

CHAPTER XI.—COURTS.

REPORTER OF SUPREME COURT.

AN ACT to prescribe the duties and fix the compensation of the Reporter of the Supreme Court.

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

SECTION 1. The reporter of the decisions of the supreme court must prepare a report of such cases decided as he may, by the court, be directed to report.

Reporter shall prepare syllabus.

SEC. 2. He shall prepare such decisions for publication by giving the title of each case, a *syllabus* of the points decided, a brief statement of the facts bearing on the points decided, the names of the counsel, and a reference to such authorities as are cited from standard reports and text-books that have a special bearing on the case, and he shall prepare a full and comprehensive index to each volume, and prefix a table of cases reported.

Reports must be published.

SEC. 3. The reports must be published under the supervision of the court, and to that end each of the judges must be furnished by the reporter with proof-sheets of each volume thirty days before its final publication.

SEC. 4. Within thirty days after such proof sheets are furnished, the judges must return the same to the reporter, with corrections or alterations, and he must make the corrections or alterations accordingly.

SEC. 5. The reporter may take the original opinions and papers in each case from the clerk's office and retain them in his possession not exceeding sixty days.

SEC. 6. The annual salary of the reporter of the decisions of the supreme court shall be 1,500 dollars, payable the same as the salary of other state officers.

Approved December 20, 1889.

ORGANIZATION OF THE SUPREME COURT.

AN ACT relating to the organization, powers and duties of the Supreme Court, and declaring an emergency to exist.

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

SECTION 1. The supreme court shall consist of five Number of judges. judges, who shall be elected by the qualified electors of the state at large at the general state election, at the time and places at which state officers are elected, next preceding the expiration of the term of office of their predecessors respectively, and hold their offices for the term of six Terms of office. years from and after the second Monday in January next after their election: *Provided*, That the justices elected on the first Tuesday of October, 1889, shall have so classified or shall so classify themselves by lot, that two of them shall go out of office at the end of three years, two of them at the end of five years, and one at the end of seven years from the second Monday in January, 1890; and an entry of such classification shall have been or shall be made in the minutes of the court, signed by such judges, and they shall cause the result thereof to be certified to the secretary of state and filed in his office.

SEC. 2. The judge having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall be the chief justice, and shall preside at all Chief Justice. sessions of the supreme court, and in case there shall be two judges having in like manner the same short term, the other judges of the supreme court shall determine which of them shall be chief justice, and in case of the absence of the chief justice, the judge having in like manner the shortest or next shortest term to serve shall preside.

SEC. 3. If a vacancy occur in the office of a judge of Vacancy. the supreme court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election, and the judge so

elected shall hold the office for the remainder of the unexpired term.

Regular and special sessions.

SEC. 4. The supreme court shall always be open for the transaction of business, except on non-judicial days. It shall hold regular sessions for the hearing of causes at the seat of government, commencing on the second Mondays of January, May and October of each year, and special sessions at the same place, at such other times as may be prescribed by the justices thereof. If proper rooms in which to hold the court, and for the accommodation of the officers thereof, are not provided by the state, together with attendants, furniture, fuel, lights, record books and stationery, suitable and sufficient for the transaction of business, the court, or any three justices thereof, may direct the clerk of the supreme court to provide the same; and the expense thereof, certified by any three justices to be correct, shall be paid out of the state treasury out of any funds therein not otherwise appropriated. Such moneys shall be subject to the order of the clerk of the supreme court, and be by him disbursed on proper vouchers, and accounted for by him in annual settlements with the state auditor.

Money disbursed by clerk.

Quorum.

SEC. 5. It shall require a majority of the justices of the supreme court to form a quorum and pronounce a decision. In the determination of causes all decisions of the court shall be in writing, and the grounds of the decision shall be stated.

Jurisdiction.

SEC. 6. The supreme court shall have original jurisdiction in habeas corpus and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy or the value of the property does not exceed the sum of two hundred dollars, unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari, and all other writs necessary and proper to the complete exercise of its

Appeal limits.

appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or before the supreme court, or before any superior court of the state, or any judge thereof. Habeas corpus.

