

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,

if the indictment or information be set aside, the time of limitation shall be computed from the setting aside of such indictment or information.

SEC. 3. Every person, whether an inhabitant of this state, or of any other state, territory, or country, may be tried and punished under the laws of this state for an offense committed by him therein, except when such offense is cognizable exclusively in the courts of the United States.

Offenses  
against U. S.

SEC. 4. Except as otherwise specially provided by statute, all criminal actions shall be commenced and tried in the county where the offense was committed.

Limit of place  
of trial.

SEC. 5. Section 960 of said code of 1881 is amended to read as follows: Offenses committed on the boundary line of two counties, or within one hundred rods of the dividing line between them, may be alleged in the indictment or information to have been committed in either of them, and may be prosecuted and punished in either county.

Offenses com-  
mitted on or  
near boundary  
line.

SEC. 6. An accessory after the fact to a felony may be tried either in the county in which he shall have become an accessory, or in the county in which the felony shall have been committed.

Accessory.

SEC. 7. Section 1072 of said code of 1881 is amended to read as follows: The defendant may show to the court, by affidavit, that he believes he cannot receive a fair trial in the county where the action is pending, owing to the prejudice of the judge, or to excitement or prejudice against the defendant in the county or some part thereof, and may thereupon demand to be tried in another county. The application shall not be granted on the ground of excitement or prejudice other than prejudice of the judge, unless the affidavit of the defendant be supported by other evidence, nor in any case unless the judge is satisfied the ground upon which the application is made does exist.

Change of  
venue.

SEC. 8. Section 1073 of said code of 1881 is amended to read as follows: When the affidavit is founded on prejudice of the judge, the court may, in its discretion, grant a change of venue to some other county, or may continue the cause until such time as it can be tried by another judge in the same county; if the affidavit is founded upon excitement or prejudice in the county against the defendant, the court may,

Continuance.

Transcript of proceedings.

in its discretion, grant a change of venue to the most convenient county. The clerk must, upon the granting of a change of the place of trial, make a transcript of the proceedings and order of court; and, having sealed up the same with the original papers, deliver them to the sheriff, who must without delay, deposit them in the clerk's office of the proper county and make his return accordingly.

Recognizance.

SEC. 9. Section 1076 of said code of 1881 is amended to read as follows: When a change of venue is ordered, if the offense be bailable, the court shall recognize the defendant, and in all cases the witnesses, to appear at the court to which the change of venue was granted.

Limit for holding to answer.

SEC. 10. Section 764 of said code of 1881 is amended to read as follows: No person shall be held to answer in any court for an alleged crime or offense, unless upon an information filed by the prosecuting attorney, or upon an indictment by a grand jury, except in cases of misdemeanor before a justice of the peace or before a court martial.

Challenges of grand jurors.

SEC. 11. Section 977 of said code of 1881 is amended to read as follows: Challenges to the panel of grand jurors shall be allowed to any person in custody or held to answer for an offense, when the clerk has not drawn from the jury box the requisite number of ballots to constitute a grand jury, or when the drawing was not done in the presence of the proper officers; and such challenges shall be in writing and verified by affidavit and proved to the satisfaction of the court.

New panel.

SEC. 12. Section 979 of said code of 1881 is amended to read as follows: If a challenge to the panel be allowed, the panel shall be discharged, and the court may order the sheriff to summon from the by-standers and the body of the county a sufficient number of persons to act as grand jurors.

Form of oath to grand jurors.

SEC. 13. Section 981 of said code of 1881 is amended to read as follows: The following oath shall be administered to the grand jury: "You, as grand jurors for the body of the county of ———, do solemnly swear [or affirm] that you will diligently inquire into and true presentment make of all such matters and things as shall come to your knowl-

edge, according to your charge; the counsel of the state, your own counsel, and that of your fellows, you shall keep secret; you shall present no person through envy, hatred, or malice; neither will you leave any person unrepresented through fear, favor, affection, or reward or the hope thereof; but that you will present things truly as they come to your knowledge, according to the best of your understanding, and according to the laws of this state. So help you God.”

