount ascertained.

33. No person shall, by means of any such leave, draw the water from any mill-pond of another existing at the time of such leave, or do anything in conflict with any vested right in any water-works erected on such water-course.

What vested rights preserved

34. If the applicant shall not begin his work within one year, and so far finish it within three years, after such leave, as then to have his mill, manufactory, machine or engine in good condition for use; or if such mill, manufactory, machine or engine be at any time destroyed or rendered unfit for use, and the rebuilding or repair thereof shall not, within two years from the time of such destruction or unfitness, be commenced, and within five years from that time be so far finished as then to be in good condition for use, the title to the land so described, shall revert to the former owner, his heirs or assigns, and the leave so granted shall then be in force no longer, except as follows:

Within what time applicant must begin work; must finish or rebuild, etc.; consequence of his failure.

35. Where any mill, manufactory, machine or engine, in possession of (but not erected by) a tenant for life or years, shall be destroyed or become unfit for use, and such tenant shall not, within the said two years begin, or within the said five years finish, such rebuilding or repair, the person next entitled in remainder or reversion may enter and rebuild or repair the same within three years from the time of the failure of such tenant, and thereafter hold and enjoy the same, with its appurtenances, for his use and benefit.

Within what time tenant for life, etc., will forfeit his right to such works, if he do not rebuild or repair them. Right of remaindermen or reversioners in such case.

36. No proceedings under this chapter, nor any judgment thereupon, shall bar any prosecution or action which could have been maintained if this chapter had not been enacted, unless the prosecution or action be for an injury actually foreseen and estimated by the commissioners.

What rights of action or prosecution not barred by proceedings or judgment.

Miller's Toll and His Duty to Grind.

37. At every mill which grinds grain, whether the same be established under an order of court or not, there shall be well and sufficiently ground all grain brought to the

Duty of miller to grind, and in what order, etc.

What tolls may be taken for grinding.

Penalty for violation.

Provisos qualifying previous provisions.

mill for the consumption, when ground, of the person bringing or sending it, or his family, and in due turn as the same is brought, and within a reasonable time thereafter; and there shall not be taken for the toll more than one-eighth part of any grain of which the remaining part is ground into meal, nor more than one-sixteenth part of any grain of which the remaining part is ground into hominy or malt. If at any mill there be a violation of this section in any respect, the proprietor thereof shall, for every such violation, forfeit to the party injured five dollars, but with these provisos, that the proprietor shall not be obliged to run more than one pair of stones to grind grain brought to the mill for the consumption of the persons bringing or sending it, or their families, and that such proprietor may grind grain for the consumption of his family in preference to that of others.

When and how exempt from grinding other grain than wheat.

But court may rescind, etc., such order.

38. The county court of the county in which is situated a mill used exclusively for manufacturing flour may release the owner or occupier thereof from the obligation to grind any grain except wheat, or to grind wheat in a damaged state; but the court making such order may, at any time, upon good cause shown, rescind or change the same.

Acts Repealed.

Acts repealed. 2. All acts and parts of acts inconsistent with this act are hereby repealed.

[Approved] March 30, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER CLX.

AN ACT to amend and re-enact chapter one hundred and thirty of the code of West Virginia.

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia :

Code amended; chapter 130 of. 1. That chapter one hundred and thirty of the code of West Virginia be amended and re-enacted so as to read as follows :

CHAPTER CXXX.

OF EVIDENCE.

Proceedings of the Legislature, and Signature of Governor or Judges.

1. Acts and resolutions of the legislature, though local or private, may be given in evidence without being specially pleaded; and an appellate court shall take judicial notice of such as appear to have been relied on in the court below.

Evidence; acts and resolutions of legislature. Appellate court to take judicial notice of; when.

2. Copies of the journal of either house of the legislature, printed by authority of the legislature, shall be received as evidence for any purpose for which the original journal could be received.

Copies of journal, when received as evidence.

3. All courts and officers shall take notice of the signature of any of the judges, or of the governor of this state to any judicial or official documents.

Signature of governor and judges; courts to take notice of; when.

Copies of Certain Deeds Evidence; Records and Papers in Public Offices.

4. Copies of deeds, acknowledged or proved and certified according to the act of the general assembly of Virginia, of the thirtieth of December, one thousand seven hundred and ninety-two, and placed upon record after the expiration of two years, the period prescribed by the act of the twenty-fifth of December, one thousand seven hundred and ninety-four, but before the passage of the act of the seventh of February, one thousand eight hundred and fourteen, shall be received in evidence, and have all the force and effect of copies of deeds recorded within two years, the period prescribed as aforesaid; *Provided*, That nothing in this section shall be construed to affect the rights of creditors and subsequent purchasers without notice.

Copies of certain deeds allowed in evidence.

Effects thereof.

Rights of creditors, etc., without notice, not affected.

5. A copy of any record or paper in the clerk's office of any court, or in the office of the secretary of state, treasurer or auditor, or in the office of surveyor of lands of any county, attested by the officer in whose office the same is, may be admitted as evidence in lieu of the original. The certificate of the auditor of the fact and time of the return of any real estate as delinquent, or of the sale thereof for taxes, shall be *prima facie* evidence of what is stated in such certificate. Any such copy or certificate purporting to be sealed, or signed and sealed, or signed alone, by any such officer, may be admitted as evidence without any proof of the seal or signature, or of the official character of the person whose name is signed to it. The certificate of the auditor of the payment or non-payment at any time of taxes on forfeited or delinquent

Copies of records and papers in public offices admitted as evidence; when proof of seal or signature not required.

Certificate of auditor in certain cases, effect of.

lands or of their not having been entered on the books of the assessor of the county or counties wherein the same were chargeable with taxes, shall, in any suit in relation to such lands, be *prima facie* evidence of what is stated in such certificate, provided it be filed with the papers of said suit and notice thereof be given to the opposite party or his attorney at least twenty days before the first day of the term at which it is to be offered as evidence. When the certificate purports to be signed by the said auditor, it may be admitted as evidence without proof of his signature.

Copy filed in one suit may be filed in another, etc. Defendant required to plead thereto.

6. Such a copy of any writing filed in a suit, may be filed in another suit on the same writing, and the defendant shall plead thereto as if the original were filed.

Provisions of two preceding sections applicable to copies of records from state of Va.

7. The provisions in the two preceding sections contained shall apply to a copy of any record or paper in the clerk's office of any court in the state of Virginia, or in the office of the secretary of the commonwealth, treasurer, register of the land office, or either auditor, or any surveyor of lands of that state, attested as aforesaid; and to any certificate of the auditor of public accounts of that state as to the return of any real estate as delinquent, or sale thereof for taxes, or payment or non-payment of taxes on forfeited or delinquent lands, or non-entry of lands on the books of the commissioners of the revenue.

Certificate of auditor of Va. as to payment, etc., of taxes on forfeited, etc., lands, etc., to be filed with papers; notice thereof.

Provided, That such certificate of the auditor as to the payment or non-payment of taxes on forfeited or delinquent lands, or non-entry of such lands on the books of the commissioner of the revenue, be filed with the papers in any suit in relation to such lands, and notice thereof be given to the opposite party or his attorney, at least forty days before the first day of the term at which it is to be offered as evidence.

When court may order delivery of original papers, retaining copy. What order court may make as to the original.

8. The court in the clerk's office whereof there is an original paper filed in a cause (although decided) may, for good cause, order it to be delivered to any person, retaining in its stead a certified copy thereof, and make any order to prevent the improper use of the original.

Court may order books or records to be bound or transcribed. How paid for.

9. The circuit or county court of any county may order any of the books and records in the office of the surveyor of such county, and any of its own books or records, to be bound or transcribed, and shall make a reasonable allowance therefor, which shall be paid out of the county treasury.

Upon what certificate such allowance paid.

10. No such allowance shall be made for any transcript until commissioners appointed for the purpose by the courts shall have examined it, and written at the foot thereof a certificate of its correctness. Thenceforth the

same faith and credit shall be given to it that the book or record transcribed would have been entitled to.

Effect of such record as evidence.

11. A court may have any of its books or records taken out of the county to be bound.

Books, etc., taken out of county to be bound.

12. Where any books containing judgments, decrees, orders of proceedings of a court, or proceedings at rules, is lost, and there can be again entered correctly, by means of any writing, any matters which were in such book, the court may cause its clerk to have such matters re-entered, and such entries shall have the same effect as the original entries.

Re-entries where book containing judgments, etc., is lost; when.

Effect of such entries as evidence.

13. Where any such book, or any book containing the record of wills, deeds, or other papers, or where any paper filed in a clerk's office, is lost, the clerk in whose office such book or paper was, upon the production to him of any original paper which was recorded in the said book, or any attested copy of the record thereof, or of an attested copy of anything else in such book, or of any paper so filed, shall, on application record or file the same anew. The record shall show whether it is made from an original or a copy, and how the paper from which it is made was authenticated or attested. Such record shall have *prima facie* the same effect that the record or papers for which it is substituted would have had.

When and how lost records supplied by recording anew the lost paper or attested copy thereof.

What such record to show.

Effect thereof as evidence.

14. If, in any cause, the original papers therein, or any of them, or the record for or in an appellate court, or any paper filed or connected with such record, be lost, the court wherein the case is, or in which, but for such loss, it would or ought to be, may docket the same; and on affidavit of such loss, the cause may be proceeded in, heard and determined, upon an authenticated copy of what is lost, or proof of the contents thereof; or if the cause be in an appellate court, upon a new record made up from the records and papers of the court below, and certified by the proper officer; or, in case the record and papers, or any part thereof be lost or destroyed, the court below may, upon application of either party, upon reasonable notice to the opposite party, supply such record or part thereof from the best evidence before it, either documentary or parol, which may be used in the court of appeals for the same purposes that the original might be. The court may, however, at the instance of either party, or in its discretion, require new pleadings to be made up in whole or in part; and the plaintiff, instead of proceeding as hereinbefore provided for, may commence and prosecute a new suit for the same matter; and such new suit may, if the former suit was in due time, be brought within one year after such loss notwithstanding the expiration of the time within which suit must otherwise have been brought. If a cause has

If original papers, etc., in cause in appellate court be lost, how cause docketed and proceeded with.

New record in appellate court, when and how made up, etc.

Court may, however, cause new pleadings to be made up, etc., or plaintiff may commence new suit.

Within what time such new suit to be brought.

If cause decided and original papers lost, when and how said cause re-docketed and lost papers supplied.

Effect of papers so supplied.

When book or paper deemed lost.

Compensation of clerk for services under 12th section. Fee for recording anew will, deed, etc.

For replacing original papers, on record in appellate court, etc. Costs and expenses, how paid, etc.

Contents of lost records, etc.; how proved.

Peti tion to be filed; what to state.

Notice in such case.

How served.

If person affected be under disability, guardian *ad litem* appointed.

Order of court referring petition to commissioners. Duty and report of such commissioners.

been decided and the original papers therein have been lost, the court by which the case was decided, on affidavit of such loss, by some person interested therein and who was a party in said suit, may re-docket said cause, and upon motion of said affiant, and after reasonable notice to all parties interested in said cause, shall supply such lost papers or parts thereof by authenticated copies of the same or proof of the contents thereof, and the papers thus supplied shall have the same effect as the papers for which they are substituted would have had.

15. Where any book or paper is obliterated, defaced or injured so as to be in whole or in part illegible, or is destroyed or carried away and concealed, or is in the possession or control of armed rebels or a public enemy, it shall be deemed lost for the purposes of this chapter.

16. For any services of the clerk under the twelfth section of this chapter, unless rendered necessary by his own neglect, the court shall allow him a reasonable compensation, which shall be chargeable to the county. For recording anew any will, deed or other paper, the clerk shall have the same fees as for the original record, to be paid by the party on whose application such new record is made. For replacing, as aforesaid, the original papers in any cause, or the record in an appellate court, or supplying papers lost in cases decided, the costs and expenses shall be ascertained under the direction of the court, and adjudged against any party or parties in the cause, or divided among them as the court may, in its discretion, determine to be equitable; and so, also, when new pleadings are ordered.

17. Any person desirous of proving the contents of any paper filed in a clerk's office, or anything which was of record in any book therein, may, if such paper or book be lost within the meaning of this chapter, present to the circuit court of the county where such paper or book was filed or kept a petition specifying with reasonable certainty the nature of the paper or record, the contents of which he desires to prove, and what persons may be affected by such proof. Reasonable notice of the time and place of proceeding on such petition shall be given to the parties interested. Such notice may be served as prescribed in the first and second sections of chapter one hundred and twenty-one of this code. If any person who may be affected by the proof be an infant or insane person, or if it affect a married woman in a case not relating to her separate property, a guardian *ad litem* shall be appointed to attend to the case on his or her behalf. Whereupon such court shall make an order referring said petition to one of the commissioners of the court, who shall take proof of the contents of such record or paper, and make report of

same with the evidence taken by him to court. Said report shall be filed in the office of the clerk of said court at least ten days before it shall be acted upon by the court, when the court may confirm or recommit the same, or make any order in relation thereto which may be necessary and proper. If said report is confirmed by the court it shall be recorded in the book where the original paper was or should have been recorded, or if it was a paper on file in the office, shall be filed away where said paper was or should have been filed, and such record or paper when so made shall in all cases be *prima facie* evidence of what is stated therein, and after ten years from the confirmation of such report shall be conclusive evidence of what is stated therein.

When and where report filed.

Action of court thereon.

If report confirmed, to be recorded; where, etc.

Effect of such record, etc., in evidence.

18. Such court may, however, without notice or the appointment of a guardian *ad litem*, proceed on such petition in accordance with the preceding section and with like effect. *Provided*, That any person whose interests may be affected by the proceedings under this section, or who shall have been proceeded against by publication, or the personal representative of any such, shall have the same rights, as to a rehearing, that may be allowed by law to non-resident defendants in actions at law or suits in equity.

Court may, without notice or appointment of such guardian, proceed on petition, etc. Re-hearing by person proceeded against by publication.

Records and Office Books Out of this State.

19. The records and judicial proceedings of any court of the United States, or of any state, territory or district, attested by the clerk thereof, with the seal of the court annexed, if there be a seal, and certified by the judge, chief justice or presiding magistrate of such court, to be attested in due form, shall have such faith and credit given to them in every court within this state, as they have in the courts of the state, territory or district whence the said records came.

Records of a court of United States, other states, etc.; how authenticated; their effect.

20. All records and exemplifications of office books kept in any public office of the United States or of a state, not appertaining to a court, shall be evidence in any court or office in this state if attested by the keeper of the said records or books and the seal of his office annexed, if there be a seal, and certified by the presiding justice of the county or district in which such office is, or by the judge of a court of record in such county or district, or by the governor, the secretary of state, the chancellor, or the keeper of the great seal of the state, to be attested in due form, and by the proper officer. Such certificate, if given by the presiding justice of a court, shall be authenticated by the clerk or protobonary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified, or if the said certificate be given by the governor, the sec-

Records and exemplifications of office books in a public office of United States, or of a state, not pertaining to a court; how authenticated; effect thereof as evidence.

retary of stato, the chancellor, or keeper of the great seal, it shall be under the great seal of the state in which said certificate is made.

Foreign Deeds, Powers of Attorney, Policies of Insurance, etc.

Foreign deeds, etc.; how authenticated; to be evidence in the courts of this state.

21. Every deed or power of attorney executed out of this state, the acknowledgement or proof of which is certified so that it might be admitted to record under chapter seventy-three of this code, and every policy of insurance, charter party, copy from a record in any foreign court, or from a register of births and marriages in any place out of the United States, if it be attested by a notary public, under his seal of office, that such policy, charter party, record or register was made, entered or kept in due form, according to the law of the place in which it was made, entered or kept, and that such copy is true, and the official character of such notary be certified to by any court of record, or the mayor or other chief magistrate of any county, city, town or borough, or under the great seal of the state, kingdom, province, island or colony in which such notary may reside, shall be evidence in any court in this state.

Competency of Witnesses.

Competency of husband or wife to testify in civil actions, suits, etc., on behalf of any party to such action, etc. Confidential communications between husband and wife excluded.

22. In any civil action, suit, or proceeding, the husband or wife of any party thereto, or of any person in whose behalf any such action, suit or proceeding is brought, prosecuted, opposed or defended, shall be competent to give evidence the same as any other witness on behalf of any party to such action, suit or proceeding, except that no husband or wife shall disclose any confidential communication made by one to the other during their marriage.

Person interested, or a party to a suit competent as witness.

Exception as to competency of such persons.

23. No person offered as a witness in any civil action, suit or proceeding shall be excluded by reason of his interest in the event of the action, suit or proceeding, or because he is a party thereto, except as follows: No party to any action, suit or proceeding, nor any person interested in the event thereof, nor any person from, through or under whom any such party or interested person derives any interest or title by assignment or otherwise, shall be examined as a witness in regard to any personal transaction or communication between such witness and a person at the time of such examination, deceased, insane or lunatic; against the executor, administrator, heir-at-law, next of kin, assignee, legatee, devisee or survivor of such deceased person or the assignee; or committee of such insane person or lunatic. But this prohibition shall not extend to any transaction or communication as to which any such executor, administrator, heir-at-law, next of kin, assignee, legatee, devisee, survivor or committee shall be examined on his own behalf, nor as to which the testi-

To what transactions, etc. this prohibition not to extend.

mony of such deceased person or lunatic, shall be given in evidence.

24. No person shall be incompetent as a witness on account of race or color.

No person incompetent on account of race or color.

How Witnesses Compelled to Testify.

25. A summons may be issued, directed as prescribed in the second section of chapter one hundred and twenty-four, commanding the officer to summon any person to attend on the day and at the place that such attendance is desired, to give evidence before a court, grand jury, arbitrators, umpire, justice, surveyor, notary public, or any commissioner appointed by a court. The summons may be issued, if the attendance be desired at a court, by the clerk thereof; if before a grand jury, by the prosecuting attorney or the clerk of the court, at the instance of the prosecuting attorney; and in other cases, by any person before whom, or the clerk of the circuit court of a county in which the attendance is desired; or, if it be desired before a justice, by such or any other justice. It shall express on whose behalf, and in what case, or about what matter, the witness is to attend. This section shall be deemed to authorize a summons to compel attendance before commissioners or other persons appointed by authority of another state, but only in case they be citizens of this state, and the summons requires the attendance of a witness at a place not out of his county.

Summons for witness; how issued and directed.

What summons to express.

Witness may be compelled to attend before commissioner appointed by another state; when.

26. When it appears by affidavit or otherwise that a writing or document in the possession of any person not a party to the matter in controversy is material and proper to be produced before the court, or any person appointed by it or acting under its process or authority, or any such person as is named in the preceding section, such court, judge or president thereof in vacation, may order the clerk of the said court to issue a subpoena *duces tecum* to compel such production at a time and place to be specified in the order.

How subpoena *duces tecum* is issued; when issued.

27. If any person, after being served with such summons, fail to attend to give evidence or to produce such writing or document according to the summons, the court whose clerk issued the summons, or if it was not issued by the clerk of a court, the circuit court of the county in which the attendance is desired, or a judge of such court in vacation, on a special report by the person or persons before whom there was a failure to attend, on proof that there was paid to him (if it was required), a reasonable time before he was required to attend, the allowance for one day's attendance, and his mileage and tolls, shall, after service of a notice to, or rule upon, him to show cause against it (if no sufficient cause be shown against it), fine

Witness failing to attend or produce writing may be fined and proceeded against by attachment; when.

Liability for damages to party injured.

him not exceeding twenty dollars, to the use of the party for whom he was summoned, and may proceed by attachment to compel him to attend and give his evidence at such time and place as it may deem fit. The witness shall, moreover, be liable to any party injured for damages.

Witness attending and refusing to testify or produce writing may be committed to jail.

28. If a person, after being served with such summons, shall attend and yet refuse to be sworn, or to give evidence, or to produce any writing or document required, he may by order of the court, whose clerk issued said summons, or of the person before whom he was summoned to attend, be committed to jail, there to remain until he shall, in custody of the jailer, give such evidence, or produce such writing or document.

Who may administer oaths to witnesses.

29. Any person before whom a witness is to be examined may administer an oath to such witness.

Interpreters.

Of interpreters.

30. Interpreters may be sworn truly to interpret, when necessary.

Of Affidavits and Depositions.

Who may administer an oath or take an affidavit.

31. In any case in which an oath might be administered by, or an affidavit made before, a justice, the same may be done by or before a county commissioner, notary public, or a commissioner appointed by the governor, or by a court or the clerk thereof; or in case of a survey directed by a court in a case therein pending, by or before the surveyor directed to execute said order of survey. An affidavit may also be made before any officer of another state or country authorized by its laws to administer an oath, and shall be deemed duly authenticated if it be subscribed by such officer, and there be annexed to it a certificate of the clerk or other officer of a court of record of such state or country, under an official seal, verifying the genuineness of the signature of the first mentioned officer, and his authority to administer an oath.

Before whom affidavit made in another state, etc.; how authenticated.

What affidavit sufficient to prove non-residence of witness. How publication in newspaper proved.

32. In any suit an affidavit that the witness or party resides out of this state, or is out of it, shall be *prima facie* evidence of the fact, although such affidavit be made without previous notice. Where anything is required by any statute to be published in a newspaper, the certificate of the editor or publisher, or affidavit of any other person, shall be admitted as evidence of what is stated therein as to the publication.

Deposition, in or out of state, may be taken without a commission.

33. In any pending case the deposition of a witness, whether a party to the suit or not, may, without any commission, be taken in or out of this state by a justice or a notary public, or by a commissioner in chancery, or before any officer authorized to take depositions in the

county or state where they may be taken, and if certified under his hand, may be received without proof of the signature of such certificate. How certified.

34. On affidavit that a witness resides out of this state, or is out of it in the service thereof, or of the United States, his deposition may be taken by or before any commissioner appointed by the governor of this state, or any justice, notary public or other officer authorized to take depositions in the state wherein the witness may be, or if the deposition is to be taken in a foreign country, by or before such commissioner or commissioners as may be agreed upon by the parties or appointed by the court, or if there be none such, by or before any American minister, plenipotentiary, *charge d' affaires*, consul general, consul, vice consul, consular agent, vice deputy consular agent, commercial agent or vice commercial agent, appointed by the government of the United States, or by or before the mayor or other chief magistrate of any city, town or corporation in such country, or any notary public therein. Any person or persons taking such depositions may administer an oath to the witness and take and certify the deposition with his official seal annexed, and if he have none, the genuineness of his signature shall be authenticated by some officer of the same state or country, under his official seal. On what affidavit deposition taken.
Before whom deposition taken in another state.
Before whom taken in a foreign country.
How such deposition authenticated.

35. Reasonable notice shall be given to the adverse party of the time and place of taking every deposition; and in a suit in equity a deposition may be read if returned before the hearing of the cause, although after an interlocutory decree, if it be as to a matter not thereby adjudged, and be returned before a final decree. Notice given of taking deposition.
When deposition in equity cause may be read.

36. A deposition in a case at law taken on such notice under the three preceding sections, may be read in such case, if when it is offered, the witness be dead, or out of this state, or one of its judges, or in any public office or service the duties of which prevent his attending the court, or be unable to attend it from sickness or other infirmity, or be out of the county in which the case is pending. But when the only ground of reading a deposition is that the witness is out of the county, on motion to the court, before the commencement of the trial it may, for good cause shown, require such witness to attend in person. When deposition taken in a case at law may be read.
When court may require attendance of witness.

37. When a deposition has been filed, if not read on the trial by the party taking it, it may be read by the other party. When deposition may be read by opposite party.

38. In any case wherein there has been a judgment, decree or order from or to which an appeal, writ of error or *supersedeas* has been or might be allowed, a deposition may be taken for any party to such case, or for or against his How deposition may be taken after decision of a cause in which an ap-

per or *superse-* or her husband or wife, personal representatives, heirs or
deas lies. devisees in like manner and by such persons as is before
 Such deposition prescribed for pending cases; and it may be read in any
 may be read on future trial; future trial that may be directed, if the same could proper-
 when. ly be read, had there been no such judgment, decree or
 order.

How Testimony May be Perpetuated.

Perpetuation of
 testimony;
 petition for
 may be filed,
 where; proceed-
 ings thereon.

39. A person desirous of perpetuating the testimony of witnesses as to a matter, whether a suit be pending in relation thereto or not, may file with a commissioner in chancery of a court wherein, if there were a bill to perpetuate the testimony, such bill might be filed, a petition stating such matter, and what persons may be affected by the testimony. Whereupon the commissioner shall appoint for proceeding on the petition a time and place, whereof reasonable notice shall be given to the persons who may be so affected. If any of them be an infant or insane person, the commissioner shall appoint a guardian *ad litem* to attend on his behalf, who shall be a practicing attorney in this state. At such time and place the commissioner shall take in writing the evidence of any witnesses adduced in respect to said matter by the petitioner, or by the person so affected. He may adjourn from time to time, and shall return a report of his proceedings, with the testimony taken by him, to the clerk's office of the court by which he was appointed, and such testimony shall have the same effect as if it had been taken on a bill to perpetuate testimony. Such court may make such order as to the costs as may seem to it right.

Effect of testi-
 mony so
 perpetuated.
 Costs.

Allowance to Witnesses for Attendance.

Per diem,
 mileage, etc., of
 witnesses.

40. A person attending any court or other tribunal, under a summons or recognizance as a witness, shall receive one dollar for each day's attendance and five cents per mile for each mile necessarily traveled to the place of attendance, and the same for returning, besides the tolls at the bridges and ferries which he crosses or turnpike gates he may pass. On his oath an entry of the sum he is entitled to, and for what, and by what party it is to be paid, shall be made; when the attendance is before either house or a committee of the legislature by the clerk of such house or the chairman of such committee, and in other cases by the clerk of the court or other tribunal before which, or by the person before whom, the witness attended. A witness summoned or recognized to attend in several cases may have the entry made against any one of the parties by whom he is summoned, or for whom he is sworn as a witness, but no witness shall be allowed for his attendance in more than one case at the same time. But no compensation shall be allowed to a witness before a grand jury.