SEC. 7. Adjournments from day to day, or from time to time, are to be construed as recesses in the sessions, and shall not prevent the court from sitting at any time. Adjournments.

SEC. 8. The judgments and decrees of the supreme court shall be final and conclusive upon all the parties properly before the court. Decrees final.

SEC. 9. The supreme court may affirm, reverse or modify any judgment or order appealed from, and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had. The decision of the court shall be given in writing; and in giving its decision, if a new trial is granted, the court shall pass upon and determine all the questions of law involved in the case presented upon such appeal and necessary to the final determination of the case. Its judgments in appealed cases shall be remitted to the court from which the appeal was taken. Written decisions.

SEC. 10. The supreme court shall be a court of record, and shall be vested with all power and authority necessary to carry into complete execution all its judgments, decrees and determinations in all matters within its jurisdiction, according to the rules and principles of the common law, and the constitution and laws of this state. Court of record.

SEC. 11. Its process shall run in the name of the "State of Washington," bear test in the name of the chief justice, be signed by the clerk of the court, dated when issued, sealed with the seal of the court, and made returnable according to law, or such rule or orders as may be prescribed by the court. Form of process.

SEC. 12. The supreme court may, from time to time, institute such rules of practice and prescribe such forms of process to be used, and for the keeping of the dockets, records and proceedings for the regulation of the said court Rules of practice.

as shall be deemed most conducive to the due administration of justice, except as otherwise provided by law.

Clerk and reporter.

SEC. 13. The judges of the supreme court shall appoint a clerk and a reporter of the decisions of the court, removable at their pleasure, each of whom shall receive an annual salary, as shall be provided by law: *Provided*, That the legislature may at any time provide for the election of such clerk, and prescribe the term of his office.

Oath of office.

SEC. 14. The several judges of the supreme court, before entering upon the duties of their office, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be), that I will support the constitution of the United States and the constitution of the State of Washington, and that I will faithfully and impartially discharge the duties of the office of judge of the supreme court of the State of Washington to the best of my ability." Which oath or affirmation may be administered by any person authorized to administer oaths, a certificate whereof shall be affixed thereto by the person administering the oath. And the oath or affirmation so certified shall be filed in the office of the secretary of state.

Pending cases.

SEC. 15. All causes pending in the supreme court of the territory, except such causes as would have been within the exclusive jurisdiction of the United States circuit court, had such court existed at the time of the commencement of such causes, and the papers, records and proceedings of said court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the supreme court of the state, and until so superseded, the supreme court of the territory and the judges thereof shall continue with like powers and jurisdiction as if this act had not been adopted.

Report to governor.

SEC. 16. The judges of the supreme court shall, on or before the first day of January in each year, report in writing to the governor such defects and omissions in the laws as they may believe to exist.

Seal.

SEC. 17. The seal of the supreme court shall be the vignette of General George Washington, with the words

“Seal of the supreme court, State of Washington,” surrounding the vignette.

SEC. 18. Whereas, there are no acts of the legislature relating to the organization, powers and duties of the supreme court, and there being an immediate necessity therefor, therefore, an emergency is declared to exist, and this act shall take effect and be in force from and after its passage.

Approved December 23, 1889.

PETIT JURORS FOR SUPERIOR COURTS.

AN ACT to provide petit jurors for the superior courts of this state.

