

CHAPTER V.—CIVIL PRACTICE.

REAL PROPERTY; RELATING TO ACTIONS TO RECOVER.

AN ACT to amend section five hundred and thirty-six of chapter 46 of the Code of Washington, relating to "Actions to recover and affecting real estate."

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

SECTION 1. That section 536 of chapter 46 of the code of Washington, relating to "Actions to recover and affecting real estate," be and the same is hereby amended to read as follows: Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title; and in all actions under this section to quiet or remove a cloud from the title to real property, if the defendant be absent or a non-resident of this state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, service may be made upon such defendant by publication of summons as provided by law; and the court may appoint a trustee for such absent or non-resident defendant, to make or cancel any deed or conveyance of whatsoever nature, or do any other act to carry into effect the judgment or the decree of the court.

From tenant.

From adverse claimant.

Service by summons.

Approved March 14, 1890.

REAL PROPERTY; SUMMARY PROCEEDINGS FOR OBTAINING POSSESSION OF.

AN ACT relating to summary proceedings for obtaining possession of real property in certain cases, and declaring an emergency.

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

SECTION 1. Every person is guilty of a forcible entry Forcible entry. who either—*First*, by breaking open windows, doors or other parts of a house, or by any kind of violence or circumstance of terror enters upon or into any real property; or, *second*, who, after entering peaceably upon real property, turns out by force, threats or menacing conduct the party in possession.

SEC. 2. Every person is guilty of a forcible detainer Forcible detainer. who either—*First*, by force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or, *second*, who, in the night time or during the absence of the occupant of any lands, unlawfully enters upon real property, and who, after demand made for the surrender thereof for the period of five days, refuses to surrender the same to such former occupant. The occupant of real property, within the meaning of this subdivision, is one who, within five days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

SEC. 3. A tenant of real property, for a term less than As to tenant. life, is guilty of unlawful detainer—*First*, when he continues in possession, in person or by sub-tenant, of the property, or any part thereof, after the expiration of the term for which it is let to him, without the permission of his landlord, or the successor in estate of his landlord, if any there be; but in case of a tenancy at will or sufferance, it must first be terminated by notice in writing given to the party in possession, as follows: When the rent reserved is payable at periods of less than three months, the time of such notice shall be sufficient, if it is equal to

the interval between the times of payment; when the estate is held by sufferance, ten days' notice shall be given; in all cases of neglect or refusal to pay rent when due, fourteen days' notice to quit, and in all other cases at least three months' notice shall be given. *Second*, when any person enters upon land or other premises without permission of the owner, or continues in possession, in person or by sub-tenant, without permission of his landlord, or successor in estate of his landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and ten days' notice in writing requiring its payment, stating the amount which is due, or possession of the property, shall have been served upon him, and if there be a sub-tenant in actual occupation of the premises, also upon such sub-tenant. Such notice may be served at any time within one year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty days after the expiration of his term without any demand or notice to quit by his landlord, or the successor in estate of his landlord, if any there be, and he shall be deemed to be holding by permission of his landlord, or the successor in estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year. *Third*, when he continues in possession, in person or by sub-tenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sub-let, than the one for the payment of rent, and ten days' notice in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him, and if there be a sub-tenant in actual possession of the premises, also upon such sub-tenant. Within ten days after the service of the notice, the tenant, or any sub-tenant in actual occupation

As to sub-tenant.

of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture. A tenant may take proceedings, similar to those prescribed in this act, to obtain possession of the premises let to an under-tenant in case of his unlawful detention of the premises underlet to him. *Fourth*, any tenant or sub-tenant assigning or sub-letting or committing waste upon the demised premises, contrary to the covenants of his lease, or who sets up or carries on therein or thereon any unlawful business, or who erects, suffers, permits or maintains on or about said premises any nuisance, thereby terminates the lease, and the landlord, or his successor in estate, shall, upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of such demised premises under the provisions of this act.

SEC. 4. The notices required by the preceding section may be served either—*First*, by delivering a copy personally to the tenant; or, *second*, if he be absent from his place of residence, and from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail, addressed to the tenant at his place of residence; or, *third*, if such place of residence and [or] business cannot be ascertained, or a person of suitable age or discretion there cannot be found, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found, and also sending a copy through the mail, addressed to the tenant at the place where the property is situated. Service upon a sub-tenant may be made in the same manner.

SEC. 5. The superior court of the county in which the property, or some part of it, is situated, shall have jurisdiction of proceedings under this act.

