

that service could not be made as provided in the last preceding section because of the absence of the defendant, and that all the provisions of this section have been complied with.

SEC. 6. Whenever it shall appear by the return of the sheriff or his deputy, or the person appointed to serve a summons, that he has not served it upon the defendant, the plaintiff may have another summons issued, and so on till service be had, or the plaintiff may proceed by publication in the manner hereinbefore provided, at his election.

In case of two  
or more de-  
fendants.

SEC. 7. When the action is against two or more defendants upon a joint contract or liability and one or more of the defendants cannot be served, the plaintiff may proceed to judgment against the defendant or defendants served, and at any time thereafter while such judgment remains unsatisfied, the plaintiff or his attorney may have summons issued to the defendant or defendants not served, and upon service thereof upon such defendant or defendants, the same proceedings may be had as if he or they had been originally served. When the action is against defendants liable severally, or jointly and severally, the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants.

Approved February 26, 1891.

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## CHAPTER LIX.

[S. B. No. 118.]

### RELATING TO NEW TRIALS.

AN ACT relating to new trials, and amending section 282 of the Code of Washington of 1881, and repealing sections 279 and 280 of said Code of 1881.

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

Limit of time.

SECTION 1. The party intending to move for a new trial must, within two days after the verdict of the jury if the action was tried by a jury, or after notice of the decision

of the court or referee if the action was tried without a jury, file with the clerk and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made. If the motion is to be made upon affidavits, the moving party must, within two days after serving the notice, or such further time as the court in which the action is pending, or a judge thereof, may allow, file such affidavit with the clerk and serve a copy upon the adverse party, who shall have two days to file counter-affidavits, a copy of which must be served upon the moving party.

SEC. 2. Section 282 of the code of Washington of 1881 is amended to read as follows: If the motion be supported by affidavits and the cause be newly discovered evidence, the affidavits of any witness or witnesses, showing what their testimony will be, shall be produced or good reasons shown for their non-production.

SEC. 3. The foregoing sections of this act shall be embodied in the code of procedure of this state, appropriately numbered, and shall be a part thereof.

SEC. 4. Sections 279 and 280 of the said code of 1881 are repealed.

Approved February 26, 1891.

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## CHAPTER LX.

[S. B. No. 98.]

### RELATING TO TRIALS BY JURY.

AN ACT relating to trial by jury, and amending sections 232, 234 and 244 of the Code of Washington of 1881.

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

SECTION 1. Section 232 of the code of Washington of 1881 is amended to read as follows: After the jury have retired for deliberation, if they desire to be informed of any point of law arising in the case, they may require the offi-