

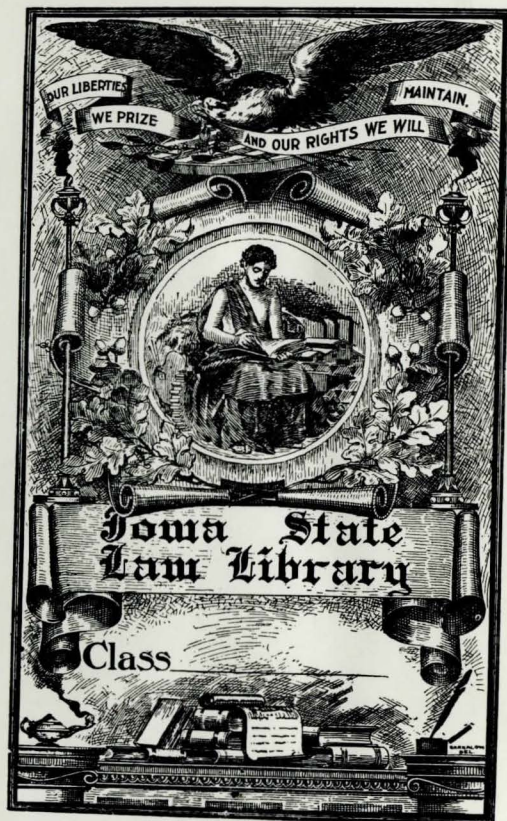
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REPORT

OF THE

Code Commission

TO ACCOMPANY THE CODE AS REPORTED TO THE

Twenty-Sixth General Assembly of Iowa,

IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER ONE HUNDRED
AND FIFTEEN OF THE ACTS OF THE TWENTY-FIFTH
GENERAL ASSEMBLY.

H. S. WINSLOW, NEWTON, Chairman,

CHARLES BAKER, IOWA CITY, Secretary,

JOHN Y. STONE, GLENWOOD,

EMLIN MCCLAIN, IOWA CITY,

H. F. DALE, DES MOINES,

Commissioners.

DES MOINES:

F. R. CONAWAY, STATE PRINTER.
1895.

TABLE OF CONTENTS.

Showing Where Each Chapter of the Reported Code is Referred to in This
Accompanying Report.

PART FIRST—PUBLIC LAW.

TITLE I—OF THE SOVEREIGNTY AND JURISDICTION OF THE STATE, AND THE LEGISLA-
TIVE DEPARTMENT.

CHAPTER.	PAGE.
1 Of the sovereignty and jurisdiction of the state.....	11
2 Of the general assembly.....	11
3 Of the statutes.....	11
4 Of the code and its operation.....	12
5 Of submission of constitutional amendments.....	12

TITLE II—OF THE EXECUTIVE DEPARTMENT.

1 Of the governor.....	13
2 Of the secretary of state.....	13
3 Of the auditor of state.....	13
4 Of the treasurer of state.....	13
5 Of the public printing and binding.....	13
6 Of the custodian of the public buildings.....	13
7 Of the executive council.....	14
8 Of the census.....	14
9 Of duties assigned to two or more officers and general regulations.....	14

TITLE III—OF THE JUDICIAL DEPARTMENT.

1 Of the organization of the supreme court.....	14
2 Of the clerk of the supreme court.....	15
3 Of the attorney-general.....	15
4 Of the supreme court reporter and reports.....	15
5 Of the district court.....	16
6 Of the superior courts.....	17
7 Of general provisions.....	17
8 Of the clerk of the district court.....	18
9 Of county attorneys and their duties.....	18
10 Of attorneys and counselors.....	18
11 Of jurors.....	19
12 Of securities and investments.....	19
13 Of notaries public.....	19
14 Of commissioners in other states.....	19
15 Of the administration of oaths.....	19

TITLE IV—OF COUNTY AND TOWNSHIP GOVERNMENT.

1 Of counties.....	20
2 Of the board of supervisors.....	21
3 Of the county auditor.....	23
4 Of the county treasurer.....	23
5 Of the county recorder.....	23

CHAPTER.	PAGE.
6 Of the sheriff.....	23
7 Of the coroner.....	23
8 Of the county surveyor.....	24
9 Of the duties of county officers.....	24
10 Of townships and township officers.....	24
11 Of general regulations affecting counties and townships.....	26

TITLE V—OF CITY AND TOWN GOVERNMENT.

1 Of incorporation.....	27
2 Of organization and officers.....	28
3 Of ordinances, courts, and fines.....	30
4 Of general powers.....	30
5 Of streets and public grounds.....	32
6 Of street improvements, sewers, and special assessments.....	33
7 Of street improvement and sewer bonds and certificates.....	35
8 Of park commissioners and board of public works.....	35
9 Of condemnation and purchase of land.....	36
10 Of taxation.....	36
11 Of bonds.....	36
12 Of plats.....	37

TITLE VI—OF ELECTIONS AND OFFICES.

Of the election of officers and their terms.....	37
2 Of the registration of voters.....	38
3 Of elections.....	41
4 Of the canvass of votes.....	42
5 Of presidential electors.....	43
6 Of qualification for office.....	43
7 Of contesting elections.....	43
8 Of removal from office.....	43
9 Of suspension of state officers.....	43
10 Of vacancies in office.....	44
11 Of additional security and the discharge of sureties.....	44
12 Of general provisions as to compensation.....	44

TITLE VII—OF REVENUE.

1 Of the assessment of taxes.....	45
2 Of the collection of taxes.....	51
3 Of the security of the revenue.....	53

TITLE VIII—OF ROADS, BRIDGES, AND FERRIES.

1 Of the establishment, alteration, and vacation of roads.....	53
2 Of working roads.....	53
3 Of ferries and bridges.....	54

TITLE IX—OF CORPORATIONS.

1 Of corporations for pecuniary profit.....	54
2 Of corporations not for pecuniary profit.....	55
3 Of agricultural and horticultural societies and stock breeders' associations.....	56
4 Of insurance other than life.....	56
5 Of county mutual insurance associations.....	58
6 Of premium life insurance companies.....	58
7 Of assessment life insurance associations.....	58
8 Of provisions applying to life insurance companies and associations.....	59
9 Of savings banks.....	60
10 Of state banks.....	60
11 Of banks.....	60
12 Of building and loan associations.....	60

TITLE X—OF INTERNAL IMPROVEMENTS.

1 Of mill dams and races.....	61
2 Of levees, drains, ditches, and watercourses.....	61
3 Of water power improvements.....	61

CHAPTER.	PAGE.
4 Of taking private property for works of internal improvement.....	61
5 Of the construction and operation of railways.....	62
6 Of the board of railroad commissioners.....	63
7 Of the regulation of carriers by railway.....	63
8 Of telegraph and telephone lines.....	63

TITLE XI—OF THE MILITIA.

1 Of the militia.....	63
-----------------------	----

TITLE XII—OF THE POLICE OF THE STATE.

1 Of the settlement and support of the poor.....	64
2 Of the care of the insane.....	65
3 Of domestic animals.....	66
4 Of fences.....	67
5 Of lost goods.....	68
6 Of intoxicating liquors.....	68
7 Of fire companies.....	70
8 Of the bureau of labor statistics.....	70
9 Of mines and mining.....	70
10 Of the geological survey.....	71
11 Of inspection of petroleum products.....	71
12 Of inspection of passenger boats.....	71
13 Of the dairy commissioner and imitation dairy products.....	72
14 Of the state veterinary surgeon.....	72
15 Of the care and propagation of fish.....	72
16 Of the state board of health.....	73
17 Of the practice of medicine.....	74
18 Of the practice of pharmacy.....	74
19 Of the practice of dentistry.....	75
20 Of the soldiers' home.....	75
21 Of regents and trustees of state institutions.....	75

TITLE XIII—OF EDUCATION.

1 Of the superintendent of public instruction.....	76
2 Of the educational board of examiners.....	76
3 Of the university.....	76
4 Of the state college of agriculture and mechanic arts.....	77
5 Of the normal school.....	78
6 Of the orphans' home and home for destitute children.....	78
7 Of the institution for feeble minded children.....	78
8 Of the industrial school.....	79
9 Of the college for the blind.....	79
10 Of the industrial home for the blind.....	79
11 Of the school for the deaf.....	79
12 Of county high schools.....	79
13 Of the county superintendent.....	80
14 Of the system of common schools.....	80
15 Of the uniformity of text-books.....	83
16 Of the school fund.....	83
17 Of the state library.....	84
18 Of the historical society.....	84

PART SECOND—PRIVATE LAW.

TITLE XIV—OF RIGHTS OF PROPERTY.

1 Of the rights of aliens.....	85
2 Of title in the state or county.....	85
3 Of perpetuities and gifts.....	86
4 Of the transfer of personal property.....	86
5 Of real estate.....	86
6 Of the conveyance of real estate.....	86
7 Of occupying claimants.....	87
8 Of the homestead.....	87

CHAPTER.	PAGE.
9 Of landlord and tenant.....	88
10 Of walls in common.....	88
11 Of easements in real estate.....	88
TITLE XV—OF TRADE AND COMMERCE.	
1 Of weights, measures, and inspection.....	88
2 Of money of account and interest.....	89
3 Of notes and bills.....	89
4 Of tender.....	89
5 Of sureties.....	89
6 Of private seals.....	89
7 Of assignments for creditors.....	90
8 Of mechanics' liens.....	90
9 Of limited partnership.....	91
10 Of warehousemen, carriers, hotel keepers, livery stable keepers, and herders.....	91
TITLE XVI—OF THE DOMESTIC RELATIONS.	
1 Of marriage.....	91
2 Of husband and wife.....	92
3 Of divorce, annulling marriages, and alimony.....	92
4 Of minors.....	92
5 Of the guardianship of persons and property.....	92
6 Of master and apprentice.....	93
7 Of adoption.....	93
8 Of homes for the friendless.....	93
TITLE XVII—OF THE ESTATES OF DECEDENTS.	
1 Of the probate court.....	93
2 Of wills and letters of administration.....	94
3 Of the settlement of estates.....	94
4 Of the descent and distribution of the intestate's property.....	95
5 Of accounting and miscellaneous provisions.....	95
PART THIRD—CODE OF CIVIL PRACTICE.	
TITLE XVIII—OF PROCEDURE IN COURTS OF ORIGINAL JURISDICTION.	
1 Preliminary provisions.....	97
2 Of limitation of actions.....	98
3 Of parties to an action.....	98
4 Of place of bringing action.....	98
5 Of change of place of trial.....	99
6 Of the manner of commencing actions.....	99
7 Of joinder of actions.....	99
8 Of pleading.....	99
9 Of trial and judgment.....	101
10 Of judgment by confession.....	105
11 Of an offer to compromise.....	105
12 Of receivers.....	105
13 Of summary proceedings.....	105
14 Of motions and orders.....	105
15 Of security for costs.....	105
16 Of costs.....	105
TITLE XIX—OF ATTACHMENTS, GARNISHMENT, EXECUTIONS, AND SUPPLEMENTARY PROCEEDINGS.	
1 Of attachments.....	106
2 Of garnishment.....	107
3 Of executions.....	108
4 Of proceedings auxiliary to execution.....	111
TITLE XX—OF PROCEDURE TO REVERSE, VACATE, OR MODIFY JUDGMENTS.	
1 Of proceedings to vacate or modify judgments in the trial courts.....	111
2 Of procedure in the supreme court.....	112
3 Of certiorari.....	113

CHAPTER.	PAGE.
TITLE XXI—OF PROCEDURE IN PARTICULAR CASES.	
1 Of actions of replevin.....	113
2 Of actions for the recovery of real property.....	113
3 Of actions for forcible entry or detention of real property.....	113
4 Of actions to quiet title.....	114
5 Of actions to establish disputed corners and boundaries.....	114
6 Of partition.....	114
7 Of the foreclosure of mortgages.....	115
8 Of actions for nuisance, waste, and trespass.....	115
9 Of actions to test official and corporate rights.....	115
10 Of actions on official securities, fines, and forfeitures.....	115
11 Of actions of mandamus.....	115
12 Of injunctions.....	115
13 Of submitting controversies without action or in action.....	116
14 Of arbitration.....	116
15 Of actions against boats or rafts.....	116
16 Of habeas corpus.....	116
17 Of contempts.....	116
18 Of changing names.....	117
TITLE XXII—OF JUSTICES OF THE PEACE AND THEIR COURTS.	
1 Of justices of the peace and their courts.....	117
TITLE XXIII—OF EVIDENCE.	
1 Of general principles of evidence.....	119
PART FOURTH—CODE OF CRIMINAL PROCEDURE.	
TITLE XXIV—OF CRIMES AND PUNISHMENTS.	
1 Of offenses against the sovereignty of the state.....	123
2 Of offenses against the lives and persons of individuals.....	123
3 Of offenses against property.....	124
4 Of malicious mischief and trespass.....	124
5 Of larceny and receiving stolen goods.....	125
6 Of forgery and counterfeiting.....	125
7 Of offenses against public justice.....	126
8 Of offenses against the right of suffrage.....	126
9 Of offenses against chastity, morality, and decency.....	126
10 Of offenses against public health.....	127
11 Of offenses against public policy.....	127
12 Of offenses against the public peace.....	127
13 Of cheating by false pretenses, gross frauds, and conspiracy.....	127
14 Of nuisances, and abatement thereof.....	127
15 Of libel.....	128
TITLE XXV—OF CRIMINAL PROCEDURE.	
1 Of public offenses.....	128
2 Of magistrates and peace officers and their powers.....	128
3 Of the prevention of offenses by resistance.....	128
4 Of security to keep the peace.....	128
5 Of vagrants.....	128
6 Of resistance to process, and suppression of riots.....	129
7 Of local jurisdiction of public offenses.....	129
8 Of the time of commencing criminal actions.....	129
9 Of fugitives from justice.....	129
10 Of preliminary information and warrants for arrest.....	129
11 Of arrest.....	129
12 Of preliminary examinations.....	130
13 Of impaneling the grand jury.....	130
14 Of the duties of the grand jury.....	130
15 Of the finding and presentation of indictment.....	130
16 Of the indictment.....	131
17 Of process upon an indictment.....	131

CHAPTER.	PAGE.
18 Of arraignment of the defendant.....	131
19 Of setting aside the indictment.....	131
20 Of pleading by the defendant.....	131
21 Of change of place of trial in criminal cases.....	131
22 Of the trial jury.....	131
23 Of challenging the jury.....	132
24 Of the trial to a jury.....	132
25 Of the jury after submission.....	132
26 Of the verdict.....	132
27 Of exceptions.....	132
28 Of new trial.....	132
29 Of arrest of judgment.....	132
30 Of judgment.....	132
31 Of execution.....	132
32 Of appeals.....	133
33 Of impeachment.....	133
34 Of evidence and witnesses.....	133
35 Of bail.....	133
36 Of the lien and release of bail.....	133
37 Of forfeiture of bail.....	133
38 Of the recommitment of the defendant after bail.....	134
39 Of deposit of money instead of bail.....	134
40 Of surrender of the defendant.....	134
41 Of the lien of judgments and stay of executions.....	134
42 Of the liberation of poor convicts.....	134
43 Of the dismissal of criminal actions.....	134
44 Of the insanity of a defendant.....	134
45 Of search warrants and proceedings thereon.....	134
46 Of property stolen or embezzled.....	134
47 Of proceedings and trials before justices of the peace.....	134
48 Of compromising certain offenses by leave of the court.....	134
49 Of pardons and the remission of fines and forfeitures.....	135
50 Of illegitimate children.....	135
TITLE XXVI—OF THE DISCIPLINE AND GOVERNMENT OF JAILS AND PENITENTIARIES.	
1 Of the jails.....	135
2 Of the penitentiaries.....	135

APPENDIX.

TABLE OF REFERENCES.

McClain's Code.....	140
Acts of Twenty-third General Assembly.....	159
Acts of Twenty-fourth General Assembly.....	160
Acts of Twenty-fifth General Assembly.....	161
Rules of district judges.....	163

GENERAL REPORT.

To the Twenty-sixth General Assembly of the State of Iowa:

The Code Commission appointed under the provisions of chapter one hundred and fifteen of the acts of the Twenty-fifth General Assembly respectfully submits to your honorable body the following report:

The act which created the Commission directs that it "shall carefully revise and codify the laws of Iowa, and shall rewrite the same and divide them into appropriate parts, and arrange them under appropriate titles, chapters, and sections; omit all parts repealed or obsolete, insert all amendments, and make the laws complete," and "shall have power to transpose words and sentences, arrange the same into sections or paragraphs and number them, change the phraseology and make any and all alterations necessary to improve, systematize, harmonize, and make the laws clear and intelligible" (25 G. A., c. 115). In carrying out the duty thus imposed the Commission has, first by its individual members, and finally in general session, gone over the whole of the Code of 1873, and all of the statutes of the State of a general, public, and permanent nature subsequently passed, incorporating all amendments which have been made, omitting all provisions which have been repealed or are obsolete, and in general making the expression of the law correspond to its present legal effect. In the exercise of the duty of rewriting the law and improving its phraseology, the Commission has made many verbal changes, but has done so with great care in order that the meaning of the statutes should not be thereby materially changed.

The language of the act as above quoted indicates, however, that some alterations in the law for the purpose of securing completeness, and to improve, systematize, and harmonize it and make it clear and intelligible, were contemplated as within

the scope of the duty of the Commission, and it has therefore recommended some changes, having in view, however, the unification and perfection of the system of the written law as it now is, rather than the enlargement of it or its change in material matters. This view finds support in the fact that the statute under which this Commission has acted is modeled after that under which a similar Commission acted in drafting the Code of 1873. That Commission prepared a report for the Fourteenth General Assembly with a somewhat restricted view of its powers, but this report was to some extent unsatisfactory, and it was directed to report further to an adjourned session (14 G. A., Private acts, p. 106) and in doing so it presented a code ready for adoption by the legislature. This Commission has thought it best to present a code substantially in accordance with the plan finally adopted by the former Commission. To have presented merely recommendations for changes would have involved great labor upon the Assembly and additional labor upon the Commissioners, and an entire reprinting in the form of bills of the Code with the recommendations incorporated, and the result would have lacked unity and harmony.

This Commission has therefore reported a complete code, divided into parts, titles, chapters, and sections, each title being in the form of a separate bill with an enacting clause, so that no reprinting in bill form will be necessary. The titles are numbered consecutively, however, and the whole is paged consecutively so that it may be bound in one volume for distribution and preservation. The chapters are numbered consecutively under each title and the sections under each chapter. It is recommended that when the code as adopted is finally printed the editor be instructed to number the chapters and also the sections consecutively from first to last, so that reference may be made to any section or chapter by its number without giving the number of the title or part. At the beginning of the reported Code is a table of contents by chapters, and at the end of the sections are references in brackets to the sections of McClain's Annotated Code or subsequent session laws (23rd, 24th, and 25th General Assemblies), which are in whole or in part covered by the matter of each section. Reference is thus made to McClain's Code because that is the compilation of the statutes of the State which will be accessible to members of the General Assembly and others for the purposes of comparison, the official Code of 1873 being out of print. Moreover, as

McClain's Code covers the session laws from 1873 to 1888, showing the statute law as it existed at the latter date, a reference to it is much simpler and more convenient than to the Code of 1873, and the mass of amending and repealing statutes. A table showing where each of these session laws is to be found in McClain's Code is given at the end of that work. The Commission has based its revision on the Code of 1873 and the session laws, but having found McClain's Code to be a correct embodiment of the whole statute law of a general and permanent nature at the date of its publication, references to it are made for the convenience of those desiring to consult the written law of that date.

Under each chapter in this accompanying report, all the sections of the Code of 1873 and the various chapters of session laws subsequent to that Code (and the corresponding sections of McClain's Code) which are incorporated into the chapter as revised by the Commission, are referred to. It has been thought best to thus connect this revision with the prior official publications of the statutes of the State, and it is recommended that in preparing this Code for publication after its adoption, the editor shall give references either at the end of the section or by way of a table to such official publications.

The references which are given as above indicated to sections of the Code and to session laws do not indicate that these sections have been entirely followed in the sections which are reported, but only that they are the sections in which provisions will be found as to similar subject matter. Sections of the reported code which contain no references at the end are presented as new provisions in addition to anything found on the subject in prior statutory law.

Wherever the Code as reported does not exactly follow the present statutory language the new words are underscored, or if a whole section has been rewritten it is all underscored. The underscoring therefore does not necessarily indicate any new law, but if provisions are new, they are necessarily underscored. Changes in language made in the Code or session laws by subsequent statutes are not indicated by underscoring. Thus where circuit court is changed to district court, or district attorney to county attorney, or new matter is by amendment inserted in a previous statute there is no underscoring.

It must be distinctly understood that a change of language does not necessarily indicate any intention to change the meaning of the law. The Commission is authorized to rewrite the

sections of the Code and statutes for the purpose of improving the expression of the law and it has faithfully done so, omitting much that is superfluous and improving the statement and arrangement of the written law where practicable. In some chapters the transposition of words, sentences and sections has been so general that substantially entire chapters are underscored without being in any sense new, for instance in the chapters relating to cities and towns, state institutions, and the public schools.

This accompanying report explains the principal changes made and refers to the new sections or parts of sections introduced, and states briefly the reasons therefor. To have attempted to state and explain each change in the language would have made this report more voluminous than the code itself, and would have been of no practical value. Such reports were prepared for the greater part of the work by each commissioner in revising the portion of the Code assigned to him and were before the Commission in acting upon his draft, but much revising was also done by the individual members in reviewing the work of the others, and also in their joint sessions when passing finally upon the various portions of the work as reported, and a record of the action as to each particular change was impracticable within the time allowed, and would have been a burden instead of an assistance in passing upon the result.

By means of the references in brackets at the end of each section the corresponding provisions of the present statutory law may be referred to, and by means of a table presented in the appendix to this accompanying report, it may be easily ascertained where the sections of the reported code covering any part of the present statutory law may be found. Those sections of McClain's Code or subsequent statutes which are omitted as obsolete, temporary, superseded, or repealed are so marked in this table.

It was necessary to print the proposed code title by title as prepared, and some changes which would have been made in the earlier portions, if they had still been open for revision when the later portions were finally passed upon, are suggested in this accompanying report. A few changes which have been suggested too late for insertion before printing are also recommended. Most of these are printed on a sheet of corrections which has been inserted at the end of the reported code. Some

errors and omissions in the bracket references are also corrected on that sheet without being otherwise referred to. There is also a slight lack of uniformity in the use of terms which were not agreed upon until part of the matter was in print, such as the substitution of "action" for "suit" and "proceeding," "road" for "highway," "school township" for "district township," "district" for "sub-district." These discrepancies are slight and will cause no uncertainty in meaning. They may easily be corrected by the editor in printing the code as adopted. Such power was given to the editor of the Code of 1873. The editor should also be given authority to re-arrange the order of sections, as some slight improvement in that respect might still be made.

It should be stated that while there has been difference of opinion among the members of the Commission as to the plan of making material changes and as to various changes recommended, yet the judgment of the Commission is embodied in the sections which it has reported. It feels justified in stating that its work has been done with great care and labor, in the hope that the result may be found satisfactory to the General Assembly and that the code as proposed may be adopted substantially in the form in which it is presented. Whatever difference of opinion there may have been as to the form of reporting the work, does not extend to the matter as reported.

A few changes of a general nature may properly be here referred to. The order of titles in the Code of 1873 has been substantially followed, but the entire title relating to compensation of officers (title 23), which seems to have been in an inappropriate and inconvenient place, has been distributed under the different chapters to which the sections relate, and the few sections of that title not appropriate to any particular chapter have been gathered into a short chapter at the end of the title relating to elections and offices, as a more appropriate place than that in which they are now found.

No changes in appropriations or in compensation of officers have been recommended, though in a few instances there are changes as to the fees to be charged, when such fees are to be accounted for by the officer receiving them.

The chapter relating to deputies has been inconvenient in location and incomplete in its scope and the plan has been adopted of placing under each chapter relating to an officer authorized to appoint a deputy, such sections as are necessary

to provide for his appointment and specify his powers and duties. The chapter on deputies has, therefore, disappeared entirely as a separate chapter.

The title relating to county, township, town and city government has been divided so as to place county and township government in one title and city and town government in a separate title, divided into proper chapters. The great increase of the statutory provisions relating to cities and towns, and their complete independence of the provisions relating to counties, has rendered this arrangement imperative.

The chapters as to the various state institutions are placed in different titles of the code, some of them under the police title, some in the educational title, but in these chapters provisions were found which were substantially common to all such institutions, and it was thought wise, not only for the purpose of avoiding repetition, but also to secure uniformity, to insert one chapter relating in general to the government of such institutions, and this has been placed at the end of the title relating to the police of the state.

The title relating to the militia has been transposed and placed preceding the title relating to the police power, for the purpose of bringing it into a more appropriate connection with the general law.

As a matter of general policy it has been thought best to omit almost entirely the sections under various headings in the nature of legalizing acts. The present statutory provisions have been so long in force that there seems to be no occasion now for relieving parties who have acted in violation of, or without regard to such statutes. These acts will remain in force as of their original date, but it is not thought wise to extend their scope.

Senate file 340, a bill for an act to revise and amend the revenue and taxation laws, was referred to the Commission by resolution of the Senate, and it has been considered, as more fully explained in the following report on the chapter relating to the assessment of taxes.

A bill contemplating the adoption of the Torrens system of land titles was also referred by the Senate to the Commission. The system has been examined to some extent, but it has not been thought wise to incorporate it into the reported code.

By joint resolution of the two houses of the General Assembly the Commission was authorized to send three delegates to represent the state at the meeting of commissioners

appointed by the various states to consider and recommend to their states for adoption uniform laws on some subjects as to which uniformity of legislation is desirable. H. O. Weaver, L. G. Kinne, and Emlin McClain were appointed and each attended sessions of such commissioners and some of their recommendations are embodied in the reported code, with an explanation in each case of the source from which such provisions come. This work is still in progress with a prospect of very beneficial results. It is recommended that that commission, consisting of the same or other members, be continued, and that an appropriation be made to pay their expenses and provide a fund to be used in paying the proper share of the necessary printing. Thus far the members have paid their own expenses.

With the view of facilitating the action upon this report by the General Assembly, it is respectfully suggested that without referring the different portions to the several committees of each body, a joint committee be appointed by the two Houses to consider and report as a whole, propose such changes as they may find in their judgment necessary, and take charge of the passage of the successive titles in the form of bills, and that from the beginning of its session the General Assembly set apart four days of each week for the consideration of the various titles as they may be reported to them by this joint committee, until the adoption of the entire code is completed. It is suggested that this is the only method by which the work can be accomplished at the regular session and that it can be successfully accomplished in this way without materially interfering with the general legislation, or greatly prolonging the session. Any general legislation which may be found necessary during the session can be passed in the form of separate bills and incorporated by the editor in the proper places in the code before the final numbering of the chapters and sections.

The Commission respectfully submits its report for the action of the General Assembly.

H. S. WINSLOW,
Chairman,
CHARLES BAKER,
Secretary,
JOHN Y. STONE,
EMLIN MCCLAIN,
H. F. DALE,
Commissioners.

ACCOMPANYING REPORT.

In Explanation of the Code as Reported.

PART FIRST---PUBLIC LAW.

TITLE I.

OF THE SOVEREIGNTY AND JURISDICTION OF THE STATE, AND
OF THE LEGISLATIVE DEPARTMENT.

CHAPTER 1.—Of the sovereignty and jurisdiction of the state (p. 5.) Code §§ 1-4. [McC. §§ 1-4]

Sec. 4. So far as the changes are not merely in phraseology, the intention is to retain the state jurisdiction for police purposes.

CHAPTER 2.—Of the general assembly (p. 6). Code §§ 5 27; 15 G. A., c. 3; 18 G. A., c. 38; 19 G. A., c. 52; 25 G. A., c. 73, 109. [McC. §§ 5-31]

Secs. 10-12. Although 15 G. A., c. 3 was passed as an addition to Code § 12, yet it was probably not intended by 18 G. A., c. 38, which repealed that section of the Code, to repeal the provisions of the subsequent act and they are therefore retained.

Sec. 13. Words are added recognizing the right of removal of an officer.

CHAPTER 3.—Of the statutes (p. 10). Code §§ 28-45; 16 G. A., c. 132; 17 G. A., c. 123. [McC. §§ 32-49]

Sec. 5. It is now the uniform practice where acts are made to take effect by publication to provide in the publication clause that they shall take effect from and after such publication, so that the provision in the Code section that they shall take effect twenty days from the date of publication, is practically abrogated. It is therefore omitted as obsolete.

Sec. 7. As the governor has thirty days within which to sign bills after the adjournment of the general assembly, it is practically impossible for the secretary of state to deliver to the printer a copy of all the laws passed at the session within

twenty days after adjournment. The time within which the copy shall be sent to the printer is therefore extended so as to give a reasonable time after the expiration of the thirty days allowed the governor for signing bills. The provisions as to the use of marginal notes in printing the statutes is changed so as to permit the use of catch words instead.

Sec. 17. The provisions of subd. 14, are extended to corporate seals. Subd. 16 is so changed that "town" shall mean an incorporated town only. This will make the use of the word more convenient. There is nothing in common between an incorporated town and an unincorporated villiage and there is no occasion for having a common term for them. Changes in subds. 18 and 21 are self explanatory. Subds. 26 and 27 are new and will be found convenient.

CHAPTER 4.—Of the code and its operation (p. 14). Code §§ 46-54. [McC. §§ 50-58]

Section 1. There seems to be no better plan for designating this code than to have it called simply "The Code." Hereafter the Code of 1873, which has heretofore been properly cited as "The Code," should be designated by its year, to distinguish it from this code when it has gone into effect.

Sec. 2. The date of the taking effect of this proposed code is left blank to be fixed by the legislature in accordance with such provisions as it may be thought wise to make for its publication.

Code § 54 is omitted for the reason that it is not deemed competent for the legislature to declare that this code shall prevail over any later acts that may be passed during the same session. A similar recommendation was made by the commissioners who prepared the Code of 1873, but for some reason the section was retained.

CHAPTER 5.—Of submission of constitutional amendments (p. 15). 16 G. A., c. 114; 19 G. A., c. 7. [McC. §§ 59-63].

Sec. 2. The provisions of the original act are so modified as to conform to those of the present statute relating to elections. [§ 19, p. 208]

TITLE II.

OF THE EXECUTIVE DEPARTMENT.

CHAPTER 1.—Of the governor (p. 17). Code §§ 55-60, 3755; 21 G. A., c. 118. [McC. §§ 64-69, 5006]

Sec. 3. These provisions are extended to cover other crimes than those mentioned in the Code section.

CHAPTER 2.—Of the secretary of state (p. 18). Code §§ 61-65, 83-93, 3756; 18 G. A., c. 167; 18 G. A., c. 206; 19 G. A., c. 123; 21 G. A., c. 118, 178; 24 G. A., c. 64. [McC. §§ 70-74, 97-114, 5007]

The state land office having been made a department of the office of secretary of state, the provisions of the chapter which relate to that office are included in this.

Code § 64 is transferred to the chapter on public printing. (§ 10, p. 29)

Sec. 6. The distribution is to be made to the members last elected.

CHAPTER 3.—Of the auditor of state (p. 21). Code §§ 66-74, 3757; 21 G. A., c. 118; 22 G. A., c. 82. [McC. §§ 75-83, 5008]

Sec. 12. To the section as reported add "bank and building and loan associations." (See §§ 9, 10, p. 356 and § 11, p. 362)

CHAPTER 4.—Of the treasurer of state (p. 24). Code §§ 75-82, 3758; 17 G. A., c. 57; 17 G. A., c. 116; 21 G. A., c. 118; 22 G. A., c. 82; 23 G. A., c. 31. [McC. §§ 84-96, 5009]

CHAPTER 5.—Of the public printing and binding (p. 26). 22 G. A., c. 82 (repealing Code §§ 94-110, 3764-8); 23 G. A., c. 52; 24 G. A., c. 64; 25 G. A., c. 86, 87. [McC. §§ 115-136a, 5019-23]

Slight changes are made in the chapter to harmonize it with provisions elsewhere relating to reports; and the acts as to the publication of the official register and the proceedings of the academy of sciences and state teachers' association are included. McC. § 117 is too general to be of practical value and is omitted.

CHAPTER 6.—Of the custodian of public buildings (p. 35). 21 G. A., c. 148. [McC. §§ 137-146a]

Sec. 7. The last clause is taken from 20 G. A., c. 1, which act was in the main temporary in its character.

CHAPTER 7.—Of the executive council (p. 37). Code §§ 111, 119. [McC. §§ 147, 155]

The original chapter of the Code included both executive council and census, but it has been thought best to put the census in a separate chapter, which leaves only two sections for the executive council.

Most of the provisions applicable to the council are found in other chapters of the Code where the subjects with reference to which it is given authority are considered.

Code § 120, as amended by 16 G. A., c. 142, § 8, and 20 G. A., c. 119, is covered by §§ 1 and 2, pp. 38 and 39.

CHAPTER 8.—Of the census (p. 37). Code §§ 112–118. [McC. §§ 148–154]

Sec. 4. The provisions of this section are so changed that the abstracts of the assessors come directly to the secretary of state, instead of being consolidated by the county auditors. It has been found by practical experience that the work can be done much more expeditiously and at less expense in this manner.

Secs. 6, 7. These are new provisions which will greatly facilitate the ascertaining and proving of the population of a county or city where, as is frequently the case, the applicability of statutory provisions thereto is made to depend upon the population. In this code and in subsequent session laws it will only be necessary to specify the population, the method of ascertaining it being fixed here.

CHAPTER 9.—Duties assigned to two or more officers and general regulations (p. 38). Code §§ 121–132, 3778; 15 G. A., c. 1; 16 G. A., c. 159 (repealing Code §§ 125, 129, 130); 17 G. A., c. 144. [McC. §§ 157–172, 5030]

TITLE III.

OF THE JUDICIAL DEPARTMENT.

CHAPTER 1.—Of the organization of the supreme court (p. 45). Code §§ 133–145, 3769; 16 G. A. c. 7; 18 G. A. c. 27; 21 G. A. c. 59; 22 G. A. c. 34; 25 G. A. c. 69. [McC. §§ 173–184, 5024]

In this chapter are incorporated the provisions of the act which changed the terms of court, and also those of the acts

increasing the number of judges. The portion of 25 G. A. c. 69 relating to the election of the additional judge is included in the chapter on elections (§ 10, p. 198). A distinction is made in this chapter between a decision and an opinion of the court.

Sec. 4. Add to the end of the section as reported, the words, “but in such cases opinions may be filed.”

Sec. 7. This is drawn to obviate the requirement of Code § 143, which seems to make necessary a written opinion on all questions reviewed on appeal, but which has been found impracticable. The proposed provisions require a decision on every question passed upon, but leave it optional with the court whether or not to write an opinion stating the reasons of the decision on each point, and allow rulings on motions to be announced orally, with an entry upon the announcement book in accordance with the present practice of the court.

CHAPTER 2.—Of the clerk of the supreme court (p. 46). Code §§ 146–9, 3771–3; 17 G. A. c. 74; 19 G. A. c. 117; 21 G. A. c. 118. [McC. §§ 185–188, 5026.]

The fee bill is changed so as to require the payment in one lump sum of an amount practically equivalent to the fees heretofore charged. When appellee docket the appeal to secure an affirmance, only one-half the usual fee is required. Code § 3773, authorizing the clerk to collect his fees by execution, is omitted, inasmuch as they may be collected by legal process, without any special statutory authority.

CHAPTER 3.—Of the attorney-general (p. 47). Code §§ 150–153, 3770; 21 G. A. c. 172. [McC. §§ 189–192, 5025]

CHAPTER 4.—Of the supreme court reporter and reports (p. 48). Code §§ 154–160; 18 G. A. c. 60; 20 G. A. c. 125; 22 G. A. c. 33. [McC. §§ 193–205]

Sec. 2. The statute as to the publication of the reports by contract is incorporated. It was thought not necessary to preserve the provision about the ownership of the copyrights of reports prior to 1875.

Sec. 3. The exchange of the reports with other states is placed in the hands of the state librarian, an additional number of books being given to the library for that purpose.

Sec. 9. The number of copies which are to be furnished to the state under the next contract is increased for the reason that the number supplied under the present contract does not enable the state to furnish the requisite number of copies to those who by law are entitled to them. It is also provided

that the copies to be furnished to the state shall be the first issued.

CHAPTER 5.—Of the district court (p. 51). Code §§ 161–186, 231, 3774, 3777, 3779; 15 G. A., c. 12; 17 G. A., c. 89; 18 G. A., c. 195; 20 G. A., c. 198; 21 G. A., c. 128; 21 G. A., c. 134; 22 G. A., c. 37; 24 G. A., c. 53, 54, 55; 25 G. A., c. 66, 67, 68. [McC. §§ 206–249, 309, 5029, 5031]

This chapter has been largely rearranged in order to eliminate the provisions of the Code relating to the circuit court.

Code § 3779 is omitted as unnecessary because covered by constitutional provisions.

The provisions of various statutes as to the election of the judges are incorporated in the chapter on elections. (c. 1, p. 197)

Code § 180 [McC. 226], authorizing the court to make rules of practice, has been omitted as practically superseded by 21 G. A., c. 134, § 11 [McC. 243], which authorized the calling of a convention of judges to make rules which should be uniform throughout the state. The rules thus promulgated have had practically the authority of statutes and are incorporated into this code as statutory provisions. While the act perhaps contemplated further conventions of judges with authority to modify these rules or make new ones, it is thought unlikely that resort to such method will be again desired, and the whole provision is omitted. If uniform rules are to be adopted by any authority, they should come from the legislature as amendments to the statutes relating to practice in the courts, and the cumbersome machinery of the convention of judges may be dispensed with. 21 G. A., c. 134, § 16 [McC. § 248], is incorporated into the section on the salary of the clerk. [§ 11, p. 64]

Section 1. This consolidates the jurisdiction given to the district court originally and also by way of succession to the circuit court, and includes the probate jurisdiction provided for in Code § 23.2 [McC. § 3509]. There seems no reason why the entire jurisdiction of the district court should not now be included in one section.

Sec. 4. This section is so extended as to provide for the two places for holding court in Pottawattamie county in accordance with 20 G. A., c. 198. It was not thought necessary to incorporate the special provisions of that act as to the districts from which jurors for the terms of court in the two parts of the county shall be drawn, nor other matters relating to these courts. The act is, in its nature, special, and will continue in force notwithstanding this code.

Sec. 5. It is thought unnecessary to require more than three terms of court in a year. In some counties that is enough. Beyond that the matter may be left to the discretion of the judges.

Sec. 8. The time of publication is changed so that there may be proper notice of terms commencing in January.

Sec. 9. The special term is provided for cases triable at the preceding term.

Sec. 11. Adjournment by letter or telegram is provided for.

Sec. 15. When the sheriff is directed to furnish a place for holding court other than the court house, the expense should be paid by the county and this section contains a provision to that effect.

Sec. 18. The reading of the record is dispensed with.

Sec. 21, 22. These sections regulate more fully the appointment and removal of court reporters, and specify in what cases they are required to take down the evidence and other proceedings.

Sec. 25. The case may be sent to a county agreed upon.

Sec. 27. The action of the clerk is reviewable only at the next term.

CHAPTER 6.—Of the superior courts (p. 56). 16 G. A., c. 143; 19 G. A., c. 24; 21 G. A., c. 2, 44; 22 G. A., c. 40; 24 G. A., c. 5. [McC. § 763–786]

As the superior courts have become an established part of our judicial system, it has been thought best to incorporate these provisions here in a new chapter, instead of leaving them stand with statutes relating to cities and towns. The provisions as to compensation of the judge and officers of the court which, in the original act, were scattered through the various sections, are collected at the end. McC. § 784 is covered by § 1, c. 2, p. 925.

Sec. 3. It is required that the judge be a lawyer.

Sec. 7. Changes of venue are allowed in civil actions to the district court.

Sec. 16. The compensation of jurors in this court is now regulated by the chapter on jurors (§ 23, p. 75). By the later statute on the subject it was made uniform with the compensation for jurors in the district court, and the section referred to applies to all courts of record, therefore including the superior court.