SEC. 14. Section 984 of said code of 1881 is amended to read as follows: The prosecuting attorney shall attend on the grand jury for the purpose of examining witnesses and giving them such advice as they may ask. Duty of prosecuting attorney.

SEC. 15. Section 985 of said code of 1881 is amended to read as follows: The grand jury shall inquire into the cases of parties in custody or under bail charged with commission of offenses against the laws of this state, and duly returned by a committing magistrate, or upon a complaint sworn to before an officer authorized to administer oaths and presented by the prosecuting attorney or under the instructions of the court. Duty of grand jury.

SEC. 16. Section 1000 of said code of 1881 is amended to read as follows: When an indictment indorsed “not a true bill” has been presented in court and filed, the effect thereof is to dismiss the charge; and the same cannot be again submitted to or inquired of by the grand jury, or made the cause of an information, unless the court so order.

SEC. 17. Section 1001 of said code of 1881 is amended to read as follows: A presentment is an informal statement of facts for the purpose of obtaining the advice of the court as to the law thereon. It is made by the foreman in the presence of the grand jury and with the concurrence of twelve of their number. A presentment is not to be filed in court or preserved beyond the sitting of the grand jury.

SEC. 18. All informations shall be verified by the oath of the prosecuting attorney, complainant or some other person. Verification of information.

SEC. 19. Section 1003 of said code of 1881 is amended to read as follows: The first pleading on the part of the state is the indictment or information.

SEC. 20. Section 1004 of said code of 1881 is amended

Indictment or information.

to read as follows: The indictment or information must contain—1. The title of the action, specifying the name of the court to which the indictment or information is presented and the names of the parties. 2. A statement of the acts constituting the offense, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

SEC. 21. Section 1005 of said code of 1881 is amended to read as follows: The indictment may be substantially in the following form:

Form of indictment.

THE STATE OF WASHINGTON V. A—— B——.

*Superior court of the State of Washington for the county of ——.*

A. B. is accused by the grand jury of the ——, by this indictment, of the crime of [here insert the name of the crime, if it have one, such as treason, murder, arson, manslaughter, or the like; or if it be a crime having no general name, such as libel, assault and battery, and the like, insert a brief description of it as given by law], committed as follows:

The said A. B. on the —— day of ——, 18—, in the county of ——, aforesaid, [here set forth the act charged as a crime.]

Dated at ——, in the county aforesaid, the —— day of ——, A. D. 18—.

[Signed] C. D., Prosecuting Attorney.

[Indorsed] A true bill.

[Signed] E. F., Foreman of the Grand Jury.

SEC. 22. Section 1006 of said code of 1881 is amended to read as follows: The indictment or information must be direct and certain as it regards: 1. The party charged. 2. The crime charged; and 3. The particular circumstances of the crime charged, when they are necessary to constitute a complete crime.

Name of defendant.

SEC. 23. Section 1007 of said code of 1881 is amended to read as follows: When a defendant is designated in the indictment or information by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted or informed against by the name mentioned in the indictment or information.

SEC. 24. Section 1008 of said code of 1881 is amended to read as follows: The indictment or information must charge but one crime, and in one form only, except that

where the crime may be committed by use of different means, the indictment or information may allege the means in the alternative.

SEC. 25. Section 1009 of said code of 1881 is amended to read as follows: The precise time at which the crime was committed need not be stated in the indictment or information, but it may be alleged to have been committed at any time before the finding of the indictment or the filing of the information, and within the time in which an action may be commenced therefor, except where the time is a material ingredient in the crime. Specifications of time.

SEC. 26. Section 1011 of said code of 1881 is amended to read as follows: When the crime involves the taking of or injury to an animal the indictment or information is sufficiently certain in that respect if it describes the animal by the common name of its class.