SEC. 6. No person other than the tenant of the premises, and sub-tenant, if there be one, in the actual occupation of the premises when the complaint is filed,

need be made parties defendant in the proceeding, nor shall any proceeding abate, nor the plaintiff be non-suited for the non-joinder of any person who might have been made party defendant; but when it appears that any of the parties served with process, or appearing in the proceeding, are guilty of the offense charged, judgment must be rendered against him. In case a defendant has become a sub-tenant of the premises in controversy, after the service of the notice, provided for by part 2 of section 3 of this act, upon the tenant of the premises, the fact that such notice was not served on each sub-tenant shall constitute no defense to the action. In case a married woman be a tenant or a sub-tenant, her coverture shall constitute no defense. All persons who enter the premises under the tenant, after the commencement of the suit, with notice thereof, shall be bound by the judgment the same as if he or they had been made parties to the action. Except as provided herein, the provisions of the code of Washington relating to parties to civil actions are applicable to this proceeding.

Who shall be bound by judgment.

Requirements for complaint.

SEC. 7. The plaintiff, in his complaint, which shall be in writing, must set forth the facts on which he seeks to recover, and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer, and claim damages therefor; in case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent. Upon filing the complaint, a summons must be issued thereon, as in other cases, returnable at a day designated therein, which shall not be less than six days nor more than twelve days from its date, except in cases when the publication of summons is necessary, in which case the court or judge thereof may order that the summons be made returnable at such time as may be deemed proper, and the summons shall specify the return day so fixed.

Summons.

SEC. 8. The summons must state the names of the parties to the proceeding, the court in which the same is brought, the nature of the action in concise terms, and the

relief sought, and also the return day; and must notify the defendant to appear and answer within the time designated, or that the relief sought will be taken against him. The summons must be directed to the defendant, and be served at least five days before the return day designated therein, and must be served and returned in the same manner as summons in civil actions is served and returned. Upon the return of any summons issued under this act, where the same has not for any reason been served, or not served in time, the plaintiff may have a new summons issued the same as if no previous summons had been issued.

Service of summons.

SEC. 9. The plaintiff, at the time of commencing an action of forcible entry and detainer or unlawful detainer, or at any time afterwards before judgment, may apply to the superior judge for a writ of restitution restoring to plaintiff the property in the complaint described, and the judge may, at his discretion, order a writ of restitution to issue. The writ shall be issued by the clerk of the superior court in which the action is pending, and be returnable in twenty days after its date, but before any writ shall issue, the plaintiff shall execute to the defendant an undertaking in such a sum as the judge shall order, with two or more sureties, to be approved by the clerk, conditioned that the plaintiff will prosecute his action without delay and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out.

Plaintiff's bond.

SEC. 10. The sheriff shall, upon receiving the writ of restitution, serve a copy thereof upon the defendant, his agent or attorney, or those in possession of the premises, and shall not execute the same for five days thereafter, within which time the defendant or those in possession of the premises may execute to the plaintiff an undertaking, to be filed and approved by the clerk of the court, in such a sum as may be fixed by the judge, conditioned that he will pay the plaintiff such sum as he may recover for the use and occupation of said premises, together with all damages the plaintiff may sustain by reason of the defend-

Duty of sheriff.

ant's occupying or keeping possession of said premises. The plaintiff, his agent or attorney shall have notice of the time and place where the judge shall fix the amount of plaintiff's bond.

SEC. 11. The plaintiff or defendant at any time, upon two days' notice to the adverse party, may apply to the judge of the superior court for an order raising or lowering the amount of the undertaking herein provided for. The judge, after hearing the same, shall make such an order as may be just in the premises.

Court may order arrest.

SEC. 12. If the complaint presented establishes, to the satisfaction of the court or judge, fraud, force or violence, in the entry or detainer, and that the possession held is unlawful, the court or judge may make an order for the arrest of the defendant.

Default.

SEC. 13. If at the time appointed the defendant do not appear and defend, the court must render judgment in favor of the plaintiff as prayed for in the complaint.

SEC. 14. On or before the day fixed for his appearance, the defendant may appear and answer or demur.

Trial by jury.

SEC. 15. Whenever an issue of fact is presented by the pleadings, it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending.

SEC. 16. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer.

Amending complaint.

SEC. 17. When, upon the trial of any proceeding under this act, it appears from the evidence that the defendant has been guilty of either a forcible entry, or a forcible or unlawful detainer, and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform to such proofs; such amendment must be made without any imposition of terms. No continuance shall be permitted upon account

of such amendment, unless the defendant shows to the satisfaction of the court good cause therefor.