CHAPTER 7.—Of general provisions (p. 61). Code §§ 187–192. [McC. §§ 250–255]

CHAPTER 8.—Of the clerk of the district court (p. 61). Code §§ 193-204, 3781-7; 18 G. A., c. 22; 18 G. A., c. 184; 19 G. A., c. 151; 22 G. A., c. 36; 22 G. A., c. 82; 24 G. A., c. 41; 25 G. A., c. 77, 90. [McC. §§ 256-266, 5033-9]

Sec. 2. All papers authorized to be filed, and all books kept are made parts of the record. A combination docket is authorized. The provision for a complete record book is omitted. Such a record book is required in the probate records (§ 21, p. 689), but there seems to be no occasion for it otherwise, and it is therefore omitted here in the enumeration of the general books which the clerk is to keep.

The various sections of the code and subsequent acts relating to compensation are consolidated and slightly modified with a view of presenting a uniform and intelligible rule, with such gradation as to population as seems reasonable.

CHAPTER 9.—Of the county attorney (p. 66). Code §§ 205-7, 3775-6; 21 G. A., c. 73. [McC. §§ 267-279]

The provisions of the Code relating to district attorneys are entirely superseded by the act providing for county attorneys, which is presented in this chapter. The provisions as to election, bond, and filling vacancies [McC. §§ 267-275] are incorporated into the chapters on those subjects.

Section. 1. Only an amended abstract is to be prepared, when that is sufficient. The attorney-general should be notified of appeals in criminal cases. Some duty in such case is also imposed upon the clerk. (See § 3, p. 977)

Sec. 5. The county attorney or his assistant should not be engaged in a civil action involving the same facts as those involved in a criminal prosecution.

CHAPTER 10.—Of attorneys and counselors (p. 68). Code §§ 208-226; 20 G. A., c. 168. [McC. §§ 280-304]

Sec. 2. The language of the Code relating to admission of attorneys by the supreme court is modified in this section so as to allow the court to give credit for time of study in another state or under the direction of a judge, who cannot be said to be a practicing lawyer. There seems to be no good reason why the court may not, if it sees fit, give a student credit for a portion of his course of reading pursued in another state.

Sec. 4. These provisions are substantially those which have been heretofore in force in regard to the admission of students who have completed a course in the law department of the university, but it leaves the determination of their qual-

ifications to the faculty of the department and the examining committee. As a matter of fact the supreme court is not in session when these examinations are held, and it is impracticable to have the qualifications of the students for admission passed on in any way by the court itself.

Sec. 14. In the last sentence of this section as it stood in the Code, there was a discrepancy between the language used and that found in the original Code as enacted by the legislature. The language of the original Code is retained not only because it is probably authoritative, but because it is deemed to furnish the better rule.

CHAPTER 11.—Of jurors (p. 71). Code §§ 227-245, 3811; 15 G. A., c. 16; 17 G. A., c. 184; 21 G. A., c. 42, 128; 25 G. A., c. 70-72. [McC. §§ 305-323, 5087]

The incorporation of the new jury law passed by the last general assembly has very greatly modified this chapter. The provisions of the original sections and of the new act are rearranged and adjusted in such a way as to make a uniform system.

Sec. 6. When the panel is not complete the parties may agree as to how additional jurors shall be secured.

Sec. 13. The provision as to disqualification on account of having served is not applicable under the present law and is omitted.

CHAPTER 12.—Of securities and investments (p. 76). Code §§ 246-257; 21 G. A., c. 157; 22 G. A., c. 41. [McC. §§ 324-344]

Sec. 6. When a fidelity company is offered as surety, the certificate of the auditor of state is sufficient to show that it is such a company as may be accepted. But such company is not to be accepted on bonds given by public officers.

CHAPTER 13.—Of notaries public (p. 79). Code §§ 258-266, 3801; 22 G. A., c. 100. [McC. §§ 345-353, 5077]

CHAPTER 14.—Of commissioners in other states (p. 81). Code §§ 267-276. [McC. §§ 354-363]

CHAPTER 15.—Of the administration of oaths (p. 82). Code §§ 277, 278, 396; 16 G. A., c. 110; 18 G. A., c. 62; 21 G. A., c. 126; 25 G. A., c. 52. [McC. §§ 364, 365, 535, 536]

The Code chapter related to acknowledgments, as well as the administration of oaths, but Code § 1955, as amended by 22 G. A., c. 99, also covers acknowledgments, and it has been thought better to make this chapter relate to oaths entirely, and leave acknowledgments to be covered in the other connection. The provisions of the chapter have been extended to include other

officers authorized to administer oaths, and the general provision covers cases where officers or boards not generally authorized are directed to do so under special circumstances. The act of the last general assembly authorizing notaries to act in counties adjoining that of their residence is also incorporated.

It was intended to make this chapter broad enough to cover all cases where there should be any occasion to administer oaths for any purpose, but by inadvertance the cases of boards, commissions, etc., were not covered. It is recommended that the section, as reported, be amended by inserting after "required," in line 10, the following: "members of all boards of any state institution, of all commissions, boards, or bodies created by law, and all persons, referees, or appraisers appointed by authority of law, who have any duty to perform by virtue of their office or appointment requiring the administration of oaths."

TITLE IV.

OF COUNTY AND TOWNSHIP GOVERNMENT

The Code of 1873, title IV, covers city and town government as well as that of counties and townships, but the provisions as to the former are so much more extensive and complicated than those relating to the latter that it has seemed best to put cities and towns into a separate title, and therefore this title relates to counties and townships only.

CHAPTER 1.—Of counties (p. 85). Code §§ 279-293; 16 G. A., c. 125; 17 G. A., c. 58; 20 G. A., c. 175; 21 G. A., c. 14; 22 G. A., c. 47. [McC. §§ 366-387]

Sec. 10, 11. Code §§ 289 and 290 were temporary in their character, in that they applied only to indebtedness outstanding on the first day of January of 1872, but by successive acts passed at each session of the general assembly up to the last one (the references to which are not given above as they are essentially temporary) these provisions are made applicable to subsequent indebtedness, and it has seemed proper, therefore, to so change the sections as to make them general and permanent in their character.

A statute authorizing the refunding of outstanding bonded indebtedness has been in force for some years, and by an act of the general assembly in 1892 was made applicable to indebtedness of that date, so that while there has not been so much

legislation with reference to this kind of indebtedness, yet it is thought to be in accordance with the apparent policy of the legislature that this authority also should be vested in the board of supervisors, and accordingly the Code sections which relate to unbonded indebtedness have been extended so as to cover bonded indebtedness as well, thus making a simple and definite system.

The sections are further changed so as to provide definitely for notice of bonds which are called for payment.

The statute providing for refunding of outstanding bonds is applicable to cities and towns as well as to counties, but so far as cities and towns are concerned it is practically superseded by later statutes, which are incorporated into c. 11, p. 185, under the head of cities and towns. The act (18 G. A., c. 140) which extended these provisions to cities under special charter is omitted in accordance with the general policy of not incorporating such statutes into this revision.

Sec. 12. The limitation of the application of the corresponding section of the Code to counties of over four thousand population seems to be wholly unnecessary, and is dropped.

CHAPTER 2.—Of the board of supervisors (p. 89). Code §§ 294-319, 1450, 1451, 3791, 3844; 15 G. A., c. 39, 70; 16 G. A., c. 80, 84, 146; 17 G. A., c. 40, 68; 18 G. A., c. 45, 46, 48, 88; 19 G. A., c. 54, 159; 20 G. A., c. 70, 178, 197; 21 G. A., c. 15, 62, 85, 86; 22 G. A., c. 42, 105; 23 G. A., c. 32; 24 G. A., c. 69; 25 G. A., c. 84. [McC. §§ 389-406, 413-449, 2292, 5065, 5124]

The provisions of 19 G. A., c. 63 [McC. §§ 407-412] authorizing cities, town, and townships to aid in the construction of county bridges is transferred, so far as it relates to cities and towns, to that title (§§ 9-14, pp. 153, 154); so far as it relates to townships, it is omitted entirely, being deemed unnecessary and impracticable. The provisions of 18 G. A., c. 45 [McC. § 414] with relation to the transfer of the bridge fund to the city is covered in the same chapter. (§ 8, p. 153)

Code § 306 [McC. § 427] is transferred to c. 9 of this title (§ 6, p. 115), where it properly belongs among the provisions relating to county officers in general.

Sec. 5. The vacancy is to be declared by the board.

Sec. 13, subd. 18. The provisions as to the regulation and control of bridges in city limits are found in the title relating to cities. (§ 7, 8, p. 153; § 2, p. 181)

Subd. 23 of the Code section is omitted as covered by the chapter relating to canvass of votes. (§ 12, p. 220)

Subd. 24 of the Code section is here made two independent sections.

Sec. 19. The provision as to appeal is made to harmonize with that in regard to appeals from the action of supervisors in case of an establishment of a road under general provisions.

Secs. 21-23. The act of the general assembly (22 G. A., c. 105; McC. §§ 416-419) is re-written and condensed, without, it is believed, the omission or change of any material provision.

Sec. 26. This is a condensation without change of the provisions of 21 G. A., c. 62. [McC. §§ 423-425]

Secs. 28-30. These provisions found in 18 G. A., c. 48 were not embodied in McClain's Code, being considered temporary, but it is believed that, even if temporary, general provisions of the same character ought to be retained and they are therefore here inserted.

Secs. 35, 36. The sections of the Code with the amendments thereto relating to the submission of the question whether stock shall be allowed to run at large, are transposed from the chapter on domestic animals and inserted here. Some provisions on the submission of such questions were already found in this chapter and it was thought best to bring the others into conjunction with them. Where the "herd law" is now in force it will continue under this code without a new submission. As "stock" is defined in the chapter on domestic animals (§ 1, p. 458), the last two lines of this section as reported should be changed to read as follows: "The word 'stock' as used in this section shall have the same meaning as in the chapter relating to domestic animals."

Sec. 41. This section is made to conform to provisions of the previous section. (§ 36, p. 98)

Secs. 48-52. The provisions of 20 G. A., c. 70 [McC. §§ 2288-93], as amended by 25 G. A., c. 84, with reference to a levy of a tax upon dogs and making compensation therefrom to the owners of stock for injury done by such animals, is inserted here with the belief that it is the proper connection in which to present the statutes, which relate rather to the duties of the board of supervisors than, in general, to the ownership of domestic animals.

Secs. 61, 62. These two sections taken from the chapter of the Code relating to supplies for county offices and compensa-

tion for supervisors are transferred from the title of the Code relating to compensation of officers and inserted here under the general plan by which provisions as to expenditure and compensation are inserted in the chapters to which they properly belong.

CHAPTER 3.—Of the county auditor (p. 102). Code §§ 320-326, 766-771, 3797, 3798; 16 G. A., c. 4; 18 G. A., c. 22, 184; 22 G. A., c. 36. [McC. §§ 450-457, 1238-43, 5036, 5071, 5072, 5074]

Sec. 6. As the clerk of the district court is required to make his returns as to criminal prosecutions on or before the first Monday in November (§ 7, p. 63), it is thought best to change the time of the auditor's report required by this section to an earlier date, as is here done.

Sec. 8. That part of Code § 326 [McC. § 457] which prohibits the auditor and his deputy from acting as attorneys before the board of supervisors is covered by c. 9 of this title. [§ 2, p. 115]

CHAPTER 4.—Of the county treasurer (p. 104). Code §§ 327-334, 766-771, 3793, 3796; 16 G. A., c. 4; 17 G. A., c. 1223; 18 G. A., c. 184; 19 G. A., c. 103; 21 G. A., c. 84; 22 G. A., c. 36. [McC. §§ 458-468, 1238-43, 5036, 5067, 5070]

CHAPTER 5.—Of the county recorder (p. 106). Code §§ 335, 336, 3792; 18 G. A., c. 40; 23 G. A., c. 49; 25 G. A., c. 76. [McC. §§ 469-471, 5066]

Sec. 5. This is 23 G. A., c. 49.

CHAPTER 6.—Of the sheriff (p. 107). Code §§ 337-347, 766-771, 3798-90; 16 G. A., c. 4; 18 G. A., c. 115; 23 G. A., c. 41; 25 G. A., c. 75. [McC. §§ 472-482, 1238-43, 5040-64]

Code §§ 342, 343 [McC. §§ 477, 478], are incorporated as §§ 3, 4, c. 9 of this title. (p. 115)

Code § 348 [McC. § 483] is incorporated into the chapter on executions. (§ 111, p. 778)

CHAPTER 7.—Of the coroner (p. 111). Code §§ 349-368, 3799; 20 G. A. c. 21; 21 G. A. c. 140. [McC. §§ 484-503, 2450, 5075]

The provision as to coroner's inquest in case of accident in mines is transferred to this chapter from the act relating to mines and mining, this being deemed a better place for the matter.

Between sections 14 and 15 insert the following:

Sec. 14a. The coroner shall report to the clerk of the district court all cases of death which may come under his supervision, with the cause or mode thereof, in accordance with forms furnished by the state board of health. [2564]"

CHAPTER 8.—Of the county surveyor (p. 114). Code §§ 369–378, 3800; 16 G. A. c. 25. [McC. §§ 504–513, 5076]

Section 1. No office being provided for the county surveyor, it is thought best to require his record of surveys to be kept in permanent form in the county auditor's office.

Sec. 9. The scope of the section is somewhat enlarged, so as to be more generally applicable.

CHAPTER 9.—Of the duties of county officers (p. 115). Code §§ 306, 326, 342, 343; 18 G. A. c. 22, §§ 1, 4; 18 G. A. c. 184, § 5. [McC. §§ 427, 457, 477, 478, 514, 515, 5074]

This chapter is made up of provisions from different sources relating to different county officers but not exclusively to any one of them.

Sec. 2. This is broader than the original, which applied only to the auditor and his deputy, but it would seem to be a wise provision as to all county officers.

Sec. 5. This is a part of one of the compensation sections and relates to officers in general, and is therefore inserted here.

Sec. 6. The requirement that the newspaper selected for the publication of public notices shall be printed in the English language seems to be a reasonable one. There is probably no longer any occasion to make provision for publication of such notices in newspapers printed in a foreign language.

CHAPTER 10.—Of township and township officers (p. 116). Code §§ 379–420, 1799, 3808–10; 16 G. A., c. 6, 35, 50, 61, 130; 17 G. A., c. 116; 18 G. A., c. 201; 19 G. A., c. 110; 20 G. A., c. 106, 120; 21 G. A., c. 48; 23 G. A., c. 25, 27; 24 G. A., c. 10. [McC. §§ 516–568, 2918, 5084–6]

Section 1. This section was printed before the school law was revised and the terms used in relation to the school district do not correspond to those adopted in the chapter on schools. It should be changed by substituting "school township" for "school district," "district" for "subdistrict" and "township" for "district," all in the last two lines of the section.

Sec. 2. This section is based upon a statute applicable, as passed, only to Des Moines, but was incorporated here as a general provision. In the revision of the school law another provision was found somewhat in conflict with it which has been preserved as § 40, p. 574. It is recommended that the section here reported be wholly omitted.

Code § 380 [McC. 517] has been omitted as of no further utility.

Code §§ 388, 389 [McC. 525, 526] are omitted as covered by the chapter on general elections. (c. 1, p. 197)

Secs. 10–13. The act abolishing township officers where a city of less than seven thousand population constituted a civil township is extended so as to apply also to towns. There seems no reason why a separate township organization should be maintained in towns.

Sec. 15. So much of the original Code section as amended is retained here as provides for the election of an assessor in a portion of a township, the balance of which is within the limits of a city or town. The general election of a township assessor in other cases is provided for in the chapter on election (§ 19, p. 199). The election of assessors in cities and towns is covered by the chapter on city and town officers. (§ 5, p. 134; §§ 12–14, p. 135; § 26, p. 138; § 38, p. 141)

Sec. 19. Code § 396 and 16 G. A., c. 110 [McC. §§ 535, 536] are covered by the general chapter on the administration of oaths (c. 15, p. 82) and omitted here, except that the portion of the Code § 396 [McC. § 535] requiring the clerk to make a record of the administration of the oath of office to the township officers is retained here.

Code §§ 400–411 [McC. § 541–552] providing for the township collector of taxes and prescribing his duties are omitted as it is believed that the collector plan has not been found successful and that it is in operation in very few if any, of the counties of the state. In practical operation the collector only prosecutes the collection of taxes so long as the percentage makes it profitable, and the taxes which he thus receives would be paid just as well to the county treasurer. Taxes which are difficult of collection will not be realized by the collector because the percentage is too small to furnish any inducement for industry in such cases. Moreover the law as it now stands, makes it obligatory on the tax payer to pay to the township collector, if there is one, and suspends during certain months the right to pay to the county treasurer. This would prove in many cases a great inconvenience, as for many tax payers the treasurer's office would be more accessible than the residence of the township collector.

Code §§ 415–420 [McC. §§ 556–561] are covered by the chapter on the state board of health (c. 16, p. 517). The sections of the Code which are found in the chapter on townships have been practically superseded by the later board of health acts, and it is thought best to consolidate the whole subject.

Sec. 34. The provision of this section in the Code as to compensation for recording marks and brands of animals is transferred to the chapter relating to domestic animals where the marks and brands are provided for. (§ 27, p. 462)

CHAPTER 11.—Of general regulations affecting counties and townships (p. 121). Code §§ 552-558. [McC. §§ 987-993]

The division of the title of the code of 1873 into two titles, one relating to counties and townships, the other to cities and towns, has made it necessary to put this chapter under one or the other head. It is therefore incorporated in the title on counties and townships, with a reference in the title on cities and towns, making it applicable also to them. (§ 17, p. 185)

TITLE V.

OF CITY AND TOWN GOVERNMENT.

The chapter of the Code on cities and towns has been expanded by subsequent legislation into many times the bulk of the original statutory law on the subject, and has, therefore, been made a separate title and divided into chapters. The plan of the Code chapter has proven entirely too narrow for the subsequent legislation, and as a result the whole law of the subject has been thrown by subsequent enactments into inextricable confusion. The Commission has, therefore, felt justified in taking radical measures for the purpose of securing some intelligible system, not only for the present revision, but to serve as a basis for future legislation on the subject.

A fundamental difficulty in any systematic arrangement has been found in the division of cities into two classes, those of the first and those of the second class. Powers which were originally given to those of the first class have been extended to those of the second class, either entirely or according to some arbitrary basis of population adopted for each particular measure, and many statutes have been passed applicable to only a portion of those of either class. Indeed it has been found that the distinction between these two classes, as fixed by the Code, has been practically abrogated. In the effort to introduce some uniformity it has been found that for many purposes a division between cities of under and those of over

20,000 is practically in accordance with the present legislation, and where some distinction is necessary this has been made the basis of the distinction. But the terms "first class" and "second class" have been omitted entirely, and where any distinction between classes of cities is made it is expressly made by population. The dividing line, however, between towns and cities has not frequently been crossed by subsequent legislation, and is allowed to stand. The present division, therefore, is into cities and towns.

The attempt made in the Code to enumerate separately the officers and the powers of cities of the first and the second class, having proven entirely futile, it has been thought best to arrange the chapters by subject matter rather than by the classes of cities to which they are applicable, it being specially provided under each chapter what grades of cities, according to population, the different provisions are applicable to.

The change of method of arrangement has made it necessary to divide up many of the sections of the Code and statutes, and put their component provisions under different chapters, and as a result it has been very difficult to show from what particular section each provision has been drawn, and yet it will be found that, with the few exceptions which will be mentioned under the various chapters, the sections which we propose practically state the law as it now is. The changes are in the main only a matter of form, but in a few instances as to powers, and in several instances as to the method of selecting officers, it will be found that these provisions as applied to particular cities have worked slight modifications in the law by which they will hereafter be governed if this code is adopted. Whatever slight inconvenience may result from these modifications will be fully justified by the increased clearness and harmony of the system adopted.

No account is taken in this revision of the statutes applicable to cities under special charter. The same method is pursued with reference to such cities as was adopted by the commissioners who prepared the Code of 1873. The statutes at present in force in such cities will remain in force unmodified by this revision. (See § 43, p. 133)

CHAPTER. 1.—Of incorporation (p. 125). Code §§ 421-453, 495, 551; 16 G. A., c. 47; 17 G. A., c. 3, 169; 18 G. A., c. 56, 79; 19 G. A., c. 16, 164; 24 G. A., c. 6; 25 G. A., c. 11. [McC. §§ 569-611, 675, 906]

No substantial change will be found in the methods of incorporation, annexation, or severance of territory, except that the provisions are in some respects more explicit as to the record to be kept of the proceedings when they are had in court. Final judgment of incorporation is postponed until after the first election and the approval by the court of the ordinances. This will obviate the necessity of so many legalizing acts. A new section is added as to costs.

23 G. A., c. 1, relating to the extension of the limits of Des Moines, and 25 G. A., c. 12, legalizing such extension, are omitted as no longer of importance, the objects contemplated having been accomplished. 19 G. A., c. 16, § 6 is omitted for the same reason.

Sec. 11. A majority vote is to determine the question.

Sec. 12. The winding up of the affairs is placed in the hands of the court.

CHAPTER 2.—Of organization and officers (p. 133). Code, §§ 390, 454, 490, 491, 493, 501, 505-12, 514, 515, 518-25, 528, 531-7, 542, 544, 547, 1800; 15 G. A., c. 52; 16 G. A., c. 6, 33, 58; 17 G. A., c. 9, 14, 20, 56; 18 G. A., c. 26, 120, 146, 201; 19 G. A., c. 25, 110, 124; 20 G. A., c. 7; 21 G. A., c. 92, 141; 22 G. A., c. 3, 4, 24; 23 G. A., c. 1, 3; 24 G. A., c. 7; 25 G. A., c. 13, 14, 15. [McC. §§ 528, 613, 670, 671, 673, 687, 691, 692, 694-9, 701, 702, 704, 705, 709, 714-18, 720, 722, 723, 727, 787-9, 791, 794-6, 798, 799, 801, 802, 807, 809, 812-14, 816, 822, 823, 2919]

Code § 513, [McC. § 700], as to special elections in towns to fill vacancies in the council, or in the office of mayor, is covered by the general chapter on vacancies in office (§ 8, p. 239). In the absence of mayor or clerk, the council may appoint for the meeting under § 32, subd. 3 (p. 139). McC. § 790 as to length of term of office of certain officers in cities of the second class is covered by §§ 11-13 (p. 135).

Some of the sections of the Code and session laws relative to officers are covered by general provisions in the title relating to elections and offices, in the chapters thereof on qualification, removal, vacancies, etc., and their omission here will not be specially noted. Some of the chapters of the session laws are covered in part by other chapters of this title and will be found again referred to under those chapters.

The general plan has been to make a consistent system as to the election of officers and it will be impossible to point out as to the cities of particular populations which may be referred to

in the session laws just what changes have been made, but the law applicable to any particular city will be easily ascertained by consulting the provisions of this chapter, which it is believed, are consistent and uniform. A general section (§ 21, p. 136) as to removal of appointive officers covers a number of provisions found in the Code and session laws which are not specifically enumerated.

By bringing together into separate sections with subdivisions the powers and duties of mayor, of clerk, and of the council, a very considerable condensation of the legislation on the subject has been effected, as well as uniformity and greater clearness. The procedure by the council for the passage of ordinances, and the veto power of the mayor are covered by the next chapter. (See §§ 2-6, pp. 142, 143)

Section 1. A definition of a village is added. To obviate the use of the term "municipal corporation" as applicable to cities and towns only, whereas it also applies to school corporations, omit the words in the first line of the section as reported, preceding "having" and substitute "The municipal corporations referred to in this title."

Sec. 2. Change of class is to be based upon increase or decrease of population as shown by a national or state census, not upon a special census.

Sec. 3. The town, when raised to the class of a city, is to be divided into wards for the first election.

Sec. 6. For uniformity, the election in all cities and towns is fixed on the first Monday in April.

Secs. 7, 8. Residence within the city for city officers and within the ward for those elected by wards is required throughout the term.

Secs. 9-15. Omit lines 7-12, § 10, page 135, from "The aldermen" to "for two years." Election of city officers is made uniform for cities of twenty thousand, in accordance with the plan now applicable to first-class cities, while for cities of less population the plan now in force as to second-class cities is adopted. Provision for police judge in cities of from fifteen to twenty thousand is made in § 19 below. In towns the recorder is abolished and a clerk substituted, to be appointed as in cities and to have similar duties and powers. In accordance with this plan omit "recorder" in § 13 and substitute "and."

Secs. 15, 16. The marshal, who is also in larger cities made chief of police, is appointed by the council, and has power to

appoint his deputies, who are to be policemen when there is a police force.

Sec. 18. In the fifth line change "is" to "are."

Sec. 19. This provision as to police judge is to enable cities of from fifteen to twenty thousand population, which are now entitled to a police court, to provide for the election of such an officer, if they desire a police court; otherwise, under § 22, subd. 7, the mayor will act. The election of such a judge in cities of twenty thousand is required by § 11 above.

Sec. 22. The mayor is made a member of the council in all cases, but has a vote only in case of a tie, or when the affirmative vote of some specified proportion of the council greater than a majority is required.

CHAPTER 3.—Of ordinances, courts, and fines (p. 142). Code §§ 482-4, 489, 492-4, 503, 542, 543, 545, 546, 4707; 18 G. A. c. 146, 189; 19 G. A., c. 128; 20 G. A., c. 192; 24 G. A., c. 6. [McC. §§ 560-3, 669, 672-4, 692, 693, 710-13, 807, 808, 810, 811, 6105]

Sec. 12. A provision should be added to this section as reported, for temporarily filling the position of mayor or police judge in case of his absence or inability to act in the discharge of judicial functions; and for this purpose it is recommended that the words in lines 2 and 3, commencing "but if" and ending with "township" be omitted, and the following be added at the end of the section: "If the mayor or police judge is absent or unable to act, the nearest justice shall hold his court and receive the statutory fees, to be paid by the city or county, as the case may be."

Sec. 13. In line 3 of the section as reported, insert after "ordinances" the following: "and the trial shall be by the court, without a jury, except on appeal." This is to conform to McC. § 666.

Code § 486 [McC. § 665], as to limitation of actions for recovery of fines, is transferred to the general chapter on limitation of actions. (§ 1, subd. 2, p. 606)

CHAPTER 4.—Of general powers (p. 145). Code §§ 454-63, 471-5, 480, 485, 511, 517, 523-6, 528, 529, 538, 539, 542; 16 G. A., c. 24, 116; 17 G. A., c. 9, 25; 19 G. A., c. 89, 136, 154; 21 G. A., c. 93, 171; 22 G. A., c. 11, 16, 21, 26; 23 G. A., c. 8; 25 G. A., c. 41. [McC. §§ 613-22, 639-46, 651, 664, 698, 708, 718, 722-5, 727, 728, 731, 732, 734-7, 738, 792, 803, 804, 807, 818, 911-13, 920, 937, 938]

Secs. 7, 8, 10. The power of control over pawnbrokers, gambling, and disorderly houses, is increased, and opium dens are placed in the category of places which may be suppressed or prohibited.

Sec. 17. The establishment of fire limits is placed within the control of the council.

Sec. 21. This should be underscored as the section is rewritten.

Secs. 26-32. Electric power plants are included with electric light plants. The works and plants referred to in these sections can be erected or disposed of only on a vote of the electors, but may be authorized by the council without a popular vote. There seems to be no reason why such franchises cannot be granted in the same manner as other franchises, such as that for a street railway. It is thought best that a city which has erected water works, gas works, or electric light or power plants shall have authority to lease or sell the same, and it is recommended, therefore, that in line 4 of § 26, the words, "and lease or sell the same," be inserted after the word "plants," and that in line 5 the word "or" be omitted before "erected," and after "erected" the words "leased or sold" be inserted; and that in § 27, line 1, after "established," the words "leased or sold," be inserted.

Sec. 33. This is a new provision with reference to bonds issued for the purposes above specified.

Secs. 37-39. Public library funds are to be kept in the city treasury, but subject to the control of the trustees, who shall report to the council.

Sec. 40. Transpose the words in line 1 to read thus: "Cities having a population of twenty thousand or over shall have power to establish."

Sec. 41. When this section was drafted it was intended to insert elsewhere provisions as to committals to houses of refuge or correction, but afterwards it was thought better to cover the whole matter in this section as is done in Code § 539 [McC. § 804]; therefore, it is recommended that this section be modified to read as follows:

"Sec. 41. Cities shall have power to establish and maintain either within their limits or within the county in which they are situated a house of refuge, or a house of correction and a work house, or either of them, and place the same under the management and control of such directors, superintendents,

and other officers as the council may by ordinance provide. Persons sentenced for violation of any ordinance, if children under sixteen years of age, may be committed to the city house of refuge if there be one; if over sixteen years of age, to the house of correction and work house. [804]"

CHAPTER 5.—Of streets and public grounds (p. 152). Code §§ 463-9, 527, 537; 15 G. A., c. 5, 6, 51; 16 G. A., c. 24; 18 G. A., c. 45, 96; 19 G. A., c. 63, 136; 20 G. A., c. 20; 21 G. A., c. 13, 92, 98, 116, 173; 22 G. A., c. 9, 13, 15, 16, 32; 23 G. A., c. 2, 7, 9, 11; 25 G. A., c. 4, 5, 14. [McC. §§ 407-12, 414, 615, 622-5, 629-32, 635, 725, 726, 740, 751-4, 802, 821, 824, 923, 924, 1554, 1937-42]

As to bridges and culverts the provisions for control by cities is somewhat broader in terms, though not in effect, than the present law. The particular provisions as to bridges over forty feet in length is omitted as of no practical utility. Cities having a population of five thousand are given full control of the bridge fund levied and collected within their limits, and are made responsible for the condition of their bridges as counties are with reference to county bridges. (See §§ 7, 8, p. 153)

McC. §§ 633, 634, as to limitation of actions for injuries on account of defective streets or walks are transferred to the general chapter on limitation of actions. (§ 1, p. 695)

Secs. 4, 5. Bicycles are classed with other vehicles as to regulation of speed and lights.

Secs. 20-24. The statutes in relation to viaducts are incorporated here as being germane to this chapter. For the purpose of better enabling the city to provide for such viaducts, it is recommended that at the end of § 20 the following words be added: "out of the general or bridge fund." As a viaduct serves the same purpose as a bridge, there seems to be no reason why the city should not use the bridge fund in this way, if necessary. Such an expense cannot usually be met out of the general fund.

Sec. 25. In order to include poles as well as wires, and street railway, as well as other electric wires, also to require regulations to be uniform and impartial, this section as reported should be changed to read as follows:

"Sec. 25. Cities and towns shall have power to authorize and regulate telegraph, district telegraph, telephone, street railway, and other electric wires, and the poles and other supports thereof by general and uniform regulation, and to provide the manner in which and places where the same shall

be placed upon, along, or under the streets, roads, avenues, alleys, and public places of such city or town., and may divide the city or town into districts for that purpose. [725]"

Cases will now frequently arise where franchises expire, and there is difficulty in adjusting terms for extension or renewal. In order to protect either party from arbitrary and hasty action, and especially to protect the public against the inconvenience which might result from a sudden stoppage of the business before new arrangements can be completed, the following section is recommended:

"Sec. 25a. Upon the expiration of any franchise granted by a city or town for the use of its streets, highways, avenues, alleys, or public places by any person, firm, or corporation, for any of the purposes authorized by this chapter, if the city or town and the owner of the franchise do not agree as to the extension or renewal of such franchise, application by petition in equity may be made by either party to the district court, which may make such reasonable order for the temporary continuance of the business as the interests of the public may require."

Sec. 26. Power is given to regulate the width and grade of temporary sidewalks.

Sec. 33. Damages for change of grade are to be assessed according to the provisions applicable in case of condemning land. [c. 9, p. 179]

CHAPTER 6.—Of street improvements, sewers, and special assessments (p. 158). Code §§ 465, 466, 478, 479, 481, 494, 527; 15 G. A., c. 51; 16 G. A., c. 51, 107; 17 G. A., c. 162; 18 G. A., c. 55; 19 G. A., c. 38, 89; 20 G. A., c. 20, 25; 21 G. A., c. 34, 116, 160, 168; 22 G. A., c. 5, 6, 7, 8, 9, 12, 13, 14, 16, 44; 23 G. A., c. 5, 6, 9, 10, 14; 24 G. A., c. 8, 11; 25 G. A., c. 7, 8. [McC. §§ 624, 626-8, 630, 649, 650, 652, 674, 725, 726, 733, 739-42, 746-9, 821, 824-6, 828, 829, 831, 833-45, 848-57, 859-63, 868-73, 877-9, 921, 943, 949, 950]

The present law as to construction of street improvements and sewers is in the greatest confusion. The attempt is made in this chapter to reduce the whole legislation on the subject to a system, preserving the beneficial features of all the statutes (including in some instances provisions found in statutes which relate at present only to cities under special charter) and to make the procedure as to street improvements and sewers harmonize as far as practicable. The powers are made uniform

in all cities of five thousand. An estimate is required which the contract cannot exceed by more than ten per cent without a new estimate (§ 19). Notice is to be given before the contract is let (§ 20). After the letting of the contract the special tax may be made a lien by filing with the county auditor a copy of the notice of the letting and a certificate of the ordinance or resolution ordering the improvement (§ 25). Objections are waived unless taken in the manner provided (§ 34). The method of making other special assessments is fixed, and an appeal allowed (§§ 49-51). McC. §§ 847, 853, are omitted as covered by these general provisions.

ALL ACTS OF GENERAL ASSEMBLIES, RELATING TO STREET IMPROVEMENTS AND SEWERS.

The following is a complete list of statutes relating to street improvements or sewers or both. When the statute relates to both it is printed on the same line in each column; when relating only to one the corresponding line in the other column is left blank. Repealing and amending statutes are noted, except general repealing clauses.

STREET IMPROVEMENTS.		SEWERS.	
G. A.	Chapter.	G. A.	Chapter.
15	c. 51. § 1 amended 22 G. A., c. 13, § 1.	15	
16		16	c. 54. § 1 amended 24 G. A., c. 8, § 1. § 7 repealed 20 G. A., c. 154, § 1. c. 107.
17		17	c. 162. Extended 21 G. A., c. 160, § 1; 24 G. A., c. 11, § 1. Amended 21 G. A., c. 34, § 1. § 1 amended 23 G. A., c. 10, § 1.
18		18	c. 55.
19	c. 38. § 2 amended 25 G. A., c. 8, § 1.	19	c. 89. § 3 compare 23 G. A., c. 6, § 1. § 8 substitute for by 21 G. A., c. 116, § 1 (8). § 8 substitute for 21 G. A., c. 116, § 1 (8), 1 (9).
20	c. 20. § 5 amended 21 G. A., c. 160, §§ 2, 3. §§ 1, 6 amended 23 G. A., c. 9, § 1.	20	c. 20. See left column. c. 25. Extended 24 G. A., c. 11, §§ 1, 2. c. 154. Repealing 16 G. A., c. 54, § 7.
21		21	c. 34. Amends 17 G. A., c. 162, § 1. c. 116. Repeals and substitutes for 19 G. A., c. 89, § 8. Amended 22 G. A., c. 9, § 1.
	c. 160. § 1 extends 17 G. A., c. 162. §§ 2, 3 amend 20 G. A., c. 20, § 5.		c. 160. See left column.
	c. 168. §§ 2, 3, 5, 6, 10, 11, 12 repealed by 23 G. A., c. 5, §§ 1-7, and sub- stitutes enacted.		c. 166. Repealed 22 G. A., c. . c. 168. See left column.

STREET IMPROVEMENTS.		SEWERS.	
G. A.	Chapter.	G. A.	Chapter.
22	c. 5. Repeals 21 G. A., c. 168, §§ 2, 3, 5, 6, 10, 11, 12; substitutes for §§ 2, 3, 5, 6, 10, 11, 12. c. 12. c. 13. Amends 15 G. A., c. 15, § 1. c. 14. Special charter cities. c. 16. § 1 amended 25 G. A., c. 5, § 1. c. 44.	22	c. 5. See left column. c. 6. Repeals 21 G. A., c. 166. c. 7. Extended 24 G. A., c. 11, §§ 1, 2. c. 8. c. 9. Substitute for 21 G. A., c. 116, § 1 (9). c. 16. § 1 amended 25 G. A., c. 5, § 1. c. 44.
23	c. 5. c. 9. Amends 20 G. A., c. 20, §§ 1, 6. c. 14. Special charter cities. §§ 11, 12 amended 24 G. A., c. 9, §§ 1, 2. § 1 repealed 24 G. A., c. 12, § 1, and substitute enacted. Repealed 25 G. A., c. 7. c. 15. Special charter cities. Extended 24 G. A., c. 13, § 1.	23	c. 10. Amends 17 G. A., c. 162, § 1. c. 14. See left column.
24	c. 9. Amends 23 G. A., c. 14, §§ 11, 12. Repealed 25 G. A., c. 7. c. 12. Repeals 23 G. A., c. 14, § 1, and enacts substitute. Repealed 25 G. A., c. 7. c. 13. Special charter, extends 23 G. A., c. 15, § 1.	24	c. 8. Amends 16 G. A., c. 54, § 1. c. 9. See left column. c. 11. Extends 17 G. A., c. 162; 20 G. A., c. 25; 22 G. A., c. 7. c. 12. See left column.
25	c. 4. c. 5. Amends 22 G. A., c. 16, § 1. c. 7. Repeals 23 G. A., c. 14; 24 G. A., c. 9; 24 G. A., c. 12. c. 8. Amends 19 G. A., c. 38, § 2. c. 9. Authorizes issuance of bonds.	25	c. 5. Amends 22 G. A., c. 16, § 1. c. 7. See left column.

CHAPTER 7.—Of street improvement and sewer bonds and certificates (p. 170). 20 G. A., c. 25; 21 G. A., c. 168; 22 G. A., c. 5; 25 G. A., c. 7, 9. [McC. §§ 846, 864-7, 873-6]

It is sought here to provide a uniform system for the bonds and certificates authorized to be issued in case of assessments for street improvements and sewers. A short statute of limitations is provided as to actions questioning the legality of the bonds or certificates (§ 13).

CHAPTER 8.—Of park commissioners and board of public works (p. 174). 20 G. A., c. 151; 22 G. A., c. 1; 24 G. A., c. 1, 2; 25 G. A., c. 1, 2. [McC. §§ 653, 654, 656, 881-94, 896-900]

This chapter presents the recent legislation on the subject in a condensed and systematic form.

After § 7 insert a new section as follows:

“Sec. 7a. Anyone who shall cut, break, or deface any tree or shrub growing in any such park or public ground, without authority, shall be guilty of a misdemeanor. [659]”

CHAPTER 9.—Of condemnation and purchase of land (p. 179). Code §§ 464, 469, 470, 476, 477; 18 G. A. c. 89; 19 G. A. c. 89. [McC. §§ 623, 635-8, 647, 648, 730]

The various provisions found scattered through the Code relating to condemnation of land by cities and towns for various purposes are brought together in this chapter.

CHAPTER 10.—Of taxation (p. 181). Code §§ 318, 319, 461, 475, 487, 488, 495, 496, 498-500, 796; 15 G. A., c. 28; 16 G. A., c. 95, 107; 17 G. A., c. 162; 18 G. A., c. 3, 52; 19 G. A., c. 32, 38, 63, 158; 20 G. A., c. 20, 79, 182; 21 G. A., c. 13, 34, 78, 108, 160; 22 G. A., c. 3, 7, 10, 11, 12, 16, 17, 18, 43, 46; 23 G. A., c. 4, 5, 8, 13; 24 G. A., c. 1, 14; 25 G. A., c. 1, 5, 6, 7, 8, 19, 43, 99. [McC. §§ 408, 409, 439, 440, 620, 643, 644, 667, 668, 675-7, 679-82, 719-21, 725, 741, 742, 746, 751, 752, 759, 762, 793, 820, 828, 830-3, 838, 857, 1270]

Various scattered provisions as to the taxes which may be levied for different purposes are here brought together.

Secs. 5-7. The poll-tax law as to cities is rewritten and somewhat changed, to make it of practical value. The number of hours required to constitute a day's work is fixed at nine, in accordance with McC. § 1479. (See § 8, p. 293)

Sec. 8. In subd. 5 the word "and" should be inserted in line 291 after "indebtedness," in order to make clear what was the evident intention of the statute on which this provision is based.

Sec. 12. Anticipation of revenue is limited to the coming fiscal year.