SEC. 27. Section 1012 of said code of 1881 is amended to read as follows: The words used in an indictment or information must be construed in their usual acceptation, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

SEC. 28. Section 1013 of said code of 1881 is amended to read as follows: Words used in a statute to define a crime need not be strictly pursued in the indictment or information, but other words conveying the same meaning may be used.

SEC. 29. Section 1014 of said code of 1881 is amended to read as follows: The indictment or information is sufficient if it can be understood therefrom—1. That it is entitled in a court having authority to receive. 2. That it was found by a grand jury of the county in which the court was held. 3. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that his real name is to the jury unknown. 4. That the crime was committed within the jurisdiction of the court, except where, as provided by law, the act, though done without the county in which the court is held, is triable therein. 5. That the crime was committed at some time previous to the finding Sufficiency of indictment or information.

of the indictment or filing of the information, and within the time limited by law for the commencement of an action therefor. 6. That the act or omission charged as the crime is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended. 7. The act or omission charged as the crime is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction according to the right of the case.

SEC. 30. Section 1015 of said code of 1881 is amended to read as follows: No indictment or information is insufficient, nor can the trial, judgment or other proceedings thereon be affected, by reason of any of the following matters, which were formerly deemed defects or imperfections: 1. For want of an allegation of the time or place of any material fact, when the time and place have been once stated. 2. For the omission of any of the following allegations, namely: "With force and arms," "contrary to the form of the statute or the statutes," or "against the peace and dignity of the state." 3. For the omission to allege that the grand jury was impaneled, sworn, or charged. 4. For any surplusage or repugnant allegation, or for any repetition, when there is sufficient matter alleged to indicate clearly the offense and the person charged. Nor 5. For any other matter which was formerly deemed a defect or imperfection, but which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

SEC. 31. Section 1016 of said code of 1881 is amended to read as follows: Neither presumptions of law nor matters of which judicial notice is taken need be stated in an indictment or information.

SEC. 32. Section 1017 of said code of 1881 is amended to read as follows: In pleading a judgment or other determination of or proceeding before a court or officer of special jurisdiction, it is not necessary to state in the indictment or information the facts conferring jurisdiction; but the judgment, determination or proceeding may be stated to have been duly given or made. The facts conferring jurisdiction, however, must be established on the trial.

SEC. 33. Section 1018 of said code of 1881 is amended to read as follows: In pleading a private statute, or right derived therefrom, it is sufficient to refer, in the indictment or information, to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

SEC. 34. Section 1019 of said code of 1881 is amended to read as follows: An indictment or information for libel need not set forth any extrinsic facts, for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment or information is founded; but it is sufficient to state generally that the same was published concerning him; and the fact that it was so published must be established on the trial.

SEC. 35. Section 1020 of said code of 1881 is amended to read as follows: When an instrument which is the subject of an indictment or information for forgery has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment or information, and established on the trial, the misdescription of the instrument is immaterial.

SEC. 36. Section 1021 of said code of 1881 is amended to read as follows: In an indictment or information for Perjury. perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the crime was committed, and in what court or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment or information need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

SEC. 37. Section 1022 of said code of 1881 is amended to read as follows: Upon an indictment or information against several defendants any one or more may be convicted or acquitted.

SEC. 38. Section 1023 of said code of 1881 is amended

Larceny or  
embezzlement.

to read as follows: In an indictment or information for larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination or kind thereof.

Lewdness or  
obscenity.

SEC. 39. Section 1024 of said code of 1881 is amended to read as follows: An indictment or information for exhibiting, publishing, passing, selling, or offering to sell, or having in possession with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing, but it is sufficient to state generally the fact of the lewdness or obscenity thereof.

Ownership of  
property af-  
fected.

SEC. 40. Section 1025 of said code of 1881 is amended to read as follows: In prosecutions under the provisions of the penal code, sections fifty-two, sixty and ninety-one, where the owner of the property is unknown, such property shall, for the purpose of this code, be deemed and held to be owned by the State of Washington; and in all cases where the indictment or information alleges the state to be the owner of such property, and the proof on the trial discloses the name of the actual owner, it shall not be deemed a variance, or failure of proof, unless the defendant is the actual owner.