SEC. 18. If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff and against the defendant, judgment shall be entered for restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement. The jury, or the court, if the proceeding be tried without a jury, shall also assess the damages Assessment of damages. occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent, and the judgment shall be rendered against the defendant guilty of the forcible entry or unlawful detainer for twice the amount of damages thus assessed and of the rent found due. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable, has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant, or any sub-tenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court for the landlord, the amount found due as rent, with interest thereon, and the amount of the damages found by the jury, or the court, for the unlawful detainer and the costs of the proceeding, and thereupon the judgment shall be satisfied and the tenant be restored Satisfaction of judgment. to his estate; but if payment, as here provided, be not made within the five days, the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately.

SEC. 19. The complaint and answer must be verified as in civil actions.

SEC. 20. Amendments may be allowed by the court at any time before final judgment, upon such terms as to the court may appear just, in the same cases and manner and to the same extent as in civil actions.

Rule of practice.

SEC. 21. Except as otherwise provided in this act, the provisions of the code with reference to practice in civil actions are applicable to, and constitute the rules of practice in, the proceedings mentioned in this act; and the provisions of the code relative to new trials and appeals, except so far as they are inconsistent with the provisions of this act, shall be held to apply to the proceedings mentioned in this act.

Relief of tenant.

SEC. 22. The court may relieve a tenant against a forfeiture of a lease, and restore him to his former estate, in case of hardship, where application for such relief is made within thirty days after the forfeiture is declared by the judgment of the court, as provided in this act. The application may be made by a tenant or sub-tenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, must be served on the plaintiff in the judgment, who may appear and contest the application. In no case shall the application be granted except on condition that full payment of rent due, or full performance of conditions of covenants stipulated, so far as the same is practicable, be made.

Appeals.

SEC. 23. If either party feels aggrieved by the verdict of the jury, or decision of the judge, he may appeal to the supreme court, as in other civil actions: *Provided*, That if the defendant appealing desires a stay of proceedings pending such appeal, he shall execute and file a bond, with two or more sufficient sureties, to be approved by the judge, conditioned to abide the order of the court on such appeal, and to pay all rent and other damages justly accruing to the complainant during the pendency of the appeal.

Appeal bond.

SEC. 24. When the defendant shall appeal, and shall file a bond as provided in the preceding section, all further

proceedings in the case shall be stayed until the determination of said appeal, and the same has been remanded to the superior court for further proceedings therein.

SEC. 25. If a writ of restitution has been issued previous to the taking of an appeal by the defendant, and said defendant shall execute and file a bond as provided in this act, the judge shall forthwith give the appellant a certificate of the allowance of such appeal; and upon the service of such certificate upon the officer having such writ of restitution, the said officer shall forthwith cease all further proceedings by virtue of such writ; and, if such writ has been completely executed, the defendant shall be restored to the possession of the premises, and shall remain in possession thereof until the appeal is determined.

Appeal certificate.

SEC. 26. Whereas, there is now no law of this state adequately providing for the trial of actions of forcible entry or unlawful detainer, an emergency exists, and this act shall take effect upon its approval by the governor.

Approved March 27, 1890.

REAL ESTATE; LIMITATION OF ACTION TO RECOVER.

AN ACT limiting the time within which an action may be brought for the recovery of real estate sold by executors, administrators or guardians, and determining when such sales shall be validated.

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

SECTION 1. No action for the recovery of any real estate sold by an executor or administrator under the laws of this state, or the laws of the Territory of Washington, shall be maintained by any heir or other person claiming under the deceased, unless it is commenced within five years next after the sale, and no action for any estate sold by a guardian shall be maintained by the ward, or by any person claiming under him, unless com-

Must be within five years.

Except in case of legal disability.

menced within five years next after the termination of the guardianship, except that minors, and other persons under legal disability to sue at the time when the right of action first accrued, may commence such action at any time within three years after the removal of the disability.

Validity of administrator's or guardian's sale.

SEC. 2. In case of an action relating to any estate sold by an executor, administrator or guardian, in which an heir or person claiming under the deceased, or in which the ward or any person claiming under him, shall contest the validity of the sale, it shall not be voided on account of any irregularity in the proceedings: *Provided*, It appears—*First*, that the executor, administrator or guardian was ordered to make the sale, by the probate or superior court having jurisdiction of the estate; *second*, that he gave a bond which was approved by the probate or superior judge, in case a bond was required upon granting the order; *third*, that he gave notice of the time and place of sale, as in the order and by law prescribed, and, *fourth*, that the premises were sold accordingly, by public auction, and the sale confirmed by the court, and that they are held by one who purchased them in good faith.