CHAPTER 11.—Of bonds (p. 185). 16 G. A., c. 57; 17 G. A., c. 162; 19 G. A., c. 38; 21 G. A., c. 34, 78; 22 G. A., c. 7, 17; 23 G. A., c. 4, 12; 24 G. A., c. 14, 15; 25 G. A., c. 3. [McC. §§ 683, 743, 744, 755-60, 838, 858]

A uniform system of bonds is here provided for, analagous to those which may be issued by counties, the particular feature being that they are subject to be paid in installments, thus making the provisions as to a sinking fund unnecessary, and obviating the usual danger of perversion or embezzlement of such a fund. While some of the statutes referred to provide only for the refunding of existing indebtedness, there has been such a uniform re-enactment to cover the later indebtedness that it is thought wise to make these provisions permanent in their application.

McC. §§ 678, 684-6, 707, and 827 are omitted as otherwise covered by these general provisions.

CHAPTER 12.—Of plats (p. 188). Code §§ 559-61, 563-72; 15 G. A., c. 54, 61; 18 G. A., c. 53; 21 G. A., c. 75. [McC. §§ 994-6, 998-1012, 1015-19]

While some of these sections are rewritten, the changes are for the purpose only of making the provisions practicable and definite.

Code § 562 [McC. § 997] is omitted as unnecessary, vacation of streets and roads being elsewhere provided for.

TITLE VI.

OF ELECTIONS AND OFFICES.

CHAPTER 1.—Of the election of officers and their terms (p. 197). Code §§ 573-593; 16 G. A., c. 7, 72; 17 G. A., c. 12, 77; 18 G. A., c. 161; 19 G. A., c. 115; 21 G. A., c. 73, 134; 22 G. A., c. 29; 23 G. A., c. 37; 25 G. A., c. 37, 74. [McC. §§ 236, 267, 1020-1042, 2029]

Section 1. The Code section is changed to conform to the amendment of the constitution in 1884.

Sec. 5. The constitution requires the question of calling a constitutional convention to be submitted every ten years (art. 10, § 3) [McC. p. 1830]. In 1880 an act was passed (18 G. A., c. 64) directing the governor to include in his general notice of the election for that year the submission of such question. Such a notice should be given each ten years, and is here provided for.

Sec. 10. When the number of judges of the supreme court was increased to six (25 G. A., c. 69) it was directed that the regular term of the additional judge should commence January 1, 1898, and that the short term of the judge elected in 1894 should expire at that time. The evident intention was to fix the term so that one judge should be chosen each year, but by oversight it was so arranged that two judges are to be chosen in 1897 and none in 1898. A temporary provision is therefore made in this section extending the short term one year so that one judge will hereafter be elected each year.

Sec. 13. It is thought best that all district judges be elected in the same year. At present the election for two of them falls on a different year from that in which the others are elected.

The temporary provision made in this section is for the purpose of curing the irregularity.

Sec. 17. Although Code § 592 [McC. § 1036] providing for the election of additional justices and constables is repealed by 25 G. A., c. 74, yet the provision of Code § 389 [McC. § 526] authorizing such additional officers in townships which include a city or town seem to be still in force and are incorporated here.

CHAPTER 2.—Of the registration of voters (p. 199). 21 G. A., c. 161; 22 G. A., c. 48; 25 G. A., 58. [McC. §§ 1045-1052 1055-1062]

Some of the provisions of the corresponding chapter of the Code and of 21 G. A., c. 161 and 22 G. A., c. 48, which are substitutes for it [McC. §§ 1043-63], are covered more fully by the Australian ballot law and are incorporated with it into the next chapter. The details as to the preparation and preservation of the lists are modified to secure a more convenient system, and the matter is to some extent re-arranged, but the plan of registration is unchanged.

Slight changes in language are recommended in the chapter as reported in order that the plan of registration as contemplated may be more clearly expressed and carried out.

Section 1. Amend in line 10 by omitting "as full" before "compensation," and changing "the sum" to "at the rate."

Sec. 2. In line 6, before "book," insert "registry"

Sec. 3. In order to maintain more definitely the distinction between the registry book and the lists prepared therefrom, and also to carry out the plan of maintaining the registry book of each election as the basis for subsequent registrations and lists, it is recommended that the following be substituted for the section as reported:

"Sec. 3. The statements thus made shall be dated and consecutively numbered, commencing with number one, at each registration. At the close of each day's registration the registry book shall be ruled off so as to prevent further entries, and when not in use by the registers shall be kept in the custody of the clerk until disposed of as provided by law. No person shall register at any other place or time than as designated in this chapter and no registration of voters for school elections shall be required. [1047, 1049, 1062]"

Sec. 4. In lines 1 and 2 for "completed registration," substitute "the registration made in the second week preceding the election," and for "an alphabetical list," substitute "two

alphabetical lists." In line 6 substitute "one of which lists" for "which list," and at the end of the section add "and retain the other in their possession."

Sec. 5. In line 1 omit "of the week;" in line 4 for "list" substitute "registry book," and in line 6 after "thereat" insert "The registers shall revise and correct the alphabetical list in their possession to correspond therewith;" omit "the list" and insert "it" before "shall;" in line 12 change "registry" to "alphabetical lists."

Sec. 6. In lines 8, 9 for "registration list" substitute "registry book and alphabetical list."

Sec. 7. The certificate granted on election day should be based on a regular registration made in the registry book and the registers should have the book at the place of election for the purpose of making such entries in cases where certificates are granted. To cover these suggestions the section as reported should be changed to read as follows:

"Sec. 7. The registers shall also be in session on the day for the holding of each election, at some place convenient to but not within one hundred feet of the voting place, and during all the hours in which by law the polls are required to be kept open, for the purpose only of granting certificates of registration to persons who, being electors, are not registered. Such registration shall be allowed and certificate thereof granted only to a person who was absent from the city during all the days fixed for the registration of voters for that election, or to a person who being a foreigner, has received his final papers since the last preceding day for the registration of voters for that election, or to a person whose name was on the preceding Saturday, and in the absence of such person, stricken from registration, and who, on said day of election, shall prove to the satisfaction of said registers that he is a lawfully qualified elector of said voting precinct. These certificates of registration shall contain all the data showing the qualification of the voter as shown by the registration, and in addition, the special matter showing the voter's right to such certificate under this section, and before delivery to the applicant shall be endorsed by the registers to the effect that the person therein named is a qualified voter in that precinct, and that he is entitled to be registered as such. The proper statement shall be signed and sworn to by the voter before one of the registers, supported by the affidavit of a freeholder who is

a registered voter in that precinct, who shall make oath to the qualification of the applicant as a voter in that precinct; and if the applicant be one whose name was stricken from registration, said affidavit of such freeholder shall contain the facts showing the right of said applicant to vote in that precinct. Registration in such cases shall be made in the manner required for regular registration. The certificate of registration shall be handed in to the judges of election when a ballot is delivered to him. The data therefrom showing the voter's name and his qualification as a voter shall be entered on the alphabetical lists by the judges and clerks of the election, under the appropriate headings, and the original certificate shall be returned to the city clerk, who shall carefully preserve it in the same manner and for the same time as the alphabetical list and poll book. [1061]"

Sec. 9. Change this to read as follows:

"Sec. 9. A new registry of voters shall be taken in each year of a presidential election. For all other state or municipal elections, general or special, the registers shall prepare a new registry book in each year by copying from the poll book of the preceding general election all the names found therein, adding thereto those of all persons registered and voting at any subsequent election, which new registry book shall show all the facts of qualification of each voter as they appear on the last preceding registry book, which, when thus made up, shall be used at each election until a new registry book is prepared as required by law. Every person thus registered shall be considered as entitled to vote at any election at which said registry book may be used, unless his name shall be dropped by the correction of registration as authorized by law. [1056, 1057; 25 G. A. c. 58, § 1]"

Sec. 11. Change this to read as follows:

"Sec. 11. The city clerk shall carefully preserve all registry books and alphabetical lists and other papers pertaining to the registration until destroyed as provided in the chapter on the canvass of votes. He shall, on the application of the registers, deliver to them, prior to their first meeting for each election, the registry book, alphabetical list, and poll book which they require in order to properly prepare the necessary registry book for the next ensuing election, all of which shall be returned to him by them when they have completed their work for such election. [1060]"

CHAPTER 3.—Of elections (p. 203). Code §§ 603, 604, 606, 609–611, 612, 614, 615, 619–621; 17 G. A., c. 71; 21 G. A., c. 161; 22 G. A., c. 48; 24 G. A., c. 33; 25 G. A., c. 39, 60. [McC. §§ 1044, 1053, 1054, 1064, 1065, 1067, 1070–3, 1075, 1076, 1078–1081, 1083, 1084]

The Australian ballot law is incorporated into this chapter with some of the provisions of Code chapter 2, and sections of the Code which are practically superseded by the latter statutes are omitted. The provisions of Code chapter 3 as to canvass of votes are made a new chapter following this. Code §§ 605, 616, 624, 625 and 630 [McC. §§ 1066, 1077, 1087, 1088 and 1093] are omitted as unnecessary in view of the fuller provisions of the Australian ballot law. McC. § 1082 is superfluous.

Sec. 11. The clauses as to what party may make nominations is made more definite.

Sec. 12. The names and addresses of members of the central, or executive committees of the parties are required to be filed.

Sec. 17. This provides for the correction of errors in nomination papers.

Sec. 20. Provisions are made as to voting for assessors in township precincts which include a town. As to the method of voting for assessor in such cases, see § 43 (p. 216).

Sec. 24. Provisions as to preparation of instructions are somewhat enlarged.

Secs. 32–34. Slight changes in the method of marking ballots are made by these sections to obviate difficulties in the practical working of the law where two or more officers of the same kind are to be elected, as pointed out in late decisions of the supreme court. (See *Whittam v. Zahorik*, 59 N. W. R., 57; *State v. Hagen*, 60 N. W. R., 108.)

To obviate a slight duplication, insert in § 33, line 10, after "candidates," the following sentence: "If for any reason it is impossible to determine the voter's choice for any office to be filled, his ballot shall not be counted for such office." In § 34 change the first sentence (lines 1–3) to read as follows: "The voting mark shall consist of two substantially straight lines, as nearly equal in length, and crossing each other as near the center of each line as practicable, placed in the circle or square;" and omit the sentence commencing in line 5 and ending in line 7. The section, as changed, gives a more definite and practical description of the voting mark.

Sec. 35. Mistake of officers is not to be a ground for rejecting a ballot.

Sec. 43. When a township precinct includes a town or part thereof (see § 3, p. 204), the assessor for the township must be separately voted for, and his name is not to be placed on the general ticket. (§ 20, p. 209)

Sec. 44. The provisions of 25 G. A., c. 39, authorizing women to vote on the question of borrowing money or increasing the tax levy, are fully covered by this section so far as the casting and counting of the ballots are provided for. When this portion of the code was prepared it was intended to insert this act elsewhere, but subsequently it was thought best to retain the whole of it in this place, and therefore it is recommended that preceding the sentence contained in this section, and as a part of the same section, the following be inserted: "The right of any citizen to vote at any city, town, or school election on the question of issuing any bonds for municipal or school purposes, and for the purpose of borrowing money, or on the question of increasing the tax levy, shall not be denied or abridged on account of sex." Although serious doubts are entertained by some members of the commission as to the constitutionality of this statute, yet, as its constitutionality has not been passed upon by the supreme court, it is thought best to retain it.

CHAPTER 4.—Of the canvass of votes (p. 218). Code §§ 502, 503, 622, 623, 626-629, 631-637, 639-656, 658, 661-664, 791, 793, 3827; 19 G. A., c. 163; 24 G. A., c. 33. [McC. §§ 688, 689, 1085, 1086, 1089-92, 1094-1100, 1102-9, 1121, 1123, 1126-9, 1265-7, 5107]

This chapter (a part of Code c. 3) provides a uniform method of canvass for all officers. The result is to be declared by the county board as to county officers, and by the state board as to officers elected by the state at large or a district larger than a county, and as to district judges. The result of the vote for governor and lieutenant-governor is to be declared, however, by the speaker of the house of representatives, as provided in the constitution. Uniformity in certificates is contemplated (§ 28, p. 223). Tie votes are to be determined by the canvassing officers (§ 32, p. 223).

Code § 624 and 625 [McC. §§ 1087, 1088] are omitted as obsolete, under the present ballot law, and McC. § 1122 as unnecessary.

Sec. 8. In line 8, for "copies of the register lists" substitute "the registry books and lists and other papers pertaining to

the registration" and change "six" to "eighteen." Under the registry law these documents are to be kept six months after the registration made for the next election.

CHAPTER 5.—Of presidential electors (p. 224). Code §§ 659, 660, 665-669; 16 G. A., c. 23; 22 G. A., c. 50. [McC. §§ 1124, 1125, 1130-4]

Provisions as to the canvass of these votes are covered by the preceding chapter.

CHAPTER 6.—Of qualification for office (p. 224). Code §§ 390, 504, 514, 670, 671, 673-685; 16 G. A., c. 6, 33; 17 G. A., c. 20; 18 G. A., c. 201; 19 G. A., c. 110; 21 G. A., c. 54. [McC. §§ 528, 690, 701, 796, 1135, 1136, 1138-51]

The provisions of this chapter are extended to cover deputies and city and town officers.

Code § 688 [McC. § 1154] as to the effect of an official bond is omitted as unnecessary.

Section 1. To preserve harmony in construction of the sentence the word "for" at the beginning of lines 16 and 18 should be omitted.

Sec. 8. The present statute as to bond of railroad commissioners provides that the amount thereof shall be fixed by the governor. In incorporating the provision here the amount of bond is provided for as in case of other state officers.

Secs. 12, 13. The time for approving bonds, and if disapproved, for filing a sufficient bond, is made clear.

CHAPTER 7.—Of contesting elections (p. 228). Code §§ 692-745; 22 G. A., c. 49. [McC. §§ 1158-1217]

Section 1. These provisions are extended to cover Code §§ 718, 750 and 757, and 22 G. A., c. 49, § 1 [McC. §§ 1184, 1196, 1203, 1212] and these sections are omitted. By a slight change of language the difficulty which has arisen in cases where women are eligible to the office, though not electors, is obviated. (See *Brown v. McCullom*, 76 Ia., 479.)

CHAPTER 8.—Of removal from office (p. 235). Code §§ 516, 746-758; 16 G. A., c. 33; 17 G. A., c. 20; 22 G. A., c. 3, 16; 25 G. A., c. 13, 15. [McC. §§ 703, 720, 725, 795, 1218-30]

This chapter is extended in its provisions to cover city and town officers. Disability is made ground of removal.

CHAPTER 9.—Of suspension of state officers (p. 236). Code §§ 759, 760, 762-5; 16 G. A., c. 20. [McC. §§ 1231, 1232, 1234-7]

This is a part of Code chapter 7.

Code chapter 8 relating to deputies is omitted as a separate chapter, the provisions as to appointment, powers, oath, and bond of deputies for the different officers mentioned being inserted in the chapters relating to the officers. A general provision as to bonds of deputies is in chapter 5 (§ 10, p. 22^a).

CHAPTER 10.—Of vacancies in office (p. 237). Code §§ 390, 504, 527, 530, 686, 781-790, 794, 795; 16 G. A., c. 6; 17 G. A., c. 107; 18 G. A., c. 201; 19 G. A., c. 124; 22 G. A., c. 1, 29; 23 G. A., c. 3; 24 G. A., c. 1. [McC. §§ 528, 690, 705, 726, 729, 881, 1152, 1253-64, 1268, 1269, 2030]

This chapter is extended to cover city and town officers.

Sec. 2. The causes of an office becoming vacant are more fully stated than in the Code.

Sec. 4. Provisions as to resignations are more explicit.

Sec. 8. This section is somewhat changed and enlarged to secure a more definite and uniform rule. It provides that vacancies in the offices of justice and constable shall be filled by the board of supervisors instead of the township trustees. [McC. §§ 1268, 1269]

Sec. 12. Add to this section as reported the following: "except that when the office is one to be filled by the general assembly, the appointee shall hold only until the general assembly elects."

CHAPTER 11.—Of additional security and the discharge of sureties (p. 240). Code §§ 772-780. [McC. §§ 1244-52]

CHAPTER 12.—Of general provisions as to compensation (p. 241). Code §§ 3780, 3813, 3819, 3820, 3832, 3836-8, 3840, 3842, 3843; 25 G. A., c. 105. [McC. §§ 5032, 5089, 5096, 5097, 5112, 5116-8, 5120, 5122, 5123]

Title 23 of the Code relating to compensation of officers is omitted. Provisions as to each officer are inserted in the chapter relating to that office. A few general provisions of that title which could not appropriately be inserted under the chapters as to particular officers are placed here. McC. § 5018 is superseded by provisions in the several chapters as to deputies. McC. § 5031 is covered by constitutional provisions. McC. § 5119 is impracticable.

Sec. 10. Where a witness is subpoenaed for the defendant in a criminal case without the order of the judge, he may demand his fees in advance.

For the purpose of covering Code §§ 3973, 3974 [McC. §§ 5281, 5282] which seem out of place in the criminal code the following sections should be added to this chapter.

"Sec. 13. All officers required by the provisions of this code to collect and pay over fines and fees shall, except as otherwise provided, on the first Monday in January in each year make report thereof under oath to the board of supervisors of the proper county, showing the amount of fines assessed, and the amount of fines and fees collected, together with vouchers for the payment of all sums collected to the proper officer. [5281]

"Sec. 14. Clerks of district, superior, and police courts, mayors of cities and towns, and justices of the peace shall, on the first Monday of January in each year, make report in writing to the boards of supervisors for their respective counties of all forfeited recognizances in their offices; of all fines, penalties, and forfeitures imposed in their respective courts which by law go into the county treasury for the benefit of the school fund; in what cause or proceeding, when, and for what purpose, against whom and for what amount rendered; whether said fines, penalties, forfeitures, and recognizances have been paid, remitted, cancelled, or otherwise satisfied, if so when, how, and in what manner; if not paid, remitted, cancelled, or otherwise satisfied, what steps have been taken to enforce the collection thereof, and the prospect of such collection. Such report must be full, true, and complete with reference to the matters therein contained and of all things required by this section to be reported, and be under oath, and any officer failing to make such report shall be guilty of a misdemeanor. [5282]"

TITLE VII.

OF REVENUE.

CHAPTER 1.—Of the assessment of taxes (p. 245) Code §§ 796-853, 865, 906, 907, 1317-23, 3794, 3795; 15 G. A., c. 28, 29, 60, 62, 63, 66; 16 G. A., c. 131, 153, 163; 17 G. A., c. 59, 114; 18 G. A., c. 13, 57, 109; 19 G. A., c. 169; 20 G. A., c. 72, 182, 194; 21 G. A., c. 78, 97, 132, 133; 22 G. A., c. 17, 43; 23 G. A., c. 39; 24 G. A., c. 14, 35, 57; 25 G. A., c. 114. [McC. §§ 761, 1270-1335, 1347, 1392-5, 1815, 2016-25, 2109-15, 2645, 2651, 5068, 5069]

The sections of the Code on the subject of taxation are not in an orderly arrangement, and in some respects they are quite

meagre and obscure. A re-arrangement, and to some extent a rewriting, were thought to be imperative. By a resolution of the senate a bill to revise the law on the entire subject, which was pending before that body, known as senate file 340 (the ways and means committee bill) was referred to the commission and has been considered by it, together with the report made to the last general assembly by a commission appointed by the previous general assembly to recommend changes in the revenue laws, the ways and means committee bill having been based, to some extent, on the report of the revenue commission. It has not been thought expedient to follow the senate bill in many of its provisions, but in some respects, especially as to the practical application of the law by the assessor, the provisions are decided improvements upon the present law and have been adopted or followed.

For the purpose of inducing the assessment of property at its real value, the revenue commission recommended a reduction of the limit of taxes for each particular purpose to one-half the amount at present allowed, and this plan was incorporated into the senate bill, but it has not been thought expedient to embody any such radical change in the code as reported. If such a measure is adopted at all it should be by a supplemental act of the legislature, temporary and experimental in its nature, until the extent to which the increase in assessments may be carried and the corresponding reduction of tax levies be secured, is ascertained by experience.

Section 1. The last general assembly suspended the operation of subd. 1 of the Code section which specified the rate of levy for state purposes, and provided for such levy as the executive council should find necessary to raise a specific sum of money (25 G. A., c. 114). While this act is temporary, yet it indicates a policy which may wisely be adopted hereafter in raising the state revenue, and has been incorporated as a general provision (see § 77, p. 264). In subd. 2 the proviso as to counties having an area exceeding nine hundred square miles, is omitted and the rate of tax is made dependent on whether the county has a population of twenty thousand, with permission as heretofore to counties having a less population to increase the levy by vote. The provision for the levy of the poor tax is incorporated in the chapter relating to the support of the poor. (See § 32, p. 443.) In subd. 4 the power to levy a bridge fund is excluded as to cities of over five thousand population.

Provision has elsewhere been made for the levy of the bridge fund in such cities, by the city itself. (§ 8, p. 153, and § 2, p. 181)

Sec. 2. Subdivision 1 of the Code section is divided, the latter part being incorporated with subds. 2 and 3 in order to make a more harmonious statement of the law. Subd. 3 (which was subd. 4 of the Code section) is modified so as to make the exemptions more uniform and easy of determination. They correspond in the main with exemptions from execution. It is thought that private and professional libraries may properly be exempted as an encouragement to education, the revenue derived from taxing such libraries being so insignificant as to be of no consequence. It is also thought that household as well as kitchen furniture should be included in the exemption, with the restriction that the provision shall not apply to hotels and boarding houses. As to animals the provision is in harmony with subd. 3 of Code § 821. [McC. § 1300] In subd. 7 a change is made so as to exempt the homestead of discharged union soldiers dependent on their labor for their support. This change is recommended in the report of the revenue commission.

Code § 798 as amended, [McC. § 1273] exempting land on account of growing forests or fruit trees planted thereon is omitted, the occasion for it having probably passed away. This recommendation is in accordance with the report of the revenue commission and the provisions of the senate bill.

Sec. 4. The specification as to the age of animals to be taxed is in accordance with Code § 821. [McC. § 1300] The changes in this section are intended to secure a more complete enumeration of the property which is subject to taxation. Change "act," at the beginning of line 3, to "chapter."

Sec. 6. This is an entire rewriting of the Code section for the purpose of securing a clear and definite statement. All currency is made subject to taxation, congress having authorized the taxation of greenbacks. (See act of 53 Congress, II Sess. (1894), c. 281; approved Aug. 13, 1894.)

Sec. 9. There has been uncertainty as to the place of assessment of personal property in some cases, which it is endeavored to obviate by this section.

Sec. 10. This provision will allow the public records to be used as a basis for ascertaining to whom mortgage debts and other claims appearing from the records should be taxed. They are to be presumed to belong to the party to whom they appear from the records to be payable.

Sec. 11. Banks and bankers are provided for in subsequent sections. Persons not bankers who loan money are taxed on the average during the year.

Sec. 13. A class of cases not heretofore reached by any specific provision will be covered by this section as to grain and coal dealers.

Sec. 16. A new provision is added for the purpose of getting at the value of the merchant's stock, but the basis of taxation is not changed.

Sec. 19. In case of bankers there is no occasion for averaging the business of the year as provided by Code § 812 [McC. § 1288]. The capital invested in the business remains practically the same throughout the year although the form of investment may vary from day to day. If the capital thus employed is ascertained for the first of the year, the amount thereof may properly be made the basis of taxation. The return required is simply to show clearly the amount thus invested. The auditor of state in his supervision of banks receives reports from them, and it seems reasonable that the information thus obtained shall be available for taxing purposes.

Sec. 20. National, state, and savings banks, and loan and trust companies should be taxed on the same basis as private banks, except that the tax should be paid by the stockholders. At present national and state banks are taxed by means of taxation on the stock. (Code § 818; McC. § 1292; 23 G. A., c. 39) There seems to be no reason why savings banks should not be taxed in the same manner.

Secs. 21-25. By the present law, corporations, except those assessed directly by the state, manufacturing companies, and savings banks, are taxed as to their personalty by means of the taxation of their stock instead of their property. This seems to be the fairest method to be followed in such cases. The principal difficulty is in reaching the stock in the hands of the shareholders, but the method already in force as to national banks of requiring payment of all the tax by the corporation, allowing it to look to its stockholders and reimburse itself out of dividends, having a lien on the shares as its security, seems the most effectual means of reaching the object sought. The returns here required from the corporation will furnish the basis for determining the value of the shares. Real estate of banks and other corporations, except as otherwise specially

provided, is to be valued on the same basis as other real estate, but is to be included in determining the value of the stock, and thus taxed and not otherwise. The redeemed and canceled shares of loan and building associations should not be taxed, as the holders of such shares already have the proceeds thereof in their hands subject to taxation as other property, having given security for the payment of future dues; unredeemed shares should be taxed as other corporate shares.

Secs. 26-29. The provisions of 17 G. A., c. 59 [McC. §§ 2109-16] as to taxation of telegraph lines are incorporated here and extended to cover telephone lines. The report is required to be somewhat more in detail, but the basis and method of assessment remain the same. Failure to report is sufficiently provided for by a general section (sec. 531, p. 258). Code § 811 [McC. § 1278] is superseded as to telegraph companies, and is of no value as to express companies, which will be taxed as other corporations, and it is therefore omitted.

Sec. 30. The present method of taxing foreign insurance companies doing business in the state by a tax on gross amount of premiums received, the tax being payable into the state treasury, is extended to domestic companies, the same rate being required, except that foreign companies of states which discriminate against this state in the matter of loans and investments are, by way of bringing about reciprocity, taxed one-half per cent more. This seems the only practicable method of reaching such companies. Inasmuch as they thus pay a tax on their receipts, their stock and investments should not pay a tax. Purely assessment companies are exempted, as a tax on them would be a tax on the insurance enjoyed by their members.

Secs. 31-39. The provisions of Code §§ 1317-23 with amendments [McC. §§ 2016-25] as to taxation of railroads are incorporated here without change as to basis or method of taxation, though a fuller report is required. This report, however, covers the same annual period as that provided for by the railway law for other purposes, and practically the same data will serve for both. Railway bridges across the Mississippi and Missouri rivers are to be taxed as other railway property unless they are used otherwise than in the usual operation of the lines. The provisions as to penalty for failing to make report is sufficiently covered by § 53.

Sec. 40. There has been some difficulty in determining how, under the present law, water and gas works, electric light plants, and street railways are to be taxed. This section furnishes a uniform system for this kind of property adapted to its peculiar nature and situation.

Sec. 42. The revenue commission recommended elaborate provisions for a succession or inheritance tax; the object seems proper but it is believed the simple provisions of this section will accomplish all that is necessary.

Secs. 43-45. The present provisions for county licenses for peddlers and shows are inserted here without essential modification. They contemplate the exercise of the taxing power.

Sec. 46. While the plan of biennial assessment of real estate is retained, provision is here made for reaching improvements made on realty between the regular assessments, and which substantially increase its value.

Sec. 47. This covers taxation of agricultural college lands.

Sec. 52. To enable the taxpayer to know whether to make complaint before the board of equalization it is provided that the assessor give to him, in each instance, a written statement of his assessment.

Secs. 53, 54. A penalty is provided for refusing to furnish any statement required, or to swear thereto, the assessor making the assessment on the best information he can get, and the making of a false statement is punished as perjury.

Sec. 55. It is hereafter provided that the executive council shall furnish a classification of personal property, as well as of realty (§ 75, p. 264), and it is only left to the supervisors to make such further classification as they may deem necessary.

Sec. 56. The plan of having separate sheets for each taxpayer on which to make return, with a blank oath to be subscribed and sworn to, is already in use. It is more fully and consistently carried out in this and the following sections.

Secs. 59-61. The only material change as to collection of statistics by the assessors is that the returns are to be forwarded directly to the secretary of state for compilation by him in the manner provided with reference to the census. The work can thus be more uniformly and expeditiously done.

Sec. 64. It being the duty of assessors to assess property at its real value, failure to do so is punished as a breach of duty.

Secs. 66-69. The method of equalization now in force is retained, but fuller provision is made for the details, and the

method is made definite and uniform. A provision is inserted in § 69 for an appeal in behalf of the public. The state, county, or city, as the case may be, ought not to be entirely precluded from having the action of the board of equalization, so far as it relieves from taxation, reviewed by the court. As such appeal can be taken only by the county or city attorney, it is thought the provision will not be burdensome.

Sec. 70. These provisions for reaching property which has been overlooked by the assessors and not reported to them or to other officers as provided for, are proposed as constituting a proper method of reaching such property.

Sec. 72. The action of the county board of equalization may be prejudicial to a township or city, and an appeal from its action is here provided for.

Secs. 75, 76. For the purpose of securing greater uniformity in taxation, the authority of the executive council as to equalization is extended to personal property. By § 57 (p. 260) the council is authorized to formulate rules for the guidance of assessors in discharging their duties.

Sec. 77. This makes permanent the method adopted by the last general assembly for fixing the amount of state levy for the current biennial period.

Sec. 78. There have heretofore been provisions as to some classes of municipal bonds that the executive council should levy a tax upon the municipality to pay them in case of default. This section provides a remedy in all cases of the kind.

Sec. 86. The method of bringing forward taxes, so as to preserve the lien of personal taxes on real property, is prescribed.

Sec. 88. Penalty and interest are not collectible after the taxes have been in default four years.

Sec. 97. The provisions of 24 G. A., c. 35, making taxes a lien upon stocks of goods transferred, are here incorporated.

CHAPTER 2.—Of the collection of taxes (p. 268). Code §§ 854-905, 1779, 3833; 15 G. A., c. 46; 16 G. A., c. 79; 17 G. A., c. 101; 19 G. A., c. 45, 169; 20 G. A., c. 194; 25 G. A., c. 81, 110. [McC. §§ 1336-91, 2651, 2652, 2897, 5113]

Code §§ 855, 856 [McC. §§ 1337, 1338] are omitted here as sufficiently covered by provisions as to legal tender inserted in the chapter on tender. (§ 4, p. 631)

Sec. 5. Provisions as to township collectors have been omitted (see p. 25 of this report), and therefore reference to them is omitted here. The term "collector" is here used as

indicating a person appointed specially by the treasurer for the collection of delinquent taxes. It is a better word for that purpose than "deputy," which is used in the Code section. Road taxes are here required to be paid with the first installment in order that they may be available for use during the current season.

Sec. 13. In line 2 change "district" to "corporation."

Sec. 16. The provisions as to sales in counties having two county seats is inserted to cover 15 G. A., c. 46. While it is only applicable in Lee county, it seems proper to insert it as a general provision. In line 7 insert "the" before "recorder."

Sec. 21. The Code section makes no provision as to how sales of real property shall be made for personal property taxes which are a lien thereon, and a provision is here inserted to regulate the sale in that respect.

Sec. 29. In amending the Code in regard to the date of sale this section was allowed to remain unchanged. "December" is here inserted for "October" in harmony with the provisions of that statute.

Sec. 33. Provisions as to the taxation of agricultural college lands are here incorporated with similar provisions relating to the sale of school lands.

Sec. 34. The penalties provided for as to county taxes should not apply to railroad aid taxes and it is so specified. In transferring to this chapter the sections as to sale of agricultural lands for taxes, the provisions of 19 G. A., c. 169, § 2 [McC. § 2652] in regard to redemption, were inadvertently overlooked. It is recommended that to this section the following be added to cover the subject:

"In redeeming from a sale of a leasehold interest in agricultural college land, the amount to be paid shall include any amount paid by the holder of the certificate as interest or principal due by the terms of the lease or otherwise to prevent a forfeiture thereof as provided by law, and for which proper voucher shall have been filed with the auditor, with interest thereon at eight per cent per annum from date of payment, which amount shall be paid by the auditor to the holder of the certificate, and the certificate of redemption shall show the amount so paid by the party redeeming. [1375, 2652]"

The rate of interest to be paid on the tax and penalty is reduced from ten to eight per cent in accordance with the general policy of recent statutes in regard to interest.

Sec. 39. The provisions as to proof of service of redemption notice are made more definite, and service of such notice outside the county is provided for.

Sec. 43. In line 1, change "proceedings" to "actions."

CHAPTER 3.—Of the security of revenue (p. 279). Code §§ 908-919; 16 G. A., c. 113; 17 G. A., c. 122, 155; 20 G. A., c. 194. [McC. §§ 1396-1409]

TITLE VIII.

OF ROADS, BRIDGES, AND FERRIES.

CHAPTER 1.—Of the establishment, alteration and vacation of roads (p. 285). Code §§ 920-968, 3824; 15 G. A., c. 19; 16 G. A., c. 111; 18 G. A., c. 50; 19 G. A., c. 80, 109; 20 G. A., c. 147; 22 G. A., c. 92. [McC. §§ 1410-63, 5101]

The term "road" has been adopted as the word in common use and equivalent in every way to the term "highway." Unless qualified by designation as a private road it means a public road. (See § 30, p. 289)

Secs. 7, 8. The functions of the commissioner are more explicitly stated than in the code. It is only for establishment or alteration, not for vacation, that damage may be allowed, but objection may be made to the vacation.

Sec. 14. These provisions are more definite as to notice when the owner is a non-resident of the county.

Sec. 30. To obviate any possibility of misconstruction as to the use of the term "road" it is recommended that the following be added to this section: "The term 'road,' as used in this code, means any public highway unless otherwise specified."

Sec. 36. It is only where claimant, on appeal, is allowed increased damages that he recovers costs.

Sec. 40. This is practically a substitute for code §§ 967, 968, [McC. §§ 1457, 1458] with reference to a plat book showing the roads of the township being kept by the township clerk.

CHAPTER 2.—Of working roads (p. 292). Code §§ 969-1000; 16 G. A., c. 21, 29, 167; 17 G. A., c. 52; 18 G. A., c. 36; 20 G. A., c. 200; 22 G. A., c. 45; 24 G. A., c. 40, 45, 68; 25 G. A., c. 21, 22, 88, 91. [McC. §§ 1464-1514]

Sec. 6. The provisions of the one road district plan are more concisely and plainly stated.

Sec. 18. The requirement that the road supervisor be a resident of the district is omitted as unnecessary, as the same rule would apply to him as to any other officer, and in particular see § 19, p. 199.

Sec. 24. The number of hours to constitute a day's labor on the roads is fixed at nine by the 20 G. A., c. 200, § 14 [McC. § 1479] (see § 8 above) under the one district plan. The rule should be uniform and as that is the later statute this section is made to harmonize with it.

Sec. 35. The amending act made the Code section applicable also to a thistle known botanically as *cnicus lanceolatus*, but popularly as the bull thistle, and the latter name is here used.

CHAPTER 3.—Of ferries and bridges (p. 300). Code §§ 1001–1037; 20 G. A., c. 13. [McC. §§ 1515–1533]

The provisions authorizing a contract by a city with a railway company for a common bridge in certain cases [McC § 1554] are incorporated into chapter 5 of the title “of cities and towns.” (§ 16, p. 155)

TITLE IX.

OF CORPORATIONS.

CHAPTER 1.—Of corporations for pecuniary profit (p. 305). Code §§ 1058–90; 17 G. A., c. 23; 20 G. A., c. 22; 21 G. A., c. 57; 22 G. A., c. 86, 88. [McC. §§ 1608–40]

Sec. 2. If one person incorporates he should not do business under an individual name unless so designating it as to show that it is the name of a corporation.

Sec. 4. It is thought best to require persons proposing to incorporate to submit their articles to the attorney-general, to determine whether the business is lawful and the articles in due form. Such a provision is now in force as to insurance companies. (Code § 1122; McC. § 1685.) Strike out last word in line 8, and all of line 9, as covered by § 8 below.

Sec. 6. This new section is intended to prevent the formation of corporations in this state without the bona fide intention of operating here, but in order to exercise corporate powers elsewhere as being organized under the laws of Iowa without actually operating under them. Under our present lax system fraudulent corporations may do business abroad as Iowa

institutions, when they are not such in fact, and indeed may not have an office nor a single stockholder in the state.

Sec. 7. The last sentence requires the proof of publication to be made matter of public record.

Sec. 9. The corporation ought not to be permitted to do business at all until its organization is completed by filing its articles with the secretary of state.

Sec. 11. Dissolution by less than a unanimous vote may be authorized in the articles.

Sec. 12. The provisions as to duration of agricultural and horticultural societies and cemetery associations, and as to the amount of land they may own, etc., are inserted in the next chapter. (§§ 2, 3, p. 310)

Secs. 24, 25. In rewriting these sections it is sought to make the procedure against the stockholder for corporate indebtedness clear and definite. Liability of the corporation and its stockholders may be determined in one action.

Sec. 26. Actions by stockholders for indemnity and contribution are provided for.

Code § 1086 [McC. § 1636] is omitted. The privileges acquired by a corporation may be sold under execution, but it is not possible to conceive of the transfer of the corporate existence by a sale, nor of the continuance of such existence in the purchaser after the corporation itself is dissolved.

Sec. 29. It is thought that the protection of the interests of the stockholders, as well as of the public, ought to be provided for when the corporation acts unlawfully or becomes insolvent.

The act which was intended to prevent removal of causes by foreign corporations to the federal court (21 G. A., c. 76; McC. §§ 1641–5) has been held unconstitutional in its essential feature, (see *Barron v. Burnside*, 121 U. S., 186) and it is therefore omitted.

The act imposing double liability on stockholders in banks (18 G. A., c. 208; McC. § 1646–8) is transferred to the chapter on banks. (See §§ 15, 16, p. 358)

CHAPTER 2.—Of corporations not for pecuniary profit (p. 309). Code §§ 1070, 1091–1102; 15 G. A., c. 40; 21 G. A., c. 71; 22 G. A., c. 77. [McC. §§ 1620–64]

This chapter is largely rewritten to obviate duplication of provisions and to secure a more orderly arrangement.

Section 1. This section, as reported, should be amended by inserting in the third line the words “military company”

before "trades unions." The attention of the commission has been called to the fact that it is desirable in some instances that such companies be allowed to incorporate.

The latter part of code § 1101 [McC. § 1659] limiting devises and bequests in behalf of charitable institutions is transferred to the chapter on wills. (See § 1, p. 670.) The first part of the section is incorporated into § 2 of this chapter.

CHAPTER 3.—Of agricultural and horticultural societies and stockbreeders' associations (p. 311). Code §§ 1103-21; 18 G. A., c. 6; 20 G. A., c. 128, 134; 23 G. A., c. 29, 44, 125; 24 G. A., c. 58, 67; 25 G. A., c. 85, 111. [McC. §§ 1665-84]

Code § 1114 as amended [McC. § 1675] is omitted because covered by the chapter on intoxicating liquors. (See § 68, subd. 2, p. 493)

Sec. 26. In the fourth line of the section, as reported, change "signal service" to "weather bureau."

Sec. 27. In the seventh line of the section, as reported, change "one" to "three." The provision of the last act on this point was overlooked in preparing the section.

CHAPTER 4.—Of insurance other than life insurance (p. 316). Code §§ 1122-60; 15 G. A., c. 55; 16 G. A., c. 37, 60, 108, 134; 17 G. A., c. 39, 104, 111; 18 G. A., c. 210, 211; 21 G. A., c. 145; 22 G. A., c. 93; 25 G. A., c. 31. [McC. §§ 1685-1734]

This chapter is made to cover all insurance except life; provisions as to life insurance are incorporated into the chapter on that subject. The provisions as to stock and mutual companies are separated so far as necessary.

Accident insurance is also covered by the chapter on assessment life associations (§ 1, p. 339 and § 11, p. 340) and live stock insurance in the same chapter (§ 17, p. 343).

Sections 1-5. The method of organization is more clearly specified than in the Code sections, and the articles, instead of a certificate thereof, are required to be presented and recorded and afterwards kept on file in the auditor's office.

Sec. 10. The provision as to surrender of premium notes found at the end of the code section is covered by § 21 (p. 320).

Sec. 19. The change of "forty" to "fifty" per cent in line 3 is to make our statute conform to the requirements on the subject in most of the states.

Sec. 21. Even though a premium note be given for insurance which is to make up the requisite amount of applications necessary to enable the company to go into business, it ought

to be surrendered when the insurance for which it is taken ceases; certainly the maker of such a note cannot be held liable thereon otherwise than the maker of any other premium note. By requiring such notes not to be surrendered within one year, protection is afforded against mere temporary and collusive insurance.

