

Duty of prosecuting attorney.

is amended to read as follows: Whenever a complaint for divorce remains undefended it shall be the duty of the prosecuting attorney to resist such complaint, but no prosecuting attorney shall be employed in or allowed to conduct any action for a divorce on the part of the plaintiff or applicant in the courts of this state; nor shall any prosecuting attorney be allowed to resist a complaint for divorce in those cases where the defendant does not appear or appearing admits the allegations of the complaint, if the attorney for the applicant is a partner of such prosecuting attorney in the practice of law, or keeps his office with such prosecuting attorney; but in all such cases the court or judge before whom the case is to be heard shall appoint an attorney to resist the complaint, who shall be entitled to the compensation allowed by law to prosecuting attorneys in such cases.

Practice governing.

SEC. 9. Section 2012 of said code of 1881 is amended to read as follows: The practice in civil actions shall govern all proceedings in the trial of actions for divorce, except that trial by jury is dispensed with.

SEC. 10. The various sections of this act shall constitute a part of the code of procedure of this state, and be arranged therein under appropriate numbers.

Approved February 24, 1891.

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## CHAPTER XXVII.

[S. B. No. 72.]

### RELATING TO JUDGMENTS.

AN ACT relating to proceedings to vacate or modify judgments in the courts in which they were rendered.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. Section 438 of the code of Washington of 1881 is amended to read as follows: The proceedings to vacate or modify a judgment or order for mistakes or omis-

sions of the clerk, or irregularity in obtaining the judgment or order, shall be by motion served on the adverse party or on his attorney in the action, and within one year.

Limit of service of motion.

SEC. 2. Section 439 of said code of 1881 is amended to read as follows: The proceedings to obtain the benefit of subdivisions two, three, four, five, six and seven of section thirteen hundred and twenty-six shall be by petition verified by affidavit, setting forth the judgment or order, the facts or errors constituting a cause to vacate or modify it, and if the party is a defendant, the facts constituting a defense to the action; and such proceedings must be commenced within one year after the judgment or order was made, unless the party entitled thereto be a minor or person of unsound mind, and then within one year from the removal of such disability.

Petition and affidavit.

Must be within one year.

SEC. 3. Section 440 of said code of 1881 is amended to read as follows: In such proceedings the party shall be brought into court in the same way, on the same notice as to time, mode of service and mode of return, and the pleadings shall be governed by the same principles, and issues be made up by the same form, and all the proceedings conducted in the same way, as near as can be, as in original action by ordinary proceedings, except that the facts stated in the petition shall be deemed denied without answer, and defendant shall introduce no new cause, and the cause of the petition shall alone be tried.

Rules of procedure.

SEC. 4. The provisions of this chapter shall not be so construed as to affect the power of the court to vacate or modify judgments or orders as elsewhere in this code provided; nor shall any judgment of acquittal in a criminal action be vacated under the provisions of this chapter.

Effect on other proceedings.

SEC. 5. In all cases in which an application under this chapter to vacate or modify a judgment or order for the recovery of money is denied, if proceedings on the judgment or order shall have been suspended, judgment shall be rendered against the plaintiff for the amount of the former judgment or order, interest and costs, together with damages at the discretion of the court, not exceeding ten per cent. on the amount of the judgment or order.

Judgment.

SEC. 6. The provisions of this act shall be embodied in

and be a part of the chapter of the code of procedure relating to the vacation or modification of judgments in the courts in which they are rendered.

Approved February 24, 1891.

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## CHAPTER XXVIII.

[S. B. No. 81.]

### PROSECUTIONS FOR PUBLIC OFFENSES.

AN ACT in relation to prosecutions for public offenses, and amending sections 782, 779, 760, 1072, 1073, 1076, 764, 977, 979, 981, 984, 985, 1000, 1001, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1028, 1030, 1038, 1039, 1066, 1064, 1065, 1045, 1048, 1049, 1050, 1051, 1052, 1054, 1055, 1058, 1059, 1060, 1061, 1070, 1043, 1044, 1078, 1083, 1084, 1067, 1088, 1091, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1105, 1107, 1121, 1125, 1134, 1138, 1139, 765, 766, 767, 769, 771, 772, 773, 775, 958 and 971 of the Code of Washington of 1881.

*Be it enacted by the Legislature of the State of Washington:*

Trial in superior courts.

SECTION 1. Section 782 of the code of Washington of 1881 is amended to read as follows: For all offenses at common law which are not hereinafter defined by statute, the offender may be tried in the superior courts of this state.

Limit of action.

SEC. 2. Section 779 of said code of 1881 is amended to read as follows: Prosecutions for the offenses of murder and arson, where death ensues, may be commenced at any period after the commission of the offense; for offenses the punishment of which may be imprisonment in the penitentiary, within three years after their commission; and for all other offenses within one year after their commission: *Provided*, That any length of time during which the party charged was not usually and publicly resident within this state shall not be reckoned within the one and three years respectively: *And further provided*, That where an indictment has been found, or an information filed, within the time limited for the commencement of a criminal action,