How and when
 allowance made.

Against whom
 entry of allow-
 ance made.
 Only allowed
 pay in one case,
 unless, etc.
 No compensa-
 tion to witnesses
 before grand
 jury.

This section shall not apply to witnesses before justices of the peace.

41. The sum to which a witness is entitled shall be paid out of the treasury in any case of attendance before either house or a committee of the legislature, and in any other case in which the attendance is for the state except where it is otherwise specially provided. In all other cases it shall be paid by the party for whom the summons issued. The payment shall be on a certificate of the person required by the preceding section to make the entry. The certificate shall express by letters, and not by figures the separate amounts to which the witness is entitled for his attendance, traveling, tolls and ferriages which he may have to pay, and the aggregate thereof. No clerk or other person authorized to make such entry, or give such certificate shall become interested by purchase in any claim payable out of the public treasury, which by law he is authorized to certify. And it shall be the duty of such clerk, as soon as possible after the adjournment of any court, to make out a list of all entries made on behalf of witnesses attending for the state, whose fees are payable out of the treasury, and certify such list to the auditor. Any dispute (before or after issuing the certificate) between the witness and the party against whom his claim is made, as to its justice or amount, may, when the case is in a court or before a justice, be determined by such court or justice.

Section not applicable to witnesses before justice.

When witness paid out of state treasury.

By whom paid in other cases.

On what certificate Payment made, What certificate to express, and how.

Clerk, etc., not to purchase claims.

When clerk to certify list of witness claims to auditor.

Dispute as to claim; by whom determined.

42. The court may restrict the taxation in the costs for witnesses to so many as may be deemed just. No entry for a witness shall be made against a party recovering costs after execution has issued for such party; and in no case shall there be an entry of a witness for attendance at a term after sixty days from the end of such term.

Court may restrict taxation of costs for witnesses. When no entry to be made for attendance of witness.

Production of Documents.

43. In any case at law, upon a party making affidavit that a particular book of accounts, or other writing or paper, is important for him to have in the trial of his cause, he may procure from the clerk of the court in which the action is pending a subpoena *duces tecum* requiring any party to the action to appear before the court on a day named therein, and bring with him and produce before such court such book of accounts, or other writing or paper, as is specified in such process, in order that the same may be used as evidence on the trial of the action; and unless the person upon whom such process is served shall, at the time specified therein, produce what is so required, or show to the satisfaction of the court that he has not under his control such book, writing or paper, or unless, from an inspection or otherwise, the court is of opinion that the character of the book, writing or paper is such as should

Production of documents by party to suit; when and how compelled.

Court may set aside plea, or dismiss suit for failure to produce, documents, etc.

not be used as evidence on the trial of the action, the court may attach him and compel him to produce the same. It may also, if it see fit, set aside a plea of such person and give judgment against him by default, if he be a defendant, or, if he be a plaintiff, order his suit to be dismissed, with costs, or if he be claiming a debt before such court or commissioner, disallow such claims.

Effect of Party's Absence for Seven Years.

When death of party absent for seven years to be presumed.

44. If any person, who shall have resided in this state, go from and do not return to the state for seven years successively, he shall be presumed to be dead, in any case wherein his death shall come in question, unless proof be made that he was alive within that time.

What done if party afterwards be found living.

45. If the person so presumed to be dead be found to have been living, any person injured by such presumption shall be restored to the rights of which he shall have been deprived by reason of such presumption.

Excluding Evidence for Want of Particulars of Claim or Defense.

Evidence; when to be excluded for want of particulars of claim or defense

46. In any action or motion, the court may order a statement to be filed of the particulars of the claim, or of the ground of defense; and if a party fail to comply with such order, may, when the case is tried or heard exclude evidence of any matter not described in the notice, declaration, or other pleading of such party so plainly as to give the adverse party notice of its character.

Evidence in Mitigation of Damages.

Mitigation of damages; what may be proved in, etc.

47. In any action for defamation the defendant may justify by alleging and proving that the words spoken or written were true, and after notice in writing of his intention to do so (given to the plaintiff at the time of, or for, pleading to such action) may give in evidence in mitigation of damages, that he made or offered an apology to the plaintiff for such defamation before the commencement of the action, or as soon afterwards as he had an opportunity of doing so, in case action shall have been commenced before there was an opportunity of making or offering such apology.

Acts Repealed.

Acts repealed.

2. All acts and parts of acts coming within the purview of this act and inconsistent therewith, are hereby repealed.

[Approved March 30, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLXI.

AN ACT amending and re-enacting sections eight, thirty-seven, sixty-seven, eighty-nine, ninety-four and ninety-five of chapter twenty-nine of the code of West Virginia, as amended and re-enacted by chapter twelve of the acts of one thousand eight hundred and eighty-one.

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That sections eight, thirty-seven, sixty-seven, eighty-nine, ninety-four and ninety-five of chapter twenty-nine of the code of West Virginia be, and the same are hereby, amended and re-enacted so as to read as follows :

Code amended; certain sections of chapter 29 of acts of 1881.

By Whom Land Books to be Made Out; Corrections Therein.

8. The land books for every county shall hereafter be made out complete by the clerk of the county court of such county. In making said land books in each year he shall be governed, as far as is proper, by the copy of the land books last made out in his county used by the assessor or assessors therein in making his or their assessments for the year, and the entries made therein by him or them, and returned to him as required by this chapter. But he shall correct errors and mistakes which he may discover in any such land book as to the names of persons properly chargeable with taxes on any tract or lot of land entered therein, and enter and charge the same with taxes thereon to the person or persons properly chargeable therewith, whether such correction be rendered necessary by the conveyance of such tract or lot by the person last charged with taxes thereon or otherwise. He shall also correct all errors and mistakes he may find in such land books as to the distance and bearing of any tract of land from the court house or in the local description thereof, and all clerical errors of every sort which he may find therein. Mistakes, errors and improper entries in the land books after they are made out, corrected and certified as provided in this chapter, shall be corrected in the manner provided in sections ninety-four and ninety-five of this chapter. For making out the land books as required by this chapter the clerk of the county court shall receive a reasonable compensation, to be fixed by the county court, and paid out of the county treasury.

Clerk of county court to make out land-books; how governed.

Corrections of errors, etc., therein; how.

Compensation of clerk.

37. In the table of the tracts of land the clerk shall enter each tract separately, and shall set forth, in as many separate columns as may be necessary, the name of the person who, by himself or his tenant, has the freehold in his possession; the nature of his estate, whether in fee or

How tracts of land entered in table, and what to set forth.

for life; the number of acres as near as may be in the tract; the name of the tract, if it has a name; a description of it, as far as practicable, with reference to the water-courses, mountains or other places on or near which it lies; the distance and bearing, as near as may be, from the court house; the value of the land per acre, including buildings; the value of the whole tract and buildings; the sum included in the value on account of buildings; the amount of taxes assessed on each tract for state, state school, county, free school, building and other district purposes, in separate columns, at the rate assessed for each of such purposes; and from whom, when and how the owner derived the land, if known, with a note and explanation of any other alteration made, showing why and upon what authority it was made.

Taxation of Railroad Corporations, etc.

Railroad corporations; taxation of.

Return to be made to auditor; by whom and when.

Detailed particulars to be included in such returns, and for what time.

Whole number miles of railroad within state.

Whole number of miles of road within, and without, state.

Further detailed particulars to be given in such return by officer of road.

67. The president, vice president, secretary or principal accounting officer of any corporation or company owning or operating a railroad or railway, wholly or in part within this state, for the transportation of freight or passengers, or both, for compensation, shall make a return in writing to the auditor on or before the first day of August, in the year one thousand eight hundred and eighty-two, and on or before the first day of February in each year thereafter, which shall be signed and sworn to by one of said officers, showing in detail the following particulars for the year ending on the thirty-first day of December next preceding, viz:

First. The whole number of miles of railroad owned, operated or leased by such corporation or company within this state.

Second. If such road so owned, operated or leased by such corporation or company be partly within and partly without this state, the whole number of miles thereof within this state and the whole number of miles without the same, including its branches in and out of the state.

Third. Its railroad track in each county in this state through which it runs; giving the whole number of miles of road in the county, including the track and its branches, and side and second tracks, switches and turnouts therein; the number of miles of road, including same, in each magisterial district, outside of an independent school district and an incorporated city, town or village, and the number of miles of road, including same, in each of such independent school districts and incorporated cities, towns and villages; and the fair cash value per mile of such railroad, including such main track, branches, side and second tracks, switches and turnouts, in each of such districts, independent school districts and incorporated cities, towns and villages.

Fourth. All its rolling stock; giving a detailed statement of the number of cars, including passenger, mail, express, baggage, freight and other cars of every description, and the fair cash value of every such car, used wholly or in part in this state, distinguishing between such as are used wholly in this state and such as are used partly within and partly without the state; the whole number of engines, including their appendages used wholly or in part within this state, distinguishing between such as are used wholly within this state, and such as are used partly within and partly without the same, and the fair cash value of such as are used wholly within the state, and such as are used partly within and partly without the state; and the proportional value of such cars and engines used by it partly within and partly without the state, according to the time used and the number of miles run by such cars and engines in and out of the state.

Further detailed particulars to be given in such return by officer of road.

Fifth. Its depots, station-houses, freight-houses, machine and repair shops and machinery therein, and all other buildings, structures, and appendages connected thereto or used therewith, together with all other real estate, other than its railroad track, owned or used by it in connection with its railroad, and not otherwise taxed, including telegraph lines owned or used by it, and the fair cash value of each and every such building and structure, and of all such machinery and appendages, and of each parcel of such real estate, including such telegraph line.

Further detailed particulars to be given in such return by officer of road.

Sixth. Its personal property of every kind whatsoever, including money, credits and investments, wholly held or used in this state, showing the amount and value thereof in each county, magisterial district, independent school district and incorporated city, town and village in such county.

Further detailed particulars to be given in such return by officer of road.

Seventh. Its actual capital stock and the number, amount and value in cash of the shares thereof. The amount of its capital stock actually paid in. The total amount of its bonded indebtedness and of its indebtedness not bonded; its gross earnings for the year, including its earnings from its telegraph lines which shall be stated separately on the whole length of its road, including the branches thereof in and out of the state, and also such earnings within this state on way freight and passengers. And the proportion of such earnings in this state on through freight and passengers carried over its lines in and out of the state to be ascertained by the number of miles the same were carried by it within and the number of miles without the state.

Further detailed particulars to be given in such return by officer.

Eighth. Its gross expenditures for the year, giving a detailed statement thereof under each class or head of expenditures.

Further detailed particulars

If any such corporation or company fail to make such return to the auditor as herein required, it shall be guilty

Fine on company for failure

to make such return.

Prosecutions for failure; in what county. Auditor to lay such return before board of public works. If approved, what then.

If such return be not approved or company fail to make such return, how board to proceed to obtain the facts, etc., required.

Expenses of such proceeding; how paid. Refusing to appear or testify before board or to produce any paper required, deemed a misdemeanor; penalty.

Prosecutions against person so refusing, where. Duty of board to assess and fix fair cash value of property of company; when and how.

What board to consider in ascertaining such value.

Decision of board final, unless appealed from; when appeal must be taken.

of a misdemeanor and fined one thousand dollars for each month such failure continues. Prosecutions for such failure shall be in the county wherein the seat of government is. If such return be made to the auditor he shall lay the same, as soon as practicable thereafter, before the board of public works, and if such return be satisfactory to the board, it shall approve the same, and by an order entered upon its records, direct the auditor to assess the property of such corporation or company with taxes, and he shall thereupon assess the same as hereinafter provided. But if such return be not satisfactory to the board, or if any such company fail to make such return as herein required, said board of public works shall proceed in such manner as to it may seem best to obtain the facts and information required to be furnished by such return, and to this end the said board may send for persons and papers, and may compel the attendance of any person and the production of any paper necessary, in the opinion of said board to enable it to obtain the information desired for the proper discharge of its duties under this section. Any expenses necessarily incurred by said board in procuring such information shall be paid by the governor out of the contingent fund. If any person shall refuse to appear before said board when required by it to do so, as aforesaid, or shall refuse to testify before said board in regard to any matter as to which said board may require him to testify, or if any person shall refuse to produce any paper in his possession or under his control, which said board may require him to produce, every such person shall be guilty of a misdemeanor, and fined five hundred dollars, and shall be imprisoned not less than one nor more than six months at the discretion of the court. Prosecutions against any such person shall also be in the county wherein the seat of government is. As soon as possible, after the board of public works shall have procured the necessary information to enable it to do so, said board shall proceed to assess and fix the fair cash value of all the property of said corporation or company hereinbefore required to be returned by it to the auditor, so far as the said board has been able to ascertain the same, in each magisterial district, independent school district, and incorporated city, town or village in each county through which the railroad of any such corporation or company runs. In ascertaining such value the board shall consider any return which may have been previously made to the auditor by such corporation or company, and all the evidence and information it has been able to procure by the means aforesaid, and all such as may be offered by such corporation or company. And the decision of said board thereon made shall be final unless the same be appealed from within thirty days after such decision comes to the knowledge of the president, vice president, secretary or principal accounting officer, or the attorney of such cor-

poration or company transacting business for it in the county wherein the seat of government is in the manner following: Any corporation or company claiming to be aggrieved by any such decision may, within the time aforesaid, appeal therefrom as to the assessment and valuation made within each county through which its road runs to the circuit court of such county. And such appeal shall have precedence over all other cases on the docket of such court, and be tried in the shortest time possible after such appeal is docketed. The court shall hear all such legal evidence on such appeal as may be offered by the state, county, district or municipal corporation, and by the corporation or company taking such appeal. And if the court be satisfied that the value so fixed is correct, it shall confirm the same; but if it be satisfied that the value so fixed by said board is either too high or too low, the court shall correct the valuation so made and ascertain and fix the true value of such property, according to the facts proved, and certify such value to the auditor. It shall be the duty of the clerk of the county court of every county through which any railroad runs, within thirty days after the county and district levies are laid by such court, to certify to the auditor the amount levied upon each one hundred dollars value of the property in the county for county purposes, and on the value of the property in each magisterial district therein for district purposes. It shall also be the duty of the secretary of the board of education of every school district, and independent school district, through which the railroad runs in each county, within thirty days after the levy is laid therein for free school and building purposes, or either, to certify to the auditor the amount so levied on each one hundred dollars value of the property therein for each of said purposes; and it shall be the duty of the recorder, clerk or other recording officer of every municipal corporation through which such railroad runs, within the same time, after a levy is laid therein for any of the purposes authorized by law, to certify to the auditor the amount levied upon each one hundred dollars value of the property therein for each and every purpose. Any clerk of a county court, secretary of a board of education, or recorder, clerk or other recording officer of a municipal corporation who shall fail to perform any of the duties herein required of him shall be guilty of a misdemeanor, and fined not less than one hundred nor more than five hundred dollars. In case of the failure of any such officer to furnish to the auditor the certificate herein required, the auditor may obtain the rate of taxation for any of said purposes from the copies of the land books on file in his office, if the same be found in such book, and if not, in such other way or manner as he may deem necessary or proper for the purpose. As soon as possible after the value of the property of such corporation or company is fixed by

Company may appeal from decision of board as to assessment and valuation; how.

Such appeal to have precedence, etc.

What testimony court to hear.

Court to confirm or correct such valuation. Value to be certified to auditor.

Duty of clerk to certify to auditor amount of county and district levies laid by court; when.

Duty of secretaries of boards of education to certify to auditor amount levy laid for free school and building purposes; when.

Duty of recorder or clerk of municipal corporation to so certify as to amount levy laid for any of the purposes authorized by law.

Penalty on such officers for failure to so certify

If any such officer fail to furnish certificate required, how auditor may obtain rate of taxation.

Auditor to assess and charge property of company with taxes; when. How and for what purposes auditor to charge taxes against such company.

the board of public works, or by the circuit court on appeal as aforesaid, and after he shall have obtained the information herein provided for to enable him to do so, the auditor shall assess and charge the property of every such corporation or company with the taxes properly chargeable thereon, in a book to be kept by him for that purpose, as follows:

First. With the whole amount of taxes upon its property for state and state school purposes.

Second. With the whole amount of taxes on its property in each county through which its road runs for county purposes.

Third. With the whole amount of taxes on its property in each magisterial district through which its road runs, for road and other district purposes other than free school and building purposes.

Fourth. With the whole amount of taxes on its property in each school district and independent school district through which its road runs for free school and building purposes, and

Fifth. With the whole amount of taxes on its property in each municipal corporation through which its road runs, for each and all purposes for which a levy therein is made by the municipal authorities of such corporation.

Upon what ground, only, any injunction awarded to restrain collection of such taxes.

And no injunction shall be awarded by any court or judge to restrain the collection of the taxes, or any part of them so assessed, except upon the ground that the assessment thereof was in violation of the constitution of the United States, or of this state, or that the same were fraudulently assessed, or that there was a mistake made by the auditor in the amount of taxes properly chargeable on the property of said corporation or company; and in the latter case no such injunction shall be awarded unless application be first made to the auditor to correct the mistake claimed, and the auditor shall refuse to do so, which facts shall be stated in the bill. The auditor shall, as soon as possible after he completes the said assessments, make out and transmit, by mail or otherwise, a statement of all taxes and levies so charged to the president, vice-president, secretary or principal accounting officer of such corporation or company. And it shall be the duty of such corporation or company so assessed and charged, to pay the whole amount of such taxes and levies upon its property into the treasury of the state, by the twentieth day of January next after the assessment thereof, subject to a deduction of two and a half *per centum* upon the whole sum, if the same be paid on or before that day. If any such corporation or company fail to pay such taxes and levies by the said twentieth day of January, the auditor shall add *ten per centum* to the amount thereof, to pay the expenses of col-

Auditor to transmit statement of all taxes, etc., charged, to officer of company; when and how.

When company to pay whole amount of taxes, etc., into treasury. What deduction allowed for prompt payment.

If not so paid, auditor to add ten per centum to the amount.

lecting the same, and shall certify to the sheriff of each county the amount of such taxes and levies assessed within his county; and it shall be the duty of every such sheriff to collect and account for such taxes and levies in the same manner as other taxes and levies are collected and accounted for by him. And when the district and independent school district taxes and levies are collected by him, he shall account for and pay the same to the proper district. Neither the county court of any county, nor any tribunal acting in any county in lieu of a county court, or otherwise, nor any board of education, nor the municipal authorities of any incorporated city, town or village, shall have jurisdiction, power or authority, by compromise or otherwise, to remit or release any portion of the taxes or levies so assessed upon the property of any such corporation or company; and when such taxes or levies are certified to the sheriff of any county for collection, as aforesaid, it shall be his duty to collect the whole thereof, regardless of any order or direction of any such county court, tribunal, board of education or municipal authority to the contrary; and if he fail to do so, he and his securities in his official bond shall, unless he be restrained or prohibited from so doing by legal process from some court having jurisdiction to issue the same, be liable thereon for the amount of said taxes and levies he may so fail to collect, if he could have collected the same by the use of due diligence. Any member of a county court or tribunal acting in lieu thereof, or of a board of education, or of the council, or other tribunal of a municipal corporation, who shall vote to remit or release any part of the taxes so assessed on the property, of any such corporation or company, shall be guilty of a misdemeanor and fined five hundred dollars and shall be removed from his office by the court by which judgment for such fine is rendered, in addition to such fine. And when such taxes and levies due to a municipal corporation are collected by the sheriff, he shall pay the same to the proper collecting officer or treasurer of such municipal corporation, or otherwise as the council, or proper authority thereof may direct. And when such taxes and levies are paid into the treasury, as herein provided, the auditor shall account to the sheriff of each of the counties to which any sum so paid in for county levies belongs, for the amount due such county, and may arrange the same with such sheriff in his settlement for the state taxes in such a way as may be most convenient; and the sheriff shall account to the county court of his county for the amount so received by him in the same manner as for other county levies. *Provided*, That the taxes assessed for the last year of the term of office of a sheriff shall be paid to or settled with the sheriff who was in office at the time the assessment was made. The amount so paid in for each district and independent school district shall be added to the dis-

Auditor to certify amount of taxes, etc., to sheriff.
Duty of sheriff as to collecting and accounting for such taxes.
Duty of sheriff as to school taxes, etc., collected.
No tax to be remitted or compromised by any authority.

Sheriff to collect regardless of any authority to the contrary.

Liability of sheriff and his securities if he fail to collect, unless restrained by legal process, etc.

Penalty on member of county court, etc., or board of education, etc., voting to remit, etc., such taxes

To whom sheriff to pay taxes, due municipal corporations, when collected.

When taxes are paid into treasury, by company, auditor to account to sheriff for amt paid in for county levies.

Sheriff to account to county court for such taxes.

Proviso as to taxes assessed for last year of term of sheriff.

Taxes so paid in for school

purposes; how disposed of, etc.

Auditor to certify to county court and county levy chargeable to sheriff; when.

What auditor to certify county sup't schools.

Am't paid into treasury for municipal corporations; to whom paid.

Duty of auditor when paid. Failure of clerk, etc., to certify levies in time, not to invalidate, etc., assessment, but auditor shall make assessment, etc.

Right of state, etc., to enforce collection of taxes, etc., not affected or impaired.

Buildings and real estate of company; how assessed.

No railroad company exempt from taxation

Assessors; compensation of.

tributable share of the school fund payable to such district, and paid upon the requisition of the county superintendent of free schools, in like manner as other school moneys are paid. The auditor shall certify to the county court of every such county, on or before the first day of May in each year, the amount with which the sheriff thereof is chargeable on account of the levy upon the property of such company. He shall also certify to the county superintendent of free schools the amount of such levies due to each district and independent school district in his county for free school purposes. The amount so paid in for each municipal corporation shall, as soon as paid into the treasury be paid over to the treasurer of the municipal corporation to which such taxes are due, or to such other officer of the corporation as the council may designate, and the auditor shall report such payment to the council. But the failure of the clerk of any county court, or the secretary of any board of education, to certify to the auditor the levies or apportionment within the time herein prescribed, shall not invalidate or prevent the assessment required by this section, but the auditor shall make the assessment and proceed to collect or certify the same to the sheriff as soon as practicable, after he shall obtain the information necessary to make such assessment. The right of the state or of any county, or district, or municipal corporation to enforce, by suit or otherwise, the collection of taxes or levies, heretofore assessed or the right to which has heretofore accrued, shall not in any manner be affected or impaired by anything in this chapter contained. All buildings and real estate owned by such company and used or occupied for any purpose not immediately connected with its railroad, or which is rented or occupied for any purpose to or by individuals, shall be assessed with the taxes properly chargeable thereon the same as other property of the like kind belonging to an individual. No such company or corporation as is mentioned in this section shall be exempt from taxation, whether the same has been, or may be created, organized or operated by, under or by virtue of any general or special law or laws, or whether heretofore exempted from taxation or not, but this section shall apply to all such companies and corporations without distinction or exception.

89. Every assessor shall be entitled to receive, in consideration of his services, to be paid out of the county treasury, as other claims against the county are paid, such reasonable compensation as the county court shall determine, not less than two hundred nor more than three hundred and fifty dollars per annum, and in addition thereto he shall be allowed a commission of three per centum on the amount of state and state school taxes assessed by him on the personal property of his county or assessment dis-

trict; which allowance shall be in addition to the fees allowed in section eighty-seven of this chapter, and shall be in full for all services performed under the provisions of this chapter, including the extension of the levies for state, free school, county and district purposes. There may be allowed in Ohio county, to be paid out of the county treasury, to the assessors of such county such further sums respectively as to the board of commissioners of said county may seem just; and to each assessor in Kanawha county such sum, not exceeding six hundred dollars, as to the county court of said county may seem just. *Provided*, That the whole amount allowed to the assessor of the district in which the greater part of the city of Wheeling is situated, shall not exceed thirteen hundred dollars, and the whole amount allowed to the other assessor in such county shall not exceed six hundred dollars. The clerk of the county court shall be entitled to receive such reasonable compensation for services rendered under this chapter, other than for making out the land books, as the county court may allow, to be paid from the county treasury.

To be in addition to fees allowed in sec. 87; and in full for all services, etc.

Provisions as to assessors in Ohio and Kanawha counties.

Further provisions as to Ohio county.

Compensation of clerk of county court; how paid.

94. Any person claiming to be aggrieved by any entry in the land or personal property books of any county or by the assessment of a license tax in any county, may within one year after the verification of such book, and within six months after the assessment of such license tax, apply for relief to the county court of the county in which such books are made out, and, as to a license tax of the county in which such tax was assessed. But he shall, before any such application is heard, give reasonable notice to the prosecuting attorney of the county, whose duty it shall be to attend to the interest of the state, county and district in the matter. If it appear on the hearing of such application that the value, quantity, distance and bearing from the court house, or the local description of any tract of land entered in such land book is, by mistake or fraud incorrectly entered therein, or that any tract or lot of land entered therein is, by mistake or fraud, charged with a greater or less amount of taxes and levies than should have been charged thereon, or that any tract or lot of land is entered and charged therein to any person who is not by law chargeable with the taxes thereon, or that the person properly chargeable with the taxes on any tract or lot entered therein is not so charged, or that there is any mistake in the name of the person charged with taxes on any tract or lot of land entered therein, the court shall by an order entered of record correct any and every such error or mistake, and direct its clerk to enter the same properly in the next land book made out by him. If the application be to correct an assessment of a tract of land the value of which was fixed by the assessor under

Relief against taxes erroneously assessed, etc.

When application for such relief must be made.

Notice in such case. Duty of prosecuting attorney.