Sec. 25. The acceptance of some cash premiums ought to be allowed to a mutual company. On the other hand such a company, not having capital invested for the protection of its policy holders, ought not to be allowed to receive cash for a long term of insurance.

Sec. 26. The category of the different kinds of business is remodeled in accordance with 24 G. A., c. 29, and 25 G. A., c. 52, and the second subdivision of the Code section is omitted as covered by the later provisions.

Sec. 27. In the second line of this section as reported, "seven" should be changed to "six."

Sec. 28. These powers (as specified in code § 1132, McC. § 1695, latter part of subd. 5) are evidently intended to be conferred on all companies enumerated in this chapter, and are therefore placed in a separate section.

Sec. 31. In the thirty-fifth line, "fifty" is substituted for "forty" for reasons stated in the note to § 19 above. The provisions at the end of the section as to the statement to be furnished by accident insurance companies, includes all that can be of value in such cases. The requirement of the Code section that a description of each ticket issued be returned to the auditor of state made the report unnecessarily voluminous.

Sec. 36. The number of copies of the report to be printed is increased to meet the reasonable calls therefor.

Sec. 44. The amount which the insured must pay in order to have his note canceled is fixed at the customary short rate, without any additional sum for the expense of taking the risk. This is in accordance with the law in other states. The short rate includes such expense.

Sec. 45. This makes definite the provision of the preceding section as to the short rates which may be required for cancellation of the insurance.

Sec. 57. So far as the Code section affects life insurance policies, it is embodied in the chapter on that subject. (§ 20, p. 348)

Sec. 67. The charge for valuing policies of life insurance is transposed to the chapter on that subject. (§ 23, p. 348)

CHAPTER 5.—Of county mutual insurance associations (p. 332). Code § 1160; 16 G. A., c. 103; 17 G. A., c. 39, 104; 20 G. A., c. 11; 22 G. A., c. 93. [McC. §§ 1723, 1724]

The mutual associations contemplated by Code § 1160 as amended [McC. § 1723] are not under the supervision of the auditor's office. It is contemplated that in such companies each member shall participate and may, for himself, exercise some supervision. They ought not therefore to do business throughout the state, but only within limited territory. This is the plan in some of our neighboring states. It is deemed best, therefore, to provide for them in a separate chapter and limit the scope of their business. The provisions of the preceding chapter are made applicable to them, however, so far as they relate to the policy and conditions of liability thereunder. So much of the Code section as relates to assessment life associations is superseded by statutes on that subject incorporated into c. 7 (p. 339).

CHAPTER 6.—Of premium life insurance companies (p. 334). Code §§ 1161-76; 15 G. A., c. 2; 17 G. A., c. 47; 21 G. A., c. 169; 23 G. A., c. 33. [McC. §§ 1735-50]

The subject of life insurance is covered by three chapters, the first relating to premium companies, the second to assessment companies, and the third to both classes. The division of companies into those which charge premiums in some form and those which make assessments only to meet death losses is one in general use and marks a reasonable distinction as to the provisions which shall be applicable.

Sec. 6. The securities required to be deposited with the auditor of state are here fully described.

Sec. 7. This section is so formed as to require a statement at commencement of business and annually thereafter in order to secure a certificate which is made a condition for entering on or continuing in business.

Secs. 8, 9. The remedy where there is a failure to comply with the provisions as to deposits, or the company is insolvent, is made more definite than it has heretofore been.

CHAPTER 7.—Of assessment life insurance associations (p. 339). 21 G. A., c. 65. [McC. §§ 1761-83]

Accident insurance and live stock insurance are also provided for under c. 4. (See § 26, subds. 4 and 5, p. 322)

Sec. 7. There seems to be no reason why such a certificate may not be taken as security to a creditor nor why the beneficiary shall not be changed in such cases as well as others, provided the family be protected in any insurance taken for the benefit of its members. To carry out this idea this section as here reported should be modified as follows: In the third line after "heir" insert "creditor" and add at the end of the section the following: "as may be provided for in the articles or by-laws; but no certificate issued for the benefit of a wife or children shall be thus changed so as to become payable to a creditor."

CHAPTER 8.—Of provisions applying to life insurance companies and associations (p. 343). Code §§ 1165-83, 2372; 15 G. A., c. 2; 16 G. A., c. 55; 17 G. A., c. 47; 18 G. A., c. 5, 211; 21 G. A., c. 65, 169; 24 G. A., c. 28, 30; 25 G. A., c. 33. [McC. §§ 1732-79, 3576]

Sec. 7. The exemption is extended to cover accident benefits as well as other cases provided for by statutes.

Sec. 8. Provisions as to reserves and funds accumulated to be held in trust are here consolidated; while the purposes may be somewhat different, the nature of the investments ought to be the same.

Secs. 10, 11. Provision is here made for obtaining service in actions against foreign companies. The part of 21 G. A., c. 65, § 13 [McC. § 1773], which forbids removals of suits to federal courts, is omitted for reasons given on page 55 of this report, as to a similar statute affecting foreign corporations in general. In the general chapter relating to place of bringing action are provisions as to actions against insurance companies. With a change suggested in § 9 (p. 702) of that chapter, the first sentence of § 11 as here reported should be omitted.

Sec. 13. A general reciprocity clause is inserted somewhat broader in its scope than that of the statute on which it is based.

Sec. 15. This section is so changed as to make its provisions more effectual. The theory is that the medical examiner is the agent of the company, and that the company is affected by anything which he knew, or might reasonably have known, as a result of the examination which he should make in the discharge of his duty.

Secs. 17, 18. These sections are new and it is believed they will prove salutary. In line 5 there is a slight omission

which should be remedied by inserting after "were made" the words, "that they were made."

Sec. 20. This incorporates certain provisions now found in the chapter on insurance in general, which have been held applicable also to life insurance companies and associations.

Sec. 22. Provision is here made for the punishment of frauds on companies.

CHAPTER 9.—Of savings banks (p. 349). 15 G. A., c. 60; 22 G. A., c. 89. [McC. §§ 1788-1820]

Some of the provisions in the act relating to savings banks have been incorporated into a general chapter on banks. (See c. 11, p. 355.) The whole act is re arranged and largely rewritten to avoid diffuseness and surplusage.

The section as to taxation [McC. § 1815] is incorporated into the chapter on assessment of taxes. (§ 20, p. 251)

McC. § 1791 is omitted as unnecessary. The record of the articles would be evidence as any other record. (See, in general, § 30 of the chapter on evidence, p. 852)

Sec. 6. Expense of insurance where provided for in the mortgage is made a lien on the mortgaged property.

CHAPTER 10.—Of state banks (p. 354). 21 G. A., c. 72. [McC. §§ 1821-3]

These are the special provisions relating to state banks. Provisions as to banks in general are found in the next chapter.

CHAPTER 11.—Of banks (p. 355). Code §§ 1570-2; 15 G. A., c. 60; 18 G. A., c. 153, 208; 23 G. A., c. 50; 25 G. A., c. 29, 30. [McC. §§ 1646-8, 1799, 1804-14, 1824, 1825, 2583-5]

Provisions common to savings and state banks are included in this chapter which is made broad enough also to cover private banks. They should be under the same regulations as corporations engaged in the same business. The Code provisions as to quarterly bank statements, Code §§ 1570-2, [McC. §§ 2583-5] are incorporated here. Code §§ 1573-6, [McC. §§ 2586-9] are omitted as superseded by later statutory provisions. The act as to fraudulent banking [McC. §§ 1824, 1825] is included, as are also late statutes as to bank examiners and other provisions for security of depositors.

Sec. 3. A strict limitation is here imposed upon loans to directors and other officers.

CHAPTER 12.—Of building and loan associations (p. 359). Code §§ 1184-7. [McC. §§ 1784-7]

The provisions of the Code and statutes as to these associations are very meagre, and substantially a new chapter is presented. It has been thought proper to bring these institutions under state regulation in somewhat the same way as insurance companies and banks.

Sec. 8. The word "of" in the third line, after "installment", should be omitted.

Sec. 9. In the fourth line after "fines" insert "as may have been authorized by the executive council." Under § 4 above, the council must approve the articles and by-laws; when the provisions as to fees, premiums, dues, fines, etc., have been thus passed upon they should be conclusively presumed to be reasonable.

TITLE X.

OF INTERNAL IMPROVEMENTS.

CHAPTER 1.—Of mill dams and races (p. 365). Code §§ 1188-1206; 15 G. A., c. 22. [McC. §§ 1826-44]

Sec. 2. A sentence is added in regard to cases where the owner is a minor or insane person having no guardian.

CHAPTER 2.—Of levees, drains, ditches, and water courses (p. 367). Code §§ 1207-35; 16 G. A., c. 140; 17 G. A., c. 121; 18 G. A., c. 85; 19 G. A., c. 44; 20 G. A., c. 186, 188; 21 G. A., c. 55, 139; 22 G. A., c. 96, 97. [McC. §§ 1845-98]

Provisions as to underground drains are almost entirely rewritten for the purpose of better stating the law on the subject.

CHAPTER 3.—Of water power improvements (p. 378). Code §§ 1236-40. [McC. §§ 1899-1903]

These provisions are so extended as to be applicable to an individual as well as a corporation.

CHAPTER 4.—Of taking private property for works of internal improvement (p. 379). Code §§ 1241-72; 15 G. A., c. 34, 47, 65; 16 G. A., c. 75; 17 G. A., c. 126; 18 G. A., c. 15, 32, 191; 19 G. A., c. 122; 20 G. A., c. 190; 23 G. A., c. 21; 24 G. A., c. 22; 25 G. A., c. 18. [McC. §§ 1904-36, 1943-54]

The provisions of McC. § 1937-42 as to viaducts are inserted in the title relating to the cities and towns. (§§ 19-24, p. 156.)

Code § 1270 [McC. § 1944] is omitted as covered by provisions in the same title. (c. 9, p. 179)

Sec. 5. The provision that application for proceedings to assess damages must be in writing is transposed from Code § 1245. [McC. § 1909]

CHAPTER 5.—Of the construction and operation of railways (p. 389). Code §§ 1273-1309; 15 G. A., c. 18, 20, 68; 16 G. A., c. 68, 116; 17 G. A., c. 152; 18 G. A., c. 128, 169; 20 G. A., c. 24, 104, 139, 159, 163; 22 G. A., c. 30, 31; 23 G. A., c. 18, 19, 20; 24 G. A., c. 18, 23, 26; 25 G. A., c. 23, 24, 25, 26, 27, 28. [McC. §§ 1955, 2008, 2027, 2028, 2082-2102]

The matter embraced in the corresponding Code chapter is divided, for convenience, into three chapters. Successive statutes have covered to some extent the same ground, making cumulative provisions or superseding previous provisions, and in such cases the analogous provisions have been consolidated, and those which have been superseded have been omitted. Much rewriting has been necessary to secure a uniform system and eliminate surplusage, but the material provisions of the law have been left unchanged. The order of the sections has been greatly altered, but they can all be found, or their omission accounted for, by means of the bracket references or the table in the appendix of this report, and but few explanations will here be necessary. For instance, duplicate provisions as to reports by the companies are consolidated. Code § 1306 [McC. § 2001] is omitted as unnecessary, being a mere saving clause. Code §§ 1310-16 [McC. 2009-15], relating to railways terminating at Council Bluffs, are omitted, having been decided unconstitutional by the supreme court. The provisions as to taxation have been transferred to the chapter on assessment and taxes. (See §§ 31-38, pp. 253-6)

Secs. 22, 23. The provisions as to liability for injuries to stock and for damages from fire set out are placed in separate sections.

Sec. 26. In line 4 of the section as reported insert "or more" after "thousand."

Sec. 40. In the second line of the section as reported insert "hundred" after "two."

Secs. 70, 71. Code §§ 1293-6 [McC. 1987-91] are practically superseded by the later statute embodied in these sections. (See *Smith v. Chicago, etc., Railroad Co.*, 86 Iowa, 202)

Sec. 77. Change this section as reported by inserting "two" in the third line, before "preceding." The statutes now provide a penalty as to each of the two matters referred to, and this section is sufficient to cover both.

CHAPTER 6.—Of the board of railroad commissioners (p. 403). 17 G. A., c. 77; 20 G. A., c. 133; 22 G. A., c. 29. [McC. §§ 2029-48]

The election of commissioners is provided for in the chapter relating to election of other state officers (§ 12, p. 198) and their bond in the chapter on qualification of officers (§ 8, p. 226). Provisions for canvassing votes and filling vacancies are covered by the chapters on those subjects. McC. §§ 2030, 2031 are therefore omitted here. McC. § 2032 is omitted as temporary.

CHAPTER 7.—Of the regulation of carriers by railway (p. 407). Code §§ 1280-2, 1292-1300; 15 G. A., c. 18; 17 G. A., c. 77; 22 G. A., c. 28; 23 G. A., c. 17; 24 G. A., c. 25. [McC. §§ 1962-4, 1957-95, 2035-79]

Provisions of McC. §§ 2040, 2041 as to reasonable rates are covered by later statutes embodied in this chapter.

Sec. 35. This section covers also 24 G. A., c. 25.

CHAPTER 8.—Of telegraph and telephone lines (p. 421). Code §§ 1324-9; 19 G. A., c. 104 [McC. §§ 2103-8]

This chapter is extended to cover telephones. For the provisions as to taxation see §§ 25-29 (pp. 252, 253).

Sec. 4. This section is made more general and applicable to both telegraph and telephone lines.

Sec. 5. In the fourth line of the section, as reported, after "attorney" insert "or wrongfully takes or receives any telegraph or telephone message."

TITLE XI.

OF THE MILITIA (p. 425).

This title is transposed from its position in the code and inserted here in what is believed to be a more proper connection. 18 G. A., c. 74; 20 G. A., c. 65; 22 G. A., c. 82; 24 G. A., c. 31. [McC. §§ 1555-1607]

Sec. 4. The provision of the code section is so changed that the call is to be made upon the commanding officer; he can then call out his company.

Secs. 10, 11. In line 2 of § 10, as reported, change "resigns" to "is discharged" to conform to the provisions of § 17 (p. 428);

and in line 3 of § 11, change "resigns" to "is discharged" for the same reason.

Secs. 31-33. General and inferior courts martial are here more fully provided for than in the existing statute.

Sec. 47. The exemption is extended to those in actual service.

Sec. 48. A provision is inserted for the protection of armories and other places where arms or implements are stored.

Sec. 57. Fuller provision is made for payment of compensation when the militia is called into service.

McC. § 1577 is omitted as unnecessary. This item of expense is now covered by the general appropriation.

TITLE XII.

OF THE POLICE OF THE STATE.

CHAPTER 1.—Of the settlement and support of the poor (p. 437). Code §§ 1330-82; 17 G. A., c. 37, 166; 21 G. A., c. 10; 22 G. A., c. 101. [McC. §§ 2117-69]

Secs. 4, 5. Several sections are consolidated in each of these without any intention to make changes in the law.

Secs. 7, 8. These sections provide for the recovery from the poor person himself, or his relatives, or his estate for the support furnished, and impose a limitation on the time of enforcing such claim. But it is provided that this limitation as against the poor person himself shall not commence to run until he is able to pay.

Secs. 9, 11. The time of residence necessary for acquiring settlement is changed to six months, the time now provided for acquiring a right to vote.

Sec. 13. The provisions as to recovery from the county of the settlement by the county furnishing the relief are consolidated.

Sec. 15. The furnishing of outdoor relief is made subject to rules which the board of supervisors may adopt. The provisions of the section are changed so as to apply to cities situated in two counties. A clause is added forbidding officers to be interested in furnishing supplies.

The provisions of the 18 G. A., c. 133 [McC. § 2148] by which the furnishing of support might be made conditional on performing labor on the public highway, are omitted as of no practical effect. Such condition is never imposed and there is no means by which the labor can be made effectual.

Sec. 16. It is left discretionary with the board whether persons in families shall be sent to the poor house.

Secs. 19, 20. The ultimate control of the board of supervisors over the whole matter is here provided for.

Sec. 23. This section authorizes either a contract for supplies, or one for support, as the board may determine, in either case to be let to the lowest bidder.

Sec. 26. It is only where an expenditure of over five thousand dollars for poor house and farm is contemplated that a vote is required.

Sec. 37. This new section defines a poor person for the purposes of this chapter. Those who have some means may be aided. It would often be economy to allow such a person to retain a homestead rather than compel the sale thereof and expenditure of the money before aid should be furnished.

Code § 1378 [McC. § 2165] as to binding out poor children is transferred to the chapter on apprenticeship (§ 6, p. 661).

CHAPTER 2.—Of the care of the insane (p. 443). Code §§ 1383-1445, 3825, 3826; 15 G. A., c. 26, 53; 16 G. A., c. 28; 17 G. A., c. 84, 100, 183; 18 G. A., c. 152; 20 G. A., c. 66; 21 G. A., c. 47; 22 G. A., c. 68, 75, 76; 24 G. A., c. 24, 48; 25 G. A., c. 80. [McC. §§ 2170-2248, 5102, 5103]

A uniform system of provisions is made for all the hospitals. Provisions as to election of trustees, their qualifications, compensation, etc., are covered by a general chapter applicable to all state institutions (c. 21, p. 529).

Code § 1387 [McC. § 2174] is covered by § 3, p. 601.

Code § 1388 [McC. § 2175] is covered by § 11, p. 41.

Sec. 8. In the section as reported omit the words "medical men" in the first line. This change is for the purpose of making it plain that women are eligible to the office.

Sec. 9. Provision is made for supplying vacancies on the board without the judge acting as a commissioner. He hears the appeal, if any, and should not serve on the board.

Sec. 18. Notice to the county of settlement may be given after the appeal is disposed of.

Sec. 25. When one who has been held in custody as insane is discharged, there should be a finding and record which will be evidence of his mental condition at that time, and his restoration to sanity if that fact is stated. This is important with reference to any guardianship that may have been granted.

Sec. 27. The investigation into the sanity of one in custody for a crime is here limited to the question of his sanity at the time of the investigation and cannot be extended to include his condition at the time the offense is charged to have been committed. The latter question is to be determined on the trial. Provisions for inquiry into his condition during the trial or during his imprisonment after conviction are made in the chapters relating to criminal procedure and imprisonment. (See c. 44, p. 990, and § 49, p. 1018.) With the same theory in view, Code § 1414 [McC. § 2213] is omitted.

Sec. 28. An important provision is here made that any one who was at the time under a charge of crime, is sent to the hospital and is released as cured, he shall not be simply discharged, but shall be surrendered only to the sheriff of the county from which he was sent, so that the sheriff may return him to abide further proceedings in the criminal case.

Sec. 36. The reason for the changes here made are indicated in the note to § 25 above.

Sec. 44. The transfer of patients from one hospital to another is provided for.

Sec. 45. This follows the provisions of the Code section in making relatives of insane persons chargeable for their support by the state. It is thought best not to adhere to the amendment made by 15 G. A., c. 26, which relieved relatives from such liability.

Secs. 48, 50. The mail sent or received by the patients is placed in the control of the visiting committee.

Sec. 56. An insane tax to be used in the support of those who are kept within the control of the county is here provided for.

CHAPTER 3.—Of domestic animals (p. 457). Code §§ 1446-1488, 3821-23; 15 G. A., c. 70; 18 G. A., c. 188; 22 G. A., c. 102; 24 G. A., c. 37, 49, 66. [McC. §§ 2249-87, 5098-5100]

Section 1. The submission of the question as to whether stock shall be allowed to run at large is provided for in the chapter relating to the board of supervisors (§§ 35-37, p. 98).

Sec. 2. A summary assessment of the damages and costs is here authorized in case the owner desires to pay and release the animal. To require an appraisal would involve more cumbersome proceedings than the importance of the question would justify.

Secs. 3-10. The provisions as to distraint are rewritten to make them more simple and effectual.

Secs. 11-21. All these provisions as to estrays are largely rewritten to secure simplicity. Animals not defined in § 1 as stock may still be estrays. Provisions as to appraisal [Code § 1467, McC. § 2264] are omitted as unnecessary. The provision that the secretary of state shall select an agricultural paper in which estray notices shall be published, is omitted because not practicable, as there is now, it is understood, no such paper which will print the notices at the statutory rate.

Sec. 32. While the act of 25 G. A. did not amend this section of the Code, yet the reason of the statute is probably equally applicable to this section, and the last clause is inserted accordingly.

Sec. 41. The fees in cases of distraint and taking up estrays are more specifically provided for than in the Code. It is recommended that the section as reported be changed as follows: In the twelfth line before "one head of stock" insert, "as an estray," and omit "taking up."

Provisions as to a tax on dogs for the purpose of raising a fund from which to pay damages for injuries committed by dogs upon domestic animals [McC. §§ 2288-93] are placed elsewhere (§§ 48-52, p. 100).

CHAPTER 4.—Of fences (p. 465). Code §§ 1489-1508; 16 G. A., c. 101, 106; 17 G. A., c. 124; 18 G. A., c. 47; 22 G. A., c. 95; 25 G. A., c. 104. [McC. §§ 2322-44].

Code §§ 1503, 1506 [McC. §§ 2336, 2339] are omitted as unnecessary.

Section 1. The latest expression of legislative policy with reference to partition fences is found in 25 G. A., c. 104, which requires the owner of land deriving a revenue or benefit therefrom to build partition fences if desired by adjoining owners. The chapter is largely rewritten and some slight changes are made with this policy in view, and some sections inconsistent therewith have been omitted. Thus Code § 1497 [McC. § 2330] and the first part of Code § 1500 [McC. § 2333] are considered to be superseded.

Sec. 4. A lien is given for any amount due from an adjoining land owner for erecting, rebuilding, or repairing fences.

Sec. 5. This new section provides for notice upon non-residents.

Sec. 6. Provision is made for preserving of record the orders or decisions of fence viewers, and for service and proof of notices.

Sec. 8. When the land owner becomes liable to pay for a partition fence erected by an adjoining owner, he may be required to determine whether he will pay for one-half thereof or erect his own fence.

Sec. 16. Grounding wires, to obviate danger from electricity, are required in case of wire fences.

Secs. 18, 19. Appeals are provided for from the action of the fence viewers, and the clerk is required to enter in his books all matters which by the chapter are made matters of record. His fee therefor is also fixed.

CHAPTER 5.—Of lost goods (p. 46). Code §§ 1509-1522. [McC. §§ 2345-58]

Two sets of provisions quite analogous are found in the Code chapter. They are consolidated into a uniform system.

CHAPTER 6.—Of intoxicating liquors (p. 472). Code §§ 1114, 1523-59, 3829; 15 G. A. c. 37; 17 G. A. c. 91, 119; 18 G. A. c. 82, 147; 20 G. A. c. 8, 143; 21 G. A. c. 66, 113; 22 G. A. c. 71, 73; 23 G. A. c. 35; 25 G. A. c. 62, 63. [McC. §§ 1675, 2359-2431, 5109]

Several successive acts covering almost the entire ground have been passed by the general assembly since the adoption of the Code. The effort is here made to bring the statutes on the subject into one uniform system embodying the law as it now is, for which purpose it has been necessary to largely rewrite the sections. It is believed that every feature of the prohibitory law as at present in force is effectually preserved.

McC. §§ 2421-9 as to sales within two miles of a city or town are omitted as superseded by later legislation.

Section 1. In this one section are gathered the prohibitory provisions with a definition of intoxicating liquor.

Secs. 4, 5. The matter of sale to registered pharmacists and manufacturers of proprietary medicines is here provided for with penalties for a misuse of the privilege on the part of those purchasing. While these provisions relate to some extent to the practice of pharmacy, they are so closely

connected with the intoxicating liquor law that it seems proper to insert them here.

Sec. 6. It seems proper to allow a permit to be issued by a superior court as well as by the district court, and the chapter is framed accordingly.

Sec. 9. In the fifteenth line of this section as reported the word "fifteen" should be omitted. It has crept in through some oversight in proof reading.

Sec. 12. The permit is to specify the length of time it shall be in force, subject, however, to revocation as elsewhere provided.

Sec. 13. It seems unnecessary to specify exactly the fees to be taxed in such cases as they are the same as in ordinary actions.

Sec. 22. The Code section fixes the penalty at ten dollars fine or thirty days' imprisonment with no discretion in the court to impose a less penalty. It has been thought wise to make this punishment the maximum and leave it in the discretion of the court to impose a less penalty as in other cases.

Sec. 39. The clause at the end of the section is added in order to cover cases where sales are provided for under the mulct law.

Sec. 45. These provisions are made broader to relate to both informations and indictments, as there may be cases of either kind under the law.

Sec. 46. Provisions as to termination of leases on account of sale of intoxicating liquors on the premises are here combined and simplified.

Secs. 52-67. These sections, covering 25 G. A. c. 62, the mulct tax law, are designed to present the principle and policy of that statute in a more harmonious and effectual form without altering its general spirit.

There is no necessity for a levy of the tax by the board of supervisors. The amount of the tax is fixed by statute and it is here provided that it shall be paid quarterly, and this in itself constitutes a levy. The only question to be determined as to the tax is as to the persons and property subject thereto, and this is done by the assessor in the first instance, with provisions for adding to the list any persons or property omitted and for a review of the question by the board of supervisors and an appeal from its action to the district court. The details of the assessment, review, and appeal are more fully provided for

than in the original act and a definite record of the result is required to be made. There are also new provisions as to costs. Dispensing with the levy will secure a more prompt collection of the tax. When the business on which the tax is levied is conducted outside any city or town it is provided that the whole tax shall go into the county treasury; otherwise it is to be divided as heretofore.

Sec. 68. The only material change here is the provision in the first subdivision that the board of supervisors shall determine the sufficiency of the statement of consent which is required to be signed by a majority of the voters in a city of five thousand or over (or by a larger per cent in smaller cities and towns) and when that is found sufficient it shall continue effectual until revoked as provided for in § 70 below. There should be some tribunal to determine the question and it is not one easily determined by the courts. When settled it ought not to be subject to be reopened on every occasion when it may be insisted perhaps that the signers no longer constitute a majority of the voters by reason of increase or changes in the voting population. The term "general consent" is used to distinguish the statement signed by the voters from that which must be obtained from adjacent property owners before the business can be conducted in any particular locality.

The provision in subdivision 2 as to county fairs covers a section (Code § 1114, McC. § 1675) which is omitted from the chapter on that subject.

CHAPTER 7.—Of fire companies (p. 495). Code §§ 1560-66. [McC. §§ 2432-38]

CHAPTER 8.—Of the bureau of labor statistics (p. 496). 20 G. A., c. 132. [McC. §§ 2439-44]

Some new sections are inserted to enable the commissioner to carry out more fully the purposes of the statute.

CHAPTER 9.—Of mines and mining (p. 498). 20 G. A., c. 21; 21 G. A., c. 43, 140; 22 G. A., c. 52, 53, 54, 55, 56; 23 G. A., c. 46; 25 G. A., c. 98. [McC. §§ 2449-82]

The statutes on this subject are prolix and in confusion, and they have accordingly been almost entirely rewritten. 24 G. A., c. 46, is temporary, except the last clause, which has been disregarded as inconsistent with the general plan of the statutes.

Sec. 3. The provision of the original statute for the publication of notice of the meeting of commissioners is omitted.

Sec. 5. The provisions of the original section as to inquest are inserted in the chapter "Of the Coroner." (§ 4, p. 111)

Sec. 7. Charges against inspectors are to be tried by the board of examiners.

Sec. 8. The latter part is new and intended to furnish protection to adjoining land owners.

Sec. 9. These provisions apply to all shaft mines and to all drift or slope mines operating five or more men.

Sec. 10. The latter part of this section applies to mines in which ten or more men are employed.

Sec. 13. The various penalties are here covered in one section.

McC. § 2482, which specially provides that attention be given by the county attorney to the violation of these statutes is omitted as unnecessary. These laws are to be enforced as others, and it is superfluous to direct an officer to do his duty.

Sec. 14. The provision as to action for injuries causing death is covered by the chapter "Of the Settlement of Estates." (§ 4, p. 676)

CHAPTER 10.—Of the geological survey (p. 505). 24 G. A., c. 71; 25 G. A., c. 159.

The provisions of 24 G. A., c. 71 on this subject were temporary; but 25 G. A., c. 159 made the appropriation permanent and the provisions slightly modified in language are here inserted.

CHAPTER 11.—Of inspection of petroleum products (p. 506). 20 G. A., c. 185; 21 G. A., c. 149; 22 G. A., c. 82; 24 G. A., c. 52. [McC. §§ 2483-96]

The statutes are rewritten without material change except in language.

Sec. 2. In first line insert "state" before "board."

Sec. 3. In fourth line after "tester" insert "and any other instruments."

Sec. 4. The report of expenses is to be made to the secretary of state as a basis for payment out of the state treasury.

Sec. 5. The penal provisions are consolidated and penalties are made uniform. In line 4 of this section as reported omit "as approved" and in lines 9 and 10 omit "paraffine or" (that substance is no longer used for adulteration), and change "other" to "any" before substance.

CHAPTER 12.—Of inspection of passenger boats (p. 508). 22 G. A., c. 107. [McC. §§ 2497-2502]

The statute is rewritten with a slight change as to details required in the report.

CHAPTER 13.—Of the dairy commissioner and imitation dairy products (p. 510). 19 G. A., c. 170; 21 G. A., c. 52; 22 G. A., c. 98; 23 G. A., c. 52; 24 G. A., c. 50; 25 G. A., c. 45, 46, 47. [McC. §§ 2503–2522, 5367]

As there have been several statutes on this subject it has been necessary to rewrite the whole.

A portion of 24 G. A., c. 50, is so far penal in its nature that it is inserted in the criminal code (see §§ 14, 15, p. 903). McC. § 2518 is omitted as unnecessary. McC. §§ 2519–22 are temporary.

Sec. 3. A plain distinction between imitation dairy products which are prohibited and substitutes for butter and cheese which may be sold under certain restrictions is intended to be carried throughout the chapter; but the distinction is not clearly maintained in this section as reported, and it is recommended that the words “substitute for” be inserted instead of “imitation” in lines 9, 16, 17 and 18.

CHAPTER 14.—Of the state veterinary surgeon (p. 513). 20 G. A., c. 189; 22 G. A., c. 82. [McC. §§ 2294–2302]

Sec. 6. Provisions as to destruction of diseased stock and compensation to the owner therefor are made more definite and simple.

CHAPTER 15.—Of the care and propagation of fish (p. 515). 16 G. A., c. 70; 17 G. A., c. 80, 188; 18 G. A., c. 92; 21 G. A., c. 63; 23 G. A., c. 34; 24 G. A., c. 46; 25 G. A., c. 65. [McC. §§ 2303–21]

The statutes on this subject are rewritten; the chapter as presented covers also the sections now found in the criminal code relating to illegal fishing [McC. §§ 5403–11] which are therefore omitted from that portion of the code as revised.

Sec. 2. The last clause in this section is new and intended to obviate a danger in regard to winter fishing.

Sec. 4. This provision is new but is deemed necessary.

CHAPTER 16.—Of the state board of health (p. 517). Code §§ 415–418; 18 G. A., c. 151; 19 G. A., c. 140; 20 G. A., c. 175; 22 G. A., c. 65, 82; 24 G. A., c. 59. [McC. §§ 556–559, 2558–82]

It has been necessary to entirely rewrite this chapter in order to put it into orderly and concise form.

The provisions found in Code §§ 415–420 [McC. §§ 556–561] as to local boards of health are superseded by subsequent statutes and are therefore covered by this chapter.

McC. § 2565 is omitted as of no practical utility.

Section 1. The requirement of approval of the appointment by the executive council is omitted in harmony with several similar provisions elsewhere. It would seem that in such cases the responsibility ought to be placed upon the governor alone. It is also provided that the secretary shall not be a member of the board, that being apparently the intention of the statute.

Sec. 5. The last sentence of the section is intended to more clearly provide for the establishment of quarantine in urgent cases, but the same authority should be sufficient for releasing or terminating such quarantine, and it is therefore recommended that the section as reported be amended by inserting in line 23 after “declared” the words “or terminated” and by adding at the end of the section the words “or termination of the cause for quarantine as the case may be.”

Sec. 9. This section is intended to make certain the superior power of the state board of health as to local boards and their officers.

CHAPTER 17. Of the practice of medicine (p. 521). 21 G. A., c. 104; 22 G. A., c. 66. [McC. §§ 2546–57]

The entire chapter is rewritten without any intent to change the law, except in a few particulars, to which attention is called.

Section 1. The secretary of the state board of health has been, though not a member of that board, a member of the board of medical examiners. It has been suggested that his duties in superintending the examination could be better performed if he were not one of the examiners, and he has been omitted, therefore from this board.

There is a slight change as to the signature of the certificate which is required to be signed by the president and secretary and three members.

The fees are raised in amount because it is understood that the fees received are not sufficient to pay the expenses of the board. The examination fee is increased to twenty dollars where an actual examination is given, but where a certificate is issued on a diploma which involves no examination and practically no labor on the part of the board beyond the performance of his duties by the secretary, a fee of five dollars only is required.

Sec. 2. It is provided that examinations may be held at any medical school by a committee of the board, thus obviating the necessity for the graduates of such school to attend an examination elsewhere in order to become entitled to a certificate.

Sec. 4. Conviction for a felony is made a ground for refusing or revoking a certificate, whether committed in the practice of the profession or not, and habitual intoxication has been made a like ground. Removal from the state is also made a ground of revocation. There seems to be no reason why the state certificate should be taken advantage of by those residing elsewhere. The provisions for recognizing certificates issued by boards of examiners in other states is omitted. It seems not to have been acted upon, and to be unwise.

Sec. 6. The penal provisions are made uniform, and the penalty is somewhat changed.

Chapter 18.—Of the practice of pharmacy (p. 524). Code §§ 4038; 18 G. A., c. 75; 19 G. A., c. 137; 21 G. A., c. 83; 22 G. A., c. 71, 81, 106; 23 G. A., c. 35, 36. [McC. §§ 2523-34, 5359]

This chapter is largely rewritten for the purpose of securing conciseness. Provisions in regard to the sale of liquor to registered pharmacists for proper purposes are found in the chapter "Of intoxicating liquors" (§§ 4, 5, p. 473), and in that chapter the whole subject of sale by pharmacists who have licenses is regulated.

Sec. 4. Provision is made for an annual fee of one dollar for a renewal certificate.

Sec. 5. The failure to comply with the requirements of the statute as to renewals or displaying certificate is made a misdemeanor.

Sec. 7. Provisions are found in the criminal code regulating the sale of poisons, but they are not inconsistent with this section, and are preserved as applicable to the giving of poisons and other cases where the pharmacy law does not apply (§ 31, p. 901).

Sec. 9. A criminal provision is added.

CHAPTER 19.—Of the practice of dentistry (p. 526). 19 G. A., c. 36; 23 G. A., c. 52. [McC. §§ 2535-45]

Provisions are made here similar to those made in the chapter relating to the practice of medicine for issuing licenses on a small fee to the graduates of the dental schools, while a much larger fee is charged where examination is given.

Sec. 2. The temporary license is to extend until the adjournment of the next regular session, so as to give the board opportunity to act before the license expires.

Sec. 3. The provision for extracting teeth by unlicensed persons is limited to physicians and surgeons.

Sec. 4. The penalty clause is slightly changed.

The section as to registry of practitioners [McC. § 2538] is omitted as practically obsolete, all practicing dentists being now registered.

CHAPTER 20.—Of the soldiers' home (p. 527). 21 G. A., c. 58; 22 G. A., c. 121; 23 G. A., c. 58; 24 G. A., c. 24, 95. [McC. §§ 2784-2802]

A considerable portion of the acts relating to this subject provided for the organization of the home and the erection of the buildings, and these portions, being now obsolete, are omitted. The other sections are rewritten for the purpose of putting them in better form and incorporating amendments which have been made.

Sec. 3. The members of the board are styled trustees, instead of commissioners, and their election, qualification, compensation, etc., are provided for in the following chapter, which relates to all state institutions of this character.

CHAPTER 21.—Of regents and trustees of state institutions (p. 529). Code §§ 1383-6, 1587, 1583, 1593, 1602-8, 1615, 1623-7, 1630, 1644-7, 1664, 1665, 1667, 1668, 1675, 1685-7, 1693; 15 G. A., c. 7, 21, 53; 16 G. A., c. 94, 119, 129, 147; 17 G. A., c. 76, 92, 100, 136, 142; 19 G. A., c. 40; 20 G. A., c. 66, 76; 21 G. A., c. 58, 181; 22 G. A., c. 64, 74, 75, 77, 121; 24 G. A., c. 51. [McC. §§ 2170-3, 2183, 2184, 2609, 2610, 2615, 2624-27, 2630-5, 2642, 2674, 2675, 2677, 2681-5, 2688, 2710, 2713, 2717, 2725-8, 2746, 2751, 2752, 2754, 2755, 2762, 2769-71, 2777, 2781, 2786, 2787, 2802, 5104, 5105]

To obviate the constant repetition of provisions which are similar as to the governing bodies of different state institutions this chapter is drafted, which makes, for the purpose of securing a uniform system, some changes in the present law as may be seen by looking at the references given at the end of each section. There is a uniform classification of terms into those of six and those of four years, and for the purpose of carrying out this classification, the length of term, and in one or two instances, the number of trustees are changed. Provision is also made for the removal of such officers for the same grounds

as those provided with reference to the removal of elective officers. It is also provided that, as a general rule, applicable to all institutions (save the university, which does not have trustees, but regents) that one member shall be a resident of the county in which the institution is situated, and that all of them shall not be of the same political party. The general provision as to requisitions is so framed that they shall be made at a time more convenient for the state treasurer than as now provided in some of the statutes.

General provisions in a chapter on state officers relating to the making of contracts, diversion of funds, etc., are applicable to regents and trustees. (See §§ 7-12, p. 40, 41)

TITLE XIII.

OF EDUCATION.

CHAPTER 1.—Of the superintendent of public instruction (p. 533). Code §§ 766, 767, 770, 1577-84, 3760; 18 G. A., c. 150; 21 G. A., c. 118; 22 G. A., c. 59, 82, 109. [McC. §§ 1238, 1239, 1242, 2590-97, 5013, 5014]

This chapter is rewritten without material change except the incorporation of the provisions as to deputy and compensation.

CHAPTER 2. Of the educational board of examiners (p. 535). 19 G. A., c. 167; 23 G. A., c. 22; 25 G. A., c. 36. [McC. §§ 2598-2606]

There is no material change in this chapter as rewritten except the incorporation of the later statutes.

Section 1. The appointment of the members is placed in the hands of the governor instead of the executive council.

Sec. 2. In line 15 change "is" to "in."

CHAPTER 3.—Of the university (p. 536). Code §§ 1585-1603; 16 G. A., c. 147; 17 G. A., c. 76, 115; 20 G. A., c. 115; 21 G. A., c. 181; 22 G. A., c. 82; 25 G. A., c. 152. [McC. §§ 2607-29]

The appointment, removal, compensation, and organization of the board of regents is covered by a general chapter (c. 21, p. 529) and the method of drawing appropriations is also there covered.

Section 1. More specific provision is made for the calling of special meetings of the board.

Sec. 2. A provision is added requiring the secretary to give bond. This seems proper in view of the fact that he receives tuitions.

Sec. 6. Several departments mentioned in the Code section are omitted as now merged into the collegiate department. Professional departments added since the adoption of the Code section are not specifically enumerated but are included in a general designation.

Sec. 7. As the report of the superintendent of public instruction is not now required to be made until November 1st (see § 6, subd. d., p. 28), the time for making report to him is fixed at a later date, so that it will be possible to include the enrollment at the beginning of the school year.

Sec. 8. The executive committee is to be appointed from members of the board, this having been the practice now for many years.

Sec. 9. The three permanent, annual appropriations which have been provided for from time to time are consolidated into one sum without changing the aggregate amount.

CHAPTER 4.—Of the state college of agriculture and mechanic arts (p. 539). Code §§ 1604-22; 15 G. A., c. 7; 16 G. A., c. 91, 119, 159; 19 G. A., c. 169; 20 G. A., c. 72, 76, 193; 22 G. A., c. 58; 24 G. A., c. 6; 25 G. A., c. 107, 110, 112, 145. [McC. §§ 2630-2672]

Provisions as to the appointment, removal, compensation, and organization of the board of trustees are included in the general chapter as to state institutions (c. 21, p. 529).

