

the expenditure of money not specifically provided by law, there is hereby created an emergency board consisting of the governor, secretary of state, state auditor, state treasurer and attorney general. But no expenditure in excess of the amount appropriated by the legislature shall be made for any state institution or department except upon a permit granted by such emergency board.

SEC. 2. The governor shall be the president and the secretary of state shall be the secretary of the board. The secretary shall keep a complete record of all the proceedings. Any board or officer contemplated in this act desiring to ask authority to create a deficiency shall notify the secretary in writing setting forth fully the facts in connection with the case. As soon as can be done conveniently the secretary shall arrange for a meeting of the board and shall notify the board or officer of the time and place of meeting and request his or their presence at such meeting. The said emergency board may, in their discretion, either grant or refuse a permit to make an expenditure in excess of the amount appropriated by the legislature for such institution or department. But before a permit is granted it must have the approval of not less than four members of the emergency board who shall sign the same.

Approved March 8, 1893.

CHAPTER LX.

[H. B. No. 377.]

PROVIDING FOR TAKING OF EXCEPTIONS, AND SETTLING AND CERTIFYING BILLS OF EXCEPTIONS AND STATEMENTS OF FACTS.

AN ACT providing for and regulating the taking of exceptions, and the settling and certifying of bills of exceptions and statements of facts, and declaring the effect thereof.

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

SECTION 1. An exception is a claim of error in a ruling or decision of a court, judge or other tribunal, or officer

exercising judicial functions, made in the course of an action or proceeding or after judgment therein.

SEC. 2. It shall not be necessary or proper to take or enter an exception to any ruling or decision mentioned in section one of this act, which is embodied in a written judgment, order or journal entry in the cause. But this section shall not apply to the report of a referee or commissioner, or to findings of fact or conclusions of law in a report or decision of a referee or commissioner, or in a decision of a court or judge upon a cause or part of a cause, either legal or equitable, tried without a jury.

Exceptions,
how taken.

SEC. 3. Exceptions to the report of a referee or commissioner, or to findings of fact or conclusions of law in a report or decision of a referee or commissioner, or in a decision of a court or judge upon a cause or part of a cause, either legal or equitable, tried without a jury, may be taken by any party, either by stating to the judge, referee or commissioner when the report or decision is signed, that such party excepts to the same, specifying the part or parts excepted to (whereupon the judge, referee or commissioner, shall note the exceptions in the margin or at the foot of the report or decision); or by filing like written exceptions within five days after the filing of the report or decision, or, where the report or decision is signed subsequently to the hearing and in the absence of the party excepting, within five days after the service on such party of a copy of such report or decision or of written notice of the filing thereof.

Same.

SEC. 4. Exceptions to a charge to a jury, or to a refusal to give as a part of such charge instructions requested in writing, may be taken by any party by stating to the court, after the jury shall have retired to consider of their verdict, and, if practicable, before the verdict has been returned, that such party excepts to the same, specifying by numbers of paragraphs or otherwise the parts of the charge excepted to, and the requested instructions the refusal to give which is excepted to; whereupon the judge shall note the exceptions in the minutes of the trial, or cause the stenographer (if one is in attendance) so to note the same.

SEC. 5. Exceptions to any ruling upon an objection to

the admission of evidence, offered in the course of a trial or hearing, need not be formally taken, but the question put or other offer of evidence, together with the objection thereto and the ruling thereon, shall be entered by the court, judge, referee or commissioner (or by the stenographer, if one is in attendance) in the minutes of the trial or hearing, and such entry shall import an exception by the party against whom the ruling was made. Entered in minutes.

SEC. 6. Exceptions to any ruling or decision made in the course of a trial or hearing, or in the progress of a cause, except those to which it is provided in this act that no exception need be taken and those to which some other mode of exception is in this act prescribed, may be taken by any party by stating to the court, judge, referee or commissioner making the ruling or decision, when the same is made, that such party excepts to the same; whereupon such court, judge, referee or commissioner shall note the exception in the minutes of the trial, hearing or cause, or shall cause the stenographer (if one is in attendance) so to note the same. Same.

SEC. 7. Alleged error in any order, ruling or decision to which it is provided in this act that no exception need be taken, or in any report, finding of fact, conclusion of law, charge, refusal to charge, or other ruling or decision which shall have been excepted to by any party as prescribed in this act, shall be reviewed by the supreme court, upon an appeal taken by the party against whom any such ruling or decision was made, or in which he has joined, from any other appealable order or from the final judgment in the cause, where such error, if found to exist, would materially affect the correctness of the judgment or order appealed from: *Provided*, The ruling or decision, the alleged error in which is sought to be so reviewed, together with the exception thereto, if any, was a matter of record in the cause in the first instance, or before the hearing of the appeal has been brought into the record in the manner prescribed in this act. And any such alleged error shall also be considered in the court wherein or by a judge whereof the same was committed, upon the hearing and decision of a motion for Exceptions reviewed on appeal.