Claims adverse to title of deceased.

SEC. 3. If the validity of a sale is drawn in question by a person claiming adversely to the title of the deceased, or the ward, or claiming under a title that is not derived from or through the deceased or ward, the sale shall not be void on account of any irregularity in the proceedings if it appears that the executor, administrator or guardian was licensed to make the sale by a probate or superior court having jurisdiction of the estate, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

SEC. 4. This act shall apply to sales heretofore as well as hereafter made, and all sales heretofore made in conformity with the provisions of this act are declared valid.

Received by the governor March 28, 1890.

[*Note by the Secretary of State.*—The foregoing act having been presented to the governor of the state for his approval, and not having been filed in the office of the secretary of state within the time prescribed by the constitution of the state, with his objections thereto, has become a law under the provisions of the constitution.]

RELATING TO ESTATES OF INSOLVENT DEBTORS.

AN ACT to secure creditors a just division of the estates of debtors who convey to assignees for the benefit of creditors.

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

SECTION 1. No general assignment of property by an insolvent, or in contemplation of insolvency, for the benefit of creditors shall be valid unless it be made for the benefit of all his creditors in proportion to the amount of their respective claims. And such assignment shall have the effect to discharge any and all attachments on which judgment shall not have been taken at the date of such assignment; and after the payment of the costs and disbursements thereof, including the attorney fees allowed by law in case of judgment, out of the estate of the insolvent, such claim or claims shall be deemed as presented, and shall share pro rata with other claims as hereinafter provided.

SEC. 2. In case of an assignment for the benefit of all the creditors of the assignor, the assent of the creditors shall be presumed.

SEC. 3. The debtor shall annex to such assignment an inventory, under oath, of all his estate, real and personal, according to the best of his knowledge, and also a list of his creditors, with their post-office address, and a list of the amount of their respective demands, but such inventory shall not be conclusive as to the amount of the debtor's estate. Every assignment shall be in writing, and duly acknowledged in the same manner as conveyances of real estate, and recorded in the record of deeds of the county where the person making the same resides, or where the business in respect to which the same is made has been carried on. Upon the application of two or more creditors of said debtor therefor, by petition to the judge of the superior court of the county in which such assignment is or should be recorded, at any time within

Meeting of creditors to choose assignee.

thirty days from the making or recording of such assignment, it shall be the duty of said superior judge to direct the clerk of said superior court to order a meeting of the creditors of said debtors, to choose an assignee of the estate of said debtor in lieu of the assignee named by the debtor in his assignment; and thereupon the clerk of said court shall forthwith give notice to all the creditors of said debtor to meet at his office at a time stated, not to exceed fifteen days from the date of such notice, to select one or more assignees in the place of the assignee named by the debtor in his assignment. Such creditors may appear in person or by proxy, and a majority in number and value of said creditors attending such meeting shall select one or more assignees; and in the event that no one shall receive a majority vote of said creditors who represent at least one-half in amount of all claims represented at such meeting, then, and in that event, said clerk shall certify that fact to the judge of the superior court aforesaid, and thereupon said superior judge shall select and appoint an assignee.

Judge shall appoint assignee.

When such assignee shall have been selected by such creditors, or appointed by the superior judge as herein provided, then the assignee named in the debtor's assignment shall forthwith make to the assignee elected by the creditors or appointed by the superior judge, an assignment and conveyance of all the estate, real and personal, that has been assigned or conveyed to him by said debtor; and such assignee so elected by the creditors or appointed by the superior judge, upon giving the bond required of an assignee by this act, shall possess all the powers, and be subject to all the duties imposed by this act, as fully to all intents and purposes as though named in the debtor's assignment. From the time of the pending of an application to elect an assignee by the creditors, and until the time shall be terminated by an election or appointment as herein provided, no property of the debtor, except perishable property, shall be sold or disposed of by any assignee; but the same shall be safely and securely kept until the election or appointment of an assignee as herein provided. No creditor shall be entitled to vote at any such meeting called for the purpose of electing an assignee, until he

Bond.

Sale of property.

shall have presented to the clerk of the superior court, who shall preside at such meeting, a verified statement of his claim against the debtor.

SEC. 4. The assignee shall also forthwith file with the clerk of the superior court of the county where such assignment will be recorded, a true and full inventory and valuation of said estate, under oath, as far as the same has come to his knowledge, and shall then and there enter into bonds to the State of Washington, for the use of the creditors, in double the amount of the inventory and valuation, with two or more sufficient sureties, to be approved by said clerk, for the faithful performance of said trust; and the assignee may thereupon proceed to perform any duties necessary to carry into effect the intention of said assignment.