Code § 1622 [McC. § 2672] is omitted as sufficiently covered by the general chapter relating to state officers (§ 9, p. 40).

Section 1. Elsewhere through the Code the institution is named the agricultural college, but in this chapter it is given a more specific name, corresponding with its designation in the act of congress making the grant.

Sec. 3. Subdivision four of this section of the Code has been omitted, as it has been found that its purpose cannot be successfully accomplished.

Sec. 6. The date of the annual meeting of the board and the commencement of the college year is slightly changed.

Sec. 8. The report to the executive council is required to be annual instead of semi-annual.

Sec. 13. It is provided that the lands may be leased without a contract of purchase, as well as with such contract.

The provisions as to taxation of the college lands are incorporated in the chapters on taxation. (§ 47, p. 257, and § 34, p. 274)

Code § 1617 as amended [McC. § 2658] is omitted, as covered by later statutes.

The act providing for bulletins to be issued by the college in regard to the Russian thistle is incorporated elsewhere. (§§ 37, 38, p. 299)

CHAPTER 5.—Of the normal school (p. 544). 16 G. A., c. 129; 17 G. A., c. 142; 21 G. A., c. 1; 22 G. A., c. 64; 25 G. A., c. 40. [McC. §§ 2673-80, 2854]

The election, removal, compensation, and organization of the trustees is elsewhere provided for. (c. 21, p. 529)

The provisions of 23 G. A., c. 22, as to certificates and state diplomas to graduates of the normal school are inserted in the chapter relating to the state board of educational examiners. (§ 2, p. 535)

Sec. 3. The act in regard to the teaching of physiology and hygiene with reference to the effect of stimulants and narcotics covered the normal school, as well as other schools, and this section is inserted to meet that requirement.

Secs. 4, 5. The act providing for the instruction of common school pupils in a training school, though general in its terms, is applicable only to the school corporation in which the normal school is situated, and therefore is incorporated here.

CHAPTER 6.—Of the orphans' home and home for destitute children (p. 546). Code §§ 1623-42; 16 G. A., c. 94; 21 G. A., c. 111; 22 G. A., c. 74, 82. [McC. §§ 2681-2708]

General provisions as to election, etc., of trustees, are found elsewhere (c. 21, p. 529).

This institution, originally provided for soldiers' orphans, has been entirely changed in its character by subsequent legislation, and the name is modified accordingly. Some of the sections have become obsolete by reason of these changes, and McC. §§ 2691, 2700, and 2703 are omitted on that account.

A section relating to instruction in physiology and hygiene, with reference to stimulants and narcotics, is inserted.

Sec. 5. This section makes more specific provision for the levying of a tax to pay for the support of orphans, whether sent to the home or not.

CHAPTER 7.—Of the institution for feeble-minded children (p. 548). 19 G. A., c. 40; 22 G. A., c. 82; 23 G. A., c. 56. [McC. §§ 2709-22]

Provision as to the election, etc., of trustees, is made elsewhere (c. 21, p. 529). This chapter is rewritten without material change.

CHAPTER 8.—Of the industrial school (p. 550). Code §§ 1643-1663; 15 G. A., c. 21; 16 G. A., c. 38; 17 G. A., c. 97; 18 G. A., c. 171; 19 G. A., c. 92, 150; 20 G. A., c. 153; 22 G. A., c. 82; 23 G. A., c. 54. [McC. §§ 2723-50]

Provision as to election, etc., of trustees, is made elsewhere. (c. 21, p. 529)

Sec. 2. In lines 1 and 2 of the section as reported omit the words commencing "to enact" and ending "therein," as the provision is covered elsewhere (§ 10, p. 530).

Sec. 5. The provision of the general statute for instruction in physiology and hygiene with reference to stimulants and narcotics is here incorporated so far as applicable to the institution.

Secs. 7, 8. The time of commitment may be fixed by the judge. (See line 23 of § 7, and line 8 of § 8)

CHAPTER 9.—Of the college for the blind [p. 553]. Code §§ 1664-84; 17 G. A., c. 72; 18 G. A., c. 165; 19 G. A., c. 166; 22 G. A., c. 82. [McC. §§ 2751-68]

This chapter is rewritten without material change. Provisions as to election, etc., of trustees are found elsewhere (c. 21, p. 529).

Code § 1674 [McC. § 2761] is omitted as covered by § 8, p. 40.

CHAPTER 10.—Of the industrial home for the blind (p. 555). 24 G. A., c. 51.

This chapter is rewritten without material change. Provisions as to election, etc., of trustees are found elsewhere (c. 21, p. 529).

Sec. 3. In lines 1-3 of the section as reported, omit the words commencing "adopt" and ending "expedient." The provision is sufficiently covered elsewhere. (§ 10, p. 530)

CHAPTER 11.—Of the school for the deaf (p. 556). Code §§ 1685-96; 17 G. A., c. 98, 136; 18 G. A., c. 203; 19 G. A., c. 105; 20 G. A., c. 73; 22 G. A., c. 82; 23 G. A., c. 55; 24 G. A., c. 65. [McC. §§ 2769-83]

The chapter is rewritten without material change, the provisions of the various session laws relating to the subject being incorporated.

Code § 1691 [McC. § 2775] is omitted as covered by § 8, p. 40.

CHAPTER 12.—Of county high schools (p. 557). Code §§ 1697-1712. [McC. §§ 2803-18]

The chapter is rewritten for the purpose of more convenient arrangement and without material change.

CHAPTER 13.—Of the county superintendent (p. 559). Code §§ 1765-76; 15 G. A., c. 57; 16 G. A., c. 136; 17 G. A., c. 54, 143; 19 G. A., c. 161; 20 G. A., c. 103; 21 G. A., c. 1. [McC. §§ 2829, 2840, 2880-94]

It seems proper to place in a separate chapter the sections relating to the county superintendent, including a few provisions found in the session laws imposing special duties upon him. Thus, the act requiring candidates for a certificate to be examined in physiology and hygiene, with special reference to the effect of stimulants and narcotics, is incorporated here, although so far as it affects schools not under the control of the superintendent its provisions are also inserted elsewhere.

Provisions as to appeals are found in the next chapter. (§§ 67-73, p. 581, 582)

Sec. 6. In line eight of the section as reported, after "report" insert "as provided by law." The provisions as to what shall be reported with reference to children who are entitled to admission into the school for the deaf, and the institution for the feeble-minded, are more fully covered elsewhere. (§ 2, p. 556, and § 3, p. 549)

CHAPTER 14.—Of the system of common schools (p. 562). Code §§ 1713-64, 1777-1836; 15 G. A., c. 27, 64, 67; 16 G. A., c. 64, 109, 112, 121, 136, 155; 17 G. A., c. 41, 113, 133; 18 G. A., c. 7, 8, 51, 59, 63, 84, 111, 131, 132, 143, 146; 19 G. A., c. 23, 46, 51, 118, 149, 160; 20 G. A., c. 103; 21 G. A., c. 95, 107, 124, 131; 22 G. A., c. 51, 60, 61, 62, 63; 23 G. A., c. 24; 24 G. A., c. 20, 21; 25 G. A., c. 34, 37, 38. [McC. §§ 2819-79, 2893-2992]

Code § 1790 [McC. § 2909] is omitted as covered by § 1, p. 82 (as changed).

The whole chapter is rearranged and largely rewritten for the purposes of methodical arrangement and concise statement, and the separate Code chapters on school house sites and appeals are incorporated. The sections relating to the county superintendent are embodied in a separate chapter preceding this.

Some confusion exists in the Code with reference to the use of names to designate the different school divisions. The term "school district" is used in many places throughout this and other chapters of the Code with uncertain meaning; on the other hand the word "district" without specific designation is given

no meaning. The terms properly used in the Code have been district township, subdistrict as a division of the district township, and independent district. It has been thought best, in order to avoid all confusion, and to have terms with specific meaning, to change the nomenclature by substituting school township for district township, and district for subdistrict, leaving the term independent district without change. Of these the school township and the independent district are corporations and are referred to collectively as school corporations; the district being a subdivision is not a corporation and is not included in that collective term.

Sec. 4. This section makes specific provision for electing directors at large when such directors are to be elected (see § 9, p. 563).

Sec. 10. General provision is made here for determining tie votes whenever they shall occur.

Sec. 11. The authority to call an election when a school township is left without directors is given to the county superintendent, instead of being left to the township trustees as formerly.

Sec. 13. The employment of attorneys to represent the board is placed with the board itself instead of with the president.

Sec. 15. In subd. 6 provision is made for certifying a school house tax levied at a special meeting. Subd. 7 makes a new provision for certifying changes of boundaries. This is important in order that the county auditor and county treasurer may determine what taxes shall go to the different school corporations.

Sec. 19. In subd. 3 provision is made for authorizing additional branches to be taught in graded or union schools. In subd. 5 the power to make contracts is expressly given to the board, including the making of contracts with teachers; but in § 20 (p. 569) it is provided that the board may authorize the director in school townships to make contracts for his district, subject to the regulations of the board. Subd. 7 vests the power to discharge teachers and dismiss or suspend pupils in the board, but provides that the director, or the principal, or superintendent of the school, may be authorized to temporarily suspend a pupil and readmit him when thus suspended. Subd. 10 is new, making provision for directing the secretary to insert in the notice of any

meeting of the electors any question authorized by law, which it is expected will be voted upon at such meeting.

Sec. 20. The power of the director of the district to employ teachers and make other contracts is subject to the control of the board, and is to be exercised only in pursuance of general authority conferred. The method in which a contract with a teacher is to be made and proved in such cases is specially pointed out and differs but slightly and only as the circumstances require from the provisions as to employment by the board itself. (See § 19, subd. 4, p. 567). In order that the report of the director shall show the facts which are necessary to enable the secretary to make to the county superintendent the report as to blind, deaf, and feeble-minded children required of him by § 15, subd. 4 (p. 565), insert in line ten of this section (20) as reported, after "age," the following: "and the name, age, and postoffice address of each person of school age who is blind, deaf or dumb, or feeble-minded, so as to be deprived of a reasonable degree of benefit from the common schools, and the postoffice address of the parent, guardian or next friend of each."

Sec. 25. Provision is made for non-resident or sojourning pupils.

Sec. 38. Various conflicting provisions as to the issuance of bonds are here consolidated into a uniform statement. The form of bond is substantially that provided for counties and cities.

Sec. 44. By existing provisions all the districts of a school township can be made independent districts only by majority vote of the electors in each such district. It is thought that this requirement works a hardship in some cases and it is provided in this section that such a change may be made if the electors in three-fourths of the districts vote therefor.

Sec. 46. Before the restoration to the school township of a portion of the territory which is incorporated into an independent district is allowed it must appear that the remaining territory is such as may properly be constituted an independent district.

Sec. 52. The number of members of the board of directors in an independent district having a population of five hundred or over is made seven so that there may not be an equal division in case of a vote.

Sec. 54. The board of an independent district is given power to admit pupils from outside the district.

SEC. 56. The last sentence in this section provides for the election of an additional director in independent districts which are entitled by § 52 above to seven directors, in order that the new method may be put into operation. That section makes the necessary provisions for the election of seven after the method is once introduced.

Sec. 58. By general reference the powers and duties of boards and officers in school townships are conferred and imposed upon like boards and officers in independent districts. But to cover a matter not heretofore provided for, add to this section as reported the following: "To enable the secretary to make to the county superintendent such report as is required to be made by him, the board shall cause a school census to be taken between the first and fifteenth of September in each year, showing the facts required to be reported by the director of each district to the secretary of a school township." For the provisions as to reports to directors and secretary in school townships, see § 20, p. 569, and § 15, subd. 4, p. 565. This census is the basis for apportioning the general school tax and the interest on the school fund. (§ 6, p. 561, and § 33, p. 572)

Sec. 62. In measuring the one acre which may be taken for school house purposes the portion of the land covered by a highway should not be included. One acre is small enough for the ground, exclusive of the highway.

Sec. 64. More specific provisions are made with reference to reversion.

Sec. 72. Provisions which are wholly new are here made for securing the attendance of witnesses on the trial of an appeal, and giving them compensation. It is believed that such provisions are necessary in order to make the right of appeal effectual.

CHAPTER 15.—Of the uniformity of text books (p. 582). 23 G. A., c. 24.; 25 G. A., c. 35.

The two statutes on this subject have been entirely rewritten for the purpose of presenting a uniform, practicable system.

CHAPTER 16.—Of the school fund (p. 585). Code §§ 1837-1884; 18 G. A., c. 12; 19 G. A., c. 174; 21 G. A., c. 163; 23 G. A., c. 23. [McC. §§ 2993-3045]

Sec. 9. The period of grace allowed a borrower who fails to pay interest when due, before the entire amount of principal and interest shall become due, is reduced from six to three months.

Sec. 13. The board of supervisors is authorized to assign a school fund note and mortgage to one holding a subsequent lien on the property covered by such mortgage upon payment of the amount due. This is a reasonable provision in favor of the junior lien-holder.

Sec. 15. This section provides for the continuation of the abstract of title on renewal of the loan. It also covers the provisions of Code § 2542 [McC. § 3747], to the effect that the statute of limitations shall not run against the state in actions to recover the school fund.

Sec. 16. In view of the difficulty which has arisen in several counties of the state on account of payment of school money borrowed being made directly to the auditor instead of to the county treasurer, it has been thought wise to change the method of doing the business so that the transaction shall be had with the auditor directly and he shall be responsible on his bond for the money. As he has authority to release the mortgage of record there is no adequate protection to the person who makes such payment, nor to the county unless the auditor can bind the county by such release and be held accountable to the county for any money received or which should have been received before making such release.

Sec. 17. Notice to a delinquent borrower is authorized to be given by mail.

Sec. 18. The rate of interest to be paid by the county is changed to five per cent in accordance with the provisions of 23 G. A., c. 23.

CHAPTER 17.—Of the state library (p. 591). Code §§ 1885–1899, 3762; 17 G. A., c. 75; 18 G. A., c. 69, 194; 19 G. A., c. 13, 113; 20 G. A., c. 191; 21 G. A., c. 158; 22 G. A., c. 82; 24 G. A., c. 60; 25 G. A., c. 17, 44. [McC. §§ 3046–3064, 5016]

Provisions as to the historical collection are incorporated into this chapter and a slight change is made as to the method of reporting so as to make the system of management harmonious.

CHAPTER 18.—Of the state historical society (p. 594). Code §§ 1900–1907; 18 G. A., c. 71; 22 G. A., c. 82. [McC. §§ 3065–3072]

PART SECOND—PRIVATE LAW.

TITLE XIV.

OF RIGHTS OF PROPERTY.

CHAPTER 1.—Of the rights of aliens (p. 597). 22 G. A., c. 85; 25 G. A., c. 82. [McC. §§ 3073–80]

This chapter has been rewritten entirely for the purpose of improving the form of expression and bringing its various provisions in logical order therein. The term “real estate” has been substituted for “real property” wherever it occurs in this and the following chapters. McC. § 3079 seems unnecessary in view of the language already used, and is omitted.

Section 1. The last clause is new, and inserted for the purpose of preventing the application, by analogy, of these rules to the distribution of personal property.

Sec. 2. “Consanguinity” is substituted for “kindred,” as more accurately defining the classes of persons to whom real estate of a non-resident alien may be conveyed. It is also provided that real estate authorized to be held may be proportionally so held within and outside of a city or town, instead of all within or all without, as appeared to be the effect of the former section.

Sec. 5. This is a new section to provide for reaching property which has escheated.

CHAPTER 2.—Of title in the state or county (p. 599). Code §§ 1910–19. [McC. §§ 3081–90]

This chapter is entirely rewritten for the purpose of condensation and improvement of statement. We have also provided for the purchase by other municipal corporations than counties, making the same rules applicable to them as are prescribed for the purchase and control of property by the state or a county.

Sec. 3. Provisions as to appraisement are omitted as unnecessary, and it is left to the officer designated to bid the reasonable value, not exceeding judgment and costs.

Sec. 7. This section is new, to carry out the enlarged plan of the chapter.

CHAPTER 3.—Of perpetuities and gifts (p. 601). Code §§ 1387, 1920, 1921. 25 G. A., c. 108. [McC. §§ 2174, 3191, 3192]

The title of the chapter should be changed by omitting "for religious purposes."

Secs. 3, 4. These sections are entirely rewritten to make their provisions include all classes of municipal corporations. The statutes referred to are limited in scope, and the later one is temporary in its nature; but it would seem proper to have a general provision to cover such cases.

CHAPTER 4.—Of the transfer of personal property (p. 601). Code §§ 1922-7. [McC. §§ 3093-8]

Sec. 5. This is a new section which seems necessary in order that it may appear, from a glance at the index, what kind of instrument it refers to.

Sec. 7. The last clause is new, and reported for the purpose of more definitely fixing the rights of the parties in mortgaged chattels, in accordance with present usage.

CHAPTER 5.—Of real estate (p. 602). Code §§ 1928-40. [McC. §§ 3099-3111]

Sec. 4. The last clause was rewritten to better define the exception to the rule stated in the first clause.

Sec. 13. The words "or lien" added to the end of the section are new.

CHAPTER 6.—Of the conveyance of real estate (p. 604). Code §§ 1941-75. 18 G. A., c. 142, 186; 20 G. A., c. 203; 22 G. A., c. 99; 25 G. A., c. 52, 90. [McC. §§ 3112-50]

Legalizing statutes are omitted.

Secs. 3-9. These sections are placed in this order as being their natural place in the chapter, while in the Code of 1873 they follow § 1947 [McC. 3118], except § 7, which is taken from 25 G. A., c. 90, as shown. The balance of that act is § 9, on p. 63.

Sec. 13. The last clause is new. Its purpose is obvious. (See § 5, p. 602)

Secs. 15, 16. These are from 18 G. A., c. 186 [McC. §§ 3119, 3120] and are entirely rewritten to improve their form. The last clause of McC. § 3120 is covered by general provisions of the chapter on evidence (§30, p. 852).

Secs. 18, 19. The provision as to who may take acknowledgments within the state is fully stated here, and Code c. 14 of

title III. [McC. § 364] is now limited to administration of oaths. (See c. 15, p. 82.) The acknowledgment outside the state may be before a judge, not a court. Under this section the officer acts by virtue of the authority here conferred, not under that of his own state. The provisions as to certificate in such cases are made more explicit.

Secs. 20-22. These are new provisions, making an acknowledgment, sufficient where taken, sufficient here. They are inserted in accordance with the recommendation of the commissioners on uniformity of laws.

Sec. 23. With the insertion of "vice consul," this section corresponds to the recommendation of the commissioners on uniform laws.

Sec. 29. The word "personally," as found in subd. 2 of the Code section, before "known," is omitted as unnecessary. If the matter is "known" to the officer it is "personally known" to him. If he only knows it as proved by a credible witness, he states that fact, and not that the matter is known to him. (See note to § 35, below)

Sec. 30. This is a new provision, to cover acknowledgments by officers of corporations.

Sec. 31. The offense is made punishable as a crime.

Sec. 33. The last clause is new, and intended to enable parties desiring to do so to record affidavits explaining apparent defects in titles.

Sec. 35. These forms of acknowledgment are new, and are in accordance with recommendations of commissioners on uniform laws.

Sec. 36. This provision that no separate acknowledgment need be made by a married woman, is the recognized law in this state, but is inserted to make our statute law uniform with that of other states.

CHAPTER 7.—Of occupying claimants (p. 611). Code §§ 1976-87. [McC. §§ 3151-62]

Very little change has been made in this chapter, and none except the omission of superfluous words, and the substitution of better forms of expression for the former ones.

CHAPTER 8.—Of the homestead (p. 612). Code §§ 1988-2010. [McC. §§ 3163-95]

Sec. 2. The last clause, continuing the homestead right to the husband or wife to whom the property is adjudged in divorce proceedings, is new

Sec. 3. This section is rewritten, and there are included therein two new features: first, a contract to convey or encumber, and second, the holder may enforce such contract against all property included therein except the homestead.

Sec. 4. The omitted provision as to taxes is covered elsewhere. (See § 21, p. 272)

Secs. 8, 9. These are rewritten to better express their provisions. There is no change except to provide that a selection by the owner of the title shall control, whether approved by the spouse or not, and that the district court shall, in the absence of a selection by the parties, make it, instead of the officer having an execution.

Sec. 14. The exception at the end of the section carries out the general purpose of the chapter. As to election between homestead or dower, see § 16, p. 684.

CHAPTER 9.—Of landlord and tenant (p. 615). Code §§ 2011-18. [McC. §§ 3186-93]

Very slight changes of expression are made in this chapter.

Sec. 2. This is a substitute for the former section.

Sec. 5. A new provision is inserted, making it necessary to have the lease recorded in order to preserve the landlord's lien against purchasers from the tenant. In line 7 of the section as reported, change "as" to "and."

CHAPTER 10.—Of walls in common (p. 616). Code §§ 2019-30. [McC. §§ 3194-3205]

No substantial change is made in this chapter, the changes of language being merely verbal.

CHAPTER 11.—Of easements in real estate (p. 617). Code §§ 2031-6. [McC. §§ 3206-11]

The changes in this chapter are but few, and merely verbal.

TITLE XV.

OF TRADE AND COMMERCE.

CHAPTER 1.—Of weights, measures, and inspection (p. 623). Code §§ 2037-74, 3763, 3802, 3803; 16 G. A., c. 52, 89; 17 G. A., c. 42; 18 G. A., c. 21; 21 G. A., c. 50. [McC. §§ 3212-50, 5017, 5078, 5079]

No change except in form of expression is made in the chapter, save in § 11, wherein it is provided that the bond shall be

filed with, and it and the sureties approved by the secretary of state.

CHAPTER 2.—Of money of account and interest (p. 626). Code §§ 2075-81; 23 G. A., c. 40. [McC. §§ 3251-7]

Sections 1, 2. The last sentence of § 1 is rewritten to better express the thought of the provision, and the same explanation applies to the preliminary clause of § 2.

Sec. 5. The underscored words are substituted for the former language as more clearly expressing the idea. The forfeiture is changed to eight per cent, in accordance with the statutory change in the rate of interest.

Sec. 6. This section is rewritten to make it conform to the construction put upon it in *Smith v. Cooper*, 9 Iowa, 376.

CHAPTER 3.—Of notes and bills (p. 627). Code §§ 2082-2113; 16 G. A., c. 81; 18 G. A., c. 31; 20 G. A., c. 183; 23 G. A., c. 45. [McC. §§ 3258-80]

Sec. 8. This is a new provision, designed to meet the growing sentiment of the country that grace should be abolished, and is in accordance with the recommendations of commissioners on uniform laws. Many of the states have already abolished it. Demand may still be made, however, within three days. The time for giving notice is fixed.

Sec. 9. The day of the general election and the 22d of February have been added to the list of days on which presentation for payment or acceptance, or protest of commercial paper, cannot be made. Since grace is abolished (see preceding section) if the date of maturity falls upon a legal holiday, the paper is to mature on the day following, in accordance with the rule as to other contracts.

Sec. 11. This last clause is added to avoid the effect of a recent decision of the supreme court.

Sec. 12. This section is rewritten for the purpose of making a clearer statement of its provisions.

CHAPTER 4.—Of tender (p. 630). Code §§ 855, 2104-7. [McC. §§ 1337, 3281-4]

This chapter is changed only by the addition to it of the last section, taken from the revenue law, and made general.

CHAPTER 5.—Of sureties (p. 631). Code §§ 2108-11. [McC. §§ 3285-8.]

CHAPTER 6.—Of private seals (p. 631). Code §§ 2112-14; 22 G. A., c. 90. [McC. §§ 3289-91]

Section 1. This section is changed in phraseology so as to more clearly express its meaning with reference to the use of the seal of a corporation.

CHAPTER 7.—Of assignments for creditors (p. 632). Code §§ 2115-82; 16 G. A., c. 14; 20 G. A., c. 124; 21 G. A., c. 115; 25 G. A., c. 93. [McC. §§ 3292-3308]

Sec. 2. The first seven lines are rewritten to secure greater clearness, and it is also provided that the instrument of assignment shall be recorded in every county where real estate is situated which will pass thereby. It is also provided that when recorded it shall be filed in the office of the clerk of the district court where the remainder of the proceedings are to be conducted.

Sec. 5. This section is the act of the last General Assembly rewritten.

Sec. 8. There should be no necessity for filing a claim for taxes. The last clause so provides.

Sec. 14. A new provision is added requiring sales of real estate to be approved by the court.

Sec. 17. This is a new provision, found necessary in actual practice, to facilitate the disposition and distribution of assigned estates.

CHAPTER 8.—Of mechanics' liens (p. 635). 16 G. A., c. 100; 20 G. A., c. 179; 23 G. A., c. 47; 25 G. A., c. 16. [McC. §§ 3309-29]

The act of the 15 G. A., which appears as McC. §§ 3324, 3325, is omitted, having been declared unconstitutional by the supreme court in *Mosher v. Independent District*, etc., 44 Iowa, 122.

Secs. 3, 4. These sections are rewritten to secure greater clearness of statement.

Sec. 6. The underscored words in lines 3, 4, make more definite the provision as to time of notice by a subcontractor.

Sec. 8. This section is so changed (in subd. 1) as to prevent priority of one claim over another on work where all have contributed to the same construction. There has been much just complaint of the unfairness of this section as it has stood, and the Commission has sought to fix an equitable rule in such cases. The last sentence of the Code section is omitted as inconsistent with the other provisions of the same subdivision. It is believed that had this sentence been omitted in the original enactment the courts would have given the section a more equitable construction.

Sec. 12. The last clause of the original section is omitted as unnecessary. It is covered by the general exemption sections (§ 58, p. 772).

Sec. 15. The change at the end carries out the plan of § 8 above, putting all claims filed within thirty days on the same footing and making subsequent claims subordinate.

Secs. 16-18. These sections are rewritten solely to secure more definiteness of statement.

CHAPTER 9.—Of limited partnership (p. 640). Code §§ 2147-2170; 19 G. A., c. 8. [McC. §§ 3330-53].

Slight changes of phraseology have been made to secure clearness and brevity, and §§ 1 and 4 are rewritten for the same purpose.

CHAPTER 10.—Of warehousemen, carriers, hotel keepers, livery stable keepers, and herders (p. 642). Code §§ 2171-84; 18 G. A., c. 25, 181; 21 G. A., 165; 24 G. A., c. 44; 25 G. A., c. 48. [McC. §§ 3354-75]

The first seven sections are entirely rewritten for the purpose of combining the several acts of successive legislatures upon similar subjects, with those of the Code. Much of the remainder of the chapter has been treated in the same manner, but it is believed that the chapter as reported preserves the law as it is.

Sec. 9. The additions to this section extend it to cover ordinary bailees' liens. It is thought that there should be some method of enforcing such liens.

TITLE XVI.

OF THE DOMESTIC RELATIONS.

CHAPTER 1.—Of marriage (p. 649). Code §§ 2185-2201; 21 G. A., c. 4. [McC. §§ 3376-92]

Code § 2197 [McC. § 3388] is omitted, so far as it relates to the record being evidence, as covered by general provisions elsewhere (§ 4, p. 518 and § 35, p. 853).

Sec. 5. A penalty for furnishing a false statement of consent is added, to cover a difficulty which has arisen under the Code section.

Sec. 8. The penalty provided for in Code § 2195 is omitted. It seems a sort of mockery to say people may solemnize marriage in any other manner than that provided for

in the statute, and then be subject to a penalty for doing the valid act.

Sec. 9. In line 4 of this section as reported change "ninety" to "thirty" to make it conform with § 3, p. 518, as to returns of marriages.

Sec. 10. No matter what form of marriage is adopted, a license should be procured, and the requirement as to such cases is changed accordingly.

Sec. 12. The provision as to cases of divorce is new.

CHAPTER 2.—Of husband and wife (p. 650). Code §§ 2202–2219. [McC. §§ 3393–3410]

Sec. 2. Contracts after separation are authorized.

Sec. 10. The sole right of recovery for a personal injury to a married woman is given to her. This change is in harmony with the spirit of our law in relation to married women, and will simplify the remedy in such cases.

CHAPTER 3.—Of divorce and annulling marriages (p. 653). Code §§ 2220–36. [McC. §§ 3411–27]

Sec. 4. An additional ground for a divorce is recommended.

Sec. 6. An absurd incongruity exists in the Code section, which is eliminated by restating the whole section.

CHAPTER 4.—Of minors (p. 655). Code §§ 2237–40. [McC. §§ 3428–31]

CHAPTER 5.—Of the guardianship of persons and property (p. 655). Code §§ 2241–79; 19 G. A., c. 100; 23 G. A., c. 42. [McC. §§ 3432–70]

Section 1. The change is to make it clear that the parent has no authority over the minor's property, unless by appointment.

Secs. 2, 3. The appointment of a guardian of the property, in all cases where the minor has an estate, is provided for by these sections, instead of leaving it to be done only in case the estate is not derived from the parent, as formerly.

Sec. 5. The provision as to a complete record is covered by § 21 p. 689, and is omitted here.

Sec. 6. Bond may be required of a guardian of the person.

Sec. 13. Failure to report is made ground for removal.

Secs. 15–27. Proceedings as to the ward's property may be before the judge. To carry out this plan completely, the words "or judge" should be inserted in § 18, after "court" in line 2, and at the end of the section.

Sec. 38. This section is new, and appears, from experience of courts and practitioners, to be necessary.

Sec. 39. Procedure is practically the same in guardianship matters as in probate, and should be assimilated so far as possible.

CHAPTER 6.—Of master and apprentice (p. 661). Code §§ 539–541, 1378, 2280–2306. [McC. §§ 804–6, 2165, 3471–97]

Sec. 6. This section embodies provisions found in other parts of the Code as to binding out children.

Sec. 8. The last sentence is a new provision.

Sec. 16. The last clause is new.

CHAPTER 7.—Of adoption (p. 663). Code §§ 2307–11. [McC. §§ 3498–3502]

No special change is made in the chapter except the addition of the last section, permitting the adoption of adults.

CHAPTER 8.—Of homes for the friendless (p. 664). 17 G. A., c. 176. [McC. §§ 3503–8]

TITLE XVII.

OF THE ESTATES OF DECEDENTS.

CHAPTER 1.—Of the probate court (p. 669). Code §§ 2313–2321; 21 G. A., c. 41, 51, 144. Probate Rules, I, II. [McC. §§ 3510–21]

Code § 2312 [McC. § 3509] prescribing the probate jurisdiction of the district court is incorporated into the chapter as to that court (§1, p. 51). Code §§ 2315, 2316 as amended [McC. §§ 3513, 3514] as to the power of the clerk of the court in probate are transferred to the same chapter, §§ 26, 27, p. 55).

Section 1. Provision is made for a hearing in another county by agreement, as well as where there is no contest.

Sec. 2. An important provision is inserted for entering appearance, and the giving of notice.

Sec. 5. This section is extended to guardianship cases, and provision is made for entering of record in any other county orders affecting real estate in that county.

Sec. 9. This section embodies two of the rules in probate adopted by the convention of district judges and found on p. lviii of McClain's Code.

CHAPTER 2.—Of wills and letters of administration (p. 670). Code §§ 1101, 2322-69; 16 G. A., c. 111; 18 G. A., c. 162; 25 G. A., c. 51. [McC. §§ 1659, 3522-73]

Section 1. This section is so changed as to more fully express the present law as to how far property may be disposed of by will. It makes the provisions of the will, if accepted in accordance with § 15, p. 684, exclusive of dower, homestead right and exemptions, unless the contrary is expressly specified. It also embodies § 1101 of the Code, relating to devises to corporate bodies.

Sec. 5. This section is so formed as to make a will defectively witnessed, good, if a codicil is made thereto which is properly executed, and which refers to and identifies the will itself.

Sec. 7. The last clause states a rule which has been announced by decisions of the supreme court.

Sec. 16. This section is new and authorizes proof of the will by depositions.

Sec. 30. Special administration, before probating the will, is authorized.

Sec. 33. Proceeding for a new bond may be before a judge.

Sec. 37. A bond with resident sureties is required of a non-resident administrator, and provision is made for payment of claims filed under the ancillary administration, before the proceeds of the property in the state are turned over to the foreign administration.

Sec. 38. Provision is here made for a valid administration upon the estate of one who, by reason of absence, may be presumed to be dead.

CHAPTER 3.—Of the settlement of estates (p. 676). Code §§ 2370-2435; 18 G. A., c. 5. Probate Rules IV, VI. [McC. §§ 3574-3639]

Sec. 5. One of the rules in probate is incorporated.

Sec. 8. This section has been so changed as to make it effective.

Sec. 14. In this section provision for mortgaging real estate belonging to a decedent has been made, to prevent an improvident sale.

Sec. 18. This is a new section to enable the court to carry out the new provision in § 14. Sections 21, 22 and 23 are so framed as to carry out the same plan.

Sec. 23. This is one of the rules in probate, with slight modifications.

Sec 29. This section has been so changed as to require greater accuracy and regularity in the establishment of claims against an estate.

Sec. 31. The provision as to pleading special defenses is new.

Sec. 38. This section is modified so as to fix the order of paying preferred claims.

Sec. 40. Provision is made for giving notice of a claim within one year to prevent its being barred.

CHAPTER 4.—Of the descent and distribution of the intestate's property (p. 683). Code §§ 2436-68; 17 G. A., c. 33. [McC. §§ 3640-73]

Secs. 7, 8. These sections are entirely rewritten to secure greater clearness of statement.

Secs. 8, 9. The powers here specified are given to the judge as well as the court.

Sec. 11. In line 1 of the section as reported insert "or judge" after "court".

Sec. 13. The words at the end of the section as reported, commencing with "before," are new and should have been underscored.

Sec. 15. In this section provision is made for notifying a surviving spouse of the provisions of the will of testator, and requiring an election to take under the will to be given in open court, and providing the consequences which will follow an omission to elect. The last clause changes the presumption which is recognized under the Code, and assent to the will is presumed unless dissent is entered after proper notice.

Sec. 16. This provides a means of requiring a survivor to elect whether to occupy the homestead for life, or take a distributive share in the estate.

Sec. 25. This is a new section, and is intended to remove the incentive to take the life of an ancestor, by an heir, or by any beneficiary under any policy of insurance.

Code § 3468 [McC. § 3673] is omitted as of no practical effect, since the repeal of accompanying sections made prior to the Code of 1873.

CHAPTER 5.—Of accounting, and miscellaneous provisions (p. 687). Code §§ 2412, 2469-2503; 25 G. A., c. 78. Probate rules, III., V., VII. [McC. §§ 3616, 3674-3708]

Code § 2503 [McC. § 3708] is omitted as unnecessary.

Sec. 17. The new clause added at the end will enable the administrator or executor to enforce a contract to convey.

Sec. 19. Specific provision is made for a probate docket which shall show every probate and guardianship case.

Sec. 20. The last part of this section is new, and is designed to furnish record evidence of the identity of persons upon whom title to real estate devolves in case of intestacy.

Sec. 21. A probate record is specifically provided for, which shall constitute a "complete record" in proper cases.

Sec. 24. In subd. 2 provision is made for removal on other grounds than those expressly mentioned, when the interests of the estate require it.

Secs. 28-30. These sections embody probate rules.

PART THIRD—CODE OF CIVIL PRACTICE.

TITLE XVIII.

OF PROCEDURE IN COURTS OF ORIGINAL JURISDICTION.

CHAPTER 1.—Preliminary provisions (p 693). Code §§ 2504-2528. [McC. §§ 3709-33]

The provisions of Code § 2512 [McC. 3717] seem to be no longer of any significance, and are therefore omitted.

Sections 1, 2. The changed terminology used in these sections is in accordance with that found in some codes, and on the whole it seems clearer and more consistent than that which is found in the old section. For the sake of uniformity, "action" is used wherever "suit" is found in the Code, the term "suit" not being recognized in this section or elsewhere as a proper term to describe proceedings in court. In accordance with the change made in this section, the term "special action" is substituted for "special proceeding."

Sec. 16. The clause added at the end of this section is to obviate the effect of the decision of the supreme court in *Weiser v. McDowell*, 61 N. W. R., 1094. While that decision stands as a construction of the present statute, it does not seem wise to leave the section in such shape as to require that ruling to be continued. The effect of the ruling is to make the period of limitation in an action on a judgment of a court of record in this state thirty-five years, which was probably not the original legislative intention.

Sec. 21. The latter part of Code § 2526 [McC. § 3731] is transferred to the probate code, with other provisions as to the exemption of the property of the decedent (§ 4, p. 676).

Sec. 22. The slight change in phraseology in the middle of the section is only intended to obviate an unfortunate form of expression, which does not seem to convey the idea plainly intended.

CHAPTER 2. Of limitation of actions (p. 695). Code §§ 486, 2529-41; 22 G. A., c. 25. [McC. §§ 633, 665, 3734-47]

Code § 2538 [McC. § 3743] is rendered unnecessary by the entire disappearance of bank notes and bills except such as are usually under the authority of the federal government. The rule stated would doubtless be applied without statutory provision.

Code § 2542 [McC. § 3747] is covered by provisions in the chapters on the university and school fund (§ 3, p. 537 and § 15, p. 590).

Section 1. Two new subdivisions are inserted, the first covering the provisions of 22 G. A., c. 25, [McC. § 633] extended so as to apply to counties as well as cities and towns, and the second to cover Code § 486 [McC. § 665] which seems more appropriate here than in the place where it has been found heretofore. In subd. 3 are inserted words extending the meaning of the term "injuries" as used, and a clause is added to cover actions to set aside a will which have not heretofore apparently been covered by any of the Code provisions.

Sec. 2. The clause added to this section fixes what is deemed a reasonable limit to the extension of time for bringing an action given by this section.

Sec. 7. The slight changes in this section by transposition and omission do not, it is believed, in any way affect the meaning. The term "minor" must necessarily refer to a person who is such under our statutes.

Secs. 10, 11. The sections as condensed by transposition and omission present the same rule as that found in the Code sections.

CHAPTER 3.—Of parties to an action (p. 697). Code §§ 2543-95. [McC. §§ 3748-80]

Sec. 3. Notice of the assignment is required to be in writing.

Sec. 18. A clause is added as to bringing in new parties.

Sec. 22. The action must be by guardian if the minor has one.

Sec. 25. The appointment may be by the judge.

Secs. 30, 31. These sections are changed so as to obviate the constitutional objection found to them. (See *Sunburg v. Babcock*, 61 Ia., 601; and *Maish v. Littleton*, 62 Ia., 105)

CHAPTER 4.—Of place of bringing action (p. 701). Code §§ 2576-89; 20 G. A., c. 126. [McC. §§ 3781-94]

Section 1. This section of the Code is so modified as to obviate the inconsistency which has existed between the third subdivision thereof and the succeeding section.

Sec. 9. At the end of this section as reported add the words "or in the county of plaintiff's residence." This will cover a provision found in McC. § 1773 as to foreign companies, which it is thought may properly be extended to all companies.

CHAPTER 5.—Of change in place of trial (p. 703). Code §§ 2590-98; 17 G. A., c. 118; 20 G. A., c. 94. [McC. §§ 3795-3803]

CHAPTER 6.—Of the manner of commencing actions (p. 705). Code §§ 2599-2629; 15 G. A., c. 10; 20 G. A., c. 77; 24 G. A., c. 34. [McC. §§ 3804-35]

18 G. A., c. 124 (McC. § 3826) is a legalizing act and as such is omitted.

Sec. 2. It is left for defendant to have the action dismissed.

Sec. 16. The provisions are somewhat extended.

Sec. 27. The change in the second subdivision will make more convenient the entry of appearance by attorneys

Sec. 19. If the minor is under fourteen service on parent or guardian alone is sufficient; if over fourteen, service on him is enough.

Sec. 24. The notice may be fixed by the judge.

Sec. 27. The appearance may be entered on the judge's calendar.

Sec. 30. The method of effecting the notice is made more specific.

CHAPTER 7.—Of joinder of actions (p. 710). Code §§ 2630-2634. [McC. §§ 3836-40]

CHAPTER 8. Of pleading (p. 711). Code §§ 2635-2736; 16 G. A., c. 36; 25 G. A., c. 96. [McC. §§ 3841-3943]

Code § 2643 [McC. § 3849] is omitted, as the practice of filing pleadings in open court is no longer followed, and the chapter relating to the clerk of the district court sufficiently prescribes how pleadings shall be filed (§ 5, p. 62).