Exception must be of record.

a new trial, a motion for judgment notwithstanding a verdict, or a motion to set aside a referee's report or decision, made by a party against whom the ruling or decision to be reviewed was made, whether the alleged erroneous ruling or decision is a part of the record or not, where the alleged error, if found to exist, would materially affect the decision of the motion. But no exception to any appealable order or to any final judgment shall be necessary or proper in order to secure a review of such order or judgment upon direct appeal therefrom.

No exception necessary.

Bill of exceptions.

SEC. 8. Any party to any action or proceeding may, at any stage thereof, have any rulings or decisions of the court, or a judge, referee or commissioner thereof, in the cause, together with the necessary evidence, papers or proceedings connected therewith or on which the same were based, and the exceptions thereto, if any, not already a part of the record in the cause, or so much of all or any thereof as is not already a part of the record, made a part of the record in the cause, by the certifying of a bill of exceptions as in this act provided. And any such party may, after the making of an appealable order or the final judgment in the cause, have all rulings, decisions, evidence, papers, proceedings and exceptions in the cause, or so much thereof as may be material to an appeal from such appealable order or from the final judgment, as the case may be, not already a part of the record, made a part of the record in the cause by the certifying of a statement of facts, as in this act provided. The certifying of a bill of exceptions or statement of facts shall not prevent the subsequent certifying of other bills of exceptions or statements of facts, or both, comprising other matters in the cause, at the instance of the same or another party; but only one bill of exceptions or statement of facts can be settled or certified after the rendition of the final judgment in the cause.

One bill of exceptions after final judgment.

SEC. 9. A party desiring to have a bill of exceptions or statement of facts certified must prepare the same as proposed by him, file it in the cause and serve a copy thereof on the adverse party, and shall also serve written notice of the filing thereof on any other party who has appeared in the cause. Within ten days after such service any other

Must file and serve copy of statement of facts.

party may file and serve on the proposing party, any amendments which he may propose to the bill or statement. Amendments. Either party may then serve upon the other a written notice that he will apply to the judge of the court before whom the cause is pending or was tried, at a time and place specified, the time to be not less than three nor more than ten days after service of the notice, to settle and certify the bill or statement; and at such time and place, or at any other time or place specified in an adjournment made by order or stipulation, the judge shall settle and certify the bill or statement. Notice to settle. If the judge is absent at the time named in a notice or fixed by adjournment, a new notice may be served. New notice. If no amendment shall be served within the time aforesaid, the proposed bill or statement shall be deemed agreed to and shall be certified by the judge at the instance of either party, at any time, without notice to any other party on proof being filed of its service, and that no amendments have been proposed; and if amendments be proposed and excepted, the bill or statement as so amended shall likewise be certified on proof being filed of its service and the service and acceptance of the amendments.

SEC. 10. Depositions and other written evidence on file shall be appropriately referred to in the proposed bill or statement, and when it is certified the same or copies thereof, if the judge so direct, shall be attached to the bill or statement and shall thereupon become a part thereof.

SEC. 11. The judge shall certify that the matters and proceedings embodied in the bill or statement, as the case may be, are matters and proceedings occurring in the cause and that the same are thereby made a part of the record therein; and, when such is the fact, he shall further certify that the same contains all the material facts, matters and proceedings heretofore occurring in the cause and not already a part of the record therein, or (as the case may be) such thereof as the parties have agreed, to be all that are material therein. Certificate of judge. The certificate shall be signed by the judge, but need not be sealed; and thereupon all the matters and proceedings embodied in the bill of exceptions or statement of facts, as the case may be, shall become and thenceforth remain a part of the record in the cause, for What certificate to contain. Signed but not sealed.

all the purposes thereof and of any appeal therein. The judge may correct or supplement his certificate according to the fact, at any time before an appeal is heard. And if the judge refuse to settle or certify a bill of exceptions or statement of facts, or to correct or supplement his certificate thereto, in a proper case, he may be compelled so to do by a mandate issued out of the supreme court, either pending an appeal or prior thereto.

Supplemental certificate.

When judge ceases to be judge, may certify.