WHEREAS, An emergency exists in relation to petit jurors in the superior courts of this state; and

WHEREAS, A temporary act is desirable to settle questions relative to the selecting, drawing and summoning of petit jurors for said superior courts: therefore,

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

SECTION 1. That until otherwise provided the judges of the superior courts may order, at such times as they see fit, a panel of not less than twelve nor more than twenty-Size of panel. four petit jurors, to be drawn from the last jury list certified by the county commissioners (whether same has been previously drawn from or not is not to be considered), and the clerk of the superior court, or his deputy, and the sheriff and county auditor, shall place ballots prepared from such list in a box, and having thoroughly mixed them, the clerk, or his deputy, being blindfolded, shall draw the requisite number to serve as such petit jurors. Drawing names. The list thus drawn shall be certified to by the sheriff and auditor, and within three days the clerk shall issue to the sheriff of the county a venire containing the names of the

Venire. persons thus drawn as petit jurors, returnable at a day and hour to be named by the judge of said court; and until
 Qualifications. otherwise provided, previous service as jurors within one or two years, or having been previously drawn from said list shall be no excuse for service on said jury, the party being otherwise qualified to serve as a juror.

Validity of drawing. SEC. 2. The failure on the part of any officer to perform the duties required within the time, or other irregularity in said drawing, shall in no way invalidate the selecting, drawing or summoning of said jurors.

Open venire. SEC. 3. If for any cause the court shall see fit to set aside the venire returned as above provided, an open venire may thereupon issue to the sheriff, who shall thereupon complete the panel by such open venire as speedily as possible.

Court may fill panel. SEC. 4. If for any cause a sufficient number of jurors are not returned by the sheriff in the manner first herein contemplated, the court may order the panel filled from the by-standers by the sheriff, or may fill such panel by an open venire, for a sufficient number, directed to the sheriff.

Validity of previous summoning. SEC. 5. All jurors and juries heretofore summoned by said superior courts, or any of them, under the practice heretofore adopted, are hereby declared legal and regular, and all venires, open or otherwise, issued by said courts for jurors before the passage of this act, are hereby declared regular and valid as if issued as herein provided.

SEC. 6. This act being deemed of immediate importance, shall take effect and be in full force from and after its passage.

Approved December 23, 1889.

SUPREME COURT REPORTS.

AN ACT entitled "An act to provide for the publication and distribution of the Supreme Court Reports of Washington."

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

SECTION 1. The reports of the supreme court of the State of Washington shall be published in volumes of not less than seven hundred (700) pages each. The style of type used, the general typography, and the paper and binding shall be equal in quality and generally similar to that used in volume three of the Washington Territory reports. Style of book.

SEC. 2. The reporter shall have no pecuniary interest in the volumes of reports, but they must be published under the supervision of the court and reporter by contract, to be entered into by the reporter, secretary of state and attorney general with the person or persons who shall agree to publish and sell the said reports for a period of five years, said price not to exceed two dollars and fifty cents (\$2.50) per volume: *Provided*, That the work shall be done in the State of Washington by the lowest responsible bidder: *Provided further*, That the person or persons who print and publish the said report shall not copyright the volumes thereof, or any portion of such volumes, or any notes, indexes or tables of contents that may be published in connection therewith, and the bond given by such person or persons for the fulfillment of the terms of the contract shall contain an acceptance of the requirements herein as to such copyright. Reporter must be disinterested. Price. Lowest bidder. Bond of contractor.

SEC. 3. The contract must require the publisher to print and publish each volume within sixty days from the time at which the manuscript is delivered by the reporter. The said contract must require the publisher — *First*, to sell three hundred (300) copies of each volume as published to the state, at the price fixed in the contract; *second*, to keep on hand and for sale, at the price stipulated in the contract, a sufficient number of copies of each volume to Contract limited.

supply all demands for five years from the publication thereof; *third*, to make stereotype plates of the pages of each volume, to the end that the same may never be out of print; *fourth*, to re-print, without state aid, volume one of Washington Territory reports, and to sell the same to the state and public at the uniform price stipulated for the future volumes in said contract; *fifth*, to give bonds for the fulfillment of the terms of the contract in the sum of ten thousand dollars (\$10,000).

Amount of bond.

SEC. 4. On the publication of each volume of reports the secretary of state must purchase, for the use of the state, three hundred copies of said volume at the price named in the contract, and after having distributed the same, as required by section 5, shall deposit the surplus copies, if any there be, in the state library.