Code § 2644 [McC. § 3850] may have been of some significance when code pleading was still new and untried, but it seems to be of no value now, and is therefore omitted.

The part of Code § 2650 [McC. § 3856] which is left after the omission of the words stricken out by 25 G. A., c. 96, is reported as § 107, p. 735. The balance is unnecessary. It is a matter of course under the system of code pleading that an objection not appearing on the face of the petition cannot be raised by demur-

rer. The provisions of 25 G. A., c. 96, are covered by § 17 of this chapter.

Code § 2652 [McC. § 3858] is omitted as of no importance under the present well-recognized methods of code procedure.

Code § 2709 [McC. § 3915] is omitted, as the authority to publish rules is not preserved.

Sections 1-3. The provisions as to motions are new.

Sec. 6. The court may fix the time.

Sec. 7. Consent must be in writing or in court.

Sec. 9. The insertion of "motion" in the enumeration of the pleadings seems to be dictated by convenience. A motion was not strictly a pleading at common law, but neither was a demurrer. By making it a pleading a motion is brought within the papers which become part of the record, without any bill of exceptions.

Sec. 16. This is proposed as a substitute for 25 G. A., c. 96, the construction of which has been found by the trial courts to be somewhat difficult. It is believed that the real purpose of the act was to change the rule of practice laid down by the supreme court in a long series of decisions, without any express foundation in the Code, to the effect that a party waives any objection to a ruling on a demurrer by proceeding to raise an issue of fact and have a trial thereof; thus a defendant whose demurrer to the petition is overruled has been compelled to either stand on his demurrer and waive any issue as to the truth of the averments in the petition or any affirmative defense which he may have thereto, and allow judgment to go against him on default of answer, or waive any objection to the ruling on the demurrer and rely entirely on the issue of fact. A similar difficulty has existed as to the plaintiff whose petition has been held defective in that he has been required to submit to the ruling against him on the question of law and amend his pleading by averring facts which he may not be able to prove, or stand on the sufficiency of those averred and run the risk of being eventually defeated on appeal without the opportunity of a trial on the facts. There has been great objection to this rule of practice. The section which we propose obviates this difficulty by allowing the party against whom a ruling is made on demurrer to preserve his legal objections to such ruling and have them considered on final appeal from the judgment, and still have a trial on any issue of fact which may be raised. If the party appealing from final judgment secures a reversal on account of

a ruling on demurrer, he will of course, under this section, have a new trial. If he does not secure a reversal on that ground, then any errors assigned on the trial of fact issues will also be considered in the same appeal. No appeal on an interlocutory ruling on demurrer is allowed, and if the party who objects to such ruling is finally successful on an issue of fact, no such error can be considered. If, by the act above referred to, it was intended to allow issues of law which could and should be raised by demurrer to be raised on the trial of issues of fact, then it is wholly inconsistent with the theory of any system of pleading now prevailing, whether at common law or under the codes, and it would be subversive of any orderly and efficient method of trying causes. But we do not believe that such was the object of the statute, and we have attempted to make what we understand its meaning to be, perfectly clear and practicable.

Sec. 28. The addition to the second subdivision is made in order that the section may follow the rule laid down by the supreme court in *Day v. Mill-Owners' Mut. F. Ins. Co.*, 75 Ia., 694, and other cases following it, and express a consistent rule on the subject.

Sec. 52. Correct a typographical error in line 2 of this section by changing "effect" to "affect."

Sec. 62. In line 3 of this section as reported substitute "pleading" for "answer."

Sec. 69. This is a combination of Code §§ 2707 and 2719 [McC. §§ 3913, 3926]

Sec. 96. The last clause is added to cover a case where it may be impossible to substitute a copy of the original pleadings.

Sec. 97. A new clause is added.

CHAPTER 9.—Of trial and judgment (p. 722). Code §§ 2737-51; 17 G. A., c. 145; 18 G. A., c. 83; 19 G. A., c. 35. [McC. §§ 3944-58]

Sec. 2. The second subdivision is changed so as to correspond with what has been the rule under the Code as to when a reply is necessary.

Sec. 6. The underscored words make more definite the time within which the certificate must be filed.

Sec. 7. The rule of practice which is here incorporated into the Code from the rules adopted by the convention of district judges, is modified so as to leave it discretionary with the court

whether it shall require an abstract of the pleadings and evidence on the trial of an equity case.

Secs. 12-14. These three sections are taken from the rules of practice adopted by the convention of district judges, except that the last one is a reference only to a more detailed rule which has been embodied in the chapter on justices' practice (§ 84, p. 840).

Sec. 15. The underscored words place the matter of assignments for trial more directly under the control of the court.

Sec. 24. A notice book is not provided for among the books to be kept by the clerk and therefore reference to it is omitted here and the entry on the appearance docket is made sufficient notice.

Sec. 29. For the purpose of obviating the necessity of bills of exceptions in order to preserve a record for purposes of appeal this section has been drafted, providing that every matter in the case which is preserved by writing filed, or by the shorthand reporter's minutes, shall be deemed a part of the record without being preserved by a bill of exceptions. In some sections words have been inserted declaring matters a part of the record which have not heretofore been so considered. This has been the previous policy of the law as to some matters and the act of the 18 G. A., c. 195 [McC. § 5029] was doubtless intended to carry out this policy and give to the shorthand report the effect of a record, but for some reason this act seems not to have been effectual. It is believed that the section here inserted will cover the ground and make a bill of exceptions unnecessary in an ordinary case. It is certainly unnecessary to preserve the mere form of the bill of exceptions when it is as a matter of fact made up entirely from the shorthand report. However, the sections with reference to bills of exceptions are preserved in their proper place to cover cases where, by reason of there not being a shorthand reporter present, or on account of other contingencies, a bill of exceptions may be necessary to perfect the record.

Sec. 30. The change here made is to adapt the proceeding to the new jury law.

Sec. 38. Change "he" to "the jury" and in place of the words following "sworn" substitute "upon the trial of a challenge the juror challenged shall be sworn, if demanded by either party, and examined as a witness, and must answer every question pertinent to the inquiry thereon, but his answers shall

not afterwards be testimony against him." This provision taken from the criminal code is proper here also (see § 4, p. 965).

Sec. 41. A portion of subd. 3 is omitted because covered by the qualifications of jurors referred to in the preceding subdivision and found in the chapter as to jurors.

Sec. 43. Code § 2775 [McC. § 3982] is omitted as inconsistent with the present jury law.

Sec. 45. This section is abridged from the one found in the Code, but is thought to preserve all of its essentials.

Provisions as to drawing the jury found in the criminal code (§§ 1-5 of c. 22, p. 963) should be inserted here.

Sec. 47. The agreement must be before final submission.

Sec. 52. In the interest of economy and the expeditious transaction of the business of the court there should be a right to limit the time of attorneys in arguments to the jury except in prosecutions for felony. In the 2d line insert "for" before "felony."

Sec. 53. The practice of directing a verdict on the failure of a party to maintain his case is well established in this state, but there has heretofore been no statutory provision therefor. This section is intended to embody the rule as laid down by the court in *Meyer v. Houck*, 85 Ia., 319, and the cases following it.

Secs. 54-56. The sections relating to instructions have been rewritten to improve their arrangement and make them in some respects more explicit. The instructions given as well as those asked are made a part of the record without bill of exceptions. Exceptions to the giving or refusal may be noted by the reporter. Requests for instructions must be presented before the arguments are commenced.

Sec. 57. The exceptions are made part of the record.

Sec. 61. So far as this section of the Code authorizes the the court to proceed with a less number of jurors than twelve against the objection of a party, it has been held unconstitutional. A modification has therefore been made to conform the section to the decisions.

Sec. 68. The language here has been changed so as to provide that the "information" which the Code contemplated shall be given by way of written instructions, and shall be subject to the same rules as are applicable to other instructions.

Sec. 76. It is provided that the court may set aside the verdict and findings.

Sec. 80. The verdict is made part of the record.

Sec. 82. In line 2 of the section as reported, after "defendant" insert "or on which the judgment is not a lien."

Sec. 90. This section is modified so as to obviate the necessity of a bill of exceptions where possible.

Secs. 92, 93. The consent must be in writing, and it, and the referee's oath are made part of the record.

Code § 2839 [McC. § 4036] is omitted as covered by general provisions of the chapter on evidence authorizing any officer who may hear evidence to subpoena witnesses; but aside from this the power is given to the referee under the general provisions of § 86 above. (p. 732)

Sec. 97. This is made to harmonize with § 90 above. A bill of exceptions will be unnecessary in ordinary cases.

Sec. 103. The additional subdivision is added to cover the grounds of the motion in arrest of judgment, or for judgment notwithstanding the verdict, which may properly be thus presented as grounds for new trial, if the court considers that justice requires such action.

Sec. 104. The time may be extended.

Secs. 106-110. The provisions of the Code as to motions in arrest of judgment and for judgment notwithstanding the verdict, and also for amendments necessary to cure the defect, and the new trial on any issue raised on the new averments thus made, have been found obscure and unsatisfactory. It is hoped that these sections, preserving what is believed to have been the plan contemplated by the Code, will be practicable. Under the new subdivision added to § 103 above, a new trial of the whole case may be secured on the same grounds if the court thinks justice so requires.

Sec. 128. This covers Code §§ 3040, 3042 [McC. §§ 4265, 4267] so far as they require the judgment to state the order of liability of principal and sureties.

Code § 2866 [McC. § 4073] is omitted because it has become practically obsolete. A complete record is provided for in probate matters, but it has not been found essential or practicable in other cases.

Sec. 149 [McC § 4088]. The added clause makes clear what is already probably the law; personal service on a non-resident ought not to have any effect on his rights different from that resulting from publication.

Secs. 150, 151. These provisions, so far as they relate to judgments in the federal courts, conform, it is believed, to the requirements of the act of congress on the subject. (Act approved August 1, 1888; see note on p. 1181 of McClain's Code.)

Sec. 153. This is intended as a better statement of the provision made by the session law on the subject.

CHAPTER 10.—Of judgment by confession (p. 741). Code § 2894-9. [McC. §§ 4104-9]

CHAPTER 11.—Of an offer to compromise (p. 742). Code §§ 2900-02. [McC. §§ 4110-12]

CHAPTER 12.—Of receivers (p. 743). Code §§ 2903-05. [McC. §§ 4113-15]

The clause inserted in § 1 extends the authority to appoint a receiver to cover cases where such remedy is frequently very important; the section as thus modified covers the provisions of Code § 2970 [McC. § 4184]. The two new sections added to the chapter contain provisions which are much needed as to determining priority among claims.

CHAPTER 13.—Of summary proceedings (p. 744). Code §§ 2906-10. [McC. §§ 4116-20]

CHAPTER 14.—Of motions and orders (p. 744). Code §§ 2911-26. [McC. §§ 4121-36]

CHAPTER 15.—Of security for costs (p. 746). Code §§ 2927-32. [McC. §§ 4137-42]

Section 1. The court is to fix the amount of the bond.

CHAPTER 16.—Of costs (p. 747). Code §§ 2933-48; 18 G. A., c. 185. [McC. §§ 4143-62, 5083, 5114]

Sec. 13. Provision is made for certifying to the supreme court, when it renders final judgment, the costs below.

Secs. 17-19. The statute as to taxation of attorneys' fees as costs has been rewritten to secure brevity and clearness. Its provision as to when the affidavit shall be filed is made definite to obviate the difficulty which has arisen in construing the statute in this respect.

Sec. 23. The addition of this section is important as covering a matter not now provided for.

TITLE XIX.

OF ATTACHMENT, GARNISHMENT, EXECUTION, AND SUPPLEMENTARY PROCEEDINGS.

CHAPTER 1.—Of attachments (p. 753). Code §§ 2949–74, 2994–3023; 20 G. A., c. 45; 21 G. A., c. 29, 117. [McC. §§ 4163–99, 4219–48]

Sec. 3. The last sentence transferred from Code § 3021 [McC. § 4246] is placed here as securing a more convenient arrangement.

Sec. 7. The whole chapter is applicable to superior courts and the judge of such a court is included in this section for that reason.

Sec. 8. In the second subdivision the word “secure” is substituted for the corresponding words in the code as better expressing the meaning.

Sec. 9. These sections are rewritten and materially changed.

Sec. 12. This combines provisions on the same subject which have heretofore been separated. The last sentence is new.

Sec. 14. It is only from the district court that the writ should issue to another county.

Secs. 18–22. Code § 2967 [McC. § 4181] covers several distinct matters and has been found difficult of construction. These substituted sections are intended to embody the same provisions in more intelligible form. They provide for the levy on corporate stock, and on property capable of manual delivery, whether in defendant's possession or in the possession of another; also for garnishment in the latter case. The provisions for levy on judgments, money, bank bills, etc., harmonize with those relating to the levy of execution on such property.

Sec. 23. The provisions as to when the lien of an attachment of real property becomes effective are transposed from another part of the Code chapter, and somewhat changed.

Sec. 24. The requirement of notice to defendant found in Code § 2967 [McC. § 4181] is modified so as to be applicable only to cases where such notice is of practical importance. When

the levy is on personal property in the defendant's possession, the seizure is sufficient notice and none other ought to be required. This is in accordance with the present law as to levy of execution. (*Ayer v. Campbell*, 9 Ia., 213). Moreover there seems no propriety in making the notice essential to the validity of the levy. Its only purpose is to enable defendant to take the proper steps to secure the release of the levy if erroneously made. By the provisions of this section the question is left to arise only as between the sheriff and the defendant.

Section 2970 [McC. § 4184] is transferred to the chapter on receivers.

Secs. 28–30. By these sections the provisions of the chapter on executions as to levy on partnership and mortgaged property, and as to indemnifying bonds, are made applicable to levies of attachments, and the provisions of Code §§ 2973, 2974, 20 G. A., c. 45, 21 G. A., c. 117 [McC. §§ 4181–99] are transferred to that chapter where they properly belong.

The provisions as to garnishment, which are a part of the Code chapter on attachments, are made a separate chapter following this one.

Sec. 36. This is a rewriting in shorter form of the corresponding section of the Code, with some change.

Sec. 45. This is the Code section simply rewritten.

Sec. 47. The clauses inserted in this section are to preserve of record, as a part of the return, the matters connected with the levy.

Sec. 48. These provisions are more explicit as to the disposition to be made of money that may be seized. It is also provided that a special execution shall issue for the sale of the attached property if necessary.

Sec. 55. The clause inserted will hold claims by garnishment in accordance with *Farwell v. Tiffany*, 82 Ia., 405.

Sec. 57. The last sentence of the corresponding section of the Code is transferred and incorporated in § 3 of this chapter (p. 754).

CHAPTER 2.—Of garnishment (p. 761). Code §§ 2975–93; 18 G. A., c. 58. [McC. §§ 4200–18]

Section 1. In this are embodied provisions taken from three sections of the Code which seem to belong together, and the provision as to property thereafter coming into garnishee's possession is omitted. Provisions as to time for appearance are somewhat changed. The amendments to the Code section made

by 18 G. A., c. 58, with reference to personal notice upon the defendant before judgment against the garnishee, are made § 14 below.

Sec. 6. The provision of the corresponding Code section as to the time for the appearance of the garnishee, is incorporated into § 1.

Sec. 7. The judge is authorized to cause questions to be propounded.

Sec. 11. This is intended to make clear how the defendant, or a third person whose interests are involved, shall have notice of the garnishment, so that he may interpose any defense or exemption that he may have.

Sec. 13. These provisions are more explicit as to the judgment which may be rendered against the garnishee, and as to the disposal of property turned over by him to the sheriff.

Sec. 14. This embodies the provisions of 18 G. A., c. 58 (a part of McC. § 4200), in regard to notice to the principal defendant.

Sec. 15. This new section points out the method by which the principal defendant may set up the exemption of the debt or property for which the garnishee is sought to be held.

CHAPTER 3.—Of executions (p. 763). Code §§ 348, 3025-3134, 3832; 15 G. A., c. 42; 19 G. A., c. 49, 62; 20 G. A., c. 23; 21 G. A., c. 117, 146; 23 G. A., c. 47, 48; 25 G. A., c. 95, 102. [McC. §§ 483, 4189-94, 4250-4363, 5112]

Code § 3030 [McC. § 4255] is omitted as unnecessary. The ordinary remedies for official non-feasance would seem to be sufficient.

Sec. 5. This is simplified but preserves all that is essential of the Code section.

Sec. 6. The method in which money may be sent is changed.

Sec. 11. The time for returning the execution is, according to the change here made, to be estimated from the time of issuance and not from the time of its being placed in the hands of the officer. There seems to be no reason for allowing the party issuing execution to keep it alive for a greater length of time by failing to place it in the hands of the officer for service.

Secs. 13, 14. Provisions as to executions against principal and surety are here brought together and somewhat changed; those as to how judgment against the principal and surety is to be rendered have been incorporated with the other provisions as to judgment. (See § 128, p. 738)

Sec. 18. A method of levying on a judgment is here provided for.

Code § 3048 [McC. § 4273] is transferred so as to come with other exemptions and is now § 54 of this chapter (p. 771).

Secs. 22, 23. As garnishment is provided for in a separate chapter these brief statements as a substitute for the Code sections are considered sufficient.

Secs. 26-37. These sections as to levying on property covered by chattel mortgage are intended to make clearer and more practicable the provisions of 21 G. A., c. 117 [McC. §§ 4189-94]. In order to render the proceeding more convenient, the time for paying or tendering the amount of the mortgage is extended to ten days from the date of the levy. The mortgagee will not be injured by this extension for he may at once, upon levy being made, give notice of his right to possession and have the property released, unless bond be given as in other cases. But if payment or deposit is made no bond is required, or if already given, is to be discharged. The statute is changed also so that the entire proceeding with reference to the matter is to be in the county from which attachment or execution issues. As a rule the mortgagee is not in the possession of the property and the county in which the property is situated is not more likely to be convenient for him than that from which the writ issues. But however this may be it is imperative for the proper protection of both parties that everything connected with the proceeding be in the county where it is pending. In place of the criminal liability for failure to give a correct statement of the amount of his mortgage, the lien of the mortgage is postponed, which seems a more appropriate remedy. The saving clause as to mortgages antedating the statute is omitted as the statute cannot apply to them, even if they are not expressly reserved from its operation. The last section on the subject (§ 37) provides for a case where the mortgagee has been garnished under a prior attachment or execution. (See *Buck-Reiner Co. v. Beatty*, 82 Ia., 353)

Sec. 38. The provision as to notice being under oath is adopted from the corresponding statute as to indemnifying bonds in cases of attachment. [McC. § 4195]

Sec. 39. It would seem necessary and also more convenient that the bond be returned to the court from which the writ issues instead of the clerk's office in the county in which the levy is made, and it is here so provided.

Code § 3053 [McC. § 4283] is omitted in accordance with decisions holding it to be unconstitutional.

Secs. 43-45. In the first of these sections are incorporated the exceptions found in Code § 3033 [McC. § 4285]. The saving clause as to judgments rendered prior to the taking effect of the Code is omitted as unnecessary, and the rate of interest is reduced to eight per cent in accordance with the policy of late statutes on interest. The requirements as to verification by surety may be waived.

Secs. 49-53. Provisions are inserted here, to make plain the secondary liability of the stay.

Sec. 54. Code § 3048 [McC. § 4273] as to the exemption of public property, is placed here with other exemptions.

Sec. 55. The provision as to the exemption of flax is omitted, as it is no longer used in domestic manufactures. The number of calves is increased to two. The order of portions of the section is changed, to secure a better expression. The provisions as to sewing machines [McC. § 4304] and poultry (25 G. A., c. 95) are added. The provision which was added to the section in reference to claiming the exemption is made § 64 of this chapter.

Secs. 56, 57. McC. § 4307 is omitted as unnecessary. The exemptions inure to the benefit of the wife and children if the husband absconds. (See § 63 of this chapter)

Secs. 65-70. 25 G. A., c. 102, and 23 G. A., c. 48, are rewritten, to secure condensation. In § 66 priority is given to coal miners' liens, as contemplated by 23 G. A., c. 47.

Sec. 72. The provision of Code § 3832 [McC. § 5112] as to selection of the paper for publication of the notice, is added.

Secs. 77, 78. These sections contain new provisions.

Sec. 82. Even though the judgment is not a lien on the property sold, yet if such property belongs to the debtor the sale should not be set aside. The section as reported should be amended by inserting after "defendant," in the second line, the words "and on which the judgment is not a lien." This would better preserve the intention of the Code section.

Sec. 84. The substitution of "judgment is rendered" for "judgment is a lien," as found in Code § 3092, is in accordance with the original bill as found in the secretary of state's office. (See note to McC. § 4321)

Sec. 89. Sale of leasehold interests of less than two years were not specifically provided for by the Code.

Secs. 94-106. In this section it is attempted to make the method of redemption more definite. Redemption is to be effected in each case by payment to the clerk. Sections 98, 99 are changed. Section 100 expresses a rule as to the effect of redemption by the debtor with reference to the unsatisfied balance of the judgment; § 105 contains material changes, and § 106 provides a method of settling controversies as to the right to redeem or the amount to be paid. The rate of interest is changed from ten per cent to eight per cent, in harmony with recent legislation.

Sec. 111. This covers also the provisions of Code § 348 [McC. § 483] as to the deed being made by the sheriff in office.

Code § 3128 [McC. § 4357] is omitted. Such change in the language of the chapter is made as to render it unnecessary.

Secs. 116-120. The Code provisions as to cases where one or more of the plaintiffs or defendants have died, are indefinite. The attempt is here made to render them clear.

CHAPTER 4.—Of proceedings auxiliary to execution (p. 779). Code §§ 3135-53. [McC. §§ 4364-82]

Sec. 18. Time is given to serve the notice after filing the petition. In line 5 of the section as reported omit "be made" and at the end insert "be commenced, and completed without delay."

TITLE XX.

CHAPTER 1.—Of procedure to vacate or modify judgments in the trial courts (p. 785). Code §§ 3154-62. [McC. §§ 4383-91]

This chapter heading as reported should be modified by omitting "reverse."

Section 1. The first two subdivisions of the Code section need not be here repeated. They are not grounds for new trial after the term.

Sec. 5. The application for a new trial should be heard in the court where the case was tried. (See *Gilman v. Donovan*, 59 Ia., 76.) If a new trial be granted a change may of course be had as in other cases. (See § 1, p. 703.) From the ruling on the application there should be a right of appeal as here provided.

CHAPTER 2.—Of procedure in the supreme court (p. 786). Code §§ 3163–80, 3183–3215; 19 G. A., c. 144; 22 G. A., c. 35. [McC. §§ 4392–4409, 4413–45]

Sec. 2. When a new trial is refused appeal should be only from final judgment. In accordance with previous provisions as to demurrers and motions assailing a pleading (§ 16, p. 713) the right to have the ruling therein reviewed can only be exercised on appeal after judgment. The right to appeal from any interlocutory ruling before judgment should be allowed only where the question involved cannot be raised on appeal from the judgment.

Sec. 11. A time for giving the certificate is fixed and a provision is added in regard to remissions for the purpose of preventing appeals.

Sec. 16. Notices become a part of the record.

Secs. 19–24. The Code provisions as to appeal imply a transcript, whereas the practice is that the appeal is presented on abstracts and a transcript is required only in exceptional cases. These sections recognize this practice and under them a transcript need not be furnished unless the court shall so order. Beyond this the whole manner of presenting the case to the supreme court is left to be regulated by rules as it is now. Code §§ 3181, 3182; 15 G. A., c. 56 [McC. §§ 4410–12], are omitted as inconsistent with the new practice.

Secs. 27, 28. The first of these is new, the other materially modified.

Sec. 39. This is materially changed.

Sec. 41. The words “asks or” are inserted.

Sec. 43. There has been no express provision heretofore for taxing the costs of printing.

Sec. 49. Add at the end of the section, “until after final decision on the rehearing.”

Sec. 50. Change to read as follows, in order to preserve the provisions of 19 G. A., c. 144 [McC. § 4432]: “Sec. 50. Upon the filing of a petition for rehearing and service thereof on the adverse party, as required by rules of court, the clerk shall docket the same for the next term of court commencing not less than twenty days thereafter. The petition may be the argument or brief of authorities relied upon for a rehearing, and upon notice given in the argument or brief, or otherwise as the rules of court may prescribe, the petitioner shall be entitled to be heard orally in support thereof, and the adverse

party in response thereto; otherwise the adverse party shall be limited to a printed argument in response. [4432]”

Sec. 53. In line 3 the words “or abstract” are inserted.

CHAPTER 3.—Of certiorari (p. 793). Code §§ 3216–24. [McC. §§ 4446–54]

TITLE XXI.

OF PROCEDURE IN PARTICULAR CASES (p. 797).

CHAPTER 1.—Of actions in replevin. Code §§ 3225–44. [McC. §§ 4455–74]

Notwithstanding the substitution in the Code of another phrase instead of replevin, the latter term has remained in current use, and is therefore here substituted.

Sec. 11. Provision is made for a third appraiser.

Sec. 13. The words added to this section are for the purpose of requiring the verdict to be sufficiently particular in its finding of facts to support the judgment which is required by the next section to be rendered thereon.

CHAPTER 2.—Of actions for the recovery of real property (p. 800). Code §§ 3245–72. [McC. §§ 4475–4502]

Sec. 11. This section is modified.

Sec. 17. The term of six years fixed as the period for which there may be a recovery for use and occupation was doubtless based upon the English statute of limitations. In analogy with our own statute of limitations the period ought to be five years, and the change is accordingly made.

The sections relating to quieting of title are made a separate chapter (c. 4, p. 804).

CHAPTER 3.—Of actions for forcible entry and detention of real property (p. 803). Code §§ 3611–24; 15 G. A., c. 41. [McC. §§ 4860–74]

This subject, which in the Code is included in the chapter on justice practice, is removed to an independent chapter and placed next to the chapter on recovery of real property as being analogous thereto. It has been deemed advisable to change the provisions as to the jurisdiction of the action so as to allow it to be also brought in the district or superior court (see §§ 4–6). The interests involved are in some cases so great that it seems unreasonable to confine the plaintiff to a justice

court and make the jurisdiction of that court exclusive. The summary character of the proceeding is preserved by allowing it to be brought in the justice court as heretofore, if the plaintiff so elects.

Section 1. A subdivision is added allowing the remedy for non-payment of rent. It has been thought wise to change the law in this respect.

Secs. 6, 7. The method of giving notice is made more effectual.

CHAPTER 4.—Of actions to quiet title (p. 804). Code §§ 3273-3276; 25 G. A., c. 103. [McC. §§ 4503-6]

This subject which was covered by the Code chapter on actions to recover real property, is here made a separate chapter.

Sec. 3. This new provision requiring an abstract of title is in analogy to a similar provision in other chapters relative to property.

CHAPTER 5.—Of actions to establish disputed corners and boundaries (p. 805). 15 G. A., c. 8. [McC. §§ 4507-10]

Various serious difficulties have arisen in the administration of the provisions of this act, and they are here rewritten with a view of securing a more harmonious and concise statement. The supreme court has decided that controversies as to boundaries arising by reason of adverse possession or otherwise may be determined in the action. (*Williams v. Tschantz*, 88 Ia., 126, *Neary v. Jones*, 56 N. W. R., 675.) It is important that the procedure be more definitely pointed out and more formal. As to the county in which cases shall be tried the language is intended to obviate the difficulty which was passed on in *Tooman v. Heidlebaugh*, 83 Ia., 130. Provision is also made for service on non-residents and unknown defendants, and in regard to notice to parties interested, of the proceeding by the commissioners, and for trial by the court of the issue of ten years' acquiescence in corners or boundaries. The costs are made a lien (§ 11).

CHAPTER 6.—Of partition (p. 807). Code §§ 3277-3306; 20 G. A., c. 184; 21 G. A., c. 130. [McC. §§ 4511-42]

Section 1. This is slightly modified to allow the rights of the parties to be settled in one action.

Sec. 3. The abstract is required to be more specific.

Sec. 4. The proceeding is expressly made applicable to an apparent interest.

Sec. 13. Provisions as to the decree are more specific.

Sec. 14. A sale may be agreed to.

Sec. 22. Additional attorney's fees are provided for where there is a contest.

Sec. 24. Additional provisions are made as to the sale.

Sec. 33. This is a new section. There has been no specific provision heretofore as to compensation of appraisers and referees in the proceedings.

CHAPTER 7.—Of the foreclosure of mortgages (p. 810). Code §§ 3307-30; 25 G. A., c. 53. [McC. §§ 4543-66]

Section 1. It is provided that the sale shall be by an officer unless otherwise agreed.

Sec. 7. It seems reasonable that attorney's fees should be allowed where a chattel mortgage securing a note providing for such fees is foreclosed without an action and this section is presented accordingly.

Sec. 9. Provisions are more specific as to affidavit of the sale.

Secs. 13, 14. There has been need of some provision regulating the foreclosure of a pledgee's lien on chattels and collateral securities. The common law procedure is in some respects defective and uncertain. It is thought these sections will make much more definite the rights of the parties in such cases and furnish to the pledgee a convenient remedy.

Sec. 21. The rebate of interest is to be fixed by the court or judge.

CHAPTER 8.—Of actions for nuisance, waste, and trespass (p. 813). Code §§ 3331-44. [McC. §§ 4567-90]

CHAPTER 9.—Of actions to test official and corporate rights (p. 814). Code §§ 3345-67. [McC. §§ 4581-4603]

CHAPTER 10.—Of actions on official securities, fines, and forfeitures (p. 817). Code §§ 3368-72. [McC. §§ 4604-8]

CHAPTER 11.—Of actions of mandamus (p. 817). Code §§ 3373-84. [McC. §§ 4609-21]

CHAPTER 12.—Of injunctions (p. 819). Code §§ 3164, 3386-3407. [McC. §§ 4393, 4622-43]

Sec. 6. The added provision will make the proceeding in term time to secure a temporary injunction conform in general to the procedure in other cases.

Sec. 11. The added provision is to obviate the difficulty illustrated by *Phelan v. Johnson*, 80 Ia., 727. A final judgment may be rendered in the supreme court but it is not practicable to proceed in that court to enjoin it.

Sec. 20. The release of the defendant from attachment for contempt ought to depend on something more than his own showing. This section authorizes a hearing upon affidavits or evidence.

Sec. 22. Provision is made for giving bond after commitment.

Sec. 23. There seems to be no reason why the action of the court in such a case as this should not be subject to review on appeal, and it is so provided.

CHAPTER 13.—Of submitting controversies without action or in action (p. 822). Code §§ 3408–15. [McC. §§ 4644–51]

CHAPTER 14.—Of arbitration (p. 823). Code §§ 3416–31, 3834. [McC. §§ 4652–67, 5114]

Sec. 11. This section is in harmony with decisions in the state, to the effect that the statutory provisions as to arbitration are not exclusive of the common law rules on the subject.

Sec. 13. The court may appoint if the parties cannot agree.

The statute as to voluntary arbitration of labor difficulties, (21 G. A., c. 20; McC. §§ 4668–80) has not been found of any practical utility and has therefore been omitted. The proceeding provided for was entirely voluntary and the determination when reached was not enforceable. In some states a permanent tribunal of arbitrators is provided for but the Commission does not feel justified in recommending such a tribunal in this state.

CHAPTER 15.—Of actions against boats or rafts (p. 824). Code §§ 3432–48. [McC. §§ 4681–97]

While these provisions have been held unconstitutional as to cases which might be brought within the admiralty jurisdiction of the federal courts (*Hine v. Trevor*, 4 Wall., 555; *Walters v. Steamboat Molly Dozier*, 24 Ia., 192), yet they undoubtedly do properly apply to some classes of cases, and they are therefore retained without essential modification.

CHAPTER 16.—Of habeas corpus (p. 826). Code §§ 3449–90. [McC. §§ 4698–4739]

Section 1. The provisions that the petition must be sworn to is covered by the next section.

Sec. 13. The underscored provision is new.

Sec. 29. The person to serve the writ may be designated by the court, as well as the judge.

Sec. 43. The Code contained no provision for taxation of costs, and this section is added to cover that subject.

CHAPTER 17.—Of contempts (p. 830). Code §§ 3491–3501. [McC. §§ 4740–50]

Section 1. To remove any doubt, the clause as to justices of the peace is inserted.

Sec. 7. The provisions are more specific as to the statement by the court or judge.

Sec. 9. There seems no reason for maintaining the distinction by which the judgment in this class of cases is reviewable only on certiorari, and this section is changed so as to authorize an appeal.

CHAPTER 18.—Of changing names (p. 832). Code §§ 3502–6. [McC. §§ 4751–5]

TITLE XXII.

CHAPTER 1.—Of justices of the peace, and their courts (p. 833). Code §§ 3024, 3507–3610, 3625–35, 3805–7, 3811, 3815, 3816; 18 G. A., c. 163; 19 G. A., c. 151; 25 G. A., c. 74; rules of practice, § 4. [McC. §§ 4249, 4756–4859, 4875–85, 5081, 5082, 5087, 5091, 5093]

Sec. 5. This section is drafted, with some modification, to make clear the provisions on the subject which have in practice been found somewhat obscure.

Sec. 9. Additional subdivisions require specific entries as to a number of matters which a justice's docket ought to show. In line 2 of the section as reported, for "and in the following order" substitute "as follows."

Sec. 13. The notice may be signed by the attorney for plaintiff.

Sec. 18. Provision is made for appearance by attorney, that term being used also in place of "agent."

Sec. 23. This is more explicit as to how the testimony is to be taken.

Sec. 28. Prepayment of fees is required.

Sec. 29. This new provision will prevent the action being defeated by a lack of qualification of the person to whom the case is sent, and authorizes a new order as to the change to be made in such a case.

Sec. 31. There is no provision for dismissing the action on account of the title to land being involved, but only for transferring it (see preceding section) and that provision is therefore omitted from the Code section.

Sec. 34. This is enlarged to cover actions on verified accounts.

Secs. 36, 37. These are made to apply to cases of account.

Secs. 42, 43. It is believed that the new method of securing a jury for the justice's court, which is now in use in neighboring states, will be found less open to objection than that which has heretofore been authorized by our statute.

Sec. 45. The added clauses express merely what is now the law.

Sec. 47. It is supposed that the original section meant "judgment by confession."

Sec. 63. These provisions as to the filing of a transcript are more specific than those found in the Code.

Sec. 69. Some provision as to garnishment proceedings under execution seems proper, and this section is therefore inserted.

Sec. 71. The cases in which the superior court has jurisdiction over appeals from justice's courts are designated in the chapter relating to the superior court (see § 6, p. 57). Where there is a superior court, appellant is given an option as to the court to select

Sec. 84. This section is based on § 4 of the rules of practice adopted by the convention of district judges [McC. p. lviii] but it is more specific as to the remedy where the appellant fails to prosecute his appeal.

Secs. 85, 86. Service may be on the attorney.

Sec. 91. The judgment is to recite the order of liability of principal and sureties.

Sec. 94. There is now no time fixed for taking the writ of error. Some limitation ought to be imposed and it is believed that the time allowed should be short.

Sec. 99. The return may be compelled.

Sec. 100. This is analogous to § 84 above, although it is entirely new. It will enable the opposite party to insist on a speedy prosecution of a proceeding under the writ of error.

Sec. 103. This is more specific as to verdict, to conform to provisions of the same kind in the chapter on replevin (§ 13, p. 799).

Sec. 104. It is here specifically provided that allowance of the amount in value of property to be levied on under attachment, shall not be necessary. As the amount for which suit may be brought in the justice court is limited, there seems no occasion for requiring such an allowance.

Sec. 107. The provision of this section of the Code [McC. § 4858] as to an order for the delivery of property seems to be of no practical value.

The provisions as to forcible entry and detention of real property are inserted as a separate chapter following the chapter relating to the recovery of real property. (p. 803)

Sec. 118. The new provisions incorporated in this section will tend, it is believed, to remove from jurors the temptation of finding against the party who is most likely to be able to pay jury fees.

Secs. 122, 123. Provisions as to compensation, not only of justices, but of constables, are incorporated here as the most convenient place for their insertion. The clause as to seizure of intoxicating liquors is to cover Code § 3807 [McC. § 5083] which is inserted in the chapter on sheriffs (§ 13, subd. 21, p. 110).

TITLE XXIII.

OF EVIDENCE.

CHAPTER 1.—Of general principles of evidence (p. 849). Code §§ 2197, 3636-3754, 3814, 3835; 15 G. A., c. 33; 16 G. A., c. 10, 62; 17 G. A., c. 26, 168; 18 G. A., c. 186; 25 G. A., c. 94. [McC. §§ 3119, 3388, 4886-5005, 5090, 5115]

Section 1. The portion of McC. § 4886 which was added by 17 G. A., c. 168, relating to defendant in a criminal case being a witness is transferred to the chapter on evidence in criminal procedure. (See § 2, p. 981)

Sec. 6. In line 3 of the section as reported, after "the other" insert "or in a civil action by one against a third party for alienating the affections of the other." This provision seems reasonable and in the interest of justice.

Sec. 29. An instrument of adoption has been held not an instrument affecting real estate within the Code section, but the same reason exists in the two cases for allowing the instrument to be read on the strength of the acknowledgment, and a clause as to instruments of adoption is therefore inserted.

Sec. 30. Much unnecessary inconvenience is caused by the present rule requiring the absence of the original instrument to be accounted for before the record thereof can be received in

evidence. It has become so common to rely on the records that the original instrument is frequently lost sight of. It is deemed wise, therefore, to provide that the record or a certified copy thereof shall be receivable as original evidence, subject to the right of the opposite party to have the original produced as any other instrument of evidence.

Code § 3670 [McC. § 4921] is omitted as no longer applicable since the abolition of the circuit court. It cannot properly be changed to cover the superior court, for the reason that the district and superior courts have not a common clerk, as the district and circuit courts had, and the records in one court must be proven in the other, just as the records of one district court are to be proven in another.

Sec. 53. The first provision of the Code section as to the publication of ordinances is covered in the chapter as to ordinances in the title on cities and towns (§ 8, p. 144).

Sec. 55. The granting of a rule to produce books and papers may in some instances work great hardship, and additional provisions are inserted in this section to guard against an abuse of the privilege.

Sec. 61. Where peace officers attend court in the performance of their duties, they should not be allowed witness fees in addition to the regular compensation provided by law. It is notorious that abuse of criminal proceedings has sometimes occurred for the mere purpose of enabling the officers to secure witness fees as well as their fees in the case. The provision inserted in this section will check that evil, and put the matter under the control of the court.

Sec. 62. To remove any doubt as to whether a witness, after attending without demanding his fees, can be compelled to testify without prepayment, the underscored words are inserted. If he does not exercise his right to demand fees in advance when the subpoena is served, he ought not to be allowed to do so afterwards, except as is further provided in this section.

Insert here Code § 3817, [McC. § 5094] which has been omitted by oversight, as follows:

“Sec. 62a. When the county or any party has paid the fees of any witness, and the same is afterward collected from the adverse party, the person or county so paying the same shall, upon the production of the receipt of such witness, or other satisfactory evidence, be entitled to such fee, whether it be in

the hands of the justice or clerk, or has been paid into the county treasury. [5094]”

Sec. 63. This new section explains itself.

Sec. 71. It is difficult to secure any adequate redress as to a recalcitrant witness before a notary public or other inferior officer, or a private person agreed upon by the parties, taking the deposition. This section gives the person taking the deposition the option to report the case to the district court, where the remedy is more effectual.

Secs. 83-104. The provisions as to taking of depositions are almost entirely rewritten, in order to make clear the distinction between the two forms of deposition on notice and on commission respectively, and also to point out more clearly the functions of the person before whom the deposition is taken. These sections provide what persons within the state, and what persons without the state, may act, and also authorize the taking of a deposition before a person agreed upon between the parties, or appointed by the court, whether an officer or not. They also provide fully for the taking of the deposition in shorthand in accordance with 25 G. A., c. 94, but that statute is incorporated in effect rather than in form, the plan being to make it possible to take the deposition in shorthand under any circumstances, if the person before whom it is to be taken chooses to do so, or have it done under his direction. The provisions as to certifying the deposition are here changed so as to cover cases where it is taken before one not authorized to administer oaths, as would frequently be the case when taken in shorthand. It is believed that these sections present in an orderly, clear, and concise manner the method of procedure, which has been very obscure under the Code sections and the amendments thereto. Code § 3729 [McC. § 4978] is omitted in accordance with the general plan of making statutory provisions so complete that rules of court shall not be necessary.