Duty of the court on the hearing of such application.

the provisions of either section ten or section twenty-two of this chapter, or to correct an assessment of the value of a building made by the assessor under the provisions of sections twenty-seven or twenty-nine of this chapter, and it shall appear to the court on the hearing of the application that the assessment complained of is either too high or too low, the court shall correct the same and fix and enter of record the true value of such tract, lot or building according to the facts proved, and the clerk of such court shall make the proper correction in the next land book made out by him. If the application be to correct an entry made in the land books of one thousand eight hundred and eighty-one as to the value of any tract or lot as re-assessed in one thousand eight hundred and seventy-five, and not corrected in that year or in the year one thousand eight hundred and seventy-six, and the court be satisfied on the hearing that the value thereof as so re-assessed is too high, the court shall proceed in such manner as to it may seem best, and which, in its opinion, will be least expensive, to ascertain the true value of all the tracts and lots in the vicinity of that complained of, or elsewhere in the magisterial district wherein the tract complained of is, and shall correct the assessment of such and so many of such tracts and lots, including the one complained of, so as to equalize the assessment of the whole thereof, and place each of such tracts and lots at its true value. But the court shall not in any such case so change the value of such tracts and lots as to reduce the aggregate value of the whole of the real estate in such magisterial district as the same appears on the said land books of one thousand eight hundred and eighty-one. *Provided*, That if the real estate of any person, or of any mining, manufacturing or oil company has, by reason of floods or the abandonment of the works and property of such company, been materially reduced since the said re-assessment made in one thousand eight hundred and seventy-five, or since the correction thereof in that year, or in the year one thousand eight hundred and seventy-six, if any such correction was made, the value thereof may be changed and the true value placed thereon by the county court without regard to the aggregate value of the real estate in the district wherein such tract or lot is situated. Every order of a county court correcting an assessment of a tract or lot of land, and reducing the value thereof so re-assessed in the year one thousand eight hundred and seventy-five, and entered in the land books of one thousand eight hundred and eighty-one, shall show that fact, and that the aggregate value of all the real estate in the magisterial district in which such tract or lot is situated is not reduced thereby, unless such value is reduced by reason of floods or of the abandonment of the works and property of a

Proviso when application is correct assessment on real estate of mining, manufacturing or oil companies reduced in value by reason of floods or abandonment; what court to do in such cases.

mining, manufacturing or oil company, as aforesaid, and if for that reason, such fact shall be stated in the order. If neither of such facts be stated in the order, the auditor shall not allow to the party, the value of whose lands are so reduced, any exoneration for any of the taxes charged thereon. If the court, upon an application to correct an assessment under any of the provisions of this chapter, refuse to make the correction asked for, the applicant may have the evidence taken thereon certified by the county court, and an appeal may be taken, as in other cases, from the order of refusal to the circuit court of the county, and such appeal, when allowed by the court or judge, shall, except as hereinbefore provided, have preference over all other cases pending in such court; and whenever any such assessment is corrected as aforesaid by the county court, or by the circuit court on appeal, the clerk of the county court shall, upon the delivery to him of a copy of the order of the court showing such correction, correct the land books accordingly, and charge up the taxes thereon according to such corrected assessment, and the value of such real estate as so corrected shall continue until the same is changed pursuant to law. But no taxes assessed and charged upon real estate, the value of which has been lessened by reason of floods or the abandonment of works and property of any such person or company as is hereinbefore mentioned prior to such change, shall be released or refunded to the owner thereof.

When auditor not to allow exoneration of taxes in such case. When and how appeal may be taken from order of refusal to correct assessment.

Such appeal to have preference, etc.

Duty of clerk when assessment is corrected.

Taxes paid on real estate lessened in value by floods, etc., not to be refunded.

95. Whenever the county court or the circuit court, on appeal, shall grant relief to any such applicant against the taxes, or any part of them, assessed against him on either the land or property book, or if a license tax, an order shall be made by such court exonerating such applicant from the payment of so much of such taxes as are erroneously charged against him, if the same have not been paid, and if paid, that the sum so erroneously charged be refunded to him.

When court grant relief on application to correct assessment, what order such court to make.

E. W. WILSON,
Speaker of House of Delegates.

A. E. SUMMERS,
President of Senate.

STATE OF WEST VIRGINIA, }
OFFICE OF SECRETARY OF STATE, }
WHEELING, April 3, 1882. }

I certify that the foregoing act, having been presented to the governor for his approval, and not having been returned by him to the house of the legislature in which it originated within the time proscribed by the constitution of the state, has become a law without his approval.

RANDOLPH STALNAKER, JR.,
Secretary of State.

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLXII.

AN ACT to amend and re-enact section one of chapter twenty-nine of the code of West Virginia, as amended and re-enacted by chapter twelve of the acts of one thousand eight hundred and eighty-one.

[Passed March 20, 1882.]

Be it enacted by the Legislature of West Virginia:

Code amended;
section 1 of
chapter 29 of,
as amended by
acts of 1881.

1. That section one of chapter twenty-nine of the code of West Virginia, as amended and re-enacted by chapter twelve of the acts of one thousand eight hundred and eighty-one, be amended and re-enacted so as to read as follows:

Assessment
districts; num-
ber of in each
county.

1. There shall be two assessment districts in each of the counties of Barbour, Berkeley, Cabell, Fayette, Greenbrier, Hampshire, Harrison, Jackson, Jefferson, Kanawha, Lewis, Lincoln, Mason, Marion, Marshall, Mineral, Monongalia, Monroe, Ohio, Preston, Randolph, Ritchie, Roane, Upshur, Wetzell, Wood and Wayne. Every other county shall constitute one assessment district, and the voters of each county shall hereafter elect one assessor for every district therein.

E. W. WILSON,
Speaker of House of Delegates.
A. E. SUMMERS,
President of Senate.

STATE OF WEST VIRGINIA, }
OFFICE OF SECRETARY OF STATE, }
April 5, 1882. }

I certify that the foregoing act, having been presented to the governor for his approval, and not having been returned by him to the house of the legislature in which it originated, within the time prescribed by the constitution of the state, has become a law without his approval.

RANDOLPH STALNAKER, JR.,
Secretary of State.

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CLXIII.

AN ACT amending and re-enacting chapter fifty-six of the acts of one thousand eight hundred and seventy-seven, entitled "an act extending the time in which distraint and sale may be made for taxes and fee bills."

[Passed March 18, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter fifty-six of the acts of one thousand eight hundred and seventy-seven, entitled "an act extending the time in which distraint and sale may be made for taxes and fee bills," be amended and re-enacted so as to read at follows :

Acts 1877 amended; chapter 56 of.

1. That the sheriff or collector of a former term, by himself or his deputies, or any constable of the county he or his personal representatives may select, shall have the power of distress and sale for the collection of taxes not returned delinquent, and fee bills due or payable in the year one thousand eight hundred and seventy-seven, or at any time since, notwithstanding the expiration of the term of office of such sheriff or collector, under the following restrictions, to-wit: Such power of distress shall be exercised within two years after this act takes effect. There shall be no lien, however, for such taxes and fee bills on the property levied on by virtue of this act, until from and after the levy is actually made; nor shall such lien have any priority over liens already accrued on the property levied on. This act shall not apply to any tax ticket or fee bill now barred by the five years statute of limitation. And upon distress or levy being made by virtue hereof, the debtor may give such bond as may now be given for the forthcoming of property upon which a *feri facias* or distress warrant has been levied, and the bond shall be returned to the clerk's office of the circuit court, and the proceedings thereon shall be the same as now provided by law in relation to bonds for the forthcoming of property levied upon by virtue of a distress warrant; and defense may be made to a suit or motion upon such bond that the amount levied for is not due in whole nor in part, or that the levy or distress is otherwise illegal; and the person making such distress shall in such cases be required to give security for costs.

Time extended in which distraint and sale may be made for taxes and fee bills.

For what years.

Within what time such distraint, etc., to be made. Levy must be actually made to create lien. No priority to such lien.

To what tax tickets, etc., act not to apply. Forthcoming bond in such case; where returned and proceedings thereon.

What defense may be made to suit or motion on such bond.

Security for costs.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CLXIV.

AN ACT making an appropriation for the purpose of paying the costs of establishing and maintaining a quarantine by the board of health of this state.

[Passed February 28, 1882.]

Be it enacted by the Legislature of West Virginia :

Quarantine by board of health; amt. appropriated for same.

1. That the sum of one thousand dollars be, and the same is hereby appropriated out of any money in the treasury not otherwise appropriated, for the purpose of paying the costs of establishing and maintaining quarantine by the board of health.

To be drawn from treasury upon order approved by governor

Proviso.

2. The said one thousand dollars, or so much thereof as may be necessary to pay the liabilities of said board of health and any expense they may incur in enforcing quarantine, shall be drawn from the treasury upon orders signed by the president and secretary of said board of health, and approved by the governor. *Provided*, That no money shall be drawn from the treasury under the provisions of this act, except to pay the expenses actually incurred up to and including the twenty-seventh day of February one thousand eight hundred and eighty-two.

[Approved March 7, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CLXV.

AN ACT to amend and re-enact section one of an act entitled "an act providing for the creation of the independent school district of Belleville, in the county of Wood," passed January fourteen, one thousand eight hundred and eighty-two.

[Passed February 27, 1882.]

Be it enacted by the Legislature of West Virginia :

Sec. 1 of acts of 1882 amended.

1. That section one of an act entitled "an act providing for the creation of the independent school district of Belleville, in the county of Wood," passed January fourteen, one thousand eight hundred and eighty-two, be amended and re-enacted so as to read as follows :

1. That the town of Belloville and adjacent territory designated and known as sub-district number two of Harris district, in the county of Wood, which is bounded as follows: Beginning at Well's upper line and running east with said line to the line of C. S. Humphrey; thence south with said line, to the line of Edward Humphrey; thence south with said line to the line of J. E. Mahow; thence south with said line to the line of H. S. Mitchell; thence south with said line to the line of H. N. Crooks' line; thence south with said line to the line of B. N. Crooks; thence south with said line to where it strikes the county road; thence with the county road to where it crosses Cove run; thence with Cove run to the Ohio river; thence north on the Ohio river to the place of beginning, and to include all the above mentioned farms, be and the same is hereby constituted an independent school district, and known as "the independent school district of Belloville," in Wood county.

Independent school district of Belleville created.

Boundaries of.

[Approved March 6, 1852.]

[NOTED BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CLXVI.

AN ACT to create an independent school district in the county of Jefferson.

[Passed March 9, 1852.]

Be it enacted by the Legislature of West Virginia:

1. That the village of Duffields and adjacent territory bounded as follows: Beginning on the Shephordstown road, at the dividing line between the Unger farm and the estate of Colonel H. Lucas, deceased; running west, following said dividing line between the farms; continuing west, taking the northern boundary of the farm of Miss Florence Lucas; thence south to the public road; following said road west, to where it intersects the ridge road; thence south with said road, embracing the property north of said road, belonging to Nelson F. Snyder; continuing south with said road, embracing the property of John W. Hendricks, situated on the north side of said road; continuing south, embracing the land of Jacob Snyder, on the north side of said road; continuing on the said road to the Baltimore and Ohio railroad to the crossing known as Moore's crossing; thence with the Warm Spring road,

Independent school district of Duffields, act to create; boundaries of.

crossing the Shenandoah Valley railroad at the west end of the property of John Hill; thence with the said road to the southern boundary of the land of Captain James W. Glenn; thence with the said line to the Shepherdstown and Charlestown road, crossing the said road, taking the southern boundary of the land of William B. Daniels; thence north, with the eastern boundary of the farm of J. Garland Hurst, striking the farm of Jacob M. Kopbart on its southwestern corner; thence east upon the southern boundary of said farm; thence north upon the eastern boundary of said farm, to the Baltimore and Ohio railroad, crossing said railroad running north, taking the dividing line between J. S. Molvin and R. V. Moler; continuing north upon said line to where it intersects the Old Furnace county road, continuing upon said road west, to the corner between George Brantner and Calvin Tabler; thence north with the eastern boundary of the Tabor land, continuing north with the eastern boundary of the Waugh farm, crossing the public road, continuing north on the same line with the eastern boundary of the land of Miss Sarah Lucas, continuing north on the eastern boundary of the land of James B. Lucas; thence west on the northern boundary of the said land to the beginning, embracing all the territory within said boundaries; and the same is hereby created an independent district in the name of "The independent school district of Duffields."

Board of education, of whom to consist, etc.

Board incorporated.

Powers and duties of board.

2. The board of education of said independent school district shall consist of a president and two commissioners, who shall be elected by the voters residing within the limits of said independent school district, and shall be a corporation by the name of "The Board of Education of the Independent School District of Duffields," and by that name may sue and be sued, plead and be impleaded, purchase and hold so much real estate and personal property as may be necessary for the purpose of this act, and they shall have all the powers, perform all the duties, and be subject to all the liabilities both of boards of education and trustees.

Election of board of education; when; their term of office.

3. The qualified voters of the said district shall meet at the usual place of voting in said district, on the second Tuesday in October, one thousand eight hundred and eighty-two for the purpose of electing a president and two commissioners, who shall serve for the term of eight months commencing on the first day of November next after their election, and on the third Tuesday of May, one thousand eight hundred and eighty-three, and every two years thereafter, the voters of said district shall meet at their regular place of voting, for the purpose of electing a president and two commissioners, who shall serve for the term of two years; the said president and commissioners shall constitute a board of education for the district, and shall exercise all

the powers and have all the rights now vested by law in the district boards of education and trustees. What powers to exercise.

4. Said board of education shall take the necessary steps for the establishment of a school, which shall be put in operation on the first Monday in November, one thousand eight hundred and eighty-two and be kept in operation not less than eight months, in each year thereafter. Board to establish a school, etc.

5. The independent school district of Duffields shall be subject to the general school law, except where it is herein otherwise provided. School law to govern district, except, etc.

6. Failure to perform any of the duties enjoined by this act, shall subject the offender to the same penalties as are now inflicted for similar offenses under the general school law. *Provided*, That this act shall not take effect until a majority of the legal voters of Shepherdstown and Charlestown districts shall accept its provisions at the election to be held on the second Tuesday in October, one thousand eight hundred and eighty-two. The ballots used at said election shall contain the words "For the independent school district," or "Against the independent school district." The voters residing within said proposed independent school district, shall vote at said election for a president and two commissioners to serve as a board of education, in the event of the adoption of the said independent school district; and the ballots used at said election by the voters residing within said proposed independent school district shall have written or printed thereon the names of the persons voted for for said offices. Except as herein otherwise provided the said election, and all elections provided for by this act, and hereafter held in said independent school district, shall be conducted and the result thereof ascertained and declared as provided by the general school law of this state. Penalties for failure to perform duties enjoined by act. When act to take effect.

Ballots used at election; what to contain.

President and two commissioners to be voted for.

How election conducted; result ascertained and declared.

7. The election provided for in the third section of this act, shall be conducted, and the result thereof ascertained and declared by the officers who conduct the general election to be held in pursuance of law on the same day; and the ballots used for the purposes of said general election shall be used for the purpose of this act, with the proper words aforesaid written or printed thereon. Election provided for in third section; how conducted, etc.

Ballots used at such election.

8. All moneys, whether belonging to the teachers' fund, or to the building fund of the districts out of which said independent school district is formed, and which may remain unexpended when this act takes effect, shall be divided between said two districts out of which said independent school district is formed, and the independent district herein provided for, in the proportion which the value of the taxable property in said three districts, respectively, bears to the aggregate value thereof, according Unexpended moneys belonging to districts out of which independent district is formed; how divided.

When such division to be made, and by whom.

to the latest assessment; and the boards of education of said three districts, shall effect such division within ninety days after this act takes effect.

E. W. WILSON,
Speaker of House of Delegates.

A. E. SUMMERS,
President of Senate.

STATE OF WEST VIRGINIA,
OFFICE OF SECRETARY OF STATE, }
-March 17, 1882. }

I certify that the foregoing act, having been presented to the governor for his approval, and not having been returned by him to the house of the legislature in which it originated within the time prescribed by the constitution of the state, has become a law without his approval.

RANDOLPH STAINAKER, JR.,
Secretary of State.

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLXVII.

AN ACT to establish an independent school district in the town of Guyandotte and vicinity, in the county of Cabell.

[Passed March 9, 1887.]

Be it enacted by the Legislature of West Virginia:

Independent school district of Guyandotte; act to establish.

Boundaries of such district.

1. That in the event of a majority of the votes cast at the election hereinafter provided for, being in favor thereof, the following described territory in the county of Cabell, including the town of Guyandotte, shall, after the result of such election is ascertained and declared, be an independent school district, and be known as "The independent school district of Guyandotte," to-wit: All of the town of Guyandotte and the territory adjacent thereto, designated and known as sub-district number one of Guyandotte district of Cabell county, as now organized, and bounded and described as follows: Beginning at the line between D. I. Smith's upper farm and Robert Stewart's, on the Ohio river; thence following said line to the Guyandotte river ridge to the corner of the Reese farm; thence down said ridge to the line between G. W. Everett's lower farm and the McGinnis farm; thence following to the Guyandotte river; thence with and down said river to its mouth; thence with and up the Ohio river to the place of beginning.

When and how provisions of

2. At the next election for municipal officers for the town of Guyandotte, to be held as is, or may be, prescrib-

ed by law, it shall be the duty of the board of education of said Guyandotte district of Cabell county, to submit to the voters of said Guyandotte district the question of the adoption or rejection of the provisions of this act; and all persons residing in said Guyandotte district and are entitled to vote at such election, and no other, shall be entitled to vote on such question. The election shall be by ballot, and those voting in favor of the establishment of such independent district shall have written or printed on their tickets the words "for independent district," and those voting against the establishment thereof shall have written or printed on their ballots the words, "against independent district." The election shall be superintended, conducted, and the result thereof ascertained and declared by the same officers superintending and conducting the election for municipal officers elected on that day, and all the provisions of the election laws of this state, so far as they are applicable, shall be in force and govern such election, unless herein otherwise provided. At the said election there shall also be elected by the voters residing in said territory, a board of education for said independent school district, consisting of a president and two commissioners, who shall be a corporation by the name of "The board of education of the independent school district of Guyandotte," and by that name may sue and be sued, plead and be impleaded, purchase and hold so much real estate and personal property that may be necessary for the purpose of this act, and without any transfer or conveyance they shall be deemed the owners of all real and personal property in the territory aforesaid, now held or owned for free school purposes by the board of education of Guyandotte district, and they shall have all the powers, perform all the duties, and be subject to all the liabilities both of boards of education and trustees. They shall hold their offices for the term of ten months, beginning on the first day of September next after their election, and until their successors are elected and qualified according to law, and in the year one thousand eight hundred and eighty-three, at the election for county superintendent of free schools and other school officers, and biennially thereafter, a new board shall be elected, who shall hold their offices for the term of two years, beginning on the first day of July next after their election and until their successors are elected and qualified according to law; but nothing herein contained shall be construed to prohibit the reelection and eligibility of any member of such board for two or more terms. Vacancies in the board shall be filled for the unexpired term by appointment by the board.

act submitted to voters of Guyandotte district.

Who to vote.

Ballots; what to contain.

How election conducted, result ascertained, etc.

Election of board of education.

To be a corporation.

Powers and duties of board.

Term of office, and when to begin.

When new board elected, and for what term.

Members may be re-elected.

Vacancies; how filled.

3. The independent school district of Guyandotte, here-
in authorized to be established, shall conform to and be govern.

governed by the general school law in this state, except where it is otherwise provided by this act.

4. All school moneys, whether belonging to the teachers' fund or building fund of Guyandotte district, which may be unexpended when the provisions of this act take effect, shall be divided between the said Guyandotte district and the independent school district of Guyandotte in proportion to the amount of taxable property in each of said districts. After the creation of the said independent school district of Guyandotte, the latest available assessment for state and county purposes shall be taken as the basis of such settlement and division. It shall be the duty of the boards of education of each of said districts, within ninety days after the provisions of this act are adopted, to make the financial settlement provided for in this section. The said board of education of the independent school district of Guyandotte shall have power to lay levies in the same manner as provided in the case of boards of education of districts; but if, in the judgment of said board, it will be advantageous to the interest of education in such district to do so, they may apply all moneys at their disposal, and which may be levied by them, either entirely to the employment and payment of teachers and the incidental expenses necessary to carrying on and conducting schools, including fuel and other things necessary to such schools, or entirely to building purposes, or partly to either, but there shall be a school taught in said district for at least six months in each year, and the board of education may provide for a longer period without resorting to a vote of the people residing therein. But the board of education of the independent school district hereby created shall not lay a greater levy than fifty cents on the one hundred dollars valuation of the property for school purposes, nor more than forty cents on the like valuation for building purposes in any one year.

Unexpended school moneys; how divided.

Basis of settlement and division.

When settlement to be made, and by whom.

Power of board to lay levies.

Application of school moneys; how.

For what time school to be taught.

Amount to be levied by board limited.

E. W. WILSON,
Speaker of House of Delegates.

A. E. SUMMERS,
President of Senate.

STATE OF WEST VIRGINIA,
OFFICE OF SECRETARY OF STATE, }
March 17, 1882.

I certify that the foregoing act, having been presented to the governor for his approval, and not having been returned by him to the house of the legislature in which it originated within the time prescribed by the constitution of the state, has become a law without his approval.

RANDOLPH STALNAKER, JR.,
Secretary of State.

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLXVIII.

AN ACT to authorize the common council of the town of Clarksburg, to divide the said town into five wards, and to provide for the election of mayor, recorder and councilmen.

[Passed March 9, 1882.]

Be it enacted by the Legislature of West Virginia :

1. The common council of the town of Clarksburg, in the county of Harrison, in this state shall, before the first day of October, 1882, divide and lay off the said town into five wards as nearly equal in population as practicable.

Town of Clarksburg; council of to lay off said town into wards.

2. The qualified voters in each ward shall elect, in the manner hereinafter provided, at the regular election on the first Thursday in January of each year, one councilman, a resident of the ward in which elected, to serve one year.

Election of councilmen; when and for what time.

3. No voter shall be permitted to vote in any other ward than the one in which he resides at the time of the election.

Voter must vote in his own ward

4. The common council of said town shall establish a voting place in each ward, at some point as nearly central as practicable.

Council to establish voting place in each ward.

5. It shall be the duty of the common council to appoint, at least three weeks before the election in each year, the necessary officers to conduct the election in each ward, and the election in each ward shall be conducted as now prescribed by law for holding municipal elections.

Duty of council as to appointment of officers to conduct election.

6. The mayor and recorder shall be elected by the qualified voters of the town, each voter voting in his own ward.

Mayor and recorder; election of.

7. No voter shall vote unless he has resided within the corporate limits of said town six months, and in the ward in which he offers his vote, ten days prior to the election.

Who may vote.

Acts Repealed.

8. All acts conflicting with this act are hereby repealed.

Acts repealed.

[Approved March 17, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-

thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER CLXIX.

AN ACT to release the forfeiture of certain lands in the county of Pocahontas, which have heretofore been taxed in the county of Randolph.

[Passed March 11, 1882.]

Preamble reciting the fixing of the boundary lines between Randolph and Pocahontas counties, and certain lands affected thereby

WHEREAS, It is represented to the legislature that by the fixing of the disputed lines between the counties of Randolph and Pocahontas on the twentieth day of August, one thousand eight hundred and eighty, by commissioners appointed for that purpose by the circuit courts of said counties, a large quantity of land is now embraced within the boundaries of Pocahontas county which has always been regarded as territory of Randolph county, and large portions of which has been improved and occupied and placed upon the assessor's books of Randolph county for taxation, and on which the taxes have been assessed and paid since the title to said lands was granted by the commonwealth of Virginia, and it further appearing that the authorities of the county of Pocahontas contend that as said lands were not assessed and taxed in that county they are forfeited to the state notwithstanding their entry upon the assessor's books, and the payment of taxes thereon in Randolph county; and that said authorities have actually taken steps to have said lands sold for the benefit of the school fund; and, inasmuch as all the taxes on the said lands have been paid in good faith, in the opinion of the legislature there should in common justice and equity be no forfeiture of said lands; and the legislature feeling it its duty to protect all the good citizens of the state, to quiet them in the possession of their property, and to encourage them in improving and developing the resources of the state, therefore,

Be it enacted by the Legislature of West Virginia:

Forfeitures of certain lands recited in preamble released.

1. That all forfeitures of said lands (if any accrued) for failure of owners to have the same entered in the assessor's books of said county of Pocahontas and charged with taxes that were entered on the assessor's books of the county of Randolph and the taxes charged thereon duly paid, are hereby released.

E. W. WILSON,
Speaker of House of Delegates.

A. E. SUMMERS,
President of Senate.

STATE OF WEST VIRGINIA,
OFFICE OF SECRETARY OF STATE, }
March 20, 1882.

I certify that the foregoing act, having been presented to the governor for his approval, and not having been returned by him to the house of the legislature in which it originated within the time prescribed by the constitution of the state, has become a law without his approval.

RANDOLPH STALNAKER, JR.,
Secretary of State.

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLXX.

AN ACT relating to the school district of Parkersburg.

[Passed March 14, 1882.]

Be it enacted by the Legislature of West Virginia :

1. The magisterial district of Parkersburg, in the county of Wood, shall constitute one school district, to be known as the school district of Parkersburg. What to constitute the district.

2. There shall be elected by the voters of said district, at the general election for county officers, on the second Tuesday in October, one thousand eight hundred and eighty-two, and every four years thereafter, and in the manner prescribed by the general school law for the election of school officers, a president of the board of education of said district, whose term of office shall commence on the first day of November next following his election, and continue for four years and until his successor is elected and qualified. President of board of education; when elected and term of office. At the election to be held on the second Tuesday in October, one thousand eight hundred and eighty-two, four commissioners shall be elected, and every two years thereafter two commissioners, whose term of office shall commence on the first day of November next following their election, and continue four years and until their successors are elected and qualified; except that two of the commissioners elected in one thousand eight hundred and eighty-two, shall serve only two years. Commissioners; when elected and term of office. The said president and commissioners shall constitute a board of education for the district, to be denominated "Board of education of Parkersburg district." President and commissioners to constitute board of education. How denominated. They shall receive no compensation for their services.