Warrant.

SEC. 41. Section 1026 of said code of 1881 is amended to read as follows: When an indictment is found or an information filed the court may direct the clerk to issue a warrant for the arrest of the defendant, returnable forthwith; if no order is made the clerk must issue a warrant within ten days after the indictment is returned into court or the information filed.

Bail.

SEC. 42. Section 1028 of said code of 1881 is amended to read as follows: The court must, at the time of directing the clerk to issue the warrant, fix the amount in which persons charged by indictment are to be held to bail, and the clerk must indorse the amount on the warrant. If no

order fixing the amount of bail has been made, the sheriff may present the warrant to the judge of the court, and such judge must thereon indorse the amount of the bail to be required; or if there is no such judge in the county, the clerk may fix the amount of bail.

SEC. 43. Section 1030 of said code of 1881 is amended to read as follows: The officer making an arrest must in- Authority. form the defendant that he acts under authority of a warrant, and must also show the warrant if required.

SEC. 44. Section 1038 of said code of 1881 is amended to read as follows: As soon as may be after the finding of Service upon defendant. an indictment or the filing of an information for a capital crime, the party charged shall be served with a copy thereof by the sheriff or his deputy, at least twenty-four hours before trial, and shall, on demand upon the clerk by himself or counsel, have a list of the petit jurors returned delivered to him at least twenty-four hours before trial, and shall also have process to summon such witnesses as are necessary to his defense, at the expense of the county.

SEC. 45. Section 1039 of said code of 1881 is amended to read as follows: Every person indicted or informed against for an offense for which he may be imprisoned in the penitentiary, if he be under recognizance or in custody to answer for such offense, he or his attorney shall be furnished with a copy of the indictment or information and of all indorsements thereof without paying any fees therefor.

SEC. 46. When the indictment or information has been Arraignment. filed the defendant, if he has been arrested, or as soon thereafter as he may be, shall be arraigned thereon before the court.

SEC. 47. Section 1066 of said code of 1881 is amended to read as follows: If the indictment or information be for Appearance by counsel. a misdemeanor punishable by fine only, the defendant may appear upon arraignment by counsel.

SEC. 48. Section 1064 of said code of 1881 is amended to read as follows: When the defendant is arraigned he True name. shall be interrogated; if the name by which he is indicted be not his true name, he shall then declare his true name or be proceeded against by the name in the indictment or information.

SEC. 49. Section 1065 of said code of 1881 is amended to read as follows: If he alleges that another name is his true name it must be entered in the minutes of the court, and the subsequent proceedings on the indictment or information may be had against him by that name, referring also to the name by which he is indicted or informed against.

Pleading.

SEC. 50. Section 1045 of said code of 1881 is amended to read as follows: In answer to the arraignment, the defendant may move to set aside the indictment or information, or he may demur or plead to it, and is entitled to one day after arraignment in which to answer thereto if he demand it.

Motion to set aside.

SEC. 51. A motion to set aside an information can be made by the defendant on one or more of the following grounds, and must be sustained: 1. When it is not signed by the prosecuting attorney. 2. When it is not verified. 3. When it has not been marked "filed" by the clerk. 4. When the names of the witnesses are not indorsed upon it as required by section eleven hundred and sixty-three of this code.

SEC. 52. Section 1048 of said code of 1881 is amended to read as follows: If the motion to set aside the indictment be denied, the defendant must immediately answer the indictment or information, either by demurring or pleading thereto.

SEC. 53. Section 1049 of said code of 1881 is amended to read as follows: If the court direct that the case be re-submitted, the defendant, if already in custody, must so remain, unless he be admitted to bail; or if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment or information.

SEC. 54. Section 1050 of said code of 1881 is amended to read as follows: An order to set aside the indictment or information as provided in this chapter shall be no bar to a future prosecution for the same offense.

Causes for demurrer.