Sec. 106. It is believed that the inserted provision for returning the deposition to have it corrected as to formal matters will be found of great practical use; it is in harmony with decisions of the supreme court.

Sec. 107. The underscored clause is new.

Sec. 110. This section is somewhat modified.

Sec. 113. Lines 6-9 are new to cover the new provisions in § 71.

Sec. 114. This is substantially new.

Sec. 117. The court is to determine whether the occasion is a proper one.

Sec. 118. Cross interrogatories may be filed by the party adversely interested.

Sec. 120. There has been no provision for costs where depositions were taken *de bene esse*.

Sec. 121. In line 6 the underscored words are new.

PART FOURTH—CODE OF CRIMINAL PROCEDURE.

TITLE XXIV.

OF CRIMES AND PUNISHMENTS.

The form of language in specifying the punishment is simplified in many cases, and further reference to such changes need not be made. The expressions "be guilty of a felony" and "be guilty of a misdemeanor" are omitted where a punishment is provided, as the punishment fixes whether the offense is a felony or a misdemeanor.

CHAPTER 1.—Of offenses against the sovereignty of the state (p. 865). Code §§ 3845-7. [McC. §§ 5125-7]

Section 1. The provision as to bail for treason is covered by § 5, p. 925.

CHAPTER 2.—Of offenses against the lives and persons of individuals (p. 865). Code §§ 3848-79; 17 G. A., c. 165; 18 G. A., c. 2; 19 G. A., c. 19; 21 G. A., c. 114; 25 G. A., c. 92. [McC. §§ 5128-78]

Secs. 2-5. The court is here authorized, when defendant pleads guilty, to empanel a jury to determine the degree of the offense, and if it is in the first degree, to pass on the question of whether the death penalty shall be imposed.

Secs. 14, 15. These sections are changed to embody the amendments made by the last general assembly, but in a more concise form than in that statute.

Sec. 16. The requirement that the judges attending the execution must sign a certificate thereof is omitted. Since the execution is to be in the penitentiary it is not likely that the judges will be in attendance in every case.

Sec. 18. The provision that the detention shall be without bail is new.

Sec. 20. More explicit provisions are inserted as to warrant of execution in case of appeal to the supreme court and affirmance of the judgment.

Sec. 30. There was much interest in the last general assembly in an attempt to pass a statute raising the age of consent. It is believed that a change is desirable and the age of fifteen is here inserted.

Sec. 35. For reasons suggested under § 30 above the age here named, which is fourteen by the present statute, is changed to fifteen.

Sec. 39. In the first line "or" is substituted for "and" as it stood in the Code section for the purpose of carrying out the meaning as stated in *State v. Smith*, 46 Ia., 670, 672.

CHAPTER 3.—Of offenses against property (p. 871). Code §§ 3880-94; 15 G. A., c. 13; 17 G. A., c. 55; 18 G. A., c. 11. [McC. §§ 5179-95]

Secs. 18-22. These are new sections for the punishment of dynamiting and similar offenses.

Code § 3895 [McC. § 5196] as amended with reference to selling or concealing mortgaged property is inserted in the chapter on larceny (§ 19, p. 882).

The balance of the Code chapter is incorporated into the following chapter.

CHAPTER 4.—Of malicious mischief and trespass (p. 874). Code §§ 3896-3900, 3977-92; 15 G. A., c. 17; 16 G. A., c. 148; 19 G. A., c. 112; 25 G. A., c. 64. [McC. §§ 5197-5207, 5285-5301]

A portion of c. 3 of the Code relating to offenses against property is to some extent a duplicate of or analogous to c. 7 of the Code relating to malicious mischief and trespass on property. The sections are here brought together in one chapter and re-arranged, being deemed properly to belong in this connection rather than in the order in which the chapter on malicious mischief is given in the Code.

Sec. 3. The provision is extended so as to cover furniture, apparatus and fixtures.

Sec. 17. This section is enlarged to cover telephone posts and wires.

Sec. 18. This is new for the protection of the telegraph and telephone business.

Sec. 19. This is a new provision that has been found desirable in conducting agricultural fairs.

Sec. 21. The distance is changed from three miles to one mile, in view of the fact that animals no longer have so large a range as formerly.

Sec. 26. The changes made here are to incorporate into one section the provisions of two which have been in different parts of the Code but relating to the same subject.

CHAPTER 5.—Of larceny and receiving stolen goods (p. 879). Code §§ 3895, 3902-16; Rev. § 4247; 15 G. A., c. 11; 21 G. A., c. 30; 25 G. A., c. 50. [McC. §§ 5196, 5208-22]

Sec. 7. The section is changed so as to cover embezzlement of public property as well as public money.

Sec. 8. This section is inserted to supply what seems to be an omission in the present law. To constitute embezzlement under the next section, which is the one heretofore in force, the money or property must have been received in pursuance of some employment, but there are also cases of embezzlement where the employment or trust relates to the particular money or property only. Such cases are covered by statute in other states and should be here.

Sec. 9. This section is also extended to cover property and the last sentence providing that in case of a series of embezzlements during the same employment, the total amount of money or property converted may be considered in fixing the punishment, is new.

Sec. 13. This new section relating to increased punishment for a third or subsequent offense of larceny is substantially the same as § 4247 of the Revision of 1860. The reasons given by the Commissioners for the omission of this section from the Code of 1873 seem not to have been followed in other cases, for a number of similar sections are retained and therefore this one is restored. The section of the Revision is modified, however, by omitting the provision relating to three convictions for larceny at the same term of court. This seems impractical as it cannot be told when the indictment is drawn whether there will be two previous convictions at the same term or not, and without the matter of aggravation being charged in the indictment the increased punishment could not be imposed. The punishment imposed is greater than that provided for in the section of the Revision which was not more than might have been inflicted for a single offense.

Sec. 19. This section is extended to cover cases of removal of mortgaged property from the county.

CHAPTER 6.—Of forgery and counterfeiting (p. 882). Code §§ 3917-35. [McC. §§ 5223-41]

Sec. 14. This section is modified by omitting the provision as to three convictions at the same term of court, which seems impractical for reasons stated in note to section 13 of the preceding chapter.

CHAPTER 7.—Of offenses against public justice (p. 885). Code §§ 3936-76; Rev. § 4294; 20 G. A., c. 123; 22 G. A., c. 83. [McC. §§ 5242-84]

Sec. 26. This is a restoration of a section of the Revision which seems to have been omitted from the Code of 1873 by inadvertance. It will be seen that the section is material, as without it there is no punishment for breaking from imprisonment in the penitentiary, while the next section provides such a punishment where the imprisonment is in the county jail.

Secs. 36, 37. In each of these sections the punishment is increased.

CHAPTER 8.—Of offenses against the right of suffrage (p. 891). Code §§ 3993-4007; 25 G. A., c. 59. [McC. §§ 5302-16]

To the chapter heading as given, prefix "Of" to make it uniform with other headings.

Sec. 10. This section is modified to correspond with the recent changes in the election law by virtue of which no ballot can be given to a voter except by an election officer.

CHAPTER 9.—Of offenses against chastity, morality, and decency (p. 894). Code §§ 4003-34; 18 G. A., c. 182; 20 G. A., c. 93, 142, 195; 21 G. A., c. 177; 24 G. A., c. 39. [McC. §§ 5317-55]

Insert "Of" at the beginning of the chapter heading to make it correspond to the form in other chapters.

Section 1. The last clause is new, to make the law on the subject more definite.

Sec. 9. Explicit provisions having been made in the chapter as to intoxicating liquors in relation to the termination of leases, this section refers to that without repetition. (See § 46, p. 488)

Sec. 15. Slight changes in expression are made without substantial change of meaning.

Sec. 29. The language of the Code section is changed to harmonize it with present conditions but the substantial meaning is not changed.

Sec. 34. This is a new section based upon statutes now in force in New York and Illinois, and perhaps other states. It would seem to be in harmony with the legislative policy with reference to such acts.

Sec. 35. This section is enlarged to cover mining and corporation stocks, but is otherwise not substantially changed.

CHAPTER 10.—Of offenses against public health (p. 901). Code §§ 4035-42; 18 G. A., c. 137; 19 G. A., 170; 20 G. A., c. 102; 21 G. A., c. 174; 22 G. A., c. 79; 24 G. A., c. 47, 50. [McC. §§ 5356-78]

Section 1. This is somewhat abridged because covered to a considerable extent by provisions in the pharmacy law (see § 7, p. 525), but a portion is retained as applicable to acts which might not fall within the regulations of that chapter.

Sec. 12. A part of the original section relating to oleomargarine is omitted as sufficiently covered by the chapter relating to dairy products (see § 2, p. 510). The provisions as to skimmed milk cheese are inserted in § 14 of this chapter.

Sec. 16. The balance of this act as to the dairy commissioner is inserted in the chapter on that subject (§ 1, p. 510)

CHAPTER 11.—Of offenses against public policy (p. 905). Code §§ 4043-51, 4055-64; 15 G. A., c. 14, 38, 59; 17 G. A., c. 156; 18 G. A., c. 193; 20 G. A., c. 78, 105; 21 G. A., c. 79, 156; 22 G. A., c. 57, 67, 103; 24 G. A., c. 43; 25 G. A., c. 45, 61. [McC. §§ 5380-5401, 5412-30]

The provisions as to illegal fishing are omitted as covered by the chapter on the care and propagation of fish (c. 15, p. 515).

Sec. 9. The clause as to notes of the branches of the state bank is omitted as obsolete.

Sec. 30. The botanical name "cnicus lanceolatus," used in the amending act, is omitted, and the popular name of the same thistle is used.

CHAPTER 12.—Of offenses against the public peace (p. 912). Code §§ 4065-72; 25 G. A., c. 97. [McC. §§ 5431-8]

CHAPTER 13.—Of cheating by false pretenses, gross frauds, and conspiracy (p. 913). Code §§ 4073-88; 16 G. A., c. 102; 18 G. A., c. 76; 22 G. A., c. 78, 80, 84, 104; 23 G. A., c. 28; 24 G. A., c. 36; 25 G. A., c. 79. [McC. §§ 5439-69]

Sec. 10. In line 11 of this section as reported, "incorporated" should be "unincorporated."

Secs. 32-35. The statute covered by these sections is preserved in its essential features, although some of its provisions as to the procedure are omitted.

CHAPTER 14.—Of nuisances and abatement thereof (p. 920). Code §§ 4089-96. [McC. §§ 5470-7]

Sec. 7. At the end of the Code section the word "scire facias" is omitted and other language substituted.

CHAPTER 15.—Of libel (p. 921). Code §§ 4097-4102. [McC. §§ 5478-83]

TITLE XXV.

OF CRIMINAL PROCEDURE.

CHAPTER 1.—Of public offenses (p. 925). Code §§ 4103-7; 17 G. A., c. 103. [McC. §§ 5484-9]

By inadvertance the title of this chapter has been omitted in the reported code and should be inserted.

CHAPTER 2.—Of magistrates and peace officers and their powers (p. 925). Code §§ 4108-11. [McC. §§ 5490-3]

Section 1. The superior court judge is included as a magistrate.

CHAPTER 3.—Of the prevention of offenses by resistance (p. 926). Code §§ 4112-14. [McC. §§ 5494-6]

CHAPTER 4.—Of security to keep the peace (p. 926). Code §§ 4115-29; 17 G. A., c. 35. [McC. §§ 5487-5511]

Section 1. The last clause of the Code section implies that there is some provision by which warrants not issued by a judge can only be served in a county other than that in which they are issued, by being endorsed by a magistrate in the county in which they are to be served. There seems to be, however, no authority for any such assumption. Code § 4190 [McC. § 5574] authorizes a warrant to be executed by any peace officer in any county in the state (see § 5, p. 938). This portion of the Code section is therefore omitted.

Sec. 4. The superior court is included.

Sec. 14. Either forfeiture or conviction will sustain an action on the bond (see § 12 above).

CHAPTER 5.—Of vagrants (p. 929). Code §§ 4130-44; 16 G. A., c. 69; 23 G. A., c. 43. [McC. §§ 5512-28]

Sec. 19. The last clause provides for a case where the board makes no order.

Sec. 25. This new section will explain itself. It is believed that it will reach a class of cases for which no provision is now made, but which should be brought within the penalties of the law. To render it more effectual, however, insert in line 1,

after "gangs" the words "or join with;" in line 5, after "into" the words "or join with" and in line 7 after "into" the words "or induce them to join with."

CHAPTER 6.—Of resistance to process, and suppression of riots (p. 932). Code §§ 4145-54. [McC. §§ 5529-38]

Sec. 10. The provision is somewhat modified so as to be more practical in its application.

CHAPTER 7.—Of local jurisdiction of public offenses (p. 933). Code §§ 4156-64. [McC. §§ 5540-48]

Code § 4155 [McC. § 5540] is omitted as wholly superfluous.

Sec. 6. This provision is extended to offenses committed during transit by rail as well as by boat.

Sec. 7. This section is modified with the intention of making it conform to §§ 34, 35, p. 869, but for this purpose the word "consent" in line 6 should be changed to "eighteen years."

Sec. 8. This is a restatement of the present law.

CHAPTER 8.—Of the time of commencing criminal actions (p. 934). Code §§ 4165-70. [McC. §§ 5549-54]

Sec. 2. In line 3 change "consent" to "eighteen years" in order to make the section conform to § 34, p. 869.

CHAPTER 9.—Of fugitives from justice (p. 935). Code §§ 4171-4184; 17 G. A., c. 65. [McC. §§ 5555-68]

Sec. 3. Warrant is authorized to issue after the filing of a preliminary information as well as upon indictment or complaint.

Sec. 6. The last clause is added to conform to provisions elsewhere as to bail.

Sec. 10. The last clause is new.

CHAPTER 10.—Of preliminary information and warrants of arrest (p. 937). Code §§ 4185-96. [McC. §§ 5569-80]

Section 1. This section is more specific as to the method of making complaint.

Sec. 3. These provisions are more specific.

Sec. 8. The return required (lines 16, 17) is more definitely provided for.

CHAPTER 11.—Of arrest (p. 939). Code §§ 4197-4225. [McC. §§ 5581-5609]

Sec. 7. This is more specific as to the occasions when notice of the intention and authority is not required to be given.

Sec. 9. The words "other building" in line 2 are new.

Sec. 19. The last sentence is new.

CHAPTER 12.—Of preliminary examinations (p. 943). Code §§ 4226-54; 15 G. A., c. 30; 18 G. A., c. 130; 25 G. A., c. 101. [McC. §§ 5610-37]

Sec. 2. This section is more specific as to the time of application for the change, and the expression "place of trial" is substituted for "venue."

Code § 4237 as to the statement of the defendant being taken was repealed by the statute which authorized defendant to be a witness; but the following section (McC. § 5621) in regard to the cross examination of the defendant making such statement was allowed to remain. It is evidently inappropriate here, but is covered by a general section inserted in the chapter on evidence (§ 3, p. 981).

Sec. 12. Provision is made for taking down the evidence in shorthand.

Sec. 17. It is left discretionary with the magistrate to bind the witnesses to appear. Lines 3 and 4 should not be underscored.

CHAPTER 13.—Of impanelling the grand jury (p. 946). Code §§ 4255-71; 21 G. A., c. 42. [McC. §§ 5638-54]

Sec. 3. The section states the present law without material change.

Sec. 5. A challenge for want of qualifications required by law is allowed to either the state or defendant. In lines 5 and 15 the meaning would be made plainer by the insertion of a comma in each instance after the word "only."

Sec. 11. The underscored words make the section conform to the manifest intention of the legislature.

CHAPTER 14.—Of the duties of the grand jury (p. 948). Code §§ 4272-90; 18 G. A., c. 130; 22 G. A., c. 38; 25 G. A., c. 71. [McC. §§ 5655-73]

Sec. 3. Change "minister" to "administer."

Secs. 4-6. Provisions as to taking down the evidence in shorthand are new.

Secs. 18, 19. These provisions are more specific as to the procedure.

Sec. 20. Insert "shall" at the end of line 7.

CHAPTER 15.—Of the finding and presentation of indictment (p. 951). Code §§ 4291-4; 18 G. A., c. 130; 21 G. A., c. 42. [McC. §§ 5674-9]

Sec. 4. The section is modified so as to be applicable where there is an assistant county attorney.

Sec. 5. Resubmission of the case to another grand jury may be proper.

CHAPTER 16.—Of the indictment (p. 952). Code §§ 4295-4317, 4425. [McC. §§ 5680-5702, 5810]

CHAPTER 17.—Of process upon indictment (p. 956). Code §§ 4318-26. [McC. §§ 5703-11]

Sec. 7. The seal of the court is required.

Sec. 8. This is a new provision in analogy to that found in the chapter relating to preliminary examinations (§ 17, p. 945).

CHAPTER 18.—Of arraignment of the defendant (p. 957). Code §§ 3829-31, 4327-36; 17 G. A., c. 91. [McC. §§ 5109-11, 5712-21]

Sec. 3. At the end of the section insert "his" before "arrest."

CHAPTER 19.—Of setting aside the indictment (p. 958). Code §§ 4337-44. [McC. §§ 5722-29]

Section 1. The last clause of subd. 3 is new.

Sec. 2. Subd. 3 is new, and it is believed will prove to be a useful provision. Lines 9-12 are added in order to prevent the resubmission of evidence which is improperly taken and using it as the basis for another indictment. Where the indictment is held insufficient the evidence may be resubmitted under § 5, p. 952.

Sec. 3. This more fully states the present law.

CHAPTER 20.—Of pleading by the defendant (p. 960). Code §§ 4345-67. [McC. §§ 5730-52]

Secs. 4, 5, 9. These sections contemplate the filing of a demurrer or plea in writing if desired.

Sec. 12. In line 12 omit "replication or" as wholly superfluous.

CHAPTER 21. Of change of place of trial in criminal actions (p. 961). Code §§ 3841, 4368-88; 17 G. A., c. 171; 18 G. A., c. 9. [McC. §§ 5121, 5753-73]

The expression "place of trial" is substituted for "venue" so as to make the language harmonious with that used in civil procedure.

Sec. 13. The provision for recovery of expenses by the county where the case is tried from the county from which it is removed, is inserted here. While the language is changed, it is believed that the law is clearly expressed as it now stands.

CHAPTER 22.—Of the trial jury (p. 963). Code §§ 4390-7. [McC. §§ 5775-82]

It is recommended that §§ 1-5 of this chapter be transferred to page 727 (as indicated in this report with reference to that chapter) and that in place of these sections be inserted the following:

“Section 1. The rules for drawing the jury shall be the same as those provided in civil procedure.”

Sec. 6. If the change last above recommended is made this will become § 2.

CHAPTER 23.—Of challenging the jury (p. 963). Code §§ 4398-4418; 22 G. A., c. 39. [McC. §§ 5783-5803]

Sec. 2. The last clause is new.

Sec. 4. This expressly authorizes jurors to be sworn to answer questions touching their competency.

CHAPTER 24.—Of the trial to a jury (p. 965). Code §§ 4419-4451; 17 G. A., c. 19, 168. [McC. §§ 5804-36]

Sec. 3. The provision for limitation of argument to the jury which is inserted in the code of civil practice is incorporated here by reference. (See § 52, p. 728)

Sec. 10. The language is modified so as to state the meaning of the original section.

Sec. 12. The last clause is new.

Code § 4438 [McC. § 5823] is covered by a similar section in the chapter on libel (§ 6, p. 922).

Sec. 18. This is modified to conform to the present practice.

CHAPTER 25.—Of the jury after submission (p. 970). Code §§ 4452-9. [McC. §§ 5837-44]

CHAPTER 26.—Of the verdict (p. 970). Code §§ 4460-78. [McC §§ 5845-63]

A provision is inserted for requiring answers to interrogatories. While the jury has been permitted to bring in a special verdict, there has been no authority to require them to find as to the facts.

CHAPTER 27.—Of exceptions (p. 972). Code §§ 4479-86. [McC. §§ 5864-71]

CHAPTER 28.—Of new trial (p. 973). Code §§ 4487-90. [McC. §§ 5872-5]

CHAPTER 29.—Of arrest of judgment (p. 974). Code §§ 4491-4494. [McC. §§ 5876-9]

CHAPTER 30.—Of judgment (p. 974). Code §§ 4495-4511. [McC. §§ 5880-96]

CHAPTER 31.—Of execution (p. 976). Code §§ 4512-19. [McC. §§ 5897-5904]

Sec. 2. Lines 7-11 are new, and will make the record of the court show the fact as to the imprisonment of defendant.

CHAPTER 32.—Of appeals (p. 977). Code §§ 4520-45. [McC. §§ 5905-30]

Sec. 2. The words “and perfected,” in line 1, are new.

Sec. 3. The underscored provision is new. Some duty in this respect is imposed on the county attorney. (See § 1, lines 6-9, p. 66)

Sec. 6. The provisions as to the time and the judge are new.

Sec. 14. This incorporates the provisions found in the code of civil procedure, and conforms the proceedings to the present practice.

Secs. 18, 19. These sections are rewritten to make more definite the procedure after judgment by the supreme court.

CHAPTER 33.—Of impeachment (p. 979). Code §§ 4546-55, 4570; 21 G. A., c. 91. [McC. §§ 5931-53, 5968]

This chapter is re-arranged, and to some extent rewritten to secure clearness, but without material change.

Sec. 4. This provision is new.

Sec. 9. The requirement of lines 7, 8, as to a majority of the members being present is new.

CHAPTER 34.—Of evidence and witnesses (p. 981). Code §§ 3636, 3818, 4238, 4425-7, 4556-72; 17 G. A., c. 168; 18 G. A., c. 207; 25 G. A., c. 100. [McC. §§ 4886, 5095, 5621, 5810-12, 5954-70]

Sec. 8. A portion of this Code section is transferred to a previous chapter (§ 19, p. 955).

Sec. 10. The last sentence is new to carry out the plan of requiring an order for the subpoenaing of defendant's witnesses where their fees are to be taxed to the county.

Sec. 16. The last clause is new.

CHAPTER 35.—Of bail (p. 983). Code §§ 4573-88. [McC. §§ 5971-86]

Three chapters are consolidated and several sections are to some extent rewritten and the order of the sections is changed, but without material modification. In view of the re-arrangement Code §§ 4586, 4588 [McC. §§ 5984, 5986] are unnecessary.

CHAPTER 36.—Of the lien and release of bail (p. 985). Code §§ 4606-8. [McC. §§ 6004-6]

Section 1. The undertaking of bail is required to be entered upon the lien index so as to constitute notice.

CHAPTER 37.—Of forfeiture of bail (p. 986). Code §§ 4596-4600. [McC. §§ 5994-8]

Sec. 5. The provisions as to executions are somewhat modified.

CHAPTER 38.—Of the recommitment of defendant after bail (p. 987). Code §§ 4601-5 [McC. §§ 5999-6003]

CHAPTER 39.—Of deposit of money instead of bail (p. 987). Code §§ 4589-92. [McC. §§ 5987-90]

CHAPTER 40.—Of the surrender of defendant (p. 988). Code §§ 4593-5. [McC. §§ 5991-3]

CHAPTER 41.—Of the lien of judgments and stay of executions (p. 989). Code §§ 4609, 4610. [McC. §§ 6007, 6008]

Section 1. The judgment is required to be entered upon the lien index.

CHAPTER 42.—Of the liberation of poor convicts (p. 989). Code §§ 4611, 4612. [McC. §§ 6009, 6010]

CHAPTER 43.—Of the dismissal of criminal actions (p. 989). Code §§ 4613-19. [McC. §§ 6011-17]

CHAPTER 44.—Of the insanity of a defendant (p. 990). Code §§ 4620-28. [McC. §§ 6018-26]

These sections are rewritten in order to present a more uniform and effective system of procedure.

CHAPTER 45.—Of search warrants and proceedings thereon (p. 991). Code §§ 4629-53. [McC. §§ 6027-51]

CHAPTER 46.—Of property stolen or embezzled (p. 994). Code §§ 4654-59. [McC. §§ 6052-57]

CHAPTER 47.—Of proceedings and trials before justices of the peace (p. 995). Code §§ 4660-4706; 25 G. A., c. 101. [McC. §§ 6058-6104]

Sec. 7. The sentence added to this section is in analogy to a like provision as to proceedings against a corporation on indictment (§ 7, p. 957).

Sec. 11. "Place of trial" is substituted for "venue," in harmony with the use of terms in the civil practice.

Sec. 32. The provisions of 25 G. A., c. 101, so far as they apply to preliminary examinations, are incorporated into § 23, p. 946.

Sec. 38. Notice of appeal is allowed to be given within twenty days.

The Code chapter (consisting of one section) relating to proceedings in police and other city courts is covered by § 13, p. 144, and omitted here.

CHAPTER 48.—Of compromising certain offenses by leave of court (p. 1000). Code §§ 4708-10. [McC. §§ 6106-9]

CHAPTER 49.—Of pardons and remission of fines and forfeitures (p. 1001). Code §§ 4712-14. [McC. §§ 6110-12]

Section 1. The governor is authorized, by a provision inserted, to commute the death sentence to imprisonment for life.

Sec. 3. Provision is made for a record in the office of the secretary of state.

CHAPTER 50.—Of illegitimate children (p. 1002). Code §§ 4715-22. [McC. §§ 6113-20]

TITLE XXVI.

OF THE DISCIPLINE AND GOVERNMENT OF JAILS AND PENITENTIARIES.

CHAPTER 1.—Of jails (p. 1005). Code §§ 4723-43; 21 G. A., c. 153, 176. [McC. §§ 6121-43]

Sec. 8. The clerk of the district court is made one of the inspectors of jails. Formerly the judge of the circuit court was an inspector, but it does not seem wise to impose that duty upon the judge of the district court.

Sec. 23. This new section is important as providing for the government of city jails.

CHAPTER 2.—Of penitentiaries (p. 1008). Code §§ 4745-4806; 14 G. A., c. 43; 15 G. A., c. 48; 16 G. A., c. 40, 156; 17 G. A., c. 83, 149, 167, 186; 18 G. A., c. 149, 154; 19 G. A., c. 91; 20 G. A., c. 17, 187; 22 G. A., c. 69, 82; 23 G. A., c. 57; 25 G. A., c. 20. [McC. §§ 6145-6234]

Various statutes applicable to one or the other of the penitentiaries are here consolidated into a uniform system with such distinctions between the two institutions as are necessary to be preserved.

Sec. 51. A new provision is here made for the removal of officers.

In closing its report, the Code Commission deems it proper to acknowledge the efficiency and uniform courtesy of Hon. F. R. Conaway, state printer, and his employees, in connection with the publication of their report. The promptness with which the work has been done has made it possible to distribute the reported Code within a short time after its completion by the Commission, and the typographical and press work has been uniformly excellent throughout.

H. S. WINSLOW,
Chairman,

CHARLES BAKER,
Secretary,

JOHN Y. STONE,

EMLIN McCLAIN,

H. F. DALE,
Commissioners.

APPENDIX.

TABLE OF REFERENCES

TO THE REPORTED CODE FOR THE CONSECUTIVE SECTIONS OF
M'CLAIN'S CODE, AND SUBSEQUENT SESSION LAWS.

In this table the sections of McClain's Code and the chapters of subsequent session laws are given consecutively, and opposite each a reference to the section and page of the reported Code in which the same subject matter is to be found. Where several sections are grouped together the order may not be exactly the same as that of the corresponding sections referred to, but it will not be difficult to find the corresponding section of the group by means of the bracket number at the end of the corresponding reported section. The sections of McClain's Code and the chapters of session laws which are not included in any form in the subject matter of the reported Code are marked as temporary, legalizing, repealing, obsolete, superseded, repealed, or omitted, and a star preceding any of these words indicates that an explanation is given in the accompanying report. In many cases the reason for not including the section is so plain that no explanation in the report is necessary. The number in the page column is that of the section, or first section, if more than one, referred to in the column of sections of the reported Code.

TABLE OF REFERENCES.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
SECTION.	SECTION.	PAGE.	SECTION.	SECTION.	PAGE.
1-4	1-4	5	206, 207	1	51
5-31	1-27	6	208	2	51
32-49	1-17	10	209	4	52
50-7	1-6	14	210-25	8-20	53
58	*Omitted.		226	*Superseded	
59-63	1-5	15	227-29	21-3	54
64-69	1-5	17	230	*Superseded	
70-2	1, 3, 4	18	231, 232	24	55
73	10	29	233, 234	Temporary	
74	2	18	235	3	51
75-83	1-9	21	236	3	51
84-91	1-8	24	237	13	198
92-5	11-14	26	238	4-7	52
96	Repealing.		239	8	53
97-109	7-19	18	240, 241	1	51
110	Temporary.		242	Temporary	
111	1	18	243	25	55
112, 113	23	21	244-7	*Omitted	
114	Temporary		248	26-9	55
115, 116	1	26	249	11	65
117	*Omitted		250-5	Repealing	
118-31	2-15	27	256-62	1-6 (c. 7)	61
132	25	34	263	1-6 (c. 8)	61
133-36	16-19	31	264-6	Obsolete	
137-146a	1-10	35	267	7, 8	62
147	1	37	268-74	16	198
148-54	1-5	37	275	1-7	66
155	2	37	276	*Omitted	
156	3	35	277	Obsolete	
157-63	2	39	278	8	67
164	1-4	38	279	Temporary	
165	7	40	280-7	Repealing	
166	5	40	288	1-8	68
167	Temporary		289-304	Repealing	
168-72	6	40	305-11	9 24	69
173	8-12	40	312-16	1-7	71
174	1	45	317	Supers'd'd 25	
175	10	46	318	G. A., c. 70	
176	Repealing			13	74
177, 178	11	46		Supers'd'd 25	
179-184	2	45		G. A., c. 70	
185-8	4-9	45	319	12	73
189-92	1	46	320-2	15-17	74
193-204	1-3	47	323	22	75
	1-12	48	324-32	1-9	76
	Repealing		333	6	76

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
SECTION.	SECTION.	PAGE.	SECTION.	SECTION.	PAGE.
334	Repealing			11-14	135
335-44	10-18	77		25	138
345-53	1-9	79	528	38	141
354-63	1-10	81		9	226
364, 365	1, 2	82		8	239
366-82	1-16	85	529	25	138
383, 384	10, 11	87, 88	530-4	16-19	118
385-7	13-15	88		1	82
388	Spec. char.		535	19	118
389-406	1-19	89	536	1	82
407	9, 10	153	537-40	20-2	118
408	11-14	154	541-52	*Obsolete.	
	16	185	553-5	23-5	119
	11	154	556	5	518
409	10	183	557	8	520
410	11, 14	154	558, 559	5	518
411	14	154	560	10	520
412	12	154	561	8	520
413	20	94	562-8	26-32	119
414	8	153	569	1	125
415	16	93	570	2, 3	125
416-25	21-7	94	571	6	126
426	31	96	572	4	126
427	6	115		5	126
428-30	32-4	96		8	127
431-8	37-44	98	573	4	126
439	45	99	574-8	22-6	129
	11	184	579-86	16-21	128
	46	99	587-91	36-40	132
440	11	184	592	42	133
441	47	100	593-9	27-32	130
442-9	53-60	101	600-6	10-15	127
450-6	1-7	102	607-11	33-5	131
	8	103	612	*Omitted.	
457	2	115	613	32	139
458-68	1-8	104	614	1	145
469-76	1-5	106		1	145
477, 478	3, 4	115		1, 2	145
479-82	6-9	108		8	146
483	111	778	615	10, 11	147
484-7	1-3	111		20, 23	148
488-90	5-7	112		5	153
491	8, 18	112, 113		18	156
492-503	8-17	112	616	17	147
504-13	1-9	114	617	3	145
514	1	115	618	12, 13	147
515	7	116	619	9	146
516	1	116		34	150
517	*Omitted		620	8	182
518-24	3-9	116	621	6	146
525	*Omitted			6, 8, 9	146
526	17	199	622	14	147
527	14	118		4	153
	15	118		1	152
528	5	134	623	6	153

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
	SECTION.	PAGE.		SECTION.	PAGE.
623	17	155	669	2-4	142
	1	179	670	32	139
624	1	152	671	41	142
	30, 34	158	672	7	143
	3	159	673	32	139
625	30	158		4	142
626	22, 23	163	674	5	143
	25	163		2	159
627	40	167		41	133
628	52	170	675	1	181
	1	152		16	185
629	30	158	676	1	181
	27	157	677	4	181
630	1, 2	158	678	*Omitted	
	27	164	679	16	185
631	28	157	680	3	181
632	26	157	681, 682	12	184
633, 634	1	695	683	1	185
635	33	153	684-6	Superseded	
	4	180	687	6	134
636	1, 3	179	688, 689	8, 9	220
637, 638	5, 6	180		4, 7	225
639	26	149	690	9	226
	26	149		2	237
640	29	150	691	33	141
	26	149	692	22	136
641	31	150		12, 13	144
642	28	149	693	12	144
	30, 31	150	694, 695	1	133
643	8	183	696, 697	2, 3	133
	26, 28-31	149		7, 9, 10	134
644	8	182		13	135
645	28	149	698	32	139
646	27	149		1	145
647, 648	4	180	699	22, 23	136
	49	169	700	8	239
649	52, 53	170		13	135
650	54	170		19	136
651	4	145	701	32	139
652	49, 50	149		4, 7	225
653	1	174		9	226
654	4	175		15	135
655-7	3	174	702	26	138
658	Repe'l'd 25 G. A., c. 1.			37	141
659	7a	176	703	8	236
660	1	142	704	8	239
661	8	144	705	32	139
662, 663	14, 15	144	706	12, 14	240
664	42	152	707	Repealing	
	1	695		Superseded	
665	4	935	708	1	145
	13	144		7	134
666	5-7	181	709	12	135
667	13	184		22	136
668			710-3	6	143

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
	SECTION.	PAGE.		SECTION.	PAGE.
	22	136	734-7	18, 19	147
714	34	141	738	2	145
	41	142	739	18	162
715	4	134		34	158
716	6-10	134	740	18	162
	15	135		26	164
717	23	137	741	8	182
	32	139		41	167
	32	139	742	8	182
718	40	142	743, 744	10	188
	1	145	745	Temporary	
719	14, 15	184		28	164
	24	137	746	42	167
720	14	184		8	182
	8	236	747	4	159
721	14	184	748	18	162
	19	136		22	163
722	32	139	749	3	159
	40	142	750	Repealing	
	1	145		9, 10	153
	17	136	751	10	183
723	28	138		11-14	154
	32	139	752	10	183
	22	148		16	185
724	2	145	753, 754	14, 15	154
	23	148	755, 756	1-3	185
	2	145		4	186
	6	146	757	7	187
	11	147	758	1	185
	20, 23	148	759	8	182
	32	150		8	187
	2, 8	153	760	9	187
725	18	156	761	78	264
	25, 28, 29	157	762	18	185
	31	158	763-73	1-10	56
	1	158		11	58
	3	159	774	25	60
	18	162		12	58
	45	168	775	26	61
	2	181		13	58
	8	236	776	24	60
	1	152		14-20	58
726	3, 7	153	777-83	*Omitted	
	1	158	784	21	59
	13	240	785, 786	9	134
	19	136		22	136
727	32	139	787	12, 15-17	135
	40	142		24	137
	24	149	788	30	139
728	25	149		7	134
729	8, 12, 14	239	789	12	135
730	2, 3	179		*Superseded	
731	6, 7	146	790	26	138
732	15	147		37	141
733	6	159	791	42	152
			792		

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
SECTION.	SECTION.	PAGE.	SECTION.	SECTION.	PAGE.
793	28	149	825	22-4	163
	8	182		25, 26	163
794	15	135		29	164
	22	136		35-7	165
	11, 14, 15	135	826	40	167
	30	139		44	168
795	40	142		46, 47	169
	8	236		52	170
	11	135	827	*Omitted	-----
	19	136		26	164
796	24	137	828	37, 38	166
	30	139		8	182
	7, 9	225		31	165
797	Temporary	-----		35	165
	11, 15	135	829	37-40	166
798	24	137		45	168
	30	139	830	8	182
799	15, 16	135		41	167
	26, 27	138	831	8	182
800	Repealing	-----	832	18	185
	16	135		26	164
801	26	138	833	41	167
	37	141		8	182
	17, 22	136	834	46, 47	169
802	26, 28	138	835, 836	47, 48	169
	4	153	837	Legalizing	-----
803	40	152		3	159
804	41	152		28	164
	6	661	838	42	167
805, 806	6	661		8	182
	20	136		10	188
807	32	139	839	22-4	163
	9-11	144		35	165
	42	152	840	37, 38	166
808	9	144		36	166
809	35	141	841	52	170
	9	144		Saving	-----
810, 811	11, 12, 13	144	842	5	159
812	22	136	843	Saving	-----
	34	141	844	25	163
813, 814	39	141		35, 37, 38	165
815	Repealing	-----		40	167
816	23	141	845	44	168
817	Repealing	-----		52	170
818	17	147		2, 3	171
819	Repealing	-----	846	*Omitted	-----
820	8	182	847	23	163
	30	158	848	19, 20	162
821	1	158	849	19	162
822	32	139		22	163
823	31, 32	139	850	32	165
	1	152		29	164
824	27	157	851	32	165
	30	158	852	33	165
	1, 2	158	853	*Omitted	-----

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
SECTION.	SECTION.	PAGE.	SECTION.	SECTION.	PAGE.
854	46	169	943	3	159
855	31	165	944-8	Spec. char.	-----
856	Repealing	-----	949, 950	3	159
857	26, 28	164	951-86	Spec. char.	-----
	8	182	987-93	1-6	121
858	10	188	994-6	1-3	188
859	1	158	997	*Omitted	-----
860-2	22-4	163	998-1001	4, 5	190
863	32	165	1002	7	190
864	2-4	171	1003, 1004	17, 18	193
	6	172	1005-7	8-10	191
865	7	172	1008, 1009	15, 16	193
866, 867	7-9	172	1010, 1011	2, 3	189
	26, 27, 29	164	1012	1	188
868	31, 32	165	1013	Saving	-----
	31, 33	165	1014	Repealing	-----
869	35	166	1015-18	11-14	192
	35-8	165	1019	6	190
870	40	167	1020-31	1-11	197
	25	163	1033-39	14-19	198
871	39	166	1040	Repealing	-----
872	39	166	1041	19	199
873	44	168	1042, 1043	Repealing	-----
	10	173	1044	1, 3	203
874	1	170	1045-50	1-6	199
	1	170	1051	12	203
875	13	174	1052	10	203
876	13	174		37	214
877	33	165	1053	38, 40, 41	215
878	3	159		46	216
879	19	162	1054	4	204
880	Repealing	-----	1055	2	199
881	10	176		5	201
	8	182	1056	9	202
882-94	11-21	176		5	201
895	17	147	1057	9	202
896-901	22-6	178	1058	5	201
902	17	177	1059	1	199
903-5	Spec. char.	-----		11	203
906	43	133	1060	8	220
907-10	Spec. char.	-----	1061	7	202
911	21	148	1062	3	200
912	16	147	1063	Repealing	-----
913	13	147	1064	3	204
914-19	Spec. char.	-----	1065	5	204
920	22	148	1066	*Omitted	-----
921	1	158	1067-9	6	204
922	Spec. char.	-----	1070-2	7-9	205
	1	152	1073, 1074	39-41	215
923	17	155	1075	43	216
	9	153	1076	45	216
924	Spec. char.	-----	1077	*Superseded	-----
925-36	15	147	1078	30	212
937	5	146	1079-81	28, 29	212
938	Spec. char.	-----	1082	*Superseded	-----
939-42	Spec. char.	-----			