3. Before entering upon their duties as school officers, the said president and each of said commissioners shall Oath of office.

be required to qualify by taking and subscribing to the following oath of office: "I, A — B —, do solemnly swear (or affirm) that I will faithfully perform the duties of president of the board of education (or school commissioner) of the school district of Parkersburg during the term for which I was elected, to the best of my ability, according to law; so help me, God." The secretary of the board of education is authorized to administer said oath, a copy of which shall be kept by him upon the files of his office. Any vacancy which may occur in the office of school commissioner, by death, resignation, refusal to serve or otherwise, shall be filled by the board of education of the district at their first regular meeting thereafter, by the appointment of a suitable person, who shall hold his office until the next election for school commissioners, when a commissioner shall be elected for the unexpired term.

Sec'y to administer oath.

Vacancies in board, how filled.

4. The first meeting of the board of education in one thousand eight hundred and eighty-two shall be held on the first Monday of November, one thousand eight hundred and eighty-two, at such hour and place as the president may designate. Annually, after one thousand eight hundred and eighty-two, the first meeting shall be held on the first Monday in November, at such hour and place as the board may have designated. Annually at the first meeting, the board shall proceed to elect a secretary, who shall not be one of their number. Before entering upon the duties of his office, the secretary shall, with at least two good securities, to be approved by the board, enter into a bond, payable to the board of education of Parkersburg district, in such penal sum as the board may determine; which bond shall be filed with the president of the board for safe-keeping. Immediately after the election of a secretary, at the first meeting in one thousand eight hundred and eighty-two, the president shall choose, by lot, two of the commissioners already elected, which two commissioners shall hold their office for two years. The other two commissioners shall hold their office for four years.

First meeting of board; when and where held.

Subsequent annual meetings

Election of sec'y

Sec'y to give bond.

To be filed with president.

Term of office of commissioners to be determined by lot.

Duty of president. To be a member of board.

President pro tempore.

Sec'y to keep record of proceedings. To be open to inspection.

To preserve all papers.

5. The president shall perform such duties as ordinarily devolve upon the presiding officer of a deliberative body. By virtue of his election he shall be a member of the board, and entitled to vote upon all questions submitted to their decision. In his absence the board may choose a president *pro tempore*.

6. The secretary shall record, in a book to be provided for the purpose all the official acts and proceedings of the board, which shall be a public record, open to the inspection of all persons interested therein. He shall preserve in his office all papers containing evidence of title, contracts and obligations; and in general, shall record and

keep on file in his office all such papers and documents as may be required by any of the provisions of this act, or by order of the board of education. He shall annually, between the first and tenth of July, make report to the county superintendent of such facts in his possession as may be required by the general school law of the state. For his services he may receive such compensation, not exceeding three hundred dollars per annum, as the board may allow. In his absence the board may appoint a secretary *pro tempore*.

To make annual report to county sup't.

Compensation of sec'y.

Secretary *pro tempore*.

7. The board of education shall hold stated meetings at such times and places as they may appoint, not less than three members being required to constitute a quorum for the transaction of business. Special meetings may be called by the president, or, at the request of two members, by the secretary.

Stated meetings of board.

Special meetings; how called

8. The board of education of Parkersburg district shall be a body corporate in law; and as such, may purchase, hold, sell or convey real or personal property for the purpose of education within the district; may receive any gift, grant, donation or devise; may become party to suits and contracts and do other corporate acts. They shall have the management of and be vested with the title to all real and personal property for the use of the public schools within the district, and shall manage and dispose of the same as in their opinion will best subserve the interests of the schools.

Board to be a body corporate; rights and powers as such.

9. Annually, within sixteen days after the fourth day of July, the board of education shall cause to be taken an enumeration of all the youth between the age of six and twenty-one years resident in the district, distinguishing between males and females, white and colored; and the result thereof, verified by the oath or affidavit of the persons employed to take the same, to the effect that the enumeration is correct and that they have used all the means in their power to have it so, shall be recorded in the office of the secretary of the board. It shall be the duty of the secretary to administer said oath; he shall also communicate to the county superintendent the result of said enumeration of youth.

Annual enumeration of youth.

To be recorded by secretary. Sec'y to communicate enumeration to county sup't.

10. The state superintendent of schools, in his report to the auditor, shall specify separately the results of the enumeration of youth in the school district of Parkersburg, and the rest of Wood county, and the auditor, in apportioning money for school purposes, shall apportion to the Parkersburg district, and to the rest of Wood county separately, according to their respective numbers of youth, as shown in the list furnished by the state superintendent, and said superintendent shall draw his requisition upon

Duty of state sup't as to such enumeration, and the apportionment of school funds.

the auditor, in favor of the treasurer of the school district of Parkersburg, for such amount as the district is entitled to receive, and at the same time shall notify the secretary of the board of education of the amount.

11. It shall be the duty of the board of education to provide by purchase, condemnation, leasing, building or otherwise, school houses and grounds, furniture, fixtures and appendages, and keep the same in good order and repair, and to supply the said school houses with fuel and all other things necessary for their comfort and convenience; to pay the principal and interest on loans made pursuant to this section, and all other expenses incurred in the district, in connection with schools, not chargeable to the teachers' fund. For the purposes mentioned in this section, the board of education shall annually levy a tax on the property taxable in the said district, not to exceed in any one year the rate of forty cents on every hundred dollars' valuation thereof, according to the latest assessment of the same for state and county taxation. The proceeds of taxes so levied, of school-houses and sites sold, of all donations, devises and bequests applicable to any of the purposes mentioned in this section, and of any loans that may be made for such purpose, shall constitute a special fund to be called "the building fund," to be appropriated expressly to the purposes named in this section. And the board of education, in addition to the levy aforesaid, may borrow money for the purposes mentioned in this section, on the credit of the building fund. *Provided*, That such loans shall at no time amount, in the aggregate, to more than can be paid by a levy at the rate of twenty-five cents per hundred dollars per year, for four successive years, on the assessed valuation of the taxable property of the district. *Provided further*, that no debt shall be contracted under this section unless all questions connected with the same shall have first been submitted to a vote of the people of the district, and have received three-fifths of all the votes cast for and against the same. Such election shall be held and conducted in the same manner as the general school election, on some day to be designated by the board of education, of which election at least thirty days notice shall be given in the manner prescribed for giving notice of the said general school election.

Building fund;
how provided.

Board may levy
an annual tax.

Limit of taxation.

Board may
borrow money
for building
purposes.

Limit to am't to
be borrowed.

Questions connected
with
debt to be submitted
to vote.

How vote taken.

Notice to be
given.

Teachers' fund;
how provided

Schools to be
kept in operation
nine
months.

Limit to taxation.

12. In addition to the levy named in the preceding section, the board of education shall, for the support of the schools in the district, annually levy such tax on the taxable property in the district, as will, with the money received from the state for the support of free schools, be sufficient to keep said schools in operation for not less than nine months in the year. *Provided*, That said tax shall not, in any year, exceed the rate of fifty cents on every one hundred dollars' valuation, according to the

latest available assessments made for state and county taxation. The proceeds of this levy, together with the money received from the state as aforesaid, shall constitute a special fund, to be called "the teachers' fund," and no part thereof shall be used for any other purpose than the payment of teachers' salaries, and the salary of the city superintendent. Upon failure of the board of education to lay the levies required by this act, or either of them, they shall be compelled to do so by the circuit court by writ of *mandamus*.

How tax applied.

How board compelled to lay levies.

13. The assessments made under the provisions of this act shall be levied and collected by the same officers as the county levies are made and collected; and the amount of said levies shall be charged in full to said officers, who shall be held to account for the same; but the board of education shall not, during any one year, incur any expenses that shall exceed the amount of available funds received for school purposes during that year.

By whom assessments collected.

Restriction on board.

14. The collecting officer shall annually make such settlement with the said board of education as the general school law may provide; and for collecting and disbursing the taxes assessed by the board of education, he shall be entitled to receive a commission of not more than three per cent. upon the amount collected. He shall receive nothing for receiving and disbursing the state fund.

Settlement to be made by collecting officer.

Commission for collecting.

15. The board of education shall have power to make all necessary rules and regulations for the government of the schools of the district, for the admission of pupils therein; for the exclusion of pupils whose attendance would be dangerous to the health or detrimental to the morals or discipline of the schools. They may prescribe a uniform list of text books for use of the schools in the district, and may furnish books and stationery for the use of indigent children in attendance at the schools; they may provide a suitable number of evening schools during the fall and winter months, for the instruction of such youth, over twelve years of age, as are prevented by their daily vocations from attending day schools; they may furnish all necessary apparatus and books for the use of the schools, and incur all other expenses necessary to make the system efficient for the purposes for which it was established, and pay the same from the building funds of the district. They shall also fix the number of days in the school month within the district.

Board to make rules for Government of schools.

May prescribe text books, and provide stationery, etc.

May provide evening schools.

May furnish books and apparatus.

To fix number of days in school month.

16. The board of education shall have power to establish, within the district, such schools, including high schools, as may, in their judgment, be best for the interests of the district. The branches to be taught in the high schools and the other schools within the district, shall be

High schools may be established.

Branches to be taught therein.

Schools to be graded by board
High schools to be open to all pupils.

prescribed by the city superintendent, with the approval of the board of education. The schools of the district, whether primary or otherwise, shall be subject to such grading as the board may direct. The said high schools shall be open to all the pupils in the district, but no pupil shall be entitled to enter them until the city superintendent shall have been satisfied that the said pupil has made due proficiency in the branches taught in the other schools in the city of Parkersburg.

Admission to schools gratuitous.

Transfer of pupils.

Non-resident pupils.

17. Admission to the various schools of the district shall be gratuitous to all white children, wards and apprentices, of actual residents within the district, between the ages of six and twenty-one years. *Provided*, That the admission of pupils, residents of one sub-district to the schools of another, shall rest with the board of education. Non-residents of the district may be allowed to attend the schools of the district upon such terms as the board of education may proscribe.

Schools for colored pupils.

Colored children not to attend schools with white children.

18. The board of education shall establish within the district one or more separate schools for colored children when the whole number, by enumeration, exceeds thirty, so as to afford them, as far as practicable, the advantages and privileges of a free school education. All such schools shall be under the management and control of the board, and shall be subject to like general regulations as the other schools of the district; but under no circumstances shall colored children be allowed to attend the same school, or be classified with white children.

Treasurer of Wood county to be treasurer of the district. To receive no compensation for disbursing.

19. The treasurer of Wood county shall be treasurer of all school funds accruing to the school district of Parkersburg. He shall receive all moneys belonging to the said funds, and shall disburse the same, and for his services as treasurer shall receive no compensation.

How moneys paid out; drafts to be signed by president and sec'y.

20. No money shall be paid out by the district treasurer except on a draft signed by the president and secretary of the board of education, and specifying upon its face the particular account to which the same is chargeable; nor shall any credit be allowed to the treasurer, in his annual settlement, upon any voucher except such draft.

Treasurer's annual settlement.

21. The treasurer of the district shall annually, in the month of August, settle with the board of education, and account to said board for all moneys received, from whom and on what account, and the amount paid out for school purposes in the district since his last settlement.

Forfeiture for failing to make settlement.

22. In case the treasurer shall fail to make such annual settlement within the time prescribed in the preceding section, he shall forfeit five hundred dollars, to be recovered before any court having jurisdiction, for the use of the

schools of the district. And it is hereby made the duty of the secretary of the board of education to proceed forthwith, in case of such failure, by suit against such treasurer and his securities, to recover the penalty aforesaid. But if, before suit shall have been entered, the treasurer shall satisfy the president and secretary of the board of education that owing to sickness or other causes which may seem to them sufficient said settlement has been rendered impracticable, such further time may be allowed as the board may deem reasonable and just.

Duty of sec'y in case of such failure.
Suit against treasurer and his securities.

Further time may be allowed by board.

23. All school-houses, school-house sites and other property for the use of the public schools of the district shall be exempt from taxation, and also from sale on execution or other process in the nature of an execution.

School property exempt from taxation, etc.

24. Annually, at their first meeting, or as soon thereafter as circumstances will allow, the board shall appoint a superintendent of schools for the city of Parkersburg, and fix his salary. Said superintendent, in addition to the duties specified in this act, shall perform such other appropriate duties with relation to the schools of the city as the board may prescribe. He shall be liable to removal by the board of education, for any palpable violation of law or omission of duty. But he shall not be removed, unless charges shall be preferred to the board by a member thereof, and notice of a hearing with a copy of the charges delivered to him, and an opportunity be given him to be heard in his defense. When the office shall become vacant from any cause, before the expiration of the term for which the superintendent shall have been elected, the board of education shall fill the same by appointment for the unexpired term. It shall be the duty of the city superintendent to make such report to the board of education of the character and condition of the schools of the city of Parkersburg, as shall enable the secretary to make his required report to the county superintendent. The city superintendent shall not, directly or indirectly, receive any gift, emolument or reward, for his influence in recommending the use of any book, apparatus, or furniture of any kind whatever in the schools of the district.

Board to appoint a sup't of schools and fix his salary.

May be removed by board.

Charges to be preferred in such cases.

Vacancy in office to be filled for unexpired term.

Duty of sup't.

Not to receive any gift, etc., for his influence.

25. The board of education shall appoint two competent persons to act with the city superintendent as an examining committee. It shall be the duty of said committee to examine all applicants for positions as teachers in the schools of the district; and each person so examined shall pay a fee of one dollar; but no applicant shall be entitled to examination who shall not furnish evidence satisfactory to the committee of good moral character. Certificates of qualification shall be granted according to the following scheme, numbering from one to three, according to the merits of the applicants, thus: Number one

Board to appoint two persons to act with sup't as examining committee.

Examination of teachers.

Fee to be paid by applicants.

Evidence of good moral character to be furnished.

Classification of teachers.

shall denote a very good teacher; number two, good; number three, medium. A number three certificate shall not be granted more than twice to any one person, but the board may make special regulation, as they may see fit, concerning the certificate of colored teachers. No certificate shall be granted for a longer period than one year; but a number one certificate may be renewed at the option of the examining committee. The committee shall hold meetings for the examination of teachers at such times and places as the superintendent may appoint. They may receive such compensation as the board may allow, out of the fees received for examining teachers. The excess of such fees, if any, shall go into the building fund of the district.

Certificates for longer period than one year not to be granted.

Compensation of examiners.

Teachers subject to rules adopted by board. How teachers removed.

26. Teachers shall be subject, in all respects, to the rules and regulations adopted by the board of education, and they may be removed by the board for incompetency or grossly immoral conduct, upon complaint of the superintendent or any member of the board.

Board to appoint teachers and fix their salaries. All teachers to be examined.

27. The board of education shall appoint all teachers for public schools of any grade within the district, and shall fix their salaries; but no person shall be employed to teach in any public school of the district, who shall not first have obtained from the examining committee a certificate, in duplicate, of qualification to teach a school of the grade for which the appointment is made, except that the city superintendent and the members of the examining committee shall not be required to obtain any certificate.

Penalty for injuring or destroying school property.

28. If any person or persons shall mar, deface or otherwise injure any school house, out-building, fence, furniture or other school property of the district, the person or persons so offending shall be liable to prosecution before any court having jurisdiction within the district; and upon conviction shall be subject to a fine of not less than five dollars and costs of prosecution; and if the amount of damage done shall exceed five dollars, the person or persons convicted of the offense shall be liable for the full amount thereof. If the injury be done by a minor, the parent or guardian of said minor shall be liable as aforesaid. It shall be the duty of the board of education of the district in which the property damaged may be located, to ascertain, if possible, by whom the offense was committed, and when satisfied thereof to cause the party or parties to be arrested and tried for the offense, in the name and on behalf of the board of education; and all fines or damages collected by virtue of this section, shall be paid into the district treasury and be appropriated for the benefit of the schools.

When done by minor, parent, etc., liable. Duty of the board in relation thereto.

Fines, etc., to be paid into district treasury.

29. All provisions of the general school law of the state, and all laws and acts heretofore existing which are in any manner inconsistent with the provisions of this act, shall be void within said district; otherwise the said general school law shall remain in full force and effect in this district, as elsewhere in the state.

Provisions of general school law, and other laws, inconsistent with this act, void as to this district.

30. Until the election in one thousand eight hundred and eighty-two the board of education now in office shall be governed by the provisions of this act, and shall exercise the powers herein conferred upon the board of education.

Board now in office to be governed by provisions of this act.

E. W. WILSON,
Speaker of House of Delegates.

A. E. SUMMERS,
President of Senate.

STATE OF WEST VIRGINIA,
OFFICE OF SECRETARY OF STATE, }
March 20, 1882.

I certify that the foregoing act, having been presented to the governor for his approval, and not having been returned by him to the house of the legislature in which it originated within the time prescribed by the constitution of the state, has become a law without his approval.

RANDOLPH STALNAKER JR.,
Secretary of State.

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLXXI.

AN ACT to prevent the spreading of the noxious weed known as the "Canadian thistle."

[Passed March 8, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That if any person shall knowingly permit the noxious weed known as the "Canadian thistle" to grow to maturity on any premises owned or occupied by him, in the county of Berkeley, he shall, upon conviction thereof before a justice of the peace of the county, be fined not less than five nor more than ten dollars, for every such offense.

Canadian thistle; penalty for permitting to grow to maturity.

E. W. WILSON,
Speaker of House of Delegates.

A. E. SUMMERS,
President of Senate.

STATE OF WEST VIRGINIA,
OFFICE OF SECRETARY OF STATE, }
March 20, 1882.

I certify that the foregoing act, having been presented to the governor for his approval, and not having been returned by him to the house of the legislature in which it originated within the time prescribed by the constitution of the state, has become a law without his approval.

RANDOLPH STALNAKER, JR.,
Secretary of State.

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLXXII.

AN ACT making provision for an independent school district of the town of Mannington, in Marion county.

[Passed March 11, 1882.]

Be it enacted by the Legislature of West Virginia:

1. The inhabitants and territory included within the corporate limits of the town of Mannington, in Marion county, are hereby constituted an independent school district by the name of "Mannington independent school district," subject, however, to the approval of the qualified voters of Mannington district, of Marion county, as hereinafter provided.

2. At the election for district school officers, to be held next after this act takes effect, the ballots used within the said Mannington district, shall have written or printed on them the words "for independent district," or "against independent district," and the ballots used by voters residing within the independent school district provided for by this act shall have printed or written on them also the names of three qualified voters thereof, for members of the board of education of the said independent school district, who shall, when duly elected and qualified, be a body corporate by the name of "the board of education of Mannington independent school district," with all the rights, powers and authority, and subject to all the liabilities of boards of education and of trustees under the general school law, unless herein otherwise provided; and all the property real and personal, situated within the said independent district shall, by this act, when the same becomes effectual, be transferred to and vested in the said board of education of Mannington independent school district.

Independent school district of Mannington created, subject to approval of qualified voters of Mannington district.

Vote to be taken for independent district; when. What to be written, etc., on ballots. Members for board of education to be voted for; by whom.

Corporate name of such board; their rights and powers.

What property to vest in board.

3. The term of office of the members of said board of education shall commence on the first day of July next after their election, and continue for two years and until their successors shall be elected and qualified.

Term of office of board, and when to begin.

4. The votes cast under the provisions of the second section of this act shall be counted, certified and the result thereof ascertained and declared in the manner provided by the general school law, and a certificate of the result shall also be delivered to one of the members of the board of education of said independent district elected at said election, within ten days after the same shall have been ascertained and declared.

How votes counted, certified, and result declared.

Certificate of result to be delivered to one member of board of education; when.

5. All funds to which the said Mannington district, of Marion county, may be entitled at the time this act takes effect shall be divided between said Mannington district and the said Mannington independent school district in the proportion which the youths of school age in said Mannington independent school district, bears to the youths of school age within the said Mannington district, according to the latest enumeration. The division of said funds shall be made by the joint action of the board of education of Mannington district and the board of education of the independent district herein provided for, at a meeting to be held in Mannington for that purpose not later than the first day of October next after this act takes effect. And a record of such division of funds shall be made in the proper book of records for each district, of which a copy shall be certified immediately to the county superintendent by the secretary of each of said boards.

Division of school funds.

When and how such division made.

Record of such division to be made; where; copy thereof; to whom sent.

E. W. WILSON,
Speaker House of Delegates.

A. E. SUMMERS,
President of Senate.

STATE OF WEST VIRGINIA,
OFFICE OF SECRETARY OF STATE. }
March 20, 1882.

I certify that the foregoing act, having been presented to the governor for his approval, and not having been returned by him to the house of the legislature in which it originated within the time prescribed by the constitution of the state, has become a law without his approval.

RANDOLPH STALNAKER, JR.,
Secretary of State.

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLXXIII.

AN ACT to prevent trespassing in this state by the stock of non-residents.

[Passed March 3, 1882.]

Be it enacted by the Legislature of West Virginia:

Unlawful for non-resident to drive, etc., stock on lands of citizens of this state, without permission.

1. It shall be unlawful for any person or persons who are not residents of this state to drive, or cause, or suffer, or permit to be driven, any of his, or their cattle, horses, hogs or sheep on any of the lands of any citizen of this state, whether the said lands be enclosed or be not enclosed, without permission of the owner or owners for that purpose first had and obtained.

Every entry of such stock deemed a trespass.

2. That every entry of any such cattle, horses, hogs or sheep contrary to the provisions of this act shall be deemed in law a trespass by the owner, person or persons having the charge or care of such cattle, horses, hogs or sheep, and the owner of all such cattle, horses, hogs or sheep shall be liable in damages to the person or persons aggrieved in a sum not exceeding twenty cents on each head of horses and cattle, and ten cents on each head of hogs or sheep thus trespassing, for each and every day that they shall be and remain on the lands or premises of any citizen in this state, to be recovered before any justice of the peace of the county in which such trespasses may have been committed.

Liability of owner for damages; in what sum.

How recovered.

3. That if any cattle, horses, hogs or sheep owned by any person or persons who are not citizens of this state shall at any time be found running at large on the lands of any person or persons within this state, it shall be lawful for the owner or owners of the lands, his, her or their agent, tenant or overseer, to consider such cattle, horses, hogs or sheep so running at large as trespassing, and the said owner or owners of said lands, his, her or their agent, tenant or overseer, may furnish, upon oath or affirmation, in writing, a list of said cattle, horses, hogs or sheep, setting forth therein the number of each kind, the natural and artificial marks of each one of every kind, as well the number of days they and each one of them may have trespassed, to the sheriff or any constable of the county in which said trespasses may have been committed; whereupon it shall be the duty of such officer to whom such oath or affirmation aforesaid shall be furnished to seize and take possession of the said cattle, horses, hogs or sheep, and keep the same as property taken under execution until disposed of as hereinafter provided, and return said oath or affirmation in writing, together with his proceedings thereon, to any justice in his said county. Any such justice may make an order directing the sheriff or any constable of the county to sell said cattle, horses, hogs or sheep

Stock of non-residents running at large on lands of citizens of this state, deemed a trespass.

List in writing, on oath or affirmation, of stock so trespassing, may be furnished by owner, etc., of land to officer; what list to set forth.

Duty of officer to whom such oath or affirmation is furnished

His return thereon.

Justice may make an order directing officer

in the manner in all respects as property taken under execution, and pay over into the county treasury the proceeds of such sale, after deducting therefrom the fees allowed for like service upon an execution. And any surplus arising from said sale, after deducting and paying all necessary expenses and costs under provisions of this act, shall be paid over to the owner or owners of said horses, cattle, hogs or sheep, or their agent. And for the failure of the officer acting herein, he shall be liable to be proceeded against by the party or parties interested in all respects as for like failures in proceedings under execution.

to sell such stock; in what manner. Where proceeds paid, after deducting fees. Surplus to be paid to owner of stock.

Liability of officer for failure.

4 If at any time before the sale of such cattle, horses, hogs or sheep, under the provisions of this act, the owner or owners thereof, or his agent, shall pay to the officer having possession of such cattle, horses, hogs or sheep, the amount of damages to be ascertained by the oath or affirmation aforesaid, together with all legal costs which may have accrued, it shall be the duty of such officer to restore to such owner or his agent the property so seized as aforesaid, and make return of the proceeds to the county court of his county; and it shall be the duty of the county court to apply all such damages to the use and benefit of the county.

When officer to restore such stock so seized to owner, etc.

What return to make. How such damages applied.

5. In all cases where any person or persons residing in this state may claim right or ownership to any cattle, horses, hogs or sheep distrained, such person or persons so claiming shall, before some justice, make oath or affirmation, as the case may be, that the said cattle, horses, hogs or sheep is *bona fide* his property, and that he did not acquire right thereto for the purpose of defeating the provisions of this act intended to prevent such trespasses in this state; and upon making such oath or affirmation as is required to be made, shall certify the same from under his hand and seal, and the owner or owners of any cattle, horse, hog or sheep shall, on presenting the certificate of the justice aforesaid, to any person or persons having possession thereof, be entitled to his cattle, horse, hog or sheep so distrained. *Provided*, That nothing in this act contained shall be so construed as in anywise to affect the right of action of the party aggrieved by the trespass aforesaid.

How person residing in this state claiming right or ownership to stock distrained may have same restored to him.

Proviso.

[Approved March 15, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLXXIV.

AN ACT to authorize the Rock Castle Railway Company to build and maintain a railroad bridge across the Tug Fork of Big Sandy river at or below the falls thereof in Wayne county.

[Passed March 10, 1882.]

Be it enacted by the Legislature of West Virginia :

Rock Castle Ry. Co. authorized to build railroad bridge across Tug Fork river. Proviso.

1. That the Rock Castle Railway Company, a corporation of this state, be and is hereby authorized and empowered to build and maintain a railroad bridge across the Tug Fork of Big Sandy river at or below the falls thereof in Wayne county; *Provided*, That the same be constructed so as not to prevent or obstruct the navigation of said stream.

[Approved March 15, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER CLXXV.

AN ACT empowering the county court of Fayette county to allow P. Morton a reasonable additional compensation for his services as assessor during the years one thousand eight hundred and seventy-nine and one thousand eight hundred and eighty.

[Passed March 11, 1882.]

Be it enacted by the Legislature of West Virginia:

County court of Fayette authorized to allow P. Morton additional pay as assessor.