SEC. 55. Section 1051 of said code of 1881 is amended to read as follows: The defendant may demur to the indictment or information when it appears upon its face

either—1. That it does not substantially conform to the requirements of this code. 2. More than one crime is charged. 3. That the facts charged do not constitute a crime. 4. That the indictment or information contains any matter which, if true, would constitute a defense or other legal bar to the action.

SEC. 56. Section 1052 of said code of 1881 is amended to read as follows: If the demurrer is sustained because the indictment or information contains matter which is a legal defense or bar to the action, the judgment shall be final, and the defendant must be discharged.

SEC. 57. Section 1054 of said code of 1881 is amended to read as follows: There are but three pleas to the indictment or information. A plea of—1. Guilty. 2. Not guilty. 3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded with or without the plea of not guilty. Limit of pleas.

SEC. 58. Section 1055 of said code of 1881 is amended to read as follows: The plea may be entered on the record substantially in the following form: 1. A plea of guilty: The defendant pleads that he is guilty of the offense charged in the indictment (or information as the case may be). 2. A plea of not guilty: The defendant pleads that he is not guilty of the offense charged in the indictment (or information as the case may be). 3. A plea of former conviction or acquittal: The defendant pleads that he has formerly been convicted (or acquitted as the case may be) of the offense charged in the indictment (or information as the case may be), by the judgment of the court of (naming it), rendered on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18 \_\_\_\_ (naming the time). Record of plea.

SEC. 59. Section 1058 of said code of 1881 is amended to read as follows: The plea of not guilty is a denial of every material allegation in the indictment or information; and all matters of fact may be given in evidence under it, except a former conviction or acquittal.

SEC. 60. Section 1059 of said code of 1881 is amended to read as follows: A conviction or acquittal by a judgment upon a verdict shall bar another prosecution for the same offense, notwithstanding a defect in form or substance in Effect of conviction or acquittal.

the indictment or information on which the conviction or acquittal took place.

SEC. 61. Section 1060 of said code of 1881 is amended to read as follows: The judgment for the defendant on a demurrer to the indictment or information, except where it is otherwise provided, or for an objection taken at the trial to its form or substance, or for variance between the indictment or information and the proof, shall not bar another prosecution for the same offense.

SEC. 62. Section 1061 of said code of 1881 is amended to read as follows: If the defendant fail or refuse to answer the indictment or information by demurrer or plea, a plea of not guilty must be entered by the court.

Satisfaction of injury.

SEC. 63. Section 1070 of said code of 1881 is amended to read as follows: In such case, if the party injured appear in the court in which the cause is pending at any time before the final judgment therein, and acknowledge, in writing, that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be discontinued and the defendant to be discharged. The reasons for making the order must be set forth therein and entered in the minutes. Such order is a bar to another prosecution for the same offense.

Limit of compromise.

SEC. 64. Section 1043 of said code of 1881 is amended to read as follows: No offense can be compromised, nor can any proceedings for the prosecution or punishment thereof be stayed upon a compromise, except as provided in this chapter.

Docket.

SEC. 65. Section 1044 of said code of 1881 is amended to read as follows: The clerk shall, in preparing the docket of criminal cases, enumerate the indictments and informations pending according to the date of their filing, specifying opposite to the title of each action whether it be for a felony or misdemeanor, and whether the defendant be in custody or on bail; and shall, in like manner, enter therein all indictments and informations on which issues of fact are joined, all cases brought to the court on change of venue from other counties, and all cases pending upon appeal from inferior courts.

SEC. 66. Section 1078 of said code of 1881 is amended

to read as follows: Except as otherwise specially provided, issues of fact joined upon an indictment or information shall be tried by a jury of twelve persons, and the law relating to the drawing, retaining, and selecting jurors, and trials by jury, in civil cases shall apply to criminal cases. Issues of fact.

SEC. 67. Section 1083 of said code of 1881 is amended to read as follows: No person whose opinions are such as to preclude him from finding any defendant guilty of an offense punishable with death shall be compelled or allowed to serve as a juror on the trial of any indictment or information for such an offense. Disqualification  
of Juror.