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
SECTION.	SECTION.	PAGE.	SECTION.	SECTION.	PAGE.
1083, 1084	43	216		3	47
1085	1	218		12	65
	1, 2	218		12	104
1086	33	223	1238-40	10	106
	Superseded			4	107
1087, 1088	1	218		12	109
1089	3	218		10	226
1090	7, 8	219		1	533
1091, 1092	*Superseded		1241	12	109
1093	9	230		22	21
1094	32	223		16	26
1095	10-14	220		3	47
1096-1100	Omitted			12	65
1101	15	221	1242	12	104
1102	17-19	221		10	106
1103-5	32	223		4	107
1106, 1107	20	222		12	109
1108	16	221		1	533
1109	25	222		12	104
1110	30	223		10	106
1111	21-4	222	1243	4	107
1112-15	26-8	222		12	109
1116-18	30	223	1244-52	1-9	240
1119	28	223		2	237
1120	29, 30	223	1253	12	240
1121	*Omitted			4	238
1122	7	219	1254	8	239
	12	220	1255	1	237
1123	26	222	1256	9-12	239
	1	224	1257-9	3	238
1124, 1125	7	219	1260	14, 15	240
1126	12-14	220	1261	5-7	229
	20, 21	222	1262-4	34	223
1127	24, 26	222	1265-7	8	239
1128	32, 33	223	1268, 1269	14	240
1129	31	223		2	181
1130	2	224	1270	1	245
	2-4	224		2	245
1131-4	1, 2	224	1271	*Omitted	
1135, 1136	*Omitted		1272	3-5	247
1137	3-7	225	1273-5	8	248
1138-41	12	226	1276	12	248
1142	8, 9	226	1277	14	249
1143	11-15	226	1278	49	258
1144-7	20, 21	228		15	249
1148, 1149	1-3	224	1279	30	253
1150, 1151	2	237	1280	39	256
1152	1	224	1281	Obsolete	
1153	*Omitted		1282-4	41	256
1154	16-19	227	1285	31	253
1155-7	1-53	228	1286	*Omitted	
1158-1217	1-7	235	1287	11	248
1218-30	1-6	236	1288	46	257
1231-7	22	21	1289	6	247
1238-40	16	26	1290	23	252

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
SECTION.	SECTION.	PAGE.	SECTION.	SECTION.	PAGE.
1291	7	247	1576	31	430
1292-6	16-18	249	1577	*Omitted	
1297-9	20	251	1578-83	24-28	429
	55, 56	259	1584	48	433
1300	58	260	1585-7	29-31	430
	48	258	1588-95	33-9	431
1301	50-3	258	1596	50	433
1302-4	14a	114	1597	40	432
1305	49	258	1598	31	430
1306	64-9	261	1599-1603	41-5	432
1307-12	71	263	1604	Temporary	
1313	73	263	1605, 1606	53	433
1314	74, 76	264	1607	Repealing	
1315	77	264	1608	1	305
1316	79-92	265	1609-11	3-5	305
1317-32	95-7	267	1612-19	7-12	306
1333-5	1	268	1620	2, 3	310
1336	4	631	1621-35	14-26	307
1337, 1338	2, 4	268	1636	*Omitted	
1339	4-10	268	1637	27	309
1340-6	97	267	1638	2	305
	11, 12	269	1639	28	309
1347	11, 12	269	1640	13	307
1348	3	268	1641-5	*Omitted	
1349	12-32	270	1646-8	15, 16	358
1350-74	34	274	1649, 1650	1, 2	309
1375	36, 43	275	1651, 1652	4, 5	310
1376-82	Saving		1653, 1654	1, 2	309
1383	44	279	1655-7	6-8	310
1384	33	274	1658	1	309
1385, 1386	45-9	279	1659	2	310
1387-91	43-5	257		1	670
1392-5	1-14	279	1660-4	9-11	311
1396-1409	1-45	285	1665-74	1-10	311
1410-63	1-11	292	1675	68	493
1464-82	Repealing		1676, 1677	11, 12	313
1483	12-35	294	1678-84	17-22	314
1484-1509	39-43	299	1685, 1686	1-5	316
1510-14	1-10	300	1687-94	8-17	317
1515-24	Obsolete		1695-7	26-30	321
1525, 1526	18-35	302	1698-1702	18-24	319
1527-46	11-17	302	1703	6	317
1547-53	16	155	1704	31	322
	1-5	425	1705, 1706	33, 34	324
1555-60	51	433	1707	37-39	325
1561, 1562	6, 7	426	1708	41	326
1563, 1564	8, 9	426		32	324
	49	433	1709	40, 42	326
1565	10-17	427	1710, 1711	62-64, 66	331
1566-71	20	429	1712-15	47-51	327
1572	47	432	1716	67	332
1573	23	429	1717, 1718	52-3	329
1574	18, 19	428	1719	68	332
1575	52	433	1720, 1721	35, 36	325
	21, 22	429	1722	7	317

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
SECTION.	SECTION.	PAGE.	SECTION.	SECTION.	PAGE.
1723	65	331	1815	20	251
	1	332	1816-19	17-20	353
	5, 6	333	1820	Repealing	-----
1724	60	330	1821-3	1, 2	354
	3, 4	333	1824, 1825	17	358
1725-8	54-6	329	1826-30	1-4	365
1729, 1730	43	326	1831	5, 10	366
1731	44, 46	326	1832-44	6-18	366
	20	348	1845-56	1-11	367
1732	65	331	1857	Amending	-----
	57	330	1858-98	11-45	370
1733	20	348	1899-1903	1-5	378
	58, 59	330	1904-36	1-28	379
1734	1-4	334	1937-42	19-24	156
1735-8	10, 11	345	1943	29	384
1739	1	343	1944	*Omitted	-----
1740	5	335	1945-54	30-9	385
1742	2	343	1955-61	1-7	387
1743-50	6-13	336	1962-4	22	415
1751, 1752	3, 4	343	1965-70	8-12	388
1753	8	344	1971-6	21-6	391
1754-6	5-7	344	1977	Temporary	-----
1757	23	348	1978	15	389
1758-60	14-16	346	1979-86	59-65	400
1761-8	1-8	339		70	402
1769	8, 9	344		4	408
1770-2	9, 10	340		6	408
	11	340		33-6	394
1773	10, 11, 13	345		7	409
	9	702		37	394
1774, 1775	19	347		43	395
1776-8	12-14	341	2001	*Omitted	-----
1779	21	348	2002-8	38-42	394
1780-3	15-17	342	2009-15	*Omitted	-----
1784	1	359	2016	31	253
1785-7	8, 9	361		31, 32	253
1788-90	1-4	349		53	258
1791	*Omitted	-----	2017	33-6	254
1792-8	5-13	350	2018-21	Temporary	-----
	14	352	2022	37, 38	255
1799	15	358	2023-5	43-5	395
	8	351	2026-8	12	198
1800	8	351		8	226
1801	14, 15	352	2029	1	403
	15	353		8	239
1802	2	349	2030	*Omitted	-----
	16	353	2031, 2032	2-4	404
1803	2	355	2033, 2034	22	415
1804	4	355	2035	12	407
1805	1	355	2036	22	415
1806	20	354		23	415
1807, 1808	6, 7	355	2037	5, 6	405
1809, 1810	14	358	2038, 2039	23	416
1811	10	356	2040, 2041	7, 8	406
1812	18, 19	358	2042, 2043	1	407
1813, 1814			2044		

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
SECTION.	SECTION.	PAGE.	SECTION.	SECTION.	PAGE.
2045	9	406	2294	1	513
2046	Repealing	-----		10	514
2047, 2048	10, 11	406	2295-2302	2-9	513
2049-79	1-81	407	2303	6, 7	516
2080, 2081	Repealing	-----	2304	2	515
2082-9	51-8	397	2305	6	516
2090-2102	66-77	401	2306	9	516
2103-8	1-6	421	2307	1	515
2109, 2110	26	252	2308	13	517
2111-14	27-9	252	2309-11	1, 2	515
2115	53	258	2312	Repealing	-----
2116	Repealing	-----	2313-15	Temporary	-----
2117, 2118	1, 2	437	2316-21	10-12	516
2119	35	443	2322-9	1-4	465
	3	437	2330	Superseded	-----
2120	36	443	2331-4	7-11	467
2121-64	4-29	437	2335	11	467
2165	6	661		15	468
2166-9	30-4	442	2336	2	466
	1	443	2337, 2338	12, 13	467
2170	1-3	529	2339	*Omitted	-----
	6	530	2340	14	468
2171	2	444	2341	1	465
	11, 12	530		1	465
2172	3	444	2342	15	4-8
2173	3	444	2343	15	468
	10	530	2344	8	467
2174	3	601	2345-58	1-11	4-9
2175	11	41		1	472
2176-81	4-8	444	2359	28	481
2182, 2183	1	443		1, 4	472
2184	1	529	2360	2	473
2185-8	Temporary	-----	2361	8	474
2189-2208	9-25	445	2362	6	474
2209	57	457	2363	9-11	375
2210-12	26-8	450	2364-7	12	476
2213	Superseded	-----	2368	20	479
2214, 2215	55	456		6, 7	474
2216-29	29-40	451	2369	13	476
2230	55	456	2370	Repealed, 23	-----
2231	Temporary	-----	2371	G. A., c. 35	-----
2232-48	41-55	453		14	477
2249-52	2-5	458	2372	17	477
	35	98	2373	19	478
2253	1	457	2374	45	487
	36	98		4	473
2254	4, 6	458	2375	21	479
2255	10	460	2376	Temporary	-----
2256	1	457	2377	5	473
2257	7, 8	459	2378	15	477
2258, 2259	11-13	460	2379	23	480
2260-3	*Omitted	-----	2380	1, 2	472
2264	15-33	461		45	487
2265-85	40	464	2381	50	489
2286, 2287	48-52	100		1	472
2288-93			2382		

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
SECTION.	SECTION.	PAGE.	SECTION.	SECTION.	PAGE.
2383	1, 2	472	2443	2	497
	47	488	2444	6	498
	50	489	2445-8	Repealed, 23	
	3	473		G. A., c. 29	
2384	25	480	2449	1	498
	28	481		4, 5	499
	50	489	2450	4	111
2385	26	481		5	499
	49	489	2451	1	498
2386	25	480		6	500
2387	27	481	2452	6	500
	3	473	2453	1	498
2388	49, 50	489	2454	5	499
	28	481	2455-61	8-11	501
2389	46	488	2462, 2463	13, 14	504
2390, 2391	29, 30	482	2464	7	500
2392	47	488	2465	11	502
2393	31	482	2466	13	504
2394	Repealing		2467	Repealing	
2395	28	481		2-4	499
2396	32	482	2468-71	12, 13	503
2397, 2398	25	480	2472-77	5	499
2399	49	489	2478	12, 13	503
2400	47	488	2479-81		
2401-4	33-6	482	2482	*Omitted	
2405	22	480	2483-96	1-6	506
2406, 2407	43, 44	486	2497-2502	1-4	508
2408	48	488	2503-5	2, 3	510
2409	42	486	2506	5	511
	39	485	2507, 2508	3	511
2410	49	489	2509	6	512
	40	485	2510	5	511
2411	49	489	2511	3	511
2412	41	486	2512	12	513
2413	24	480	2513	1	510
2414	Repealing		2514	1	510
	1	472		13	513
2415	51	481	2515, 2516	1	510
	1	472	2517	7	512
2416	37, 38	485	2518-22	*Omitted	
2417, 2418	42	486	2523-34	1-9	524
2419	15	477	2535	3	527
2420	Superseded		2536, 2537	1	526
2421	68	492	2538	Temporary	
2422	Superseded		2539-45	1-4	526
2423	1	472	2546, 2547	1	521
2424	Superseded		2548	1	521
2425	1	472		6	523
2426	45	487	2549, 2550	3	522
2427	46	488	2551	1	521
2428	Superseded			7	523
2429	68	492	2552, 2553	4	522
2430, 2431	1-7	495	2554, 2555	6	523
2432-8	1	496	2556	Temporary	
2439-42	9	498	2557	Repealing	
			2558-63	1-4	517

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
SECTION.	SECTION.	PAGE.	SECTION.	SECTION.	PAGE.
2564	14a	113	2648, 2649	20, 21	542
2565	*Omitted		2650	Repealing	
2566	1	517	2651	47	257
2567	1	517		33	274
2568	11	521	2652	15	542
2569	2	517		34	274
2570, 2571	1	517	2653-5	16-18	274
2572	12	521	2656	Temporary	
2573, 2574	5	518	2657	Repealing	
2575-81	8	520	2658	Superseded	
2582	5, 10	518	2659-62	22-4	543
2583, 2584	5-8	518	2663	8	540
2585	Repealing		2664-6	25-7	544
2586-9	6, 7	355	2667	Repealing	
2590-7	10	356	2668	28	544
2598-2606	*Omitted		2669	5	540
2607, 2608	1-6	533	2670	29	544
	1-6	535	2671	4	540
	6	538	2672	Superseded	
2609	1	529	2673	1	544
	6, 10	530		1-3	529
2610	1	536	2674	6	530
2611	2, 3	529		1	544
2612	6	538		7	546
2613	1	536	2675	11	530
2614	8	538		1	544
2615	1, 2	536	2676	1	544
	4	529	2677	10	530
2616, 2617	1, 3	536		2	545
2618	3	537	2678, 2679	Temporary	
2619-21	1	536	2680	6	545
2622, 2623	4, 5	537		1-3	529
2624	7	538	2681	6	530
2625	11, 12	530		1	546
2626	7	530	2682	10	530
2627	8	530		1, 2	546
2628	9	539	2683	7	530
2629	Obsolete		2684	11	530
2630	1	529	2685	4	529
	1, 2	539	2686, 2687	1, 2	546
2631	2, 3, 6	529	2688	8	530
2632	10	530		9	548
	3	539	2689	9	548
2633	9	530	2690	1	546
2634, 2635	11, 12	530	2691	Obsolete	
2636-41	6-11	540	2692	6, 8	547
2642	4	529	2693-9	4, 5	547
2643, 2644	11	541	2700	Obsolete	
2645	12, 13	541	2701, 2702	3	547
	47	257	2703	6	547
2646	14	542	2704	1	546
2647	19	542	2705, 2706	9, 10	548
	12	541	2707	7	547
			2708	Omitted	
			2709	Repealing	

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
SECTION.	SECTION.	PAGE.	SECTION.	SECTION.	PAGE.
2710	1-3	529	2784	Temporary	-----
	6	530	2785	1-3	527
2711, 2712	1, 2	548		1, 3	527
	10, 11	530	2786	1-3	529
2713	1	548		6, 9-11	530
	9	550	2787	4	529
2714, 2715	3, 4	549	2788-96	Temporary	-----
2716	1	548	2797	3	528
2717	8	530	2798	4, 7	528
	8	549	2799	Temporary	-----
2718-20	5-7	549	2800, 2801	8	529
2721, 2722	1, 2	548		8	529
2723	1	550	2802	8, 12	530
2724	Temporary	-----	2803-18	1-6	557
	1-3	529	2819	1	562
2725	6	530	2820	11	564
	1	550	2821, 2822	2, 3	562
	4	529	2823	4	562
2726	1	550		19	566
2727	11	530	2824	5	563
2728	10	530	2825	6	563
	1	550	2826	6, 10	563
2729-45	3-11	550	2827	4	562
2746	8	530		9	563
	12	553	2828	9	563
2747	1	550		1	559
2748	Temporary	-----	2829	9	563
2749	12	553		52	577
2750	Temporary	-----		9	563
	1-3	529	2830	12, 14	564
2751	1	553	2831	12	564
2752	7	530	2832, 2833	19	566
2753	1	553	2834	19	566
2754	9	530		27	570
2755	11	530	2835, 2836	19	566
2756-60	1, 2	553		19	566
2761	*Omitted	-----	2837	66	580
2762	8	530		66	580
	5	554	2838, 2839	5, 66	580
2763-7	2-5	554		7	561
2768	*Omitted	-----	2840	65	580
	1	529	2841	65	580
2769	1	556	2842	21	569
	9, 10	530	2843	4	562
2770, 2771	1	556	2844, 2845	19	566
2772-4	1, 2	556	2846	14	564
2775	*Omitted	-----	2847-50	19	566
2776	5	557	2851	15	564
2777	8, 12	530	2852	19	566
	5	557		19	566
2778-80	3-5	556	2853	27	570
2781	1-3	529		31	571
	1	556	2854, 2855	13	564
2782, 2783	1	556	2856-60	15	564
			2861	73	582
			2862-6	16	566

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
SECTION.	SECTION.	PAGE.	SECTION.	SECTION.	PAGE.
2867	10	563	2944, 2945	46, 47	575
2868-79	19-24	566	2946	Legalizing	-----
2880-3	1-4	559	2947	Obsolete	-----
	3	545	2948	55	577
2884	7	547	2949-55	48, 49	576
	5	551	2956-9	45	575
	3	560	2960	56, 58	578
2885-94	1-9	559	2961	38	573
	15	564		57	578
2895	31	571	2962	15	564
	7	563		38	573
2896	31	571	2963	39	573
	32	572	2964	17	566
2897	1	568	2965-73	38, 39	573
	4	562	2974	Repealing	-----
2898	31, 32	571	2975-84	61-4	579
2899	31	571	2985-92	67-71	581
2900	33	572	2993-6	1, 2	585
2901	13	564	2997	33	572
	34	572		2	585
2902-4	35-7	572	2998-3000	10	587
2905	73	582	3001-3	3	585
2906	30	571	3004	Obsolete	-----
2907	Obsolete	-----	3005	4	586
2908	8	563	3006-14	6-9	586
	56	578	3015-21	11, 12	588
2909	*Omitted	-----	3022	18	590
2910	18	566	3023	12	588
2911	2	562	3024	Repealing	-----
2912-17	25-29	570	3025	Legalizing	-----
2918	1	116	3026-45	13-20	589
	40	574	3046-50	1, 2	591
2919	1	133	3051	Repealing	-----
2920	40	574	3052	4	592
2921	2	562	3053	1, 3	591
2922	41	574	3054-61	4-10	592
	41	574	3062, 3063	17	594
2923	52, 53	577	3064	Repealing	-----
2924	56	578	3065-72	1-7	594
2925	43	574	3073, 3074	1, 2	597
2926	42	574	3075, 3076	4, 6	598
2927	54, 56, 58	577	3077, 3078	2, 3	597
2928-30	44	574	3079	*Omitted.	-----
2931	56, 58	578	3080	Repealing	-----
2932	51	577	3081-90	1-6	599
2933	4	562	3091, 3092	1, 2	601
	56, 57	578	3093-6	1-4	601
2934	Legalizing	-----	3097, 3098	6, 7	602
	4	562	3099-3111	1-13	602
2935	10	563	3112, 3113	1, 2	604
	52, 53, 56	577	3114-17	11-14	605
2936-41	59, 60	578	3118	17	606
2942	Repealing	-----		15	605
	1	562	3119	36	853
2943	50	577	3120	16	606

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
SECTION.	SECTION.	PAGE.	SECTION.	SECTION.	PAGE.
3121-4	3-6	604	3573	Legalizing	-----
3125-7	8-10	605	3574	1	676
3128, 3129	18, 19	606	3575	3	676
3130-6	23-9	607	3576	7	344
3137, 3138	31, 32	609	3576	4	676
3139-43	Legalizing	-----	3577, 3578	2	676
3144, 3145	33, 34	609	3579	5	677
3146	37	610	3580	1	676
3147	Omitted	-----	3581	5	677
3148-50	38, 39	611	3582	2	676
3151-62	1-8	611	3583-99	6-17	677
3163-82	1-14	612	3600-4	19-21	678
3183	14	614	3605-15	23-32	679
3184, 3185	16	684	3616	1	687
3186-93	15, 16	614	3617-39	33-52	680
3194-3205	1-6	615	3640-56	1-15	683
3206-10	1-10	616	3657-72	17-31	685
3211	1-5	617	3673	*Omitted	-----
3212-50	Saving	-----	3674-3707	2-27	687
3251-7	1-25	623	3708	*Omitted	-----
3258-80	1-6	626	3709-16	1-7	693
3281-4	1-16	627	3717	*Omitted	-----
3285-8	1-3	630	3718-30	8-20	694
3289-91	1-4	631	3731	4	676
3292-3308	1-3	631	3732	21	695
3309	1-16	632	3732	22, 23	695
3310-23	Repealing	-----	3734-42	1-9	695
3324, 3325	1-14	635	3743	Obsolete	-----
3326-9	*Omitted	-----	3744-6	10-12	697
3330-53	15-17	639	3747	15	589
3351-75	1-16	640	3748-80	3	537
3376-87	1-17	642	3781-94	1-32	697
3388	1-9	649	3781-94	1-14	701
3389-92	8	650	3795-3803	1-9	703
3393-3410	30	852	3804-25	1-22	705
3411-27	10-12	650	3826	Legalizing	-----
3428-31	1-18	650	3827-35	23-30	708
3432-64	1-17	653	3836-40	1-5	710
3465-70	1-4	655	3841-8	1-7	711
3471-7	1-29	655	3849, 3850	*Omitted	-----
3478-97	32-7	659	3851	8	712
3498-3502	1-5	661	3852-5	10-13	712
3503-8	7-21	661	3856	107	735
3509	1-5	663	3857	14	713
3510, 3511	1-6	664	3858	*Omitted	-----
3512	1	51	3859-3914	15-70	713
3513, 3514	1, 2	669	3915	Obsolete	-----
3515-21	Legalizing	-----	3916-25	71-80	719
3522-41	Superseded	-----	3926	69	719
3542-52	3-8	669	3927-43	81-97	720
3553	1-15	670	3944-53	1-11	722
3554-70	17-26	672	3954-67	15-28	724
3571, 3572	Legalizing	-----	3968-81	30-44	726
	27-37	673	3982	*Superseded	-----
	39	675	3983-90	45-52	727

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
SECTION.	SECTION.	PAGE.	SECTION.	SECTION.	PAGE.
3991-4035	54-95	729	4255	*Omitted	-----
4036	*Omitted	-----	4256-63	5-12	764
4037-46	96-105	733	4264	13, 14	765
4047, 4048	111, 112	736	4265	128	738
4049	106, 109	735	4266	13, 14	765
4050	110	736	4267	13, 14	765
4051-65	113-127	736	4267	128	738
4066	106	735	4268-72	13, 14	765
4067-72	129-34	738	4273	15-19	765
4073	*Omitted	-----	4274-9	54	771
4074-4103	135-161	738	4280-2	20-25	766
4104-9	1-6	741	4283	38-40	769
4110-12	1-3	742	4284-95	*Omitted	-----
4113-15	1-3	743	4296	41 52	769
4116-20	1-5	744	4297	13	765
4121-36	1-16	744	4298-4303	53	771
4137-42	1-6	746	4304-6	55	771
4143-62	1-19	747	4307	64	772
4163-80	1-17	753	4308-38	58-63	772
4181	18-22, 24	755	4339-48	55-7	771
4182	25	756	4349-56	*Omitted	-----
4183	22	756	4357	71-99	773
4184	1	743	4358-63	101-5	777
4185-8	26-28	756	4364-82	107-14	778
4189	29	757	4383-91	*Omitted	-----
	26	766	4392-4407	115-20	778
	29	757	4408	1-19	779
4190	27-31	766	4409	1-9	785
	34	768	4410-12	1-15	786
4191	29	759	4413	23, 26	789
4192	33	767	4414	17	788
	35	768	4415-23	*Omitted	-----
4193	29	757	4424-6	38	791
	34	768	4427	24	789
4194	29	757	4428-32	28-35	790
4195-9	36	768	4433	40-2	791
4200	30	757	4434, 4435	44	792
	1	761	4436	46-50	792
4201-10	14	763	4437, 4438	18	788
4211	1-9	761	4439	40	791
4212, 4213	10, 13	762	4440	45	792
4214-18	12, 13	762	4441-3	37, 39	791
4219-39	16-20	763	4444	25	789
4240, 4241	31-51	757	4445	36	791
4242	52, 54	760	4446-54	51-3	792
4243	12	755	4455-74	16	788
4244, 4245	53	760	4475-4502	54	793
4246	55, 56	760	4503-10	1-9	793
4247	3	753	4511-42	1-19	797
4248	57	757	4513-8	1-26	800
4249	23	756	4549-54	1, 2-11	804
4250-4	58	760	4555-66	1-32	807
	104	842		1-6	810
	1-4	763		8-12	811
				15-26	812

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
SECTION.	SECTION.	PAGE.	SECTION.	SECTION.	PAGE.
4567-10	1-12	813	5005	115	863
4581-4603	1-23	814	5006	6	18
4604-8	1-5	817	5007	20-2	21
4609-21	1-13	817	5008	10-12	24
4622-43	1-23	819	5009	15, 16	26
4644-51	1-8	822	5010-12	Obsolete	-----
4652-67	1-17	823	5013, 5014	7	534
4668-80	*Omitted	-----	5015	Repealing	-----
4681-97	1-17	824	5016	17	594
4698-4739	1-42	826	5017	26	626
4740-50	1-11	830	5018	*Omitted	-----
4751-5	1-5	832	5019, 5020	22, 23	32
4756-63	1-7	833	5021, 5022	26, 27	34
4764-83	9-28	834	5023	Saving	-----
4784-4822	30-68	836	5024	12	46
4823-36	70-83	839	5025	4	48
4837-4851	85-99	841	5026	2, 3	46
4852-9	101-8	842	5027	*Omitted	-----
4860-5	1-5	803	5028	Obsolete	-----
4866-74	7-15	803	5029	30	56
4875-83	109-117	843	5030	29	725
4884	119	844	5031	13	41
4885	8	833	5031	*Omitted	-----
4886	1	849	5032	1	241
4887-4919	2	981	5033, 5034	10	63
4920	2-33	849	5035	Superseded	-----
4921	48	854	5036-9	10-14	63
4922-4	Obsolete	-----	5040	Repealing	-----
4925-8	58-60	856	5041-62	13	109
4929-33	62-5	857	5063	Repealing	-----
4934, 4935	69-71	857	5064	14	111
4936-9	66, 67	857	5065	62	102
4940-51	54-7	855	5066	6	107
4952, 4953	72-82	858	5067	9, 10	105
4954	34, 35	853	5068, 5069	93, 94	267
4955-66	Obsolete	-----	5070	11	106
4967-71	36-47	853	5071	9	103
4972-79	49 53	854	5072	10, 12	104
4980	83-91	859	5073	*Omitted	-----
4981	*Omitted	-----	13	65	-----
4982-4	87	859	5074	11	104
4985	96	861	5075	5	115
4986	94, 95	861	5076	19	113
4988	92	860	5077	10	115
4989	97, 98	861	5078, 5079	10	80
4990-2	93	8 0	5080-2	27, 28	626
4993	98	861	5081	122-4	844
4994, 4995	103	862	5082	13	110
4996-5000	102	862	5083	33	121
5001	104-6	862	5084	13	109
5002-4	101	862	5085	34	121
	107, 108	862	5086	27	462
	116-19	863	5087	35	121
	121	864		23	75
	109-12	863		118	844

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
SECTION.	SECTION.	PAGE.	SECTION.	SECTION.	PAGE.
5088	20	749	5267-80	27-40	889
5089	2	241	5281, 5282	13, 14	243
5090	61	856	5283, 5284	41, 42	891
5091	120	844	5285	20	877
5092	Temporary	-----	5286	7	875
5093	121	844	5287	8	875
5094	62a	857	5288, 5289	17	876
5095	10	982	5290	25, 26	877
5096, 5097	3, 4	241	5291	2	874
5098	41	465	5292	30	878
5099	15	461	5293	27	878
5100	41	465	5294, 5295	24	877
5101	15	461	5296	3, 4	874
5102, 5103	46	291	5297	31	878
5104, 5105	57, 58	457	5298	1	874
5106	11	530	5299, 5300	10	875
5107	Repealing	-----	5301	5, 6	875
5108	35	224	5302	9	891
5109	13	650	5303-5316	1	892
5110, 5111	48	488	5317-20	5-18	894
5112	5	958	5321-32	1-4	895
5113	5	958	5333	7-19	120
5114	5	242	5334-40	31	897
5115	72	773	5341	20-26	-----
5116-18	17	271	5342-8	Repealing	-----
5119	21, 22	749	5349, 5350	27-33	898
5120	18	824	5351	35, 36	900
5121	113	863	5352-5	5	894
5122, 5123	6-8	242	5356-8	37-40	900
5124	*Omitted	-----	5359	6-8	902
5125-7	9	242	5360-2	7	526
5128-35	13	962	5363	1	901
5136, 5137	10-12	242	5364-6	2-5	901
5138-40	61	102	5367	14	903
5141, 5142	1-3	865	5368	9-11	902
5143-8	1-8	865	5369	2	510
5149	Repealed	-----	5370-5	12, 4	903
5150	13, 14	867	5376	13	903
5151-78	Superseded	-----	5377	Repealing	-----
5179-95	15-20	867	5378	17-20	904
5196	Temporary	-----	5379	Temporary	-----
5197	Repealing	-----	5380-5	21-3	905
5198, 5199	21-48	868	5386-90	19	904
5200	1-17	871	5391	Temporary	-----
5201	19	882	5392-5401	1-4	905
5202-7	21	877	5402	6-9	906
5208-14	28, 29	878	5403-11	Repealing	-----
5215-17	26	878	5412-30	10-18	907
5218-22	22	877	5431-6	Repealing	-----
5223-41	11-16	879	5437, 5438	Superseded	-----
5242-66	1-7	880	5439-46	19-36	909
	9-12	881	5447-53	1-6	912
	14-18	882		10, 11	913
	1-19	882		1-8	913
	1-25	885		13-19	915

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
SECTION.	SECTION.	PAGE.	SECTION.	SECTION.	PAGE.
5454-7	Repealed	-----	5782	Omitted	-----
5458-62	28-32	918	5783-90	1-3	963
5463	6	934	5791	Omitted	-----
5464-6	33-5	919	5792-5803	4-12	965
5467	*Omitted	-----	5804	1	965
5468, 5469	36, 37	919	5805-9	3-6	966
5470-7	1-8	920	5810	19	955
5478-83	1-6	921	5811	8	982
5484-9	1-5	925	5812	1	981
5490-3	1-5	925	5813-20	8	982
5494-6	1-3	926	5821	7-14	967
5497-5511	1-14	926	5822	2	966
5512-26	1-15	929	5823	15	968
5527, 5528	Repealed	-----	5824-36	6	922
5529-38	1-10	932	5837-44	16-27	968
5539	*Omitted	-----	5845-63	1-5	970
5540-8	1-9	933	5864-71	1-13	970
5549-54	1-6	934	5872-5	1-7	972
5555-68	1-13	935	5876-9	1-4	973
5569-80	1-11	937	5880-96	1-4	974
5581-7	1-5	939	5897-5904	1-13	974
5588-92	7-11	940	5905-22	1-5	976
5593-5	2	939	5923-30	1-13	977
5596-5609	12-23	940	5931-4	15-21	978
56 0-20	1-9	943	5935-40	1, 2	979
5621	3	981	5941	5-9	980
5622-37	10-23	944	5942-5	3	979
5638-40	1, 2	946	5947	9-12	980
5641-4	3, 5	947	5948	14	981
5645-54	3-14	947	5949	Temporary	-----
5655-73	1-21	948	5950	5	979
5674-7	1-5	951	5951, 5952	13	981
5678	Repealing	-----	5953	10	980
5679	3	951	5954	14	981
5680-97	1-18	952	5955-8	1	981
5698-5702	20-4	955	5959-70	4-7	981
5703-11	1-7	956	5971, 5972	10-17	982
5712-17	1-4	957	5973-9	1, 2	983
5718-21	6-9	958	5980-3	8-13	985
5722-9	1-7	958	5984	3-6	984
5730	1	960	*Omitted	-----	-----
5731	4	960	7	984	-----
5732	3	960	*Omitted	-----	-----
5733	12	961	1-4	987	-----
5734-6	3	960	1-3	988	-----
5737	12	961	1-5	986	-----
5738-46	2	960	5999-6003	1-4	987
5747-52	4-9	960	6004-6	1, 2	985
5753-67	10-15	961	6007, 6008	1, 2	989
5768-70	1-14	961	6009, 6010	1, 2	989
5771	Obsolete	-----	6011-17	1-5	989
5772, 5773	13	962	6018-26	1-4	990
5774	Obsolete	-----	6027-32	1-6	991
5775-81	*Omitted	-----	6033	Omitted	-----
	1-6	963	6034-51	7-24	992

TABLE OF REFERENCES—CONTINUED.

McCLAIN'S CODE.	REPORTED CODE.		McCLAIN'S CODE.	REPORTED CODE.	
SECTION.	SECTION.	PAGE.	SECTION.	SECTION.	PAGE.
6052-7	1-6	994	6212	47	1017
6058-6104	1-47	995	6213	Temporary	-----
6105	13	144	6214	14	1012
6136-9	1-4	1000	6215-17	57	1019
6110-12	1-3	1001	6218	Superseded	-----
6113-20	1-8	1002	6219	47	1017
6121-43	1-22	1005	6220	16	1012
6144	Omitted	-----	6221	47	1017
6145-66	1-13	1008	6222	Repealing	-----
6167, 6168	Superseded	-----	6223	Superseded	-----
6169	52	1018	6224	3	1009
6170-82	15-27	1012	6225-30	Repealing	-----
6183-7	56-8	1019	6231	Superseded	-----
6188-6202	28-40	1013	6232, 6233	49, 50	1018
6203, 6204	54, 55	1019	6234	57	1019
6205	41	1016		Temporary	-----
6206	Saving	-----		53	1018
6207-9	42, 43	1016		57	1019
6210, 6211	Temporary	-----			

TWENTY-THIRD GENERAL ASSEMBLY (1890.)

CHAPTER.	REPORTED CODE.		CHAPTER.	REPORTED CODE.	
	SECTION.	PAGE.		SECTION.	PAGE.
1	Temporary	-----	17	32-7	419
2	8	153	18	46-50	396
3	5	134	19	22	415
	12	135	20	55, 56	398
	8	239	21	25	392
	8	182	22	33	385
4	1, 2	185	23	2	535
	4, 5	186		12	588
	6-8	187		18	590
5	8	182		4	562
	6-17	159	24	1-7	582
6	40	167		9-17	583
	8	182	25	2	116
	29	157	26	Temporary	-----
7	8	182	27	16	118
	22	148	28	20-7	916
8	8	182	29	25-8	315
	30	158	30	Legalizing	-----
9	1	158	31	9, 10	25
	45	168	32	39	99
10	3	159	33	14, 15	338
11	17	155		1-3	515
12	1	185	34	5-9	516
	28	149		1	472
13	8	182	35	4-21	473
14 16	Sp. ch.	-----		45	487

TWENTY-THIRD GENERAL ASSEMBLY—CONTINUED.

CHAPTER.	REPORTED CODE.		CHAPTER.	REPORTED CODE.	
	SECTION.	PAGE.		SECTION.	PAGE.
35	1	524	48	67	773
36	5	525	49	5	107
37	16	198	50	8, 9	356
38	Legalizing	-----	51	Superseded	-----
39	20	251		9, 10	28
40	2	626	52	1	510
41	13	109		1	526
42	28	658	53	3	52
	30, 31	659	54	12	553
	1	929	55	4, 5	556
43	16-24	930	56	8	549
44	17	314	57	43-6	1016
45	9	629	58	8	529
46	*Omitted	-----	59-124	Temporary	-----
	18	639	125	12	313
47	67-70	773	126-36	Temporary	-----

TWENTY-FOURTH GENERAL ASSEMBLY (1892).

1	1-6	174	26	72	402
	9	176	27	22	415
	9	183		7	344
	16	185	28	20-7	918
	8	220	29	26	321
2	1	174	30	8	344
3	10	176		2	425
4	Sp. ch.	-----		6-15	426
5	22, 23	59		17, 18	428
	1	125	31	23, 25	429
6	12	144		27	430
	1	539		34, 36, 37	431
7	34	141		39, 42	432
8	4	159	32	46	432
9	Repealed	-----		2	203
10	10-13	117		9-34	205
11	3	159	33	36, 37	214
12	Repealed	-----		42	215
13	Sp. ch.	-----		47-50	216
	8	182		2, 4-6	218
	18	185	34	24, 25	708
14	1-4	185	35	97	267
	6-9	187	36	9-11	914
	78	264	37	40	464
15	1, 2	185	38	Swamp land.	-----
16	Temporary	-----	39	6	895
17	10	86	40	44	300
18	51, 53	397	41	7	63
19	19	566	42	Legalizing	-----
20	10	563	43	6	906
21	5	563	44	1	642
22	33	385		3-7	643
23	46-9	396		35	298
	18	448	45	30	910
24	5	528	46	11	516
25	35	420	47	24	905

TWENTY-FOURTH GENERAL ASSEMBLY—CONTINUED.

CHAPTER.	REPORTED CODE.		CHAPTER.	REPORTED CODE.	
	SECTION.	PAGE.		SECTION.	PAGE.
48	44	453	60	17	594
49	35-9	464	61	5, 6	18
	1	510	62	Repealed	-----
50	9-11	512	63	27	315
	14-16	903		29	316
	22, 23	59	64	24	33
51	1-4	529		26	34
	10, 11	530	65	1	556
	1-4	555	66	34	463
52	2-4	506	67	13-16	313
	7	508	68	45	300
53	3	51	69	23	94
54	3	51		26	322
55	3	51	70	Temporary	-----
56	11	593	71	1-6	505
57	59-61	260	72-94	Temporary	-----
58	23, 24	315	95	6	528
59	5	518	96-113	Temporary	-----
	10	520			

TWENTY-FIFTH GENERAL ASSEMBLY (1894.)

1	2, 3-8	174	14	27	138
	16	185		18, 22	136
2	3, 4	174		29	138
3	1	185	15	32	139
4	32	158		36	141
	8	153		8	220
5	18	156	16	2	635
	28, 29	157		1	591
	2	181	17	11	593
6	11	184	18	34	385
	1-3	158		9	153
	19	162	19	10, 14	154
	21-6	163		10	183
	28, 29	164	20	47, 48	1017
	31-3, 35	165	21	45	300
7	37-9	166	22	1, 3	292
	42	167	23	13	389
	44, 45	168	24	14	389
	1-4	170	25	27-32	392
	6-10	172	26	16, 17	389
	13	174		51	397
	8	182	27	53	398
8	41	167	28	18-20	390
	8	182	29	3, 11, 12	357
9	2-4	171	30	2, 4, 5	355
	8, 10-12	173		18	358
10	3-5	85	31	61	331
	7	86	32	26	321
11	18	128	33	8	344
12	Legalizing.	-----	34	19	566
13	15-17	135	35	97	267
	8	220		10	583
14	16	135	36	6	536

TWENTY-FIFTH GENERAL ASSEMBLY—CONTINUED.

CHAPTER.	REPORTED CODE.		CHAPTER.	REPORTED CODE.	
	SECTION.	PAGE.		SECTION.	PAGE.
37	19	566	78	31	691
38	40	574	79	12	915
39	44	216	80	1	443
40	4, 5	545	81	39	275
41	35-9	151	82	1	597
42	Legalizing	-----	83	13	109
43	8	182	84	51	100
44	10	593	85	32	463
45	3	511	86	19	314
46	2 5	510	87	20	32
	7	512	88	21	32
47	12	513	89	44	300
	1	510		Legalizing	-----
48	8	512	90	9	63
	1	642	91	7	604
49	Temporary	-----	92	36-8	298
50	19	882	93	9-15	866
51	39	675	94	5	633
52	15	82	95	10, 13	634
53	18	606	96	100	862
54	23	812	97	55	771
55	10, 11	86	98	16	713
56	10, 11	86	99	7-9	912
57	10, 11	86	100	12	503
58	12-16	593		8	182
59	10	86		6	982
60	8, 9	202		23	946
61	2-4	891		32	998
62	3	204		65, 66	772
63	5	906		5	805
64	52-74	489		1	465
65	4	473		17	468
66	23	877		5	242
67	2	515		10	553
68	3	51		4	540
69	3	51		3, 4	601
70	2, 3	45		2	6
	10	198		33	274
71	1	71		53	543
	4, 7-11	72		1	311
72	14, 15,	74		3	539
	18-21	74		Temporary	-----
73	4	948		1	245
74	6	949		77	264
75	2	71		Temporary	-----
76	9	7		30	544
77	17	199		Temporary	-----
	125	846		9	539
	10-12	108		Temporary	-----
	3, 4	106		6	506
	11	64		Temporary	-----

RULES OF DISTRICT JUDGES.

(SEE M'CLAIN'S CODE, P. LVII.)

PRACTICE.	REPORTED CODE.		PROBATE.	REPORTED CODE.	
	SECTION.	PAGE.		SECTION.	PAGE.
1	9	712	I, II	9	670
2, 3	12, 13	723	III	28	690
4	14	724	IV	22	679
5	84	840	V	29	691
	7	723	VI	5	677
			VII	30	691



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