Secretary of state must purchase.

Surplus.

SEC. 5. The secretary of state must distribute the bound volumes of the decisions of the supreme court as follows: *First*, to each state and territory, one copy; *second*, to the state library, ten copies, and other public libraries in the state, one copy; *third*, to each department of this state, and to each of the United States district judges for this state, supreme and superior judges, one copy; *fourth*, to each district attorney and county clerk, one copy; *fifth*, to reporters of decisions, one copy.

Distribution of copies.

Books marked.

SEC. 6. The secretary of state must indelibly mark each book distributed to officers in this state (except the reporters) with the name of county to which and the designation of the office to whom it is sent. Each book remains the property of the state and must be, by the officers receiving the same, delivered to their successors.

Approved January 20, 1890.

SALARIES OF JUDGES OF THE SUPREME AND SUPERIOR COURTS.

AN ACT providing for the payment of certain expenses of and the manner in which the salaries of the Judges of the Supreme and Superior Courts shall be paid, and declaring an emergency to exist.

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

SECTION 1. The auditor of state shall draw his warrant on the treasurer of state, at the end of each quarter, for the amount of salary then due under the constitution from the state to each of the judges of the supreme court and superior courts of this state, and said warrant shall be paid by the treasurer out of any funds in the state treasury not otherwise appropriated. Quarterly payment.

SEC. 2. The county auditor of each county shall draw his warrant on the treasurer of such county, at the end of each quarter, for the amount of salary then due from such county to the judge of the superior court thereof, and said warrant shall be paid by said treasurer out of any funds in the county treasury not otherwise appropriated. Proportionate payment by counties.

SEC. 3. Where there is only one judge of the superior court for two or more counties, the auditors thereof, acting together, shall apportion among or between such counties, according to the assessed valuation of their taxable property, the amount of such judge's salary that each county shall pay. When two or more counties in district.

SEC. 4. When the judge of any superior court is called to hold court in any county for which he was not elected, his actual traveling and incidental expenses in going to and from and while holding such court shall be paid by such county, and the auditor of such county shall, upon a verified statement of expenses made by such judge, draw his warrant for the amount thereof upon the treasurer of such county, who shall pay the same out of any funds not otherwise appropriated. Traveling and incidental expenses.

SEC. 5. Whereas, the constitution provides that the salary of the judges of the supreme and superior courts shall

be paid quarterly; and whereas, the laws enacted by this legislature will probably not take effect for more than six months from this date (unless by reason of an emergency clause), it is, therefore, declared that an emergency exists for the immediate taking effect of this act, and the same shall be in force from and after its passage and approval by the governor.

Approved January 27, 1890.

CLERK SUPREME COURT; SALARY OF.

AN ACT fixing the salary of the Clerk of the Supreme Court, and providing for the payment of the same, and declaring an emergency.

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

\$2,000 a year.

SECTION 1. That the clerk of the supreme court shall receive an annual salary of two thousand dollars, the same to be paid out of the funds appropriated for paying the expenses of the said court.

Quarterly payment.

SEC. 2. He shall draw his salary from the time of entering upon the duties of his office, and at the end of each quarter the state auditor shall draw a warrant on the state treasurer in favor of said clerk of the supreme court for one-fourth the amount of his annual salary.

SEC. 3. Whereas, no law now in force makes any provision for paying the clerk of the supreme court for his services, an emergency is declared to exist, and this act shall take effect and be in force from and after its passage.

Approved February 28, 1890.

BAILIFFS OF SUPREME COURT; SALARIES OF.

AN ACT to provide for the payment of the salary of Supreme Court Bailiffs.

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

SECTION 1. Bailiffs of the supreme court are hereby entitled to, and shall be paid three (\$3) dollars per diem.

SEC. 2. The state auditor shall issue his warrant for salary of supreme court bailiffs upon receipt of certificate of time served, signed by any one or more of the supreme court judges, and attested by the clerk of the supreme court.

SEC. 3. The immediate operation of this act is hereby declared an emergency.