1. That the county court of Fayette county be, and they are hereby authorized to allow P. Morton a reasonable additional compensation for his services as assessor during the years one thousand eight hundred and seventy-nine and one thousand eight hundred and eighty.

[Approved March 15, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLXXVI.

AN ACT concerning the school districts of Jefferson county.

[Passed March 8, 1882.]

WHEREAS, The county court of the county of Jefferson did, in the year one thousand eight hundred and eighty-one, alter and change the magisterial districts of said county, reducing the number of said districts from seven to five, thereby producing confusion in the school districts which are required by law to be composed of the same territory as the magisterial districts. Therefore,

Preamble reciting change of magisterial districts in Jefferson county

Be it enacted by the Legislature of West Virginia:

1. That on and after the first day of July, one thousand eight hundred and eighty-two, the school districts of Jefferson county shall be conformed to the order of the county court recited in the foregoing preamble.

School districts of Jefferson county to conform to order of court recited in preamble; when

2. The board of education of Shepherd district, as heretofore constituted, shall exercise the duties, and in all respects perform and do such acts as may be necessary to carry out and have efficiently conducted the school affairs of Shepherdstown district, as altered and enlarged by the said order of the county court.

Board of education of Shepherd district; what duties to exercise as to Shepherdstown district as altered and enlarged.

3. The board of education of Harper's Ferry district, as heretofore constituted, shall exercise the duties and in all respects perform and do such acts as may be necessary to carry out and have efficiently conducted the school affairs of Harper's Ferry district, as altered and enlarged by the said order of the county court.

Board of education of Harper's Ferry district; what duties to exercise as to said district as altered and enlarged.

4. All property, debts, accounts and demands of every kind due or to become due the respective boards of education shall be vested in, and held hereafter by the boards of education herein continued in office, until their successors are elected and qualified, as proscribed by law, and all liabilities which may have accrued against the boards of education as heretofore constituted shall be transferred to their successors unimpaired.

What property, debts, etc., vested in board of education herein continued in office.

What liabilities transferred to such boards.

5. The boards of education hereby continued in office shall at their first meeting in July next, re-arrange the sub-districts of their respective districts so as to conform to the new district lines in those sub-districts where the changes here authorized to be made affect any or all of the trustees of said sub-districts, either increasing or diminishing their number; such changes shall be made that there shall be three trustees in every sub-district, whose terms of office shall expire in one, two and three years from July first, one thousand eight hundred and eighty-two.

Sub-districts; rearrangement of; by whom; when and how.

6. The enumeration required by law to be taken shall

Enumeration;
how made and
returned.
Who to make
report to county
sup't.

be made and returned in accordance with the new districts, and the secretaries of the boards of education hereby retained in office shall make the report of the enumeration to the county superintendent.

What duties not
affected by this
act.

7. All other duties of the sheriff and school officers, teachers, etc., required to close up the school affairs of each district as heretofore constituted, shall be done and performed as if this act had not been passed.

[Approved March 16, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER CLXXVII.

AN ACT to appropriate three hundred and fifty-seven dollars and seventy-five cents to the Martinsburg Light Artillery Company.

[Passed March 11, 1882.]

Be it enacted by the Legislature of West Virginia:

Appropriation
to pay Martins-
burg Light
Artillery Co.

1. That the sum of three hundred and fifty-seven dollars and seventy-five cents is hereby appropriated out of any money in the treasury, not otherwise appropriated, to pay the Martinsburg light artillery company for the use of horses and ammunition used in accordance with the state law by said company at the state parades, for the years one thousand eight hundred and seventy-eight, one thousand eight hundred and seventy-nine and one thousand eight hundred and eighty.

Auditor direct-
ed to issue
warrant for
amount,

2. The auditor is hereby directed to issue his warrant upon the treasurer for the amount so appropriated, payable to John Q. A. Nadenbousch, captain of said Martinsburg light artillery company.

[Approved March 16, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLXXVIII.

AN ACT to authorize the county court of Monongalia county to pay certain sums for work done and material used in the construction of the jail in said county.

[Passed March 18, 1882.]

Be it enacted by the Legislature of West Virginia :

1. It shall be lawful for the county court of Monongalia county, within five years after the passage of this act, to audit and pay out of the county treasury any and all claims, not exceeding in the aggregate thirteen hundred and thirty-six dollars, exclusive of interest, for labor done and material furnished for the construction of the jail in said county, under the contract with Eli Chenowith.

County court of Monongalia county authorized to pay certain claims; when and to what amount.

[Approved March 16, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CLXXIX.

AN ACT to repeal chapter one hundred and thirty-four of the acts of one thousand eight hundred and sixty-nine, entitled "an act relating to road tax and labor of John Wylie and W. W. Wylie, of Hancock county," passed on the fourth day of March, one thousand eight hundred and sixty-nine.

[Passed March 8, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That chapter one hundred and thirty-four of the acts of one thousand eight hundred and sixty-nine, entitled "an act relating to road tax and labor of John Wylie and W. W. Wylie, of Hancock county," passed on the fourth day of March, one thousand eight hundred and sixty-nine, be and the same is hereby repealed.

Chapter 34 of acts of 1869 repealed.

[Approved March 17, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLXXX.

AN ACT for the relief of Isaac McNeel, late sheriff of Pocahontas county.

[Passed March 9, 1882.]

Preamble reciting why Isaac McNeel, late sheriff of Pocahontas county, failed to receive credit for delinquent lists for the year 1861.

WHEREAS, The auditor's books of the commonwealth of Virginia, show a balance against Isaac McNeel, late sheriff of Pocahontas county for two hundred dollars, for the year one thousand eight hundred and sixty-one, and whereas, by reason of a state of war existing in the said county of Pocahontas during the year one thousand eight hundred and sixty-one, the county court of said county was not able to hold the regular terms thereof, by reason of such failure the said Isaac McNeel, late sheriff as aforesaid, failed to receive credit for his delinquent lists for that year, which said delinquents would have amounted to the said sum of two hundred dollars. Therefore,

Be it enacted by the Legislature of West Virginia :

Exemption of Isaac McNeel from payment of amt recited in preamble, so far as West Va. has claim to same.

1. That the said Isaac McNeel, late sheriff of Pocahontas county, be exempted from the payment of the said sum of two hundred dollars for the year one thousand eight hundred and sixty-one, and which said sum has been transferred to this state, and be released from any liability that may exist against him as shown by the auditor's books of the state of Virginia for said year, so far as West Virginia may be able to establish the same against the said Isaac McNeel for said balance.

[Approved March 17, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CLXXXI.

AN ACT to authorize the heirs of William Chapline to remove the remains of the said William Chapline and others from the place where they are now interred to some other cemetery.

[Passed March 14, 1882.]

Be it enacted by the Legislature of West Virginia :

Heirs of Wm. Chapline, dec'd, authorized to remove the remains of said Chapline and others to some other cemetery.

1. That it shall be lawful for the heirs of William Chapline, deceased, late of the county of Ohio, to disinter the remains of all the dead buried in a certain parcel of land owned by said heirs, situated in the city of Wheeling, Ohio county, and described as follows: Commencing at the corner formed by the intersection of Alley E with Twenty-third street; thence north along said alley one hundred and

seventy-six feet; thence east two hundred and fifty-six feet to McColloch street; thence south one hundred and seventy-six feet to Twenty-third street; thence west along Twenty-third street two hundred and fifty-six feet to the place of beginning. *Provided.* They decently re-inter said remains in some other burial ground in said county at their own expense. But said heirs shall also remove all tombstones and boards, and shall place every such stone or board in the cemetery to which the remains are removed, and over the body to which it belongs.

Provido as to re-interment of said remains.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER CLXXXII.

AN ACT to create the independent school district of Pennsboro, out of sub-district number sixteen of Clay district, of Ritchie county.

[Passed March 17, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That in the event a majority of the votes cast at the election hereinafter provided for, be in favor thereof, the following described territory in the county of Ritchie, including the village of Pennsboro, shall, after the result of such election is ascertained and declared, be an independent school district, and be known as "the independent school district of Pennsboro," to-wit: All of the village of Pennsboro and the territory adjacent thereto, designated and known as sub-district number sixteen, of Clay district of Ritchie county as now organized, and bounded and described as follows: Beginning at a stake, thence south seventy-seven west one hundred and sixty poles to a chestnut oak; thence north eighty-six west one hundred and thirty-two poles to a chestnut oak; thence south fifty-three and one half west two hundred and sixty-two poles to a gum; thence south twenty-two and one-half west eighty-eight poles to a black oak; thence south fifty-one and a half west twenty-six poles to a white oak; thence south eighty-eight and one-half west fifty-nine poles to a stake; thence north sixty-five west fifty-seven poles to a beech; thence north eighteen east one hundred and six poles to an ironwood; thence north three east one hundred and twenty poles to a white oak; thence five and a

Independent school district of Pennsboro; act to create.

Boundaries of such district.

half west one hundred and eight poles to a jack oak; thence north sixty and one-half east one hundred and two poles to a stake; thence north thirteen east twenty-six poles to a hickory; thence north twenty east forty-four poles to a black oak; thence north twenty-eight east one hundred and eighty-four poles to a white oak; thence north thirty-four east sixty-eight poles to a pine; thence north fifty-one east fifty-six poles to a stake; thence south eighty-two east thirty-six poles to a stake; thence south seventy-seven east one hundred and sixty-four poles to a pine; thence north fifty-one and a half east forty-six poles to a chestnut oak; thence north seventy-three east fourteen poles to a hickory; thence north twelve east two hundred poles to a stake; thence south forty-four east three hundred and sixteen poles to a stake; thence south five west one hundred and thirty-two poles to a white oak; thence south twenty-eight west three hundred poles to the place of beginning.

2. It shall be the duty of the board of education of said Clay district, of Ritchie county, at a special election, to be held for that purpose on the first Tuesday in May, one thousand eight hundred and eighty-two, to submit to the qualified voters of said Clay district, the question of the adoption or rejection of the provisions of this act, and all voters residing in said Clay district, and no others, shall be entitled to vote on such question. The election shall be by ballot, and those voting in favor of the establishment of such independent school district, shall have printed or written on their ballots the words "for independent school district," and those voting against the establishment thereof, shall have printed or written on their ballots the words "against independent school district." The said election shall be superintended, conducted, and the result thereof ascertained and declared by the officers who were appointed to conduct, ascertain and declare the result of the last general election for school officers held in said Clay district, and all the provisions of the election laws in this state, so far as they are applicable, shall be in force and govern such elections, unless herein otherwise provided. At the said election there shall also be elected by the voters residing within the boundaries of said proposed independent school district, a board of education, consisting of a president and two commissioners, who shall be a corporation by the name of the "board of education of the independent school district of Pennsboro," and by that name may sue and be sued, plead and be impleaded, purchase and hold so much real estate and personal property as may be necessary for the purpose of this act, and without any transfer or conveyance they shall be deemed the owners of all real estate and personal property within the territory aforesaid, now

Board of education of Clay district: when to submit question to voters of said district.
Who may vote.

Election to be by ballot; what ballot to have written, etc., thereon.

How election conducted, etc., and result declared.

Board of education, election of.

Corporate name.

Powers, duties, etc., of such corporation.

held or owned for free school purposes by the board of education of Clay district, and they shall have all the powers, perform all the duties, and be subject to all the liabilities, both of boards of education and trustees. They shall hold their offices until the first day of July, one thousand eight hundred and eighty-three, beginning on the first Monday next after their election, and until their successors are elected and qualified according to law; and in the year one thousand eight hundred and eighty-three, at the election for county superintendent of free schools and other school officers, and biennially thereafter, a new board shall be elected, who shall hold their offices for the term of two years, beginning on the first day of July next after their election, and until their successors are elected and qualified according to law; but nothing herein contained shall be construed to prohibit the re-election and eligibility of any member of such board for two or more terms. Vacancies in the board shall be filled for the unexpired term by appointment by the board.

Term of office of members of board.

When new board elected; their term of office.

Members of board may be re-elected.

Vacancies; how filled.

3. The independent school district of Pennsboro herein authorized to be created and established shall conform to and be governed by the general school law in this state, except where it is otherwise provided by this act.

What law to govern district.

4. All school money, whether belonging to the teachers' or building fund of Clay district, which may be unexpended when the provisions of this act take effect, shall be divided between the said Clay district and the independent school district of Pennsboro, in proportion to the amount of taxable property in each of said districts, after the creation of the said independent school district of Pennsboro. The latest available assessment for state and county purposes shall be taken as the basis of such settlement and division. It shall be the duty of the board of education of each of said districts, within ninety days after the provisions of this act are adopted, to make the financial settlement provided for in this section. The said board of education of the independent school district of Pennsboro shall have power to lay levies in the same manner as provided in the case of boards of education of districts, but if, in the judgment of said board, it will be advantageous to the interests of education in such district to do so, they may apply all moneys at their disposal, and which may be levied by them, either entirely to the employment and payment of teachers, and the incidental expenses necessary to carrying on and conducting schools, including fuel and other things necessary for such schools, or entirely to building purposes, or partly for either; but there shall be a school taught in said district for at least six months in each year, and the board of education may provide for a longer period without resorting to a vote of the people residing therein. But the board of education of the independent school dis-

Unexpended school moneys of Clay district; how divided.

Basis of such division.

When financial settlement to be made.

Power of board of education to lay levies.

How board may apply such levies.

How long school must be taught.

Levy by board limited.

trict hereby created shall not lay a greater levy than fifty cents on the one hundred dollars valuation of the property for school purposes, nor more than forty cents on the like valuation for building purposes in any one year.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLXXXIII.

AN ACT to repeal chapter thirty-eight of the acts of one thousand eight hundred and seventy-nine, entitled "an act to establish a court of limited jurisdiction in the city of Huntington."

[Passed March 20, 1882.]

Be it enacted by the Legislature of West Virginia :

Act establishing municipal court in city of Huntington repealed.

1. That chapter thirty-eight of the acts of one thousand eight hundred and seventy-nine, entitled "an act to establish a court of limited jurisdiction in the city of Huntington," passed March fourth, one thousand eight hundred and seventy-nine, be, and the same is hereby repealed.

Motions, suits, etc., pending, etc., in said court; where docketed, tried, etc.

Records and papers; where transferred.

Records so transferred; how taken and held.

2. All motions, suits and proceedings pending and undetermined in the municipal court of the city of Huntington when this act takes effect shall be docketed in the circuit court of Cabell county, to be proceeded in, tried, heard and determined, and the records and papers appertaining to said municipal court shall be transferred to the office of the clerk of the said circuit court, and remain in custody of the clerk thereof; and for the purpose of terminating all such motions, suits and proceedings, the said records shall to all intents be taken and held as the records of said circuit court.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLXXXIV.

AN ACT to ratify and legalize certain acts of the persons acting as the board of education of Richland school district of Ohio county, and to legalize the election in regard to levy for school purposes held in said district on the eighteenth day of June one thousand eight hundred and eighty-one.

[Passed March 21, 1882.]

WHEREAS, By reason of the failure of the county commissioners of Ohio county to appoint and notify officers for Richland district, in the county of Ohio, to conduct the election for school purposes, in said district as provided by chapter fifteen of the acts of one thousand eight hundred and eighty-one, to be held on the third Tuesday in May, one thousand eight hundred and eighty-one; and,

WHEREAS, J. W. Morgan, A. D. Garden and William Connelly, who along with two others, had been only elected in the year one thousand eight hundred and seventy-nine as members of the board of education of said district did continue, and have ever since continued to act as the board of education of said district; and,

WHEREAS, By order of said persons, so acting as said board, a special election was held in said district on the eighteenth day of June, one thousand eight hundred and eighty-one, for the purpose of determining whether a levy for a school for seven months should be made in said district, at which said election a majority of the voters of said district voted in favor of said levy; therefore,

Be it enacted by the Legislature of West Virginia :

1. All the acts heretofore done by the said J. W. Morgan, A. D. Garden and William Connelly, acting as the board of education of the district of Richland, in the county of Ohio, and until, according to law, a board of education is elected for said district, all acts and proceedings hereafter done and performed by them, acting as aforesaid, shall be, and are hereby declared to be legal and valid and in all respects the same as if done and performed by officers duly elected and qualified so to do and perform.

Acts heretofore done, and acts hereafter done by the board of education of Richland dist. declared legal and valid.

2. The said recited election, held on the eighteenth day of June, one thousand eight hundred and eighty-one, is hereby declared to be legal and binding.

Election of June 18, 1881, declared legal and binding.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLXXXV.

AN ACT to allow A. L. Vandal, sheriff of Roane county, further time to return his delinquent lists for the year one thousand eight hundred and eighty-one.

[Passed March 21, 1882.]

Be it enacted by the Legislature of West Virginia:

Sheriff of Roane county allowed further time to return delinquent lists for 1881.

1. That A. L. Vandal, sheriff of Roane county be allowed to return the delinquent lists of said county, for the year one thousand eight hundred and eighty-one, to the first term of the county court of said county, beginning after the first day of August, one thousand eight hundred and eighty-two.

[Approved March 25, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER CLXXXVI.

AN ACT making appropriations of public money to pay general charges upon the treasury.

[Passed March 25, 1882.]

Be it enacted by the Legislature of West Virginia:

Appropriation to pay general charges, fiscal year ending Sept. 30, 1882.

1. There shall be, and hereby is, appropriated out of the state fund for the fiscal year ending September thirtieth, one thousand eight hundred and eighty-two, the following sums for purposes as follows, viz:

Penitentiary.

Penitentiary.
Support of convicts and pay of guards.
Superintendent.

For the support of convicts and pay of guards at the penitentiary, eight thousand dollars.

For salary of superintendent, one thousand five hundred dollars.

Clerk.

For salary of clerk, one thousand dollars.

Commissary.

For salary of commissary, one thousand dollars.

Physician.

For salary of physician, five hundred dollars.

Furniture and repairs.

For furniture and repairs of buildings, one thousand dollars.

Chaplain.

For salary of chaplain, one hundred and fifty dollars.

How drawn and paid.

The foregoing appropriations for the penitentiary are to be drawn from the treasury upon requisitions of the board of directors, addressed to the auditor, as the same may be required.

Criminal Charges.

For criminal charges, sixty thousand dollars.

Criminal charges.

Lunatics in Jails.

For support of lunatics in jails, seventeen thousand dollars.

Lunatics in jail.

Normal Schools.

For the support of the normal school and its several branches, the sum of eight thousand dollars, to be paid according to the provisions of section ninety-six of chapter forty-five of the code, as amended and re-enacted by the present legislature.

Support of normal schools.

How paid.

For insurance of normal school buildings, four hundred and seventy-five dollars.

Insurance.

For repairs on Marshall college, five hundred dollars.

Repair of normal school buildings.

For repairs on normal school building at Fairmont, two hundred dollars.

For repairs on normal school building at West Liberty, two hundred dollars.

For repairs on normal school building at Concord, two hundred dollars.

For expenses of regents of normal schools, three hundred dollars.

Expenses of regents.

The University.

For expenses of the regents of the West Virginia University, five hundred dollars.

University. Expenses of regents. Contingent expenses.

For contingent expenses of the university, four thousand dollars.

For salaries of teachers at university, eight thousand and twenty-six dollars and sixty-three cents.

Salaries of teachers.

For library at the university, five hundred dollars.

Library.

For repairs at the university, five hundred dollars.

Repairs.

For insurance at the university, five hundred dollars.

Insurance.

For the establishment and equipment of a laboratory for the more efficient instruction in chemistry in the university, and for the analization of all fertilizers, samples of which shall be furnished the professor of chemistry for that purpose, two thousand five hundred dollars.

Laboratory.

The foregoing appropriations for the university to be drawn from the treasury upon orders of the executive committee addressed to the auditor, except that the "expenses of the regents" shall be paid on the order of the governor.

How drawn and paid.

Institution for the Deaf, Dumb and Blind.

For current expenses for the deaf, dumb and blind, twenty-seven thousand dollars.

Deaf, dumb and blind. Current expenses.

For transportation of indigent pupils, six hundred and fifty dollars.

Transportation.

Additional boiler. For an additional boiler, one thousand dollars.
How drawn and paid. The foregoing appropriation for the institution of the deaf, dumb and blind to be drawn from the treasury upon the orders of the board of directors addressed to the auditor.

Hospital for the Insane.

Hospital for insane Current expenses. Transporting patients. For current expenses of the hospital for the insane, seventy-six thousand dollars.
 For transporting patients, three thousand five hundred dollars.

Repairs. For repairs of hospital, three thousand dollars.

Heaters For two new heaters and setting up the same, one thousand and five hundred dollars.

Gas works. For building gas works, two thousand dollars.

Chairs, blankets, etc. For chairs, blankets, etc., for new wing, one thousand dollars.

Fencing grounds. For fencing grounds, one thousand dollars.

Water pipe. For new water pipe, eight hundred dollars.

Heating pipe. For new heating pipe, four hundred dollars.

Spouts and roof. For repairing spouts and roof, one hundred and eighty-five dollars.

Asbestos. For asbestos to cover heating pipe, one thousand three hundred and thirty dollars.
 To refund to current expense fund amount borrowed for transportation of patients during year one thousand and eight hundred and eighty-one, one thousand eight hundred and ninety dollars and fifty-seven cents.

Refunding to expense fund. The foregoing appropriations for the hospital for the insane to be drawn from the treasury upon the orders of the board of directors, addressed to the auditor, at the beginning of each quarter.

Contingent Legislative Expenses.

Contingent expenses of senate. Of house of delegates For contingent expenses of the senate, one thousand one hundred and fifty-eight dollars and fifty-six cents.
 For contingent expenses of the house of delegates, two thousand dollars.
 But no part of this appropriation shall be applied to the payment of mileage to any of the clerks, assistant clerks, committee clerks or pages, or to the sergeant-at arms or doorkeeper of either of the houses of the legislature.

Not to be applied to payment of mileage For expenses of joint committee of the legislature to investigate the sanitary and general management of the hospital for the insane, four hundred and fifteen dollars and eighty-three cents.

Committee to investigate insane hospital.

For Publishing Constitutional Amendments.

Publishing constitutional amendments. To pay to the proprietors of the newspapers which published the constitutional amendments on the order of the governor the balance due them, four thousand nine hundred and fifty dollars to be drawn from the treasury on the

orders of the governor. But the amount to be paid any newspaper for such service shall not, including payments already made, exceed two hundred and sixty-two dollars and fifty cents.

Re-assessment of Real Estate.

For pay of assessors for re-assessment of real estate, Reassessment of real estate. eighteen thousand dollars.

Executive Department.

For civil contingent fund, eight thousand dollars. Civil contingent fund.

For contingent expenses of auditor's office, and pay of extra clerks, two thousand dollars. Auditor's office.

For contingent expenses of treasurer's office, three hundred dollars. Treasurer's office.

For contingent expenses of secretary of state's office, eight hundred dollars. Sec'y of state.

For contingent expenses of attorney general, two hundred dollars. Attorney general.

For contingent expenses of state librarian, one hundred dollars. State Librarian.

For contingent expenses of adjutant general, two hundred dollars. Adjutant gen'l.

The foregoing appropriations to be drawn upon the requisitions or orders of the officers to whom said funds are respectively appropriated. How drawn and paid.

Salaries of Clerks.

To pay salary of private secretary to the governor, one thousand dollars. Salaries of clerks.

To pay salary of clerk to secretary of state, one thousand two hundred dollars. Sec'y of govern- or.

To pay salary of clerk in treasurer's office, one thousand two hundred dollars. Clerk to sec'y of state.

To pay salary of clerks in auditor's office, five thousand six hundred dollars. Clerk to treasurer.

To pay salary of clerk in attorney general's office, one thousand dollars. Clerks in auditor's office.

To pay salary of clerk in the office of the state superintendent of free schools, to be paid out of the general school fund, one thousand dollars. Clerk to attorney general.

Clerk to state sup't of free schools.

Capitol Building.

For further construction of capitol building at Charleston, thirty-four thousand dollars. Capitol building at Charleston.

To be drawn upon the order of the board of public works. How drawn and paid.

Judicial Department.

For contingent expenses of courts, two thousand dollars. Contingent expenses of courts.

For printing and binding supreme court reports, three thousand six hundred dollars. Printing supreme court reports.

Overpaid Taxes.

Refunding
taxes overpaid.
How paid.

For refunding over payments made at the treasury on account of taxes, licenses, fines and commissions, to be paid upon such form or voucher as may be prescribed by the auditor, out of the fund into which the payment was made, two thousand dollars.

Erroneous Assessments.

Refunding
taxes erroneously
assessed.
How paid.

For refunding taxes erroneously assessed, collected and paid into the treasury, to be paid out of the fund into which taxes were paid, five hundred dollars.

County and District Taxes.

Refunding
county and
district taxes.

For refunding to counties county and district taxes paid into the treasury for the redemption of land such amount is hereby appropriated as will be necessary to refund to the counties entitled thereto the taxes so paid into the treasury.

Refunding to
counties, etc.,
taxes paid by
railroads.

For refunding county, district and municipal taxes, paid into the treasury by railroad companies, such sum is hereby appropriated as will be necessary to refund to each county, district and municipal corporation the amount of such taxes as may be paid into the treasury to the credit of such county, district or municipal corporation.

Public Printing.

Public printing.

For public printing and binding, twenty thousand dollars.

Stationery and
printing paper.

For supplying stationery and printing paper for the state house, and interest on overdue account for stationery, fourteen thousand dollars.

Railroad Commissioners.

Railroad com-
missioners.

To pay expenses, to assess railroad property, three hundred dollars.

Boundary Commissioners.

Boundary
commissioners.

To pay expenses of commissioners appointed to locate the boundary line between this state and Pennsylvania, two thousand dollars.

Civil Suits.

Expenses civil
suits, etc.

To pay expenses of civil suits and pay of state agents, one thousand two hundred dollars.

Fish Commissioners.

Fish commis-
sioners.

To pay expenses of fish commissioners, to be drawn upon the order of the president of the fish commission, five hundred dollars.

Vaccine Agents.

To pay salary of vaccine agents, to be drawn upon the order of the governor, one hundred and fifty dollars.

Interest.