Assignee's inventory.

SEC. 5. The assignee shall forthwith give notice of such assignment, by publication in some newspaper in the county, if any, and if none, then in the nearest county thereto, which publication shall be continued at least six weeks; and shall forthwith send a notice by mail to each creditor of whom he shall be informed, directed to their usual place of residence, and notifying the creditors to present their claims, under oath, to him within three months thereafter.

Notice.

SEC. 6. At the expiration of three months from the time of first publishing notice, the assignee shall report and file with the clerk of the court a true and full list, under oath, of all such creditors of the assignor as shall have claims to be such, with a statement of their claims, and also an affidavit of publication of notice, and a list of the creditors, with their places of residence, to whom notice has been sent by mail, and the date of mailing, duly verified.

Notice of claims.

SEC. 7. Any person interested may appear within three months after filing such report and file with said clerk any exceptions to the claim or demand of any creditor, and the clerk shall forthwith cause notice thereof to be given to the creditor, which shall be served as in case of summons, returnable at the next term, and the said court shall at such term proceed to hear the proof and allega-

Filing exception.

tion of the parties in the premises, and shall render such judgment therein as shall be just, and may allow a trial by jury thereon.

Dividends.

SEC. 8. If no exception be made to the claim of any creditor, or if the same has been adjudicated, the court shall order the assignee to make, from time to time, fair and equal dividends among the creditors of the assets in his hands, in proportion to their claims, and as soon as may be to render a final account of said trust to said court, who may allow such commissions to said assignee in the final settlement as may be considered just and right.

Report.

SEC. 9. The assignee shall at all times be subject to the order of the court or judge, and the said court or judge may, by citation and attachment, compel the assignee from time to time to file reports of his proceedings, and of the situation and condition of the trust, and to proceed in the faithful execution of the duties required by this act.

Examination of debtor.

SEC. 10. No assignment shall be declared fraudulent or void for want of any list or inventory as provided in this act. The court or judge may, upon application of the assignee, or any creditor, compel the appearance in person of the debtor before such court or judge forthwith, or at the next term, to answer under oath such matters as may then and there be inquired of him; and such debtor may then and there be fully examined under oath as to the amount and situation of his estate, and the names of the creditors, and amounts due to each, with their places of residence, and the court may compel the delivery to the assignee of any property or estate embraced in the assignment.

Additional property.

SEC. 11. The assignee shall, from time to time, file with the clerk of the court an inventory and valuation of any additional property which may come into his hands under such assignment, after the filing of the first inventory, and the clerk may thereupon require him to give additional security.

SEC. 12. Any creditor may claim debts to become due, as well as debts due, but on debts not due, a reasonable abatement shall be made when the same are not drawing

interest; and all creditors who shall not exhibit their claims within the term of three months from the publication of notice as aforesaid shall not participate in the dividends until after payment in full of all claims presented within said term and allowed by the court.

SEC. 13. Any assignee as aforesaid shall have as full power and authority to dispose of all estate, real and personal, assigned, as the debtor had at the time of assignment, and to sue for and recover, in the name of such assignee, everything belonging or appertaining to said estate, and generally to do whatever the debtor might have done in the premises; but no sale of real estate belonging to said trust shall be made without notice published, as in case of sale of real estate on execution, unless the court shall order and direct otherwise.

SEC. 14. In case any assignee shall die before closing of his trust, or in case any assignee shall fail or neglect, for the period of thirty days after the making of any assignment, to file an inventory and valuation, and give bonds as required by this act, the superior court, or judge thereof, of the county where such assignment may be recorded, on the application of any person interested, shall appoint some person to execute the trust embraced in such assignment; and such person, on giving the bond, with sureties, as required of the assignee, shall possess all the powers conferred on such assignee, and shall be subject to all the duties hereby imposed, as fully as though named in the assignment; and in case any surety shall be discovered insufficient, or on complaint before the court or judge it should be made to appear that any assignee is guilty of wasting or misapplying the trust estate, said court or judge may direct and require additional security, and may remove such assignee, and may appoint others instead, and such person so appointed, on giving bond, shall have full power to execute such duties, and to demand and sue for all estate in the hands of the person removed, and to demand and recover the amount and value of all moneys and property or estate so wasted and misapplied, which he may neglect or refuse to make satisfaction for, from such person and his sureties.

Assignor may
be discharged.