SEC. 68. Section 1084 of said code of 1881 is amended to read as follows: The jury shall be sworn or affirmed well and truly to try the issue between the state and the defendant, according to the evidence, and in capital cases to well and truly try, and true deliverance make between the state and the prisoner at the bar whom they shall have in charge, according to the evidence. Oath of jurors.

SEC. 69. Section 1067 of said code of 1881 is amended to read as follows: Witnesses may be compelled to attend and testify before the grand jury; and witnesses on behalf of the state, or of the defendant in a criminal prosecution, may be compelled to attend and testify in open court, if they have been subpoenaed, without their fees being first paid or tendered, unless otherwise provided by law; the court may recognize witnesses, with or without sureties, to attend and testify at the same or the next session of the court, or at the term of a court within the state, and any person accused of any crime in this state by indictment, information, or otherwise, may, in the examination or trial of the cause, offer himself or herself as a witness in his or her own behalf, and shall be allowed to testify as other witnesses in such case, and when accused shall so testify, he or she shall be subject to all the rules of law relating to cross-examinations of other witnesses: *Provided*, That nothing in this act shall be construed to compel such accused person to offer himself or herself as a witness in such case: *And provided further*, That it shall be the duty of the court to instruct the jury that no inference of guilt shall arise against the accused if the accused shall Compulsory  
attendance of  
witnesses.

fail or refuse to testify as a witness in his or her own behalf.

SEC. 70. Section 1088 of said code of 1881 is amended to read as follows: The court shall decide all questions of law which shall arise in the course of the trial, and the trial shall be conducted in the same manner as in civil actions.

Separate trial.

SEC. 71. Section 1091 of said code of 1881 is amended to read as follows: When two or more defendants are indicted or informed against jointly, any defendant requiring it shall be tried separately.

Correction of errors.

SEC. 72. Section 1094 of said code of 1881 is amended to read as follows: When it appears, at any time before verdict or judgment, that the defendant is prosecuted in a county not having jurisdiction, the court may order the venue of the indictment or information to be corrected, and direct that all the papers and proceedings be certified to the superior court of the proper county, and recognize the defendant and witnesses to appear at such court on a day specified in the order, and the prosecution shall proceed in the latter court in the same manner as if it had been there commenced.

Effect of conviction or acquittal.

SEC. 73. Section 1095 of said code of 1881 is amended to read as follows: When a jury has been impaneled in either case contemplated in sections twelve hundred and forty-eight and twelve hundred and forty-nine, such jury may be discharged without prejudice to the prosecution.

SEC. 74. Section 1096 of said code of 1881 is amended to read as follows: When the defendant has been convicted or acquitted upon an indictment or information of an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment or information for the offense charged in the former, or for any lower degree of that offense, or for an offense necessarily included therein.

SEC. 75. Section 1097 of said code of 1881 is amended to read as follows: Upon an indictment or information for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment or information, and guilty of any degree inferior thereto, or of an attempt to commit the offense.

SEC. 76. Section 1098 of said code of 1881 is amended to read as follows: In all other cases the defendant may be found guilty of an offense the commission of which is necessarily included within that with which he is charged in the indictment or information.

SEC. 77. Section 1099 of said code of 1881 is amended to read as follows: On an indictment or information against <sup>Verdict.</sup> several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly.

SEC. 78. Section 1100 of said code of 1881 is amended to read as follows: When there is a verdict of conviction in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider the verdict; and if after such reconsideration they return the same verdict it must be entered, but it shall be good cause for new trial. When there is a verdict of acquittal the court cannot require the jury to reconsider it.

SEC. 79. Section 1101 of said code of 1881 is amended to read as follows: When any person indicted or informed <sup>Insanity.</sup> against for an offense shall, on trial, be acquitted by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the community, the court may order him to be committed to prison, or may give him into the care of his friends if they shall give bonds, with surety to the satisfaction of the court, conditioned that he shall be well and securely kept, otherwise he shall be discharged.