To pay interest on money borrowed of the school fund, to be paid after appropriations made in pursuance of existing general laws, and before any other appropriations, seven thousand six hundred and fifty dollars and sixty-nine cents.

Miscellaneous.

- For insurance of library, three hundred dollars. Insurance of Library.
- For insurance on capitol at Wheeling, one thousand five hundred dollars. Of capitol building at Wheeling
- For insurance on capitol building at Charleston, six hundred and seventy-five dollars. Of capitol building at Charleston.
- For purchase of books for state library at Wheeling, one thousand dollars. Books for state library.
- For purchase of books for law library at Charleston, one thousand dollars. Library at Charlestown.
- To be drawn on the order of the supreme court of appeals and expended under the direction of the court. How drawn and paid.
- To pay expenses of military in aiding civil officers to preserve the peace in Fayette county, to be paid upon the order of the adjutant-general, to compensate companies, F, E and H, of the second regiment, West Virginia Volunteers, five hundred and sixty-one dollars and fifty-one cents. Military to preserve peace, How drawn and paid.
- To pay Z. I. Chenowith in full for services as special agent in going and returning from California, and arresting A. C. Ward on a charge of felony, nine hundred and thirty-four dollars and seventy-five cents. Z. I. Chenowith
- To pay Francis M. White in full for services as special agent in going to and returning from Washington territory and arresting M. L. Ward on a charge of felony, one thousand three hundred and eighty-four dollars and thirty-four cents. Francis M. White.
- To pay W. J. Johnston postage paid out by him on Revisory Committee bills sent members during vacation, forty-six dollars and ninety-eight cents. W. J. Johnston, postage.
- To pay A. C. Swartz, extra work done during vacation, folding and mailing revisory committee bills to member, forty-two dollars. A. C. Swartz, page.
- No part of the general school fund shall be taken, borrowed or used for the purpose of paying any appropriation made by this act, at a less rate of interest than six per cent., except the appropriation to pay salary of clerk in the office of the state superintendent of free schools. General school fund not to be used to pay appropriations.
2. Be it further enacted, that no sums of money shall be paid out of the treasury during the fiscal year ending No money to be paid beyond appropriation.

Exception.**Auditor to pay; when.****What payments may be made to public institutions, etc., after end of fiscal year.**

on the thirtieth day of September, one thousand eight hundred and eighty-two, beyond the amounts hereby appropriated unless the same be provided for by the constitution or some general law. But in addition to the sums hereby appropriated for said fiscal year, the auditor may, after the expiration of said fiscal year, ending on the thirtieth day of September, one thousand eight hundred and eighty-two and during the first six months of the fiscal year beginning on the first day of October, one thousand eight hundred and eighty-two make payments to the following institutions, officers and persons upon proper vouchers of sums of money not exceeding in the aggregate one-half of the amount appropriated for the same purposes for the fiscal year ending September thirtieth, one thousand eight hundred and eighty-two; that is to say: for the support of convicts and pay of guards at the penitentiary; for criminal charges; for the support of lunatics in jail; for the pay of teachers at university; for current expenses of the institution of the deaf, dumb and blind; for current expenses of the hospital for the insane; for contingent expenses of the different executive officers, and of the library and adjutant general; for pay of clerks in the executive offices; for printing and binding supreme court reports; for refunding overpaid taxes, and for taxes erroneously assessed, and for public printing and binding, and for supplying stationery. And during the said six months, the auditor may pay all proper charges for refunding to counties and districts, taxes for county and district purposes upon lands redeemed at the auditor's office, and also, taxes assessed against railroads for county and district purposes which may be presented to him for payment. And there are hereby appropriated out of the state fund for the year ending September thirtieth, one thousand eight hundred and eighty-three, sums sufficient to make the payments authorized by this section.

Sup'ts of public institutions to furnish itemized accounts of expenditures of all contingent funds and for repairs. To be included in their reports.

3. The superintendents of the several public institutions of this state shall furnish to the board of directors and regents, of their respective institutions, itemized accounts of all money paid out on account of appropriations for contingent expenses and repairs, and when audited and allowed, the directors and regents, respectively, shall include such itemized accounts in their reports directed by law to be made.

[Approved March 27, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CLXXXVII.

AN ACT making appropriations of public money to pay members of the legislature and for salaries of the officers of the government, in pursuance of the forty-second section of the sixth article of the constitution.

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia :

1. There shall be and is hereby appropriated for the fiscal year ending September thirtieth, one thousand eight hundred and eighty-two, the following sums for pay of members and officers of the legislature, and for salaries of the officers of the government :

Fund to pay members and officers of legislature and officers of government.

LEGISLATIVE DEPARTMENT.

Senate.

To pay for mileage allowed to members of the senate for the session commencing on the eleventh day of January, one thousand eight hundred and eighty-two, the sum of nine hundred and fifteen dollars and sixty cents.

Mileage of senators.

To pay *per diem* compensation of the twenty-four members of the senate, from the eleventh day of January, to the twenty-eighth day of March, one thousand eight hundred and eighty-two, seven thousand five hundred and forty-six dollars.

Per diem of senators.

To pay *per diem* compensation of the officers, clerks of committees and pages, that is to say :

Per diem of officers, etc., of senate.

To the clerk of the senate, eight hundred and seventy dollars.

Clerk.

To two assistant clerks of the senate, nine hundred and twenty-four dollars.

Assistant clerk.

To three committee clerks, nine hundred and twenty-four dollars.

Committee clerks.

To four pages, six hundred and sixteen dollars.

Pages.

To the sergeant-at-arms, three hundred and eighty-five dollars.

Sergeant-at-Arm.

To the doorkeeper, three hundred and eight dollars.

Doorkeeper.

House of Delegates.

To pay mileage of sixty-five members of the house of delegates for the session commencing on the eleventh day of January, one thousand eight hundred and eighty-two, the sum of two thousand three hundred and ninety-three dollars and fifty cents.

Mileage of delegates.

To pay *per diem* compensation of the members of the house of delegates from the eleventh day of January to the twenty-eighth day of March, one thousand eight hun-

Per diem of delegates.

dred and eighty-two, twenty thousand one hundred and seventy-four dollars.

Per diem of officers of house of delegates.	To pay <i>per diem</i> compensation of the officers, clerks of committees and pages as follows:
Clerk.	To the clerk of the house of delegates, eight hundred and seventy dollars.
Assistant clerks.	To five assistant clerks, two thousand three hundred and ten dollars.
Committee clerks.	To five committee clerks, one thousand five hundred and forty dollars.
Sergeant-at-Arms.	To sergeant-at-arms, three hundred and eighty-five dollars.
Doorkeeper.	To the door-keeper, three hundred and eight dollars.
Pages.	To pay five pages, one thousand and seventy-eight dollars.

Executive Department.

Salary of governor.	To pay salary of the governor, two thousand seven hundred dollars.
Auditor.	To pay salary of the auditor, two thousand dollars.
Sec'y of state.	To pay salary of the secretary of state, one thousand dollars.
Treasurer.	To pay salary of the treasurer, one thousand four hundred dollars.
Attorney gen'l.	To pay salary of the attorney-general, one thousand three hundred dollars.

State Superintendent of Schools.

Sup't of free schools. How paid.	To pay salary of superintendent of free schools, to be paid out of the general school fund, one thousand five hundred dollars.
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Librarian.

Librarian, etc.	To pay salary of librarian and <i>ex-officio</i> adjutant-general, one thousand one hundred dollars.
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Keeper of the Rolls.

Keeper of rolls.	To pay salary of the keeper of the rolls, three hundred dollars.
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Janitor.

Janitor.	To pay salary of janitor, one thousand dollars. To pay compensation allowed by law to janitor for his services during the session of the legislature, two hundred and thirty-one dollars.
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Judicial Department.

Judges court of appeals.	To pay salaries of judges of the supreme court of appeal, eight thousand eight hundred dollars.
Circuit judges.	To pay salaries of judges of the circuit courts, twenty-five thousand two hundred dollars.

To pay compensation allowed by law to persons who hold the courts where the judge of the circuit court cannot act, five hundred dollars. Special judges.

To pay mileage of judges of the supreme court of appeals, seven hundred and fifty dollars. Mileage of judges of court of appeals.

To pay mileage of the judges of the circuit courts, one thousand eight hundred dollars Mileage of circuit judges.

To pay salary of clerk of the supreme court of appeals, one thousand dollars. Clerk supreme court.

2. The auditor is hereby authorized and directed, when properly demanded, to issue his warrant on the treasury in the same manner he would be required to if each item of expenditure was directed to be paid to a creditor by name; and no money shall be drawn from the treasury for the purpose herein named during the fiscal year ending September thirtieth, one thousand eight hundred and eighty-two, beyond the amount hereby appropriated, unless the same is authorized by the constitution or some general law. But the auditor may draw his warrants on the treasury in favor of the several officers whose salaries and compensation are provided for by this act, for services actually rendered by them during the first six months of the fiscal year beginning on the first day of October, one thousand eight hundred and eighty-two, for an amount not to exceed in the aggregate, one-half of the sum appropriated for the salary or compensation of such officers respectively, for the year ending September thirtieth, one thousand eight hundred eighty-two. Auditor authorized to pay. No money to be drawn beyond appropriation, unless, etc. Auditor may pay salaries of public officers for services actually rendered, etc.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CLXXXVIII.

AN ACT for the relief of Andrew Spindle, of Harrison county.

[Passed March 16, 1882.]

WHEREAS, on the ninth day of September, one thousand eight hundred and sixty-seven the board of education of Ten Mile district in the county of Harrison, entered into a written contract with one George B. Whitney, for the delivery to said board by said Whitney of ten series of Israel's Ancient and Modern Outline Maps, for the use of the schools of said district at the price of three hundred and fifty dollars. And, Preamble.

Preamble cont'd WHEREAS, said series of maps were subsequently delivered to said board of education by said Whitney or his agent, and an order therefor was issued by said board of education, directing the payment of said sum of three hundred and fifty dollars out of the building fund of said district. And

WHEREAS, Andrew Spindle, who was then collector and treasurer of the school and building funds of said district paid said order out of the building funds then in his hands, and presented and surrendered said order to said board of education, and was allowed credit therefor in his settlement with said board. And

WHEREAS, the committee authorized and appointed under authority of chapter one hundred and seventy-one of the acts of one thousand eight hundred and seventy-one, entitled "an act to provide for the settlement of the accounts of certain officers and persons for school moneys in their hands, or under their control," in their settlement with said Andrew Spindle as collector and treasurer of the school and building moneys of said district, refused to allow and credit him with the said sum of three hundred and fifty dollars paid on the order of the board of education as aforesaid, for the reason that said order could not be found, but had been misplaced and lost from the papers of said board of education after the surrender to said board by said Spindle, and could not be produced or found. And,

WHEREAS, Said committee appointed under said act of the legislature made and filed a report of settlement wherein it was shown that said Spindle as treasurer was indebted to the building fund of said district in the sum of three hundred and fifty dollars, the amount of said order, and judgment was entered by motion against him and his sureties on his official bond by motion in the circuit court of Harrison county for said sum of three hundred and fifty dollars and the accrued interest thereon, which judgment has since been paid by said Spindle, and

WHEREAS, A large number of the voters and tax payers of said Ten Mile district have petitioned that the amount of said judgment paid by said Spindle and the accrued interest thereon be refunded to said Spindle, and that the same be levied upon the tax payers of said district; therefore

Be it enacted by the Legislature of West Virginia:

1. That the board of education of Ten Mile district, in the county of Harrison, be, and they are hereby, authorized and directed to refund to Andrew Spindle, former treasurer of Ten Mile township (now district), the amount recovered against him and his sureties in the circuit court

Board of education of Ten Mile district, Harrison county, authorized to refund to

of Harrison county, in the name of said township, and paid by said Spindle, and the accrued interest thereon, the same to be paid out of the building fund of Ten Mile district; *Provided, however,* That this act shall not take effect, nor no money shall be paid by virtue hereof, until the question of its payment is submitted to the qualified voters of said district at the general election to be held on the second Tuesday in October, one thousand eight hundred and eighty-two. The clerk of the board of education of said district shall give notice of the provisions of this act and the vote to be taken by posting, twenty days before the day of election, written or printed notices thereof at not less than five public places in said district; and all voters desiring to vote on said question, and to vote in favor of its payment, shall have printed or written on their tickets "for payment," and those opposed to its payment shall have written or printed on their tickets "against payment." The election shall be conducted and returned, and the result thereof ascertained and declared, in the same manner as the election for school officers is declared; and if a majority of the voters voting in said Ten Mile district be in favor of refunding to Andrew Spindle the amount of the judgment so paid by him, and the accrued interest thereon, then the foregoing provisions of this act shall be in full force and effect, otherwise this act shall be void and of no effect.

Andrew Spindle \$350, with accrued interest; Out of what fund.

Question of payment to be first submitted to voters of district; when

Notice to be given; how.

Voters voting for or against payment; what to have written on tickets.

How such election conducted, etc., and result ascertained, etc. Majority vote for refunding necessary to put act in force.

[Approved March 23, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CLXXXIX.

AN ACT authorizing the board of public works to sell the privilege of mining coal under the bed of the Ohio river.

[Passed March 23, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That the board of public works be and is hereby authorized to sell to any person, or municipal or other corporation, the privilege, either perpetually or for a limited period, of mining, removing and disposing of the coal under the bed of the Ohio river, either at public or private sale, whichever will produce the greatest amount of money upon the terms and conditions hereinafter mentioned.

Board of public works authorized to sell the privilege of mining coal under bed of Ohio river.

2. Such sales shall be made in sections of not exceeding

Sale to be made in sections of not exceeding one mile in length; how surveyed. Dividing lines between such sections; how laid down and located. Where plat of survey filed.

one mile in length, which shall be accurately surveyed along the shore of said river in this state, and the dividing line between the sections, and the bearing of such lines across the river shall be laid down on a map or plat of such survey, which shall be filed and preserved in the office of the secretary of said board; and a stone or other monument shall be placed or marked, so as to show the location of each of said dividing lines on the ground.

Terms and conditions of such sale.

3. Every such sale shall be made upon the following terms and conditions:

First. At least one-third of the purchase money of each section sold shall be paid in cash at the time of the sale, one-half of the residue in one year, and the balance in two years from the day of sale, the purchaser giving notes or bond with good security, bearing interest from date, for the deferred payments. But any such purchaser may, at the time of the sale, pay the whole of the purchase money, or any other amount greater than the one-third thereof.

Second. Every such purchaser shall erect and maintain his or its works and structures, and carry on his or its mining operations on and from the West Virginia side of said river, and not on the Ohio side thereof, and shall commence the erection of such works and structures, and such mining operations within two years after the date of such purchase, and shall thereafter prosecute the same with all reasonable dispatch; and if any such purchaser, or his or its heirs, assigns or successors, shall violate this provision in any particular, all of his, their or its rights and privileges under said purchase, shall forthwith cease and determine, without any judicial or other proceedings therefor.

For what the rights, etc., of purchasers, etc., cease and determine.

4. Before any such sale shall be made, the said board shall give notice thereof, by publication in some newspaper printed in the counties of Cabell, Mason, Wood and Ohio, and the cities of Washington, Baltimore and Pittsburgh, at least once in each week for six successive weeks, of the time and place at which the sale will commence, and said board may continue such sale from day to day, and from time to time, until the sale is completed, without any further notice, except that if such postponement be for more than one week, a notice thereof shall be published once in some newspaper printed at the place of sale; and before any such section shall be sold at private sale, the same shall be offered at public sale.

Notice to be given by board of sale; how.

Sale may be continued from day to day, etc.

When further notice to be given. Section must first be offered publicly before sold privately.

5. When the purchaser of any one or more of such sections shall have paid all the purchase money thereof and the interest, if any, accrued thereon, said board shall by an order entered upon its records, direct its secretary to execute, sign, seal and acknowledge for record, in the

Deed of conveyance; when and how made.

name of the state of West Virginia as grantor, a proper deed of conveyance of all the interest, right and title of the state in and to the coal underlying the bed of the Ohio river contained within said section or sections, for and during the time for which such purchase was made, to the purchaser thereof, or to the heirs, assigns or successors of such purchaser, in which deed shall be inserted in full the second condition of such sale hereinbefore mentioned, and such deed when so executed, acknowledged and recorded, shall convey and transfer to the grantee therein all right, title, interest and claim of the state in and to all the coal contained within the boundary lines of such section or sections for and during the period for which such purchase was made, subject to the conditions aforesaid.

What to be inserted in such deed.

Effect of such deed.

6. The works and structures of any person, firm or corporation mining for coal under the provisions of this act, shall be so erected or placed as not to interfere with or interrupt the navigation of the Ohio river, or any of its tributaries.

Navigation of Ohio river, etc., not to be interfered with.

[Approved March 28, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXC.

AN ACT to extend the time within which the Grafton and Greenbrier railroad company may organize.

[Passed March 24, 1882.]

WHEREAS, The Grafton and Greenbrier railroad company has failed to organize within the time prescribed by law, therefore

Preamble.

Be it enacted by the Legislature of West Virginia :

1. That the time for the organization of the said Grafton and Greenbrier railroad company be extended until the first day of August, one thousand eight hundred and eighty-two, and that the organization of said company, if effected before the said day, shall be as valid to all intents and purposes as if the said company had been duly organized within six months from the filing of its articles of incorporation in the office of the secretary of state.

Further time given the Grafton & Greenbrier R. Co. to organize.

[Approved March 28, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CXCL.

AN ACT to repeal the third section of an act of the general assembly of Virginia, entitled "an act laying off into wards those cities and towns, the white population of which exceeds five thousand, and establishing a separate place of voting in each," passed May fifteen, one thousand eight hundred and fifty-two, amended and re-enacted by an act of said general assembly, passed January fourteen, one thousand eight hundred and fifty-three, the last named act being chapter five of the acts of said assembly, passed in one thousand eight hundred and fifty-two and fifty-three.

[Passed March 24, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That the third section of an act of the general assembly of Virginia, entitled "an act laying off into wards those cities and towns, the white population of which exceeds five thousand, and establishing a separate place of voting in each," passed May fifteen, one thousand eight hundred and fifty-two, amended and re-enacted by an act of said general assembly, passed January fourteen, one thousand eight hundred and fifty-three, the last named act being chapter five of the acts of said assembly, passed in one thousand eight hundred and fifty-two and fifty-three, be and the same is hereby repealed.

[Approved March 28, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

Section 3 of an act of general assembly of Va. laying off into wards cities and towns the white population of which exceeds 5,000 and establishing a separate place of voting in each, repealed.

CHAPTER CXCII.

AN ACT to amend and re-enact section twenty-three of an act entitled, "An act relating to the school district of Wheeling," passed February fifth, one thousand eight hundred and seventy-two, as amended and re-enacted by chapter forty-six of the acts of one thousand eight hundred and seventy-two and seventy-three, and again amended and re-enacted by an act passed February sixteenth, one thousand eight hundred and eighty-two.

[Passed March 24, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That section twenty-three of an act entitled "An act relating to the school district of Wheeling," passed February fifth, one thousand eight hundred and seventy-two, as amended and re-enacted by chapter forty-six of the acts of one thousand eight hundred and seventy-two and seventy-three, and again amended and re-enacted by an act passed February sixteenth, one thousand eight hundred and eighty-two, shall be amended and re-enacted so as to read as follows :

Section 23, as amended by acts passed Feb. 16, 1882, relating to school dist. of Wheeling, amended and re-enacted.

23. At their first meeting for organization under this act, and at every meeting for organization thereafter, the board shall appoint a superintendent of schools for the district and fix his salary. Said superintendent shall be an officer of the board, and in addition to the duties specified in this act, he shall perform such other appropriate duties with relation to the schools of the district or such public library as the board may prescribe. He shall be liable to removal by the board of education for any palpable violation of law or omission of duty. But he shall not be removed unless charges shall be preferred to the board by a member thereof, and notice of a hearing, with a copy of the charges, delivered to him and opportunity be given him to be heard in his defense. When the office shall become vacant from any cause before the expiration of the term for which the superintendent shall have been elected, the board of education shall fill the same by appointment for the unexpired term. It shall be the duty of the district superintendent to make, from the report of the clerk of the board of education, and from his own information, such report to the state superintendent of free schools of the character and financial condition of the schools of the district as may be necessary, in order to secure to the district its quota of the state school fund, and to convey to said state superintendent all necessary information of the character and condition of the schools of the district. The

School dist. of Wheeling; appointment of sup't of schools for; when. To fix his salary Sup't to be an officer of board; duties to be performed by.

For what and how removed.

Vacancy in office of sup't; how filled.

Report of dist. sup't to state sup't.

Not to receive any gift, reward, etc., for influence in recommending any book, apparatus, etc.

district superintendent shall not directly or indirectly receive any gift, emolument or reward for his influence in recommending the use of any book, apparatus or furniture of any kind whatever in the schools of the district.

[Approved March 28, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER CXCIH

AN ACT to amend and re-enact the first section of an act of the general assembly of Virginia, passed March ninth, one thousand eight hundred and thirty-eight, entitled "an act to amend the act, entitled 'an act to incorporate the city of Wheeling, in Ohio county.'"

[Passed March 24, 1882.]

Be it enacted by the Legislature of West Virginia :

Sec. 1 of act of general assembly of Va., passed March 9, 1838, relating to Wheeling city, amended.

1. That the first section of an act of the general assembly of Virginia, passed March ninth, one thousand eight hundred and thirty-eight, entitled "an act to amend the act entitled 'an act to incorporate the city of Wheeling, in Ohio county,'" be amended and re-enacted so as to read as follows :

Mayor; who may be elected; how and when.

Term of office.

Duties and powers of mayor

His salary.

1. The mayor of the city of Wheeling, in the county of Ohio, shall be elected from among the citizens thereof, qualified to vote for mayor and members of council, at the regular biennial charter election held in and for said city, by the voters qualified to vote at such elections, and shall hold the office for the term of two years, and until his successor shall be qualified. It shall be the duty of the mayor of said city to cause all the laws and ordinances thereof to be enforced, to keep the seal of said city, and to perform all such other duties as the council may ordain, not inconsistent with the laws and constitutions of this state or of the United States. He shall also preside at the meetings of the first branch of the council, but shall in no case be entitled to a vote in the deliberations of said branch, except when there is a tie; he shall then give the casting vote; he shall also receive out of the treasury of said city such reasonable compensation and perquisites as the council may ordain, but in no case shall his salary and perquisites be increased or diminished during the time for which he shall be elected. When the said of-

office shall be vacant from refusal to serve, death, resignation or any other cause, the council shall have power to fill the vacancy for the residue of the term by an election, in joint session, to the office, of a citizen of said city, qualified to vote for mayor and members of council. When any oath may lawfully be administered, or affidavit or deposition taken within said city, it may be done by the mayor thereof. Such mayor shall also have authority to take, within said city, acknowledgments of deeds and other writings, and the privy examination of married women respecting the same, and to certify such acknowledgments and privy examination under his signature, and the seal of the city, the certificate, if the instrument is to be recorded in this state; to conform in effect so far as applicable to the form prescribed for such certificates when given by a notary public, but it must show that the acknowledgment or acknowledgment and privy examination were taken by such mayor within said city and are certified under his signature and the seal of said city. Any clerk of the county court in any county in the state shall admit any writing to record, that may by law be recorded, as to any person whose name is signed thereto and whose acknowledgment and privy examination relative to the same is certified by said mayor as aforesaid. The mayor shall receive the same fees for administering oaths, taking depositions and acknowledgments and certifying same as a notary public for similar services.

Vacancy; how filled.

May administer oaths, take depositions, etc.

Authorized to take acknowledgments of deeds, etc., and privy examination of married women.

How certified. What such certificate must show

Duty of clerk to admit any writing to record so certified.

Fees of mayor in such cases.

Acts Repealed.

2. All acts and part of acts, in so far as in conflict with this act, are hereby repealed.

Acts repealed.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER CXCIV.

AN ACT to amend the charter of the city of Wheeling.

[Passed March 24, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That the twelfth, fifteenth, eighteenth, twenty-seventh and fiftieth sections of an act of the general assembly of Virginia, entitled "an act to incorporate the city of Wheeling, in Ohio county," passed March eleventh, one thou-

Certain sections of act of general assembly of Va., incorporating city of Wheeling,

passed in 1836,
amended.

and eight hundred and thirty-six, be amended and re-enacted so as to read as follows:

Wards; number
of, city divided
into; representa-
tion of each in
second branch
council.
Who to vote for
members of
council.

12. The said city shall be divided into not less than four nor more than eight wards, and the representation of each ward in the second branch of the council shall be as nearly as practicable in proportion to the number of persons residing therein; and the members from each ward shall be elected by the voters of said city who shall at the time of the election be actual residents of such wards, except that freeholders, qualified as voters of said city, shall be entitled to vote in any one ward in which the freehold estate, in right whereof they vote, is situated.

Who eligible as
member of
council.
What vacates
office.

15. No person shall be eligible as a member of the council of said city from any ward thereof, unless he is a resident of the ward for which he is chosen. The removal of a member of council from the ward he represents shall vacate his office as such member.

Enumeration of
persons residing
in wards; when.

18. The council of said city shall, before the first day of January, one thousand eight hundred and eighty-three, and once at least in every tenth year thereafter cause enumerations to be made of the number of persons residing in the several wards of said city, and having fixed the number of members of which their representation in the second branch of the council shall thereafter consist (the whole number of members in said branch not to exceed thirty, however,) they shall apportion the number of members among the several wards according to the principle of representation hereinbefore fixed.

Apportionment
of representa-
tion in second
branch council.

Journal of pro-
ceedings to be
kept.
Open to inspec-
tion.
Ayes and noes;
when entered.

27. Both branches of the council shall keep a journal of their proceedings, which shall at all times be open to the inspection of any voter of said city; and at the request of any two of the members present, the ayes and noes on any question put shall be taken and entered in the journal.

What council
authorized to
ordain and
enforce.

What to spec-
ially provide.