SEC. 15. Whenever it shall appear to the satisfaction of the court, or judge thereof, when the assignment is pending upon the final report of the assignee chosen by the creditors or otherwise, that the assignor has been guilty of no fraud in making the assignment, nor concealment or division of his property, or any part thereof, in order to keep the same beyond the reach of his creditors, but that he has acted fairly and justly in all respects; that his estate has been made to realize the fullest amount possible, and not less than fifty per cent. of the full amount of his indebtedness over and above all expenses of the assignment, the said court or judge thereof shall, upon the allowance of the final account of said assignee, make an order discharging the assignor from any further liability on account of any indebtedness existing against him prior to the making of such assignment, and thereafter such assignor shall be freed from any liability on account of any unsatisfied portion of the indebtedness existing against him prior to the making of his assignment.

SEC. 16. That all laws and parts of laws in conflict with the provisions of this act be and the same are hereby repealed.

Approved March 6, 1890.

PENSION MONEY EXEMPT FROM ATTACHMENT.

AN ACT to exempt pension money from levy and attachment for debt.

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

SECTION 1. Any money received by any citizen of the State of Washington as a pension from the government of the United States, whether the same be in the actual

possession of such person or be deposited or loaned by him, shall be exempt from execution, attachment or seizure by or under any legal process whatever.

SEC. 2. When a debtor dies, or absconds, and leaves his family any money exempted by this act, the same shall be exempt to his family as provided in section 1 of this act.

Approved March 6, 1890.

RELATING TO WITNESSES TO DEEDS, ETC.

AN ACT correcting omissions of attesting witnesses in deeds, mortgages and other instruments of writing.

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

SECTION 1. All deeds, mortgages or other instruments in writing, heretofore executed to convey real estate, or any interest therein, and which have no subscribing witness or witnesses thereto, are hereby cured of such defect and made valid, notwithstanding such omission: *Provided*, Nothing in this act shall be construed to affect vested rights or impair contracts made in good faith between parties prior to the passage of this act: *And provided further*, That nothing in this act shall be construed to give validity to, or in any manner affect, the sale or transfer of real estate made by the Territory or State of Washington, or any officer, agent or employee thereof prior to the passage of this act.

Approved March 6, 1890.

COMMISSIONERS OF DEEDS.

AN ACT to authorize the appointment of Commissioners of Deeds,
and declaring an emergency to exist.

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

SECTION 1. The governor may appoint in each of the United States, and the territories thereof, one or more commissioners, under the seal of this state, to continue in office for the term of four years, who shall have the power to administer oaths and to take depositions and affidavits to be used in this state.

Oath. SEC. 2. Before any commissioner appointed as aforesaid shall proceed to perform any of the duties of his office he shall take and subscribe an oath before any clerk of a court of record, or other officer having an official seal authorized to administer oaths in the state or territory for which such commissioner is appointed, that he will faithfully discharge all duties of his office, a certificate of which shall be filed in the office of the secretary of state, and shall provide and keep an official seal, upon which Seal. must be engraved his name and the words "Commissioner of Deeds for the State of Washington," and the name of the state or territory for which he is commissioned, with the date at which his commission expires, and shall pay Fee. into the state treasury the sum of five dollars for the special state library fund.

SEC. 3. Chapter CCV, entitled "Commissioners of Deeds," embodying sections 2626 and 2627 of the code of Washington, and all other acts and parts of acts on the subject matter of this act, and in conflict therewith, be and the same are hereby repealed.

SEC. 4. There being no law for the appointment of commissioners of deeds, an emergency exists, and this act shall take effect from and after its approval by the governor.

Approved March 6, 1890.

COMMISSIONERS OF DEEDS; AMENDATORY
ACT.

AN ACT to amend an act entitled "An act to authorize the appointment of Commissioners of Deeds, and declaring an emergency to exist," approved March 6th, 1890, and declaring an emergency to exist.

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

SECTION 1. That section 1 of the above act is hereby amended to read as follows: Section 1. The governor may appoint in each of the United States and the territories thereof, one or more commissioners, under the seal of this state, to continue in office for the term of four (4) years, who shall have power to administer oaths, and to take depositions and affidavits, to be used in this state, and also to take the acknowledgment of any deed or other instrument to be used or recorded in the state.

SEC. 2. In order to perfect the original act, an emergency exists, and this act shall take effect from and after its approval by the governor.

Received by the governor March 28, 1890.

[*Note by the Secretary of State.*—The foregoing act having been presented to the governor of the state for his approval, and not having been filed in the office of the secretary of state within the time prescribed by the constitution of the state, with his objections thereto, has become a law under the provisions of the constitution.]