SEC. 80. Section 1102 of said code of 1881 is amended to read as follows: When the jury have agreed upon their verdict they must be conducted into court by the officer having them in charge. Their names must then be called, and if all appear their verdict must be rendered in open court; and if all do not appear the rest must be discharged without giving a verdict, and the cause must be tried again.

SEC. 81. Section 1105 of said code of 1881 is amended

New trial.

to read as follows: An application for a new trial must be made before judgment, and may be granted for the following causes materially affecting a substantial right of the defendant: 1. When the jury has received any evidence, paper, document or book not allowed by the court. 2. Misconduct of the jury. 3. Newly discovered evidence material for the defendant, which he could not have discovered with reasonable diligence, and produced at the trial. 4. Accident or surprise. 5. Error of law occurring at the trial, and excepted to by the defendant. 6. When the verdict is contrary to law and evidence; but not more than two new trials shall be granted for these causes alone.

Arrest of judgment.

SEC. 82. Section 1107 of said code of 1881 is amended to read as follows: Judgment may be arrested on the motion of the defendant for the following causes: 1. No legal authority in the grand jury to inquire into the offense charged, by reason of its not being within the jurisdiction of the court. 2. That the facts as stated in the indictment or information do not constitute a crime or misdemeanor.

Bond for good behavior.

SEC. 83. Section 1121 of said code of 1881 is amended to read as follows: Every court before whom any person shall be convicted upon an indictment or information for an offense not punishable with death or imprisonment in the penitentiary may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum to keep the peace, or to be of good behavior, or both, for any term not exceeding one year, and to stand committed until he shall so recognize.

Non-payment of fine or costs.

SEC. 84. Section 1125 of said code of 1881 is amended to read as follows: If any person ordered into custody until the fine and costs adjudged against him be paid shall not, within five days, pay, or cause the payment of the same to be made, the clerk of the court shall issue a warrant to the sheriff commanding him to imprison such defendant in the county jail until such fine and costs are paid, or until he has been imprisoned in such jail one day for every three dollars of such fine and costs; but execution may at any time issue against the property of the defendant as in other cases.

SEC. 85. Section 1134 of said code of 1881 is amended to read as follows: The clerk of the court shall make a Final record. final record of all the proceedings in a criminal prosecution within six months after the same shall have been decided, which shall contain a copy of the minutes of the challenge to the panel of the grand jury, the indictment or information, journal entries, pleadings, minutes of challenges to panel of petit jurors, judgment, orders, or decision, and bill of exceptions.

SEC. 86. Section 1138 of said code of 1881 is amended to read as follows: The parties, or either of them, against whom such judgment may be entered in the superior or supreme courts, may stay said execution for sixty days by giving a bond with two or more sureties, to be approved by the clerk, conditioned for the payment of such judgment at the expiration of sixty days, unless the same shall be vacated before the expiration of that time. Stay of execution.

SEC. 87. Section 1139 of said code of 1881 is amended to read as follows: If a bond be given and execution stayed, as provided in section twelve hundred and ninety-one, and the person for whose appearance such recognizance was given shall be produced in court before the expiration of said period of sixty days, the judge may vacate such judgment upon such terms as may be just and equitable, otherwise execution shall forthwith issue as well against the sureties in the new bond as against the judgment debtors.

SEC. 88. No action brought on any recognizance given in any criminal proceeding whatever shall be barred or defeated, nor shall judgment be arrested thereon, by reason of any neglect or omission to note or record the default of any principal or surety at the time when such default shall happen, or by reason of any defect in the form of the recognizance, if it sufficiently appear from the tenor thereof at what court or before what justice the party or witness was bound to appear, and that the court or magistrate before whom it was taken was authorized by law to require and take such recognizance; and a recognizance may be recorded after execution awarded.