SEC. 12. If the judge before whom the cause was pending or tried shall from any cause have ceased to be such judge he shall, notwithstanding, settle and certify, as the late judge, any bill of exceptions or statement of facts that it would be proper for him to settle and certify if he were still such judge, and such acts on his part shall have the same effect as if he were still in office; and he may be compelled by mandate so to do, as if still in office. If such judge shall die or remove from the state while in office or afterwards, within the time within which a bill of exceptions or statement of facts, in a cause that was pending or tried before him, might be settled and certified under the provisions of this act, and before having certified such bill or statement, such bill or statement may be settled by stipulation of the parties with the same effect as if duly settled and certified by such judge while still in office. But if the parties cannot agree, and if such judge, when removed from the state, does not attend within the state and settle and certify a bill of exceptions or statement of facts in case one has been duly proposed, his successor in office shall settle and certify such bill or statement in the manner in this act provided, and in so doing he shall be guided, so far as practicable, by the minutes taken by his predecessor in office, or by the stenographer, if one was in attendance on the court or judge, and may, in order to determine any disputed matter not sufficiently appearing upon such minutes, examine under oath the attorneys in the cause who were present at the trial or hearing, or any of them.

When judge removes or dies, how settled.

Time in which to file.

SEC. 13. A proposed bill of exceptions or statement of facts must be filed and served either before or within thirty days after the time begins to run within which an appeal

may be taken from the final judgment in the cause, or (as the case may be) from an order with a view to an appeal from which the bill or statement is proposed: *Provided*, That the time herein prescribed may be enlarged either before or after its expiration, once or more, but not for more than sixty days additional in all, by stipulation of the parties, or, for good cause shown and on such terms as may be just, by an order of the court or judge wherein or before whom the cause is pending or was tried, made on notice to the adverse party. And the certifying of a bill of exceptions or statement of facts provided for by this act, and the filing and service of the proposed bill or statement, the notice of application for the settlement thereof, and all other steps and proceedings leading up to the making of the certificate, shall be deemed steps and proceedings in the cause itself, resting upon the jurisdiction originally acquired by the court in the cause, and no irregularity or failure to pursue the steps prescribed by this act on the part of any party, or the judge, shall affect the jurisdiction of the judge to settle or certify a proper bill of exceptions or statement of facts.

No irregularity to affect jurisdiction.

SEC. 14. The copy of a proposed bill or statement which is served as in this act prescribed, shall be returned to the party serving the same upon the bill or statement being certified, if he has appealed to the supreme court, or upon his thereafter appealing, for his use in preparing his brief on the appeal, and the time limited by any law or rule of court for the service and filing of his brief shall be enlarged by any delay in returning such copy as herein required to the extent of such delay; and when he serves his brief he shall return such copy to the party on whom it was originally served, and his brief shall not be deemed served till such copy is so returned by him.

Bill or statement to be returned to party serving same.

SEC. 15. All reports of referees or commissioners, with the testimony and other evidence returned into court therewith, all findings of fact and conclusions of law made in writing by a judge, referee or commissioner and signed by him, all charges to a jury made wholly in writing, all instructions requested in writing to be given as part of a charge, all verdicts, general or special, and all rulings and

What shall be part of record.

decisions embodied in a written judgment, order or journal entry in the cause, together with all exceptions, if any, taken to any thereof, as well as all papers and matters hitherto deemed a part of the record, shall be deemed and are hereby declared to become, upon being filed in the cause, or, as the case may be, embodied in a journal entry, a part of the record in the cause, for all the purposes thereof and of any appeal therein; and it shall not be necessary or proper, for any purpose, to embody the same in any bill of exceptions or statement of facts.

Unnecessary
when cases are
consolidated.

SEC. 16. When two or more causes shall have been consolidated it shall not be necessary, for any purposes of an appeal which concerns only one or more, and not all of the original causes, to embody in a bill of exceptions or statement of facts any fact, matter or proceeding that relates solely to an original cause with which the appeal is not concerned; and the bill or statement shall be certified as in this act prescribed, notwithstanding the omission therefrom of such facts, matters and proceedings.

Governs what
actions.

SEC. 17. This act shall apply to and govern all civil actions and proceedings, both legal and equitable, and all criminal causes, in the superior courts, but shall not apply to courts of justices of the peace or other inferior courts or tribunals from which an appeal does not lie directly to the supreme court.

SEC. 18. This act shall govern proceedings had after it shall take effect, in actions then pending as well as those in actions thereafter begun; but it shall not affect any right acquired or proceeding had prior to the time when it shall take effect, nor restore any right or enlarge any time then already lost or expired. And except as above provided all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved March 8, 1893.