EVIDENCE.

AN ACT to amend section 389, chapter XXXVI, of the Code of Washington, relating to witnesses and evidence.

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

SECTION 1. That section 389 of the code of Washington is hereby amended so as to read as follows: Sec. 389. No person offered as a witness shall be excluded from

giving evidence by reason of his interest in the event of the action, as a party thereto or otherwise, but such interest may be shown to affect his credibility: *Provided, however,* That in an action or proceeding where the adverse party sues or defends as executor, administrator or legal representative of any deceased person, or as deriving right or title by, through or from any deceased person, or as the guardian or conservator of the estate of any insane person, or of any minor under the age of fourteen (14) years, then a party in interest or to the record, shall not be admitted to testify in his own behalf as to any transaction had by him with, or any statement made to him by any such deceased or insane person, or by any such minor under the age of fourteen (14) years: *Provided further,* That this exclusion shall not apply to parties of record who sue or defend in a representative or fiduciary capacity, and who have no other or further interest in the action.

Approved March 20, 1890.

FINAL RECEIPTS AND CASH CERTIFICATES; RECORDING OF.

AN ACT relative to the recording of cash and final receipts and certificates of United States Registers and Receivers.

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

SECTION 1. That every cash or final receipt from any receiver, and every cash or final certificate from any register of the United States land office, evidencing that final payment has been made to the United States as required by law, or that the person named in such certificate is entitled, on presentation thereof, to a patent from the United States for land within the State of Washing-

ton, shall be recorded by the county auditor of the county wherein such land lies, on request of any party presenting the same, and any record heretofore made of any such cash or final receipt or certificate shall, from the date when this act becomes a law, and every record hereafter made of any such receipt or certificate shall, from the date of recording, impart to third persons and all the world, full notice of all the rights and equities of the person named in said cash or final receipt or certificate in the land described in such receipt or certificate.

Approved March 14, 1890.

RELATING TO CONFLICTING CLAIMS TO PROPERTY.

AN ACT to provide for the determination of conflicting claims to property, money or indebtedness.

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

SECTION 1. Any one having in his possession, or under his control, any property or money, or being indebted, where more than one person claims to be the owner of, entitled to, interested in, or to have a lien on, such property, money or indebtedness, or any part thereof, may commence an action in the superior court against all or any of such persons, and have their rights, claims, interest or liens adjudged, determined and adjusted in such action.

SEC. 2. In all actions commenced under the preceding section, the plaintiff may disclaim any interest in the money, property or indebtedness, and deposit with the clerk of the court the full amount of such money or indebtedness, or other property, and he shall not be liable for any costs accruing in said action. And the clerks of the various courts shall receive and file such complaint,

and all other officers shall execute the necessary processes to carry out the purposes of this act, free from all charge to said plaintiff, and the court, in its discretion, shall determine the liability for costs of the action.

SEC. 3. Either of the defendants may set up or show any claim or lien he may have to such property, money or indebtedness, or any part thereof, and the superior right, title or lien, whether legal or equitable, shall prevail. The court or judge thereof may make all necessary orders, during the pendency of said action, for the preservation and protection of the rights, interests or liens of the several parties.

Approved February 19, 1890.

DEFINING THE WORDS TERRITORY AND TERRITORY OF WASHINGTON.

AN ACT providing the words Territory and Territory of Washington shall be construed to mean State and State of Washington, and declaring an emergency to exist.

SECTION 1. Wherever in the laws now in force in the State of Washington or in the laws of the Territory of Washington as continued in force by virtue of the acts of congress, as under the operations and provisions of the constitution of this state the words Territory and Territory of Washington shall be used, the same shall be construed to mean State and State of Washington.

SEC. 2. Whereas, by reason of changed conditions from territory to state the use of said words "Territory" and "Territory of Washington" in the laws is inappropriate and confusing, an emergency exists; therefore, this act shall take effect and be in force from and after its passage and approval by the governor.

Approved December 13, 1889.

RELATING TO INN-KEEPERS.

AN ACT to relieve inn-keepers from liability in certain cases, and prescribing their responsibilities therein.