50. The council shall have authority to ordain and enforce such regulations as shall be necessary or proper to prevent accident by fire within said city, or to secure the inhabitants thereof as far as practicable, from injury thereby; and specially to provide for the establishment, organization, equipment and government of a fire department or of fire companies in said city, or both; and to provide suitable magazines, or places in or near said city for the storage of gunpowder, petroleum, or other combustible and dangerous articles; and to ordain and enforce such regulations as they may deem necessary respecting the place and manner of keeping and transporting the same.

License tax for
sale of combusti-
ble and danger-
ous articles

And the council shall also have authority to assess, by ordinance, and collect an annual license tax for the sale of all such articles. All insurance companies, not incorpora-

ted under the laws of this state, engaged in the business of insurance in said city, may be required by the council thereof, by ordinance, to pay to said city for the privilege of transacting insurance business therein, a percentage upon their receipts for premiums of not more than one per cent. of the gross amount of premiums received by them for insurance in said city, during the half year ending on every first day of July and January; and said council may, by ordinance, prescribe that no person shall act in said city as officer, agent, broker, solicitor or otherwise, for or on behalf of any such company in the transaction of insurance business, or soliciting risks, until he shall have obtained from the clerk of the city a certificate of authority so to do, which certificate the clerk shall issue upon application, that every person to whom such certificate shall be granted shall, on or before the fifteenth day of July and January in each year, render to the said clerk a full, true and just account, verified by his oath, of all such premiums, which during the half year ending on every first day of July and January preceding such report, shall have been received by him, or any other person for him, in behalf of any such company, or by the company directly or through any other person, for risks, procured by him, unless the same are accounted for in the account rendered under such ordinance by some other officer, agent, broker or solicitor for the company in said city; and that the books in the possession or under the control of the person having such certificate, showing the business done by or through him in said city for any such company, shall be open to the examination of such officers of the city or committee of the council as the council shall designate for the purpose. Said council may, by ordinance, further require that every person holding such certificate, when he renders such account, shall pay over to the receiver of the city of Wheeling the amount for which the company which received the premiums mentioned in such account is liable on account of such premiums, under any ordinance passed by the council of said city by virtue thereof. And such amount may also be recovered of such company or the person rendering such account, by action in the name and for the use of the city, as for money had and received for its use. Said council may further, by ordinance, provide that if such accounts be not rendered, and moneys paid, on or before the fifteenth day of July and January in each year, it shall be unlawful for the company in default to transact any insurance business in said city until such accounts are duly rendered and the money due from such company fully paid.

Insurance companies; provision in relation to.

What per cent. agc. to pay on receipts for premiums

Certificate of authority may be required for transaction of insurance business.

When clerk to issue such certificate; what account to be rendered to such clerk, and how.

Books of company open to examination; by whom.

When such tax to be paid, and to whom.

How recovered.

Unlawful for company to transact insurance business; when.

2. All acts and parts of acts in so far as in conflict with Acts repealed. this act are hereby repealed.

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXC.V.

AN ACT to amend an act of the legislature of West Virginia, entitled "An act to amend the charter of the city of Wheeling," passed March third, one thousand eight hundred and seventy.

[Passed March 25, 1882.]

Be it enacted by the Legislature of West Virginia :

Sections 2 and 3,
acts 1870,
amended.

1. That the second and third sections of an act of the legislature of West Virginia, entitled "An act to amend the charter of the city of Wheeling," passed March third, one thousand eight hundred and seventy, be amended and re-enacted so as to read as follows :

What officers
elected, and for
what time; all
other officers
appointed by
council.

2. The mayor, city clerk, city sergeant and wharf master shall be elected by the qualified voters for the term of two years, and all other officers deemed necessary by the city council shall be appointed or elected by the council as provided in the next section of this act, unless otherwise provided by law. The city sergeant (and deputies who have served under him during the preceding year), shall be ineligible for re-election after two successive terms, until one term shall have intervened; and the powers of the city sergeant and his deputies under the ordinances of the city shall extend to and embrace the Peninsula cemetery and the approaches thereto. Said city may enforce its lien on real estate for the taxes or other assessments thereon by a sale thereof under a decree in a suit in equity in any court of record in the county of Ohio or city of Wheeling. The office of city treasurer is and shall remain abolished.

Sergeant and
deputies ineligible
to re-
election after
two successive
terms.
Powers of
sergeant and
deputies.
Lien on real
estate for taxes,
etc., how
enforced.

Office of treas-
urer abolished.

Council author-
ized to provide
for appointment
or election of
certain officers.

3. The council shall have authority, unless otherwise provided by law, to provide, by ordinance, for the appointment or election by the council of such officers, whose election or appointment is not provided for by law, as shall be necessary or proper to carry into full effect any authority, power, capacity or jurisdiction which is or shall be vested in the said city, or in the council, or in the mayor or aldermen thereof, to grant to the officers so appointed or elected by the council the powers necessary or proper for the purposes above mentioned; to define their duties; to fix their terms of office; to allow them reasonable fees and

Also, to grant to
such officers
necessary
powers.
To define their
duties, fix their

compensation, and to require and take of all or any of them such bonds, obligations or other writings as they shall deem necessary or proper to insure the proper performance of their several duties. All officers so appointed or elected by the council may be removed from office at the pleasure of the council, and unless their terms of office be otherwise fixed by ordinance, they shall be considered as holding their respective offices at the pleasure of the council. The term of every officer of the city shall continue, unless the office be vacated by death, resignation, removal from office or otherwise, until his successor is elected or appointed and qualified, notwithstanding anything in the charter of said city, or any law applicable thereto, or in any ordinance thereof to the contrary.

term of office, compensation, etc.; also, to require bond, etc.

How such officers removed; their term of office, unless fixed by ordinance. Term of every officer; how long to continue, unless office be vacated by death, removal, etc.

Acts Repealed.

2. All acts and parts of acts, in so far as they conflict with this act, are hereby repealed.

Acts repealed.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each House, by a vote taken by yeas and nays, having so directed.

CHAPTER CXCVI.

AN ACT to revive, amend and re-enact the fourteenth section of the act of the general assembly of Virginia, entitled "An act to incorporate the city of Wheeling, in Ohio county," passed March eleventh, one thousand eight hundred and thirty-six.

[Passed March 24, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That the fourteenth section of the act of the general assembly of Virginia, entitled "An act to incorporate the city of Wheeling, in Ohio county," passed March eleventh, one thousand eight hundred and thirty-six, be revived, amended and re-enacted so as to read as follows:

Sec. 14 of act of general assembly of Va., relating to the incorporation of Wheeling, revived and amended, etc.

14. Elections for mayor, members of both branches of the council and such other officers of the city as are by law required to be elected by the people shall be held at such places in said city, under the superintendence of such persons and subject to such regulations, (not inconsistent with the charter of the city or laws of this state), as are now provided in relation to such elections by ordinance

Elections for mayor, etc.; where and how held.

All other elections; where held or taken, and how.

passed by the council, or as such council may hereafter from time to time ordain. All other elections or votes on any question by the qualified voters of said city shall be held or taken at such places, under the superintendence of such persons, and subject to such regulations, (not inconsistent with the charter of the city or laws of this state), as such council has or shall from time to time hereafter ordain.

Acts Repealed.

Acts repealed. 2. All acts and parts of acts, in so far as they are in conflict with this act, are hereby repealed.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER CXC VII.

AN ACT to repeal section thirty-two of chapter fifty-eight of the code of West Virginia:

[Passed March 24, 1882.]

Be it enacted by the Legislature of West Virginia:

Sec. 32 of chap.
58 of code,
repealed.

1. That section thirty-two of chapter fifty-eight of the code of West Virginia be, and the same is hereby repealed.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CXC VIII.

AN ACT appropriating money to pay John E. Peck for conveying a lunatic to the insane asylum at Weston.

[Passed March 24, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That the sum of seventy-eight dollars and twenty

cents be, and the same is hereby appropriated out of the treasury, to pay John E. Peck, late deputy sheriff of Logan county, and reimburse him for expenses incurred in conveying a lunatic to the insane asylum at Weston.

Appropriation to reimburse John E. Peck, of Logan county; for what.

2. The auditor is hereby directed and authorized to draw his warrant on the treasury, for the sum herein appropriated in the manner prescribed by law.

Auditor directed to draw his warrant for amount.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER CXCI.

AN ACT authorizing and empowering the Kanawha board to settle and adjust certain claims against the old Western board of the James river and Kanawha canal company, and pay the same *pro rata* out of its surplus funds.

[Passed March 25, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That the Kanawha board be, and is hereby directed to examine into the justice of the claims of the heirs of James E. Houston, deceased, and the other creditors of the western branch of the old James river and Kanawha canal company, and if satisfied upon and after said examination that there is still due on said claim, or claims, any balance, or balances, for service actually rendered in the employ of the said western branch of the old James river and Kanawha canal company, on or in connection with the improvement of the Kanawha river, in and near Charleston, in Kanawha county, in the years one thousand eight hundred and sixty and one thousand eight hundred and sixty-one, then the said board shall ascertain the amount thus due, with interest thereon, and pay the same out of any funds that may remain to the credit of the said board, after discharging its own liabilities, or should the funds be inadequate to meet said claim, or claims, in full, then, divide the amount so remaining *pro rata* among the said several claimants. But no tolls shall be levied by said board on persons, boats, or other property passing on, or along, the great Kanawha river, to pay any such claims, but the same, if paid at all, must be paid out of the property and other assets now in the hands of said

Kanawha board empowered to settle and adjust certain claims; how.

No tolls to be levied to pay such claims.

board; and no such property or assets, or the proceeds thereof, shall be applied to the payment of any such claim until all the other debts and liabilities of said board shall be fully paid off and discharged. The said board shall not take any action under the provisions of this act, unless, and until, such claimants shall dismiss any and all actions and suits now pending in any court against said board brought by them, or any of them, for the recovery of any such claim; and nothing in this act shall be so construed as to admit that there is any liability on the part of this state, or of said board, for the payment of the said claims, or any of them, or any part thereof.

All other debts, etc., must be paid before such claims.

Claimants to dismiss all suits, etc., now pending against such board.

Liability to pay such claims not admitted.

[Approved March 28, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CC.

AN ACT fixing the boundary lines of the corporation of Clarksburg.

[Passed March 25, 1882.]

Be it enacted by the Legislature of West Virginia:

Boundary lines of the corporation of Clarksburg fixed.

Police.

1. The boundary lines of the corporation of the town of Clarksburg, shall be as follows: Beginning at the mouth of Elk creek, where it enters the West Fork river; thence up said creek to the mouth of Gregory run; thence up said run to the northern line of the Northwestern Virginia railroad, (now operated by the Baltimore and Ohio railroad company); thence along and with said northern line of said railroad to Still-house run; thence with the meanderings of said run to Elk creek; thence with said creek and its meanderings to the mouth of the drain from Monticello spring; thence a due west line to the West Fork river; thence down said river to the beginning. The police of the town of Clarksburg shall continue to have jurisdiction for all police purposes over the territory extended by this act, and that which previously was within the corporate limits of the said town of Clarksburg.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

CHAPTER CCI.

AN ACT authorizing the president and directors of the "West Virginia Central Agricultural and Mechanical Society," at Clarksburg, to extend their police jurisdiction.

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia:

1. That the president and directors of the "West Virginia Central Agricultural and Mechanical Society," at Clarksburg, are authorized and empowered to extend the police jurisdiction of such society, one-half mile in every direction from the fair grounds belonging to the society during their exhibitions, for the purpose of suppressing riots and all other unlawful acts. *Provided*, That this act shall in no wise interfere with the police regulations of the town of Clarksburg.

President and directors of West Va. Central Agricultural Society authorized to extend their police jurisdiction.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CCII.

AN ACT to amend and re-enact chapter one hundred and forty-five of the acts of one thousand eight hundred and seventy-two, entitled "an act for the better government of the Berkeley Springs, in the county of Morgan."

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia:

1. Chapter one hundred and forty-five of the acts of one thousand eight hundred and seventy-two is hereby amended and re-enacted so as to read as follows:

Chapter 145 acts 1872 amended.

1. The public grounds in the town of Bath, in the county of Morgan, known as the public square, together with the medicinal springs and improvements thereon, shall be and continue under the management and control of a board of trustees, in trust, as heretofore, for the public use and benefit.

Berkeley Springs, etc. to remain under control of a board of trustees, in trust, etc.

2. The powers and authority of the present trustees of the Berkeley Springs shall cease and determine on the

Powers and authority of

present board;
when to cease.

Board of trust-
tees.

Board made a
corporation;
by what name.

To have a com-
mon seal, sue
and be sued,
purchase and
hold real estate,
etc.

Powers of such
board.

Proviso as to
municipal
jurisdiction of
the town of
Bath.

Trustees not to
mortgage, etc.,
property or
grant exclusive
privileges.

Trustees to
receive no pay

Governor to fill
vacancies.

Officers of
board; when and
how elected;
term of office.

Bath keeper.

Bond of treas-
urer and bath
keeper.

Meetings of b'rd
of trustees;

first day of April, one thousand eight hundred and eighty-two, and thereafter said board shall consist of Isaiah Buck, David H. Strother, Charles Green, Joseph S. Duckwall, William H. Travis, Dr. E. B. Pendleton, T. H. B. Dawson, John T. Tiger, Henry Willard, John T. Siler, John Rufus Smith, George W. Haverdale, E. Boyd Faulkner and Uberto Mondenhall; and they and their successors are heroby declared to be a corporation by the name of the "Trustees of the Berkeley Springs," and as such may have a common seal, and by that name may sue and be sued, plead and be impleaded, contract and be contracted with, and may purchase, take and hold in trust, as aforesaid, any real estate adjacent for the enlargement of the said public grounds. They shall have and exercise all the powers heretofore vested in and exercised by the trustees of the Berkeley Springs over the said springs and public grounds, and make by-laws, ordinances, rules and regulations not contrary to the constitution and laws of this state for the improvement and preservation of the same, for the use of the waters of said springs, for the government of all under their authority and the management of the springs and the property aforesaid, and generally may do any and all things compatible with the object of their organization and necessary for the better execution of their said trust. *Provided*, That nothing herein contained shall be construed to exclude the municipal jurisdiction of the town of Bath over the said public grounds. *And provided further*, That the said trustees shall have no power to mortgage or otherwise alien the public property aforesaid, nor shall they grant to the proprietor of any hotel, or any other person, any special or exclusive privileges in the use or enjoyment of said springs or public grounds. Every trustee shall serve without *per diem* or mileage.

3. The governor shall have power to fill all vacancies occurring in said board of trustees.

4. The officers of the said board shall be a president, a secretary and a treasurer, each of whom shall be elected annually by the board, from among its members, and shall hold their offices for the term of one year, and until a successor is elected.

5. A bath-keeper shall be elected annually by the board, who shall continue such until the election of his successor. The present bath-keeper shall remain in office until his successor is elected.

6. The treasurer and bath-keeper shall each give bond for the faithful discharge of his duties, in a penalty to be fixed by, and made payable, to the board.

7. The board or trustees shall meet at least once in every year, the time and place of meeting to be fixed by an or-

der of the board, but special meetings may at any time be held, on notice by the president or any two members of the board, whose proceedings, however, where they involve the creation of a debt, or an appropriation of money must be approved at a regular meeting of the board. The first meeting of the board under this act shall be held on the first Tuesday in April, one thousand eight hundred and eighty-two, or as soon thereafter as convenient, and not less than five members shall constitute a quorum at any meeting.

regular and special.

First meeting.

Quorum.

8. The said board of trustees shall, on or before the first day of November, one thousand eight hundred and eighty-two, and every two years thereafter, make report to the governor, giving a full and complete statement, sworn to by the president and treasurer of the board, of all moneys received and disbursed by them; said report to be accompanied by certified copies of all vouchers and papers connected therewith, and other matter the said board or the governor may deem necessary or pertinent. And the governor shall transmit said report to the legislature at its succeeding session.

Report by trustees to governor; when and what to contain.

What to accompany such report.

Duty of governor or as to such report.

9. All rights, privileges and properties of the trustees of Berkeley Springs heretofore acquired and possessed, owned and enjoyed, shall continue and remain under the control and management of the trustees under this act, and all laws, ordinances, by-laws, resolutions, rules and regulations of the trustees of said springs now in force, and not inconsistent with this act, shall be and continue in full force until regularly repealed.

Rights, properties, etc., heretofore acquired, etc., to continue, etc., under control of trustees. What laws, by-laws, etc., to remain in force.

10. All acts and resolutions of the general assembly of Virginia, or of the legislature of West Virginia, in conflict with the provisions of this act, are hereby repealed.

Inconsistent acts and regulations repealed.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CCIII.

AN ACT appropriating an additional sum of money to be expended in the purchase and distribution of pure bovine vaccine virus amongst the people of this state.

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia :

1. That a sum not exceeding three hundred dollars be,

Appropriation to purchase and distribute pure bovine vaccine virus.

and the same is hereby, appropriated out of any money in the treasury not otherwise appropriated, to be expended in the purchase and distribution of pure bovine vaccine virus amongst the people of this state.

When, to whom and how auditor to draw his warrant.

2. The auditor shall draw his warrant on the treasury in favor of each of the vaccine agents in this state for one-third of the sum mentioned in the first section, or so much thereof as may be necessary, on the certificate of such agent that there is necessity for such expenditure.

Duty of vaccine agents as to distribution of such virus.

3. It shall be the duty of the agent of each Congressional district, upon the application of the presiding officer of the county local board of health of any county therein, to supply such county board, free of charge for the use of the citizens thereof, a just proportion of the virus obtained under the provisions of this act. It shall be the duty of the local board of such county to furnish to any citizen thereof, free of charge, an amount of such virus as will be sufficient to vaccinate himself and family, if he have one residing therein.

Duty of local board of health as to furnishing such virus.

[Approved March 29, 1882.]

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect at the expiration of ninety days after its passage.

CHAPTER CCIV.

AN ACT amending and re-enacting the first section of the charter of the town of Martinsburg.

[Passed March 27, 1882.]

Be it enacted by the Legislature of West Virginia :

Sec. 1 of act relating to the charter of Martinsburg, amended.

1. That section one of an act passed February twenty-ninth, one thousand eight hundred and sixty-eight, entitled "an act amending and re-enacting the charter of the town of Martinsburg, as amended and re-enacted by an act passed February twenty-eighth, one thousand eight hundred and seventy-two," be and the same is hereby amended and re-enacted so as to read as follows :

Town of Martinsburg; elect'n of mayor of; when and for what term. Who may vote.

1. On the fourth Monday in May, eighteen hundred and eighty-two, and on the same day in every alternate year thereafter, the voters of the town of Martinsburg, in the county of Berkeley, qualified to vote for members of the legislature, and who shall have resided within said town for one year next preceding the election, and who shall have paid the head tax assessed against them for the current year, ten days before the offer to vote, shall elect a fit and proper person, being a freeholder and resident of

said town, to serve as mayor thereof for the period of two years, or until his successor be duly elected and qualified; and it shall be the duty of the collector of taxes, thirty days before the regular May election in each and every year, or before any election to fill vacancies in the office of mayor and members of the common council, or any or either of them, to prepare a list of those delinquents who for the current year have failed to pay the head tax assessed against them, and who but for that would be entitled to vote for the officer or officers to be elected, and to post the said list within two days after it is prepared as aforesaid, in the mayor's office, to remain there and be kept posted up until the polls are closed on election day, subject to be inspected by any citizen of the town. The names of those voters upon said list who may have failed to pay the said tax for the current year shall be furnished by the said collector to the commissioners of election at each voting place, and at any time before the polls are closed, upon producing a receipt showing payment of the said tax to the proper officer, ten days before said election, said voter shall be allowed to vote. No change or alteration shall be made in the delinquent list by the collector or any one else after the same has been prepared and posted as aforesaid. Nor shall any voter be prevented from voting, unless his name appears upon said list, and he has failed to pay his tax ten days before the said election, nor unless said list has been prepared and posted as provided for in this section. *Provided*, That this act shall not take effect until a majority of the legal voters of said town shall, either at a special election ordered for that purpose by the council, or at the regular election in May, declare their assent to this act. Publication in one or more newspapers of the town, and by hand-bills, shall be given at least ten days before the said election, of the day on which the same is to be held and of the different places of voting. The election shall be conducted and the returns thereof made as is provided by law for all other elections held in said town for officers or other purposes. And if from any cause an election cannot be held at the time appointed by this act, the mayor and council are hereby authorized and required to order an election to fill all existing vacancies after thirty days notice by proclamation published in one or more papers published in the said town, and posted at, at least, one public place in each ward.

List of delinquents who have failed to pay head tax; duty of collector as to.

When voter whose name is upon such list may vote.

No change to be made in such list.

When voter not prevented from voting.

When this act to take effect.

Notice of such election; how conducted, etc.

Election to fill vacancies; notice of and how given.

Acts Repealed.

2. All acts and parts of acts coming within the purview of this act and inconsistent therewith, are hereby repealed.

Acts repealed.

E. W. WILSON,

Speaker of House of Delegates.

A. E. SUMMERS,

President of Senate.

STATE OF WEST VIRGINIA,
OFFICE OF SECRETARY OF STATE, }
April 3, 1882. }

I certify that the foregoing act, having been presented to the governor for his approval, and not having been returned by him to the house of the legislature in which it originated within the time proscribed by the constitution of the state, has become a law without his approval.

RANDOLPH STALNAKER, JR.,
Secretary of State.

[NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.]

The foregoing act takes effect from its passage, two-thirds of the members elected to each house, by a vote taken by yeas and nays, having so directed.

JOINT RESOLUTIONS.

[No. 1.]

JOINT RESOLUTION raising a committee of the two houses to wait upon the governor.

Resolved by the Legislature of West Virginia:

That a joint committee of three on the part of the house of delegates and two on the part of the senate be appointed to wait upon his excellency, the governor, and inform him that a quorum of the two houses of the legislature is now in session and ready to receive any communication he may have to submit.

[Adopted January 11, 1882.]

[No. 2.]

JOINT RESOLUTION, providing for furnishing copies of the acts of one thousand eight hundred and eighty-one to the several county commissioners in this state.

Resolved by the Legislature of West Virginia:

That the secretary of state be, and he is hereby authorized and directed, to transmit to the several clerks of the county courts in this state three additional copies of the acts of one thousand eight hundred and eighty-one; and the clerks of said county courts are directed to deliver one copy of said acts so transmitted to each of the county commissioners in their respective counties. And each commissioner receiving a copy of said acts shall turn it over to his successor in office.

[Adopted January 12, 1882.]

[No. 3.]

JOINT RESOLUTION, instructing our senators and requesting our representatives in congress to urge the early passage of the apportionment bill.

Resolved by the Legislature of West Virginia :

That in view of the fact that a large number of the legislatures of the states of the union, are now in session awaiting the action of congress, that our senators be instructed and our representatives requested to urge upon congress the immediate passage of the act to apportion representation among the several states of this union.

[Adopted January 13, 1882.]

[No. 4.]

JOINT RESOLUTION instructing our senators and requesting our representatives in congress to favor a modification of the internal revenue laws in relation to the sale of tobacco.

Resolved by the Legislature of West Virginia :

1. That our senators be instructed and our representatives in congress be requested to use their best efforts to procure a modification of the internal revenue laws of the United States, so that producers may be permitted to sell leaf tobacco without paying a license therefor.

2. That the secretary of state be instructed to forward an official copy of this resolution to each of our senators and representatives in congress.

[Adopted January 13, 1882.]

[No. 5.]

JOINT RESOLUTION providing for a special committee of the two houses to constitute a committee on a geological survey.

Resolved by the Legislature of West Virginia :

That a special committee consisting of three (3) members of the senate and five of the house of delegates be appointed to constitute a committee on a geological survey.

[Adopted January 14, 1882.]

[No. 6.]

JOINT RESOLUTION, providing for a joint committee to examine into the charges of newspaper publishers for printing the constitutional amendments.

Resolved by the Legislature of West Virginia :

That a joint committee consisting of three members of the house and two members of the senate be appointed to take into consideration the charges of the publishers of this state for publishing the constitutional amendments under authority of the then governor of this state, that an equitable settlement of said accounts may be had.

[Adopted January 23, 1882.]

[No. 7.]

JOINT RESOLUTION, providing for the renewal of the insurance of the Capitol building in the city of Wheeling.

WHEREAS, the insurance on the Capitol building in the city of Wheeling, will expire on the first day of February, one thousand eight hundred and eighty-two. Therefore,

Resolved, By the Legislature of West Virginia, that the board of public works are hereby instructed to renew the insurance on said building, in companies which have complied with the insurance law of this state, on the best terms possible for the term of three years.

[Adopted January 24, 1882.]

[No. 8.]

JOINT RESOLUTION providing for the annotating, or side-noting of the acts of the present legislature, as soon as the same shall become laws.

Resolved by the Legislature of West Virginia :

That when any act shall have been approved by the governor, or shall otherwise become a law, the clerk shall as soon thereafter as practicable, append thereto the proper side-notes, so as to prepare the same for printing in the usual form. The clerk of the house of delegates shall have power to employ an additional assistant to make such side-notes, if necessary.

[Adopted January 27, 1882.]

[No. 9.]

JOINT RESOLUTION providing a joint committee of the two houses to visit and examine into the sanitary condition and general management of the hospital for the insane.

WHEREAS, Specific charges of mismanagement and mal-administration of the affairs of the hospital for the insane have been made in the *Clarksburg Telegram*, a newspaper filed with the committee on humane institutions and public buildings, and returned by them to the house; and

WHEREAS, The superintendent of the said hospital for the insane requests that the charges so set forth be investigated; therefore

Resolved by the Legislature of West Virginia :

That a joint committee, consisting of three members of the house and two members of the senate, be appointed to visit and examine into said charges and into the sanitary condition and general management of the hospital for the insane of this state, with power to send for persons and papers; and that said joint committee report in detail the result of such examination.

[Adopted February 2, 1882.]

[No. 10.]

JOINT RESOLUTION providing for the appointment by the board of public works, of a night watchman for the capitol building.