SEC. 89. Section 765 of said code of 1881 is amended to read as follows: On the trial of any indictment or in-

formation, the party accused shall have the right to be heard by himself or counsel, to meet the witnesses produced against him face to face: *Provided, always,* That in any case where a witness or witnesses whose deposition or depositions have been taken by a committing magistrate pursuant to law are absent, and cannot be found when required to testify in such case, so much of such deposition or depositions as the court shall decide to be admissible and competent shall be admitted and read as evidence in such case.

Rights of defendant.

SEC. 90. Section 766 of said code of 1881 is amended to read as follows: On the trial of any indictment or information the party accused shall have the right to produce witnesses and proofs in his favor, and have compulsory process to compel the attendance of witnesses in his behalf, and to a speedy public trial by an impartial jury, and no person shall be put upon trial on an indictment or information for a felony until the expiration of five days from the day of his arrest.

Conviction.

SEC. 91. Section 767 of said code of 1881 is amended to read as follows: No person indicted or informed against for an offense shall be convicted thereof unless by confession of his guilt in open court, or by the verdict of a jury accepted and recorded in open court.

SEC. 92. Section 769 of said code of 1881 is amended to read as follows: A defendant acquitted on the ground of variance between the indictment or information and the proof may be thereafter prosecuted upon a new indictment or information.

Dismissal of prosecution.

SEC. 93. Section 771 of said code of 1881 is amended to read as follows: When a person has been held to answer, if an indictment be not found or information filed against him within thirty days, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

SEC. 94. Section 772 of said code of 1881 is amended to read as follows: If a defendant indicted or informed against for an offense, whose trial has not been postponed upon his application, be not brought to trial within sixty days after the indictment is found or the information filed, the court must order it to be dismissed, unless good cause to the contrary be shown.

SEC. 95. Section 773 of said code of 1881 is amended to read as follows: If the defendant be not indicted, informed against or tried, as provided in the last two sections, and sufficient reason therefor shown, the court may order the action to be continued from time to time, and in the mean-  
Continuation.

SEC. 96. Section 775 of said code of 1881 is amended to read as follows: The court may, either upon its own motion or upon application of the prosecuting attorney, and in furtherance of justice, order an action, after an indictment or information, to be dismissed; but in such case the reason of the dismissal must be set forth in the order, which must be entered upon the record.

SEC. 97. Section 948 of said code of 1881 is amended to read as follows: Every person who shall become an ac-  
Accessory after the fact.

SEC. 98. Section 971 of said code of 1881 is amended to read as follows: The governor of this state may appoint  
Extradition.

SEC. 99. The foregoing sections, as amended by this act,

shall be a part of the code of procedure of this state, and be embodied therein under appropriate numbers.

Approved February 24, 1891:

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## CHAPTER XXIX.

[S. B. No. 84.]

### APPEALS FROM JUSTICES' COURTS.

AN ACT relating to appeals from justices' courts, and amending sections 1858, 1859, 1861, 1863, 1865 and 1914 of the Code of Washington of 1881.

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

SECTION 1. Section 1858 of the code of Washington of 1881 is amended to read as follows: Any person considering himself aggrieved by any judgment or decision of a justice of the peace in a civil action or proceeding may, in person or by his agent, appeal therefrom to the superior court of the same county where the judgment was rendered or the decision made.

SEC. 2. Section 1859 of said code of 1881 is amended to read as follows: Such appeal shall be taken by filing a notice of appeal with the justice and serving a copy on the adverse party or his attorney, and, unless such appeal be by a county, city or school district, filing a bond or undertaking, as herein provided, within twenty days after the judgment is rendered or the decision made. No appeal, except when such appeals are by a county, city or school district, shall be allowed in any case unless a bond or undertaking shall be executed on the part of the appellant and filed with and approved by the justice, with one or more sureties, in the sum of one hundred dollars, to the effect that the appellant will pay all costs that may be awarded against him on the appeal; or if a stay of proceedings before the justice be claimed, except by a county, city or school district, a bond or undertaking, with two or more sureties to be approved by the justice, in a sum equal to twice the amount

Appeal; how taken.