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

SECTION I. No inn-keeper who constantly has in his inn an iron safe or suitable vault in good order, and fit for the safe custody of money, bank notes, jewelry, articles of gold and silver manufacture, precious stones and bullion, and who keeps a copy of this act printed by itself in large, plain Roman type, and framed, constantly and conspicuously suspended in the office, bar-room, saloon, reading, sitting and parlor-room of his inn, and also a copy printed by itself in ordinary sized plain Roman type posted upon the inside of the entrance door of every public sleeping-room of his inn, shall be liable for the loss of any such article suffered by any guest, unless such guest has first offered to deliver such property lost by him to such inn-keeper for custody in such iron safe or vault, and such inn-keeper has refused or neglected to receive and deposit such property in his safe or vault and to give such guest a receipt therefor: *Provided*, That all doors to rooms furnished to guests shall be provided with slide bolts inside of such rooms on all doors; otherwise he shall be liable; but every inn-keeper shall be liable for any loss of the above enumerated articles by a guest in his inn when caused by the theft or negligence of the inn-keeper or any of his servants.

Approved February 11, 1890.

HOTEL AND LODGING-HOUSE KEEPERS; PROTECTION OF.

AN ACT for the protection of hotel, inn, lodging-house and boarding-house keepers.

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

SECTION 1. That hereafter all hotel keepers, inn keepers, lodging-house keepers and boarding-house keepers in this state shall have a lien upon the baggage, property, or other valuables of their guests, lodgers or boarders, brought into such hotel, inn, lodging-house or boarding-house by such guests, lodgers or boarders, for the proper charges due from such guests, lodgers or boarders for their accommodation, board or lodging and such other extras as are furnished at their request, and shall have the right to retain in their possession such baggage, property or other valuables until such charges are fully paid, and to sell such baggage, property or other valuables for the payment of such charges in the manner provided in section two hereof.

SEC. 2. That whenever any baggage, property or other valuables which have been retained by any hotel keeper, inn keeper, lodging-house keeper or boarding-house keeper, in his possession by virtue of the provision of section one hereof, shall remain unredeemed for the period of three months after the same shall have been so retained, then it shall be lawful for such hotel keeper, inn keeper, lodging-house keeper or boarding-house keeper to sell such baggage, property or other valuables at public auction, after giving the owner thereof ten days' notice of the time and place of such sale, through the post-office, or by advertising in some newspaper published in the county where such sale is made, or by posting notices in three conspicuous places in such county, and out of the proceeds of such sale to pay all legal charges due from the owner of such baggage, property or valuables, including proper charges

for storage of the same, and the overplus, if any, shall be paid to the owner upon demand.

Approved March 7, 1890.

RELATING TO JUDGMENTS IN U. S. COURTS.

AN ACT relating to the filing and recording of transcripts of judgments rendered in this State by the District or Circuit Courts of the United States.

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

SECTION 1. That judgments in the district or circuit court of the United States, if rendered in this state, may be made liens upon the real estate owned by the person against whom said judgment is rendered, and also upon all he may subsequently acquire for a period of five years from the date of the judgment, by filing a certified transcript of the judgment in the office of the auditor or recorder of the county in which the land lies, and no lien shall attach to the lands in any county of this state until the date of filing such transcript, except the county wherein such judgment is rendered, in which case the lien shall attach from the date of such rendition: *Provided*, That within twenty days from such rendition, a certified transcript of such judgment shall be filed in the office of the auditor of said county, and if not so filed, the lien of such judgment shall not attach until the actual filing of such certified transcript. Must file transcript.

SEC. 2. The auditor or recorder shall, on the filing of such transcript in his office, immediately proceed to docket and index the same in a separate book kept for that purpose, in the same manner as though rendered in the superior court of his own county, and he shall be allowed to charge and receive the same fee as provided by law for like service. Docket and index.

Satisfaction of
judgment.

SEC. 3. When the amount due on any judgment is paid off or satisfied in full, the plaintiff, or those legally acting for him, must acknowledge satisfaction thereof in the margin of the record of the judgment, or by the execution of an instrument in writing, referring to the judgment, acknowledged and filed in the office of the auditor or recorder in every county where the judgment is a lien. If he fail to do so within sixty days after having been requested in writing so to do, he shall forfeit to the defendant the sum of fifty dollars.

Approved February 19, 1890.

PROVIDING FOR THE SOLEMNIZATION OF MARRIAGE.

AN ACT to authorize certain officers and persons to solemnize marriages.

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

SECTION 1. The following named officers and persons are hereby authorized to solemnize marriages, to-wit: Judges of the supreme court, judges of superior courts, any regular ordained minister or priest of any church or religious denomination anywhere within the state, and justices of the peace within their respective counties.

SEC. 2. Doubts have arisen as to who are authorized under existing laws to solemnize marriages, and the public interest demanding the immediate removal of any uncertainty, or question, upon this important matter, a cause of emergency is deemed to exist, and this act shall take effect and be in force from and after its passage.

Approved December 12, 1889.