Resolved by the Legislature of West Virginia :

That the board of public works be and are hereby authorized and empowered, as in their discretion may seem proper or necessary, to employ a night watchman, during the present session of the legislature, for the capitol building, at an expense of not exceeding two dollars per day, to be paid out of the state treasury, upon the certificate of said board.

[Adopted February 18, 1882.]

[No. 11.]

JOINT RESOLUTION, directing the auditor to proceed to enforce the state's claim against the estate of A. R. Hall, deceased.

Resolved by the Legislature of West Virginia :

That the auditor do proceed to enforce a claim due this state from the estate of A. R. Hall, deceased, by collecting all collaterals placed in the

hands of the agent of the state to secure the original claim, and all monies realized by the agent of the state and now in his hands from such original claim or such collatorals. And that the attorney general, if necessary, institute all proper suits or suit to enforce such collection.

[Adopted March 6, 1882.]

[No. 12.]

JOINT RESOLUTION, providing for paying newspapers for publishing the constitutional amendments proposed at the regular session of the legislature for the year one thousand eight hundred and seventy-nine.

Resolved by the Legislature of West Virginia :

That all newspapers that published the constitutional amendments by authority of the governor, for which a charge has been made over three hundred dollars, shall be paid the sum of three hundred dollars, crediting any amount heretofore paid; and in all cases where the account presented is less than three hundred dollars, the account shall be paid, after giving credit for any sum heretofore paid.

[Adopted March 8, 1882.]

[No. 13.]

JOINT RESOLUTION providing for the printing and distribution of the report of the fish commissioners for the year one thousand eight hundred and eighty-two.

Resolved by the Legislature of West Virginia :

That the governor be requested to have printed fifteen hundred copies of the report of the fish commissioners for the year one thousand eight hundred and eighty-two, for distribution among the members of the legislature.

[Adopted March 9, 1882.]

[No. 14.]

JOINT RESOLUTION, authorizing provision to be made for the education of the colored deaf, dumb and blind of this state.

Resolved by the Legislature of West Virginia :

That the board of regents of the West Virginia institution for the education of the deaf, dumb and the blind be, and are hereby author-

ized to make such provisions as they may deem best for the education of the colored deaf, and dumb and blind of the state in institutions without the state, that receive colored pupils, and at such rates of charge as they may deem best for the interest of the state.

[Adopted March 16, 1882.]

[No. 15.]

JOINT RESOLUTION, providing for the payment of witnesses and other expenses incurred by the joint committee of the legislature appointed to investigate the sanitary condition and general management of the hospital for the insane, under a joint resolution of the two houses, adopted February second, one thousand eight hundred and eighty-two.

Resolved by the Legislature of West Virginia:

That the respective committees of the senate and house of delegates having under consideration the legislative appropriation bill for the present session, be instructed to include in said bill the sum of four hundred and fifteen dollars and eighty-three cents, to defray the per diem and mileage of witnesses before, and other expenses of, the joint committee appointed under house joint resolution number nine, "providing a joint committee of the two houses to visit and examine into the sanitary condition and general management of the hospital for the insane," adopted February second, one thousand eight hundred and eighty-two, as shown by an itemized statement made out by said committee.

[Adopted March 20, 1882.]

[No. 16.]

JOINT RESOLUTION providing for the adjournment of the present session of the legislature.

Resolved by the Legislature of West Virginia:

That the present session of the legislature shall adjourn *sine die* on Tuesday, March twenty-eighth, at the hour of twelve o'clock m.

[Adopted March 22, 1882.]

[No. 17.]

JOINT RESOLUTION, for the relief of James L. Morehead.

Resolved by the Legislature of West Virginia:

That Jacob B. Jackson, agent for the state, be, and he is hereby, authorized to stay proceedings in the matter of a certain suit in chan-

cery now pending in the circuit court of Wood county, wherein William J. Hill is complainant and James L. Morehead is defendant, in which it is sought to enforce a judgment lien against the property of said Morehead on account of a judgment obtained against said Morehead for two thousand five hundred dollars, in favor of William H. Mattingly, and by him assigned to the state of West Virginia, so far as it relates to the said judgment now owned by the state, for the period of three years from and after the date of the passage of this resolution, it being the intention of this resolution to stay judgment, so far as the state is concerned, for the period hereinbefore named, but upon failure of said Morehead within sixty days from the passage of this resolution to pay all costs and interest on said debt due up to the date of the passage of this resolution then the agent of the state is hereby directed to proceed to enforce the collection of said debt, and if said costs and interest are paid, then upon his failure to pay the interest due annually thereafter on said debt as the same becomes due, after thirty days notice, the said agent shall proceed to enforce the collection of said debt as if this resolution had not passed; and the agent of the state, shall take such steps (if necessary) to keep such judgment alive.

[Adopted March 23, 1882.]

[No. 18.]

JOINT RESOLUTION providing the manner of paying the expenses incurred by the joint committee in the investigation of the hospital for the insane.

Resolved by the Legislature of West Virginia:

That the sum included in the general appropriation bill passed at this session for the payment of witnesses before, and other expenses incurred by, the joint committee of the two houses to visit and examine into the sanitary condition and general management of the hospital for the insane, appointed under a joint resolution of the two houses adopted February second, one thousand eight hundred and eighty-two, be paid out of the treasury to the several parties entitled thereto upon the certificate of the chairman of said committee.

[Adopted March 24, 1882.]

[No. 19.]

JOINT RESOLUTION authorizing the repair of the clock on the capitol at Wheeling.

Resolved by the Legislature of West Virginia:

That the governor be, and he is hereby authorized to have a new face placed on the clock on the capitol building at Wheeling.

[Adopted March 24, 1882.]

[No. 20.]

JOINT RESOLUTION, concerning American citizens confined in
English prisons.

Resolved by the Legislature of West Virginia:

That the members of the senate and house of representatives, representing this state in the congress of the United States, be and they are hereby respectfully requested to use such means and influence as may be in their power to secure for American citizens now confined in prisons in Ireland, by authority of the English government, contrary to the spirit of public law, all the rights to which, as American citizens, they are justly entitled.

[Adopted March 27, 1882.]

[No. 21.]

JOINT RESOLUTION authorizing the auditor to turn over to the
janitor certain personal property books no longer required.

WHEREAS, There is a large accumulation of assessors' personal property books in the auditor's office which are of no use as public records and of no value except as waste paper, and only serve to cumber the vaults of that office; therefore,

Resolved by the Legislature of West Virginia :

That the auditor be and he is hereby authorized to turn over to the janitor all assessors' personal property books for former years in his charge, which in his judgment are not required as public records, or may not be necessary in settling the accounts of any sheriff, or other officer.

[Adopted March 27, 1882.]

[No. 22.]

JOINT RESOLUTION authorizing the redemption of certain lands
in Jackson county, forfeited to the state, upon the payment of the
taxes and interest thereon.

WHEREAS, A tract of land in Jackson county, containing nineteen thousand acres, in the name of Mary Bruen and F. Perkins, was delinquent for the non-payment of the taxes thereon for the year one thousand eight hundred and seventy-nine; and

WHEREAS, In making the return of such delinquency to the auditor an error was made, and such land was returned as one thousand nine hundred acres instead of nineteen thousand acres; and

WHEREAS, The owners of said land made application to redeem said nineteen thousand acres of land at the auditor's office, and were notified that no such tract was delinquent for said year one thousand eight hundred and seventy-nine, and no redemption having been made, the same was sold as one thousand nine hundred acres by the sheriff on the tenth day of October, one thousand eight hundred and eighty-one, and purchased by the state; therefore

Be it Resolved by the Legislature of West Virginia:

That the auditor be authorized to issue a certificate of redemption for said land upon the payment of the amount of tax thereon, with six per cent interest from January twentieth, one thousand eight hundred and eighty, to September twenty-seventh, one thousand eight hundred and eighty-one, that being the day upon which application was made to redeem said land.

[Adopted March 28, 1882.]

[No. 23.]

JOINT RESOLUTION, tendering the thanks of the legislature to the citizens of the city of Wheeling, for their uniform kindness and hospitality.

Resolved by the Legislature of West Virginia:

That the thanks of this legislature are due and are hereby tendered to the citizens of the city of Wheeling, for their uniform kindness to, and hospitable treatment of, its members during the session about to close.

[Adopted March 28, 1882.]

[No. 24.]

JOINT RESOLUTION, providing for the appointment of a joint committee to wait upon the governor and inform him that the two houses of the legislature are ready to adjourn.

Resolved by the Legislature of West Virginia:

That a joint committee of two on the part of the senate and three on the part of the house be appointed to wait upon the governor and inform him that the legislature, having completed its business, is now ready to adjourn, and to ascertain whether his excellency has any farther communication to make to the two houses.

[Adopted March 28, 1882.]

APPENDIX.

TERMS OF CIRCUIT COURTS.

FIRST JUDICIAL CIRCUIT—GEORGE E. BOYD AND JNO. J. JACOB, JUDGES.

COUNTIES.	COMMENCEMENT OF TERMS.
Brooke.....	First Monday in March, first Monday in June and second Monday in October.
Hancock.....	Fourth Monday in March, fourth Monday in June and first Monday in November.
Ohio.....	Second Monday in April, first Monday in September and third Monday in November.
Marshall.....	First Monday in March, first Monday in June and second Monday in October.

SECOND JUDICIAL CIRCUIT—A. BROOKS FLEMING, JUDGE.

COUNTIES.	COMMENCEMENT OF TERMS.
Harrison.....	Second Tuesday in January, second Tuesday in May and second Tuesday in September.
Marion.....	First Tuesday in March, first Tuesday in July and fourth Tuesday in November.
Monongalia.....	Second Tuesday in February, second Tuesday in June and second Tuesday in October.

THIRD JUDICIAL CIRCUIT—WM. T. ICE, JUDGE.

COUNTIES.	COMMENCEMENT OF TERMS.
Barbour.....	First day of March, sixth day of July and fifteenth day of October.
Preston.....	Eighth day of April, thirteenth day of August and twenty-fourth day of November.
Randolph.....	Twentieth day of May, fourteenth day of September and third day of January.
Taylor.....	Twentieth day of March, twenty-fifth day of July and fourth day of November.
Tucker.....	Tenth day of May, third day of September and sixteenth day of December.

FOURTH JUDICIAL CIRCUIT—THOMAS J. STEALEY, JUDGE.

COUNTIES.	COMMENCEMENT OF TERMS.
Doddridge	Third Monday in March, third Monday in July and third Monday in November.
Ritchie.....	Third Monday in February, third Monday in June and third Monday in October
Tyler	Second Monday in April, second Monday in August and second Monday in December.
Wetzel	Third Tuesday in January, third Tuesday in May and third Tuesday in September.

FIFTH JUDICIAL CIRCUIT—J. M. JACKSON, JUDGE.

COUNTIES.	COMMENCEMENT OF TERMS.
Pleasants.....	On the second Monday in March, second Monday in June and second Monday in October.
Wirt.....	On the fourth Monday in March, fourth Monday in June and the fourth Monday in October.
Wood.....	On the second Monday in February, second Monday in July and second Monday in October.

SIXTH JUDICIAL CIRCUIT—R. F. FLEMING, JUDGE.

COUNTIES.	COMMENCEMENT OF TERMS.
Calhoun.....	On the twentieth day of February, twentieth day of June and twentieth day of October.
Clay.....	On the second Monday in May, second Monday in September and second Monday in December.
Gilmer.....	On the fifth day of February, the fifth day of June and the fifth day of October.
Jackson.....	On the first day of March, the first day of August and the first day of November.
Roane.....	On the twenty-fifth day of March, the twenty-fifth day of August and the twenty-fifth day of November.

SEVENTH JUDICIAL CIRCUIT—F. A. GUTHRIE, JUDGE.

COUNTIES.	COMMENCEMENT OF TERMS.
Kanawha.....	Second Monday in March, second Monday in June and first Monday in December.
Mason.....	First Monday in February, first Monday in May and first Monday in September.
Putnam.....	Fourth Monday in February, fourth Monday in May and second Monday in November.

EIGHTH JUDICIAL CIRCUIT—IRA J. MCGINNIS, JUDGE.

COUNTIES.	COMMENCEMENT OF TERMS.
Cabell.....	For the year 1881—First Monday in March, first Monday in June and first Monday in October. For the year 1882 and thereafter—First Monday in March, first Monday in August and first Monday in November.
Lincoln.....	For the year 1881—Third Monday in April, third Monday in July and third Monday in November. For the year 1882 and thereafter—First Monday in February, first Monday in June and first Monday in October.
Logan.....	For the year 1881—First Monday in May, first Monday in August and first Monday in December. For the year 1882 and thereafter—Fourth Monday in March, fourth Monday in August and fourth Monday in November.
Wayne.....	For the year 1881—Fourth Monday in March, fourth Monday in June and fourth Monday in October. For the year 1882 and thereafter—Third Monday in February, third Monday in June and third Monday in October.

NINTH JUDICIAL CIRCUIT—D. E. JOHNSTON, JUDGE.

COUNTIES.	COMMENCEMENT OF TERMS.
Boone.....	On the third Monday in April, third Monday in July and third Monday in October.
Mercer.....	On the first Monday in March, third Monday in June, and second Monday in November.
McDowell.....	On the Wednesday after the first Monday in April, on the Wednesday after the first Monday in July and on the Wednesday after the first Monday in October.
Raleigh.....	On the fourth Monday in April, fourth Monday in July and fourth Monday in October.
Wyoming.....	On the second Monday in April, second Monday in July and second Monday in October.

TENTH JUDICIAL CIRCUIT—HOMER A. HOLT, JUDGE.

COUNTIES.	COMMENCEMENT OF TERMS.
Fayette.....	Fourth Monday in February, third Monday in May and third Monday in September.
Greenbrier.....	Third Monday in April, fourth Monday in June and first Monday in November.
Monroe.....	Third Monday in March, first Monday in June and first Monday in October.
Pocahontas.....	First Monday in April, third Monday in June and third Monday in October.
Summers.....	Second Monday in February, first Monday in May and first Monday in September.

TERMS OF CIRCUIT COURTS.

ELEVENTH JUDICIAL CIRCUIT—HENRY BRANNON, JUDGE.

COUNTIES.	COMMENCEMENT OF TERMS.
Braxton.....	On the fourth Monday in April, fourth Monday in August and the fourth Monday in November.
Lewis.....	On the first Monday in March, third Monday in June and the third Monday in October.
Nicholas.....	On the Wednesday after the second Monday in April, on the Wednesday after the second Monday in August and on the Wednesday after the second Monday in November.
Upshur.....	On the second Monday in February, first Monday in June and first Monday in October.
Webster.....	On the first day of April, the first day of August and the first Monday in November.

TWELFTH JUDICIAL CIRCUIT—J. D. ARMSTRONG, JUDGE.

COUNTIES.	COMMENCEMENT OF TERMS.
Grant.....	On the fourth Tuesday in March, first Tuesday in June and third Tuesday in October.
Hampshire.....	On the first Tuesday in February, second Tuesday in May and third Tuesday in September.
Hardy.....	On the second Tuesday in March, the last Tuesday in May and the first Tuesday in October.
Pendleton.....	On the second Wednesday in April, the Wednesday after the second Tuesday in June and the first Wednesday in November.
Mineral.....	For the year 1882—On the fourth Tuesday in April, first Tuesday in September and the fourth Tuesday in November. For the year 1883 and thereafter—On the second Tuesday in January, fourth Tuesday in April and first Tuesday in September.

THIRTEENTH JUDICIAL CIRCUIT—CHAS. J. FAULKNER, JR., JUDGE.

COUNTIES.	COMMENCEMENT OF TERMS.
Berkeley.....	On the second Tuesday in January, second Tuesday in April and second Tuesday in October.
Jefferson.....	On the second Tuesday in February, third Tuesday in May and third Tuesday in November.
Morgan.....	On the first Tuesday in January, first Tuesday in April and second Tuesday in August.

LIST OF SHERIFFS.

COUNTIES.	NAMES.	ADDRESS.
Barbour.....	James E. Heatherly.....	Phillippi.
Berkeley.....	George A. Crisman.....	Marionburg.
Boone.....	Wm. T. Smoot.....	Madison.
Braxton.....	A. C. Dyer.....	Braxton Court House.
Brooke.....	James W. Cooper.....	Wellsburg.
Cabell.....	Edmund Kyle.....	Cabell Court House.
Calhoun.....	John W. Bell.....	Grantville.
Clay.....	P. B. Cochran.....	Pleasant Retreat.
Doddridge.....	S. P. McMillan.....	West Union.
Fayette.....	Wm. M. Tyree.....	Fayetteville.
Gliner.....	Hugh McQuain.....	Glenville.
Grant.....	Arnold C. Scherr.....	Maysville.
Greenbrier.....	James Knight.....	Lewisburg.
Hampshire.....	John Mourée.....	Capon Bridge.
Hancock.....	John S. Swaney.....	New Cumberland.
Harly.....	John W. Chambers.....	Voortfield.
Harrison.....	James D. Horner.....	Clarksburg.
Jackson.....	F. R. Hassler.....	Jackson Court House.
Jefferson.....	John T. Moore.....	Charlestown.
Kanawha.....	John F. Hubbard.....	Charleston.
Lewis.....	Addison McDaniel.....	Weston.
Lincoln.....	John S. Sweetland.....	Hamlin.
Logan.....	Robert W. Peck.....	Logan Court House.
Marion.....	C. B. Carney.....	Fairmont.
Marshall.....	J. B. Hicks.....	Moundsville.
Mason.....	A. A. Hanley.....	Point Pleasant.
Mercer.....	J. H. McCaugherly.....	Pruceon.
Mineral.....	C. H. Caudy.....	Keyser.
Monongalia.....	George W. McVicker.....	Morgantown.
Mourée.....	R. T. McNeer.....	Union.
Morgan.....	John H. Buzzard.....	Berkeley Springs.
McDowell.....	Wm. Harmon.....	Peeryville.
Nicholas.....	Henry M. Queen.....	Harkersville.
Ohio.....	C. P. Brown.....	Wheeling.
Penitentiary.....	F. Anderson.....	Franklin.
Pleasants.....	Wm. E. Bier.....	St. Mary's.
Pocahontas.....	Levi Gay.....	Marlin's Bottom.
Peterson.....	Elisha Thomas.....	Kingwood.
Putnam.....	L. A. Christy.....	Winfield.
Raleigh.....	Wilson Swiney.....	Raleigh Court House.
Randolph.....	Jacob G. Ward.....	Huttonsville.
Ritchie.....	D. F. Haymond.....	Ritchie Court House.
Roane.....	A. L. Vandal.....	Spencer.
Summers.....	Harrison Galno.....	Green Sulphur Springs.
Taylor.....	Samuel S. Watler.....	Webster.
Tucker.....	Adam C. Mbeur.....	St. George.
Tyler.....	Thomas Smith.....	Epkey.
Upshur.....	G. D. Murple.....	Fallinsville.
Wayne.....	W. E. Wilkinson.....	Wayne Court House.
Weber.....	H. W. Ruler.....	Lane's Bottom.
Weizel.....	R. B. Postlethwait.....	New Martin'sville.
Wirt.....	J. H. Bumgarner.....	Wirt Court House.
Wood.....	Charles B. Smith.....	Parkersburg.
Wyoming.....	Richard Mitchell.....	Oceana.

CLERKS OF CIRCUIT COURTS OF WEST VIRGINIA.

COUNTIES.	NAMES.	P. O. ADDRESS.
Barbour	I. V. Johnson.....	Philippi.
Berkley.....	S. H. Martin.....	Martinsburg.
Boone.....	Wm. Thompson.....	Madison.
Braxton.....	W. F. Morrison.....	Braxton Court House.
Brooke.....	T. H. Marks.....	Wellsburg.
Cabell.....	M. S. Thornburg.....	Barboursville.
Calhoun.....	G. W. Silcott.....	Grantsville.
Clay.....	C. Pierson.....	Clay Court House.
Doddridge.....	T. K. Knight.....	West Union.
Fayette.....	E. H. Essley.....	Fayette Court House.
Gilmer.....	C. B. Conrad.....	Glennville.
Grant.....	E. Muntzing.....	Grant Court House.
Greenbrier.....	Jonathan Mays.....	Lewisburg.
Hampshire.....	V. M. Poling.....	Romney.
Hancock.....	A. McFlanigan.....	Fairview.
Hardy.....	Charles Lobb.....	Moorfield.
Harrison.....	T. C. Ramage.....	Clarksburg.
Jackson.....	W. W. Riley.....	Jackson Court House.
Jefferson.....	E. P. Lynch.....	Charleston.
Kanawha.....	Thomas Swinburn.....	Charleston.
Lewis.....	Wm. Harrison.....	Weston.
Lincoln.....	B. F. Curry.....	Hamlin.
Logan.....	John Chaffin.....	Logan Court House.
Marion.....	C. L. Smith.....	Farmont.
Marshall.....	A. O. Baker.....	Moundsville.
Mason.....	C. B. Waggner.....	Point Pleasant.
Mercer.....	F. A. Bolin.....	Princeton.
Mineral.....	W. T. Head.....	Keyser.
Monongalia.....	A. Haymond.....	Morgantown.
Monroe.....	M. J. Kester.....	Union.
Morgan.....	Lewis Allen.....	Berkeley Springs.
McDowell.....	John F. Johnson.....	McDowell.
Nicholas.....	A. F. Rider.....	Nicholas Court House.
Ohio.....	S. B. McColloch.....	Wheeling.
Pendleton.....	I. P. Biggs.....	Franklin.
Pleasants.....	J. L. Knight.....	St. Mary's.
Pocahontas.....	J. J. Beard.....	Huntersville.
Princeton.....	S. Crane.....	Kingwood.
Pulnam.....	H. L. Judge.....	Winfield.
Raleigh.....	John Beckley.....	Raleigh Court House.
Randolph.....	J. B. Morrison.....	Beverly.
Ritchie.....	W. A. Strickler.....	Ritchie Court House.
Roane.....	M. W. Kidd.....	Spencer.
Summers.....	B. L. Hoge.....	Hinton.
Taylor.....	John S. S. Herr.....	Grafton.
Tucker.....	John J. Adams.....	St. George.
Tyler.....	Christian Engle.....	Middlebourne.
Upshur.....	John A. Hess.....	Buckhannon.
Wayne.....	J. P. Wellman.....	Wayne Court House.
Webster.....	B. C. Conrad.....	Webster Court House.
Wetzel.....	James W. Newman.....	New Martinsville.
Wirt.....	O. C. Morris.....	Wirt Court House.
Wood.....	O. M. Clemens.....	Parkersburg.
Wyoming.....	M. G. Clay.....	Oceana.

CLERKS OF COUNTY COURTS OF WEST VIRGINIA.

COUNTIES.	NAMES.	ADDRESS.
Barbour.....	L. E. Elliott.....	Philippi.
Berkley.....	C. W. Doll.....	Martinsburg.
Boone.....	M. J. Hopkins.....	Madi-on
Braxton.....	W. L. J. Corley.....	Braxton Court House.
Brooke.....	C. B. Turner.....	Well-burg.
Cabell.....	M. S. Thornburg.....	Cabell Court House.
Calhoun.....	G. W. Sitcot.....	Grantaville
Clay.....	A. J. Stephenson.....	Clay Court House.
Doddridge.....	A. C. Holmes.....	West Union.
Fayette.....	M. T. Davis.....	Fayetteville.
Gilmer.....	Jasper N. Kee.....	Glenville.
Grant.....	E. Muntzing.....	Petersburg.
Greenbrier.....	M. L. Spotts.....	Lewisburg.
Hampshire.....	C. S. White.....	Romney.
Hancock.....	A. McFlaigan.....	Fairview.
Hardy.....	Charles Lobb.....	Moorefield.
Harrison.....	James Monroe.....	Charl-sburg.
Jackson.....	J. L. Armstrong.....	Jackson Court House.
Jefferson.....	Thos. A. Moore.....	Charl-stown.
Kanawha.....	H. Morris.....	Charleston.
Lewis.....	Jesse Woofter.....	Weston.
Lincoln.....	H. Hager.....	Hammil.
Logan.....	John Hahn.....	Logan Court House.
Marion.....	John B. Crane.....	Fairmont
Marshall.....	Thomas Finn.....	Moundsville.
Mason.....	J. P. R. B. Smith.....	Pt. Pleasant.
Mercer.....	C. R. McNutt.....	Pin-cle-ton.
Mineral.....	W. T. Heald.....	Keyser.
Moungalia.....	Wm. S. Coburn.....	Morgantown.
Monroe.....	A. A. Nickell.....	Union.
Morgan.....	T. H. B. Dawson.....	Berkeley Springs.
McDowell.....	John M. Johnson.....	Perryville.
Nicholas.....	J. A. Hamilton.....	Nicholas Court House.
Ohio.....	George Hook.....	Wheeling.
Putnam.....	Isaac P. Bzgs.....	Franklin.
Pleasants.....	J. L. Knight.....	St. Mary's.
Pocahontas.....	J. J. Beard.....	Huntersville.
Prinston.....	J. Am. Martin.....	Kingwood.
Putnam.....	W. T. Alexander.....	Winfield.
Raleigh.....	John Heckley.....	Raleigh Court House.
Randolph.....	J. D. Wilson.....	Beverly.
Richie.....	G. W. Amos.....	Richie Court House.
Roane.....	C. C. Clevenger.....	Spencer.
Summers.....	E. H. Peck.....	Hinton.
Taylor.....	John S. S. Herr.....	Grafton.
Tucker.....	John J. Adams.....	St. George.
Tyler.....	David Hickman.....	Middlebourne.
Upshur.....	C. C. F. McWhorter.....	Buckhannon.
Wayne.....	P. H. Napier.....	Wayne Court House.
Webster.....	R. P. Conrad.....	Webster Court House.
Wetzel.....	J. C. McEldowney.....	New Martinsville.
Wirt.....	O. L. Williams.....	Wirt Court House.
Wood.....	T. G. Smith.....	Parkersburg.
Wyoming.....	L. B. Cook.....	Oceana.

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