Approved March 7, 1890.

GRAND JURORS FOR SUPERIOR COURTS.

AN ACT to provide Grand Jurors for the Superior Courts of this state.

WHEREAS, An emergency exists in relation to grand jurors in the superior courts of this state; and

WHEREAS, A temporary act is desirable to settle questions relative to selecting, drawing and summoning of grand jurors for said courts: therefore,

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

SECTION 1. That until otherwise provided, the judges of the superior courts may, at such times as they see fit, order a panel of grand jurors to be drawn from the last jury lists certified by the county commissioners (whether the same has previously been drawn from or not), and the clerk of the superior court, or his deputy, and the sheriff

Manner of drawing.

and county auditor shall place ballots prepared from such list in a box, and having thoroughly mixed them, the clerk, or his deputy, being blindfolded, shall draw the requisite number to serve as such grand jurors. The list thus drawn shall be certified to by the sheriff and auditor, and within three days the clerk shall issue to the sheriff of the county a venire containing the names of the persons thus drawn as grand jurors, returnable at a day and hour to be named by the judge of said court, and until otherwise provided, previous service as jurors within two years, or having been previously drawn from said list, shall be no excuse for service on said jury, the party being otherwise qualified to serve as a grand juror.

Validity of drawing.

SEC. 2. The failure on the part of any officer to perform the duties required within the time, or other irregularity in said drawing, shall in no way invalidate the selecting, summoning or drawing of said jurors.

Open venire.

SEC. 3. If for any cause the court shall see fit to set aside the venire returned as above provided, an open venire may thereupon issue to the sheriff, who shall thereupon complete the panel by such open venire as speedily as possible.

SEC. 4. If for any cause a sufficient number of jurors are not returned by the sheriff in the manner first herein contemplated, or if a sufficient number of jurors are not in attendance, the court may order the panel filled by summoning a sufficient number by an open venire issued and directed to the sheriff.

Jurors heretofore drawn.

SEC. 5. All jurors and juries heretofore summoned by said superior courts, or any of them, under the practice heretofore adopted, are hereby declared legal and regular, and all venires, open or otherwise, issued by said courts for grand jurors before the passage of this act are hereby declared regular and valid, as if issued as herein provided.

SEC. 6. This act being of immediate importance, shall take effect and be in full force and effect from and after its passage.

Approved February 11, 1890.

REMOVAL OF CAUSES FROM SUPERIOR TO SUPREME COURT.

AN ACT to provide a single and uniform method of removing causes from the superior courts to the supreme court, and to regulate the practice in the supreme court in such causes.

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

SECTION 1. An appeal may be taken to the supreme court from the following decisions, orders or judgments of superior courts, and from none other: *First*, from all final decisions; *second*, from a final order made in special proceedings affecting a substantial right therein, or made on a summary application in an action after judgment; *third*, from an order granting a new trial, or granting or refusing, continuing or modifying a temporary injunction or restraining order in cases where the principal object of the action is to obtain injunctive relief; *fourth*, from a final order or judgment on *habeas corpus*.

When appeals may be taken.

SEC. 2. A person desiring to appeal from any such decision, order or judgment may, by himself or attorney, give notice in open court, or before the judge, if the decision, order or judgment appealed from be rendered or made at chambers, at the time said decision, order or judgment is made, that he appeals from such decision, order or judgment to the supreme court, and such notice shall, by order of the court or judge, be entered in the journal of the court. If the appeal be not taken at the time the decision, order or judgment is rendered or made, then the party desiring to appeal may, by himself or attorney, at any time within six months after the decision, order or judgment complained of was made, give notice in writing to the prevailing party or his attorney, that he appeals from said decision, order or judgment to the supreme court, and shall file with the clerk of the superior court the original of such notice, with a return of service or acceptance of service thereon, and it shall then be the duty of the clerk of the superior court to enter said notice, with the return or acceptance of service thereon, in the journal of the court.

Limit of time.

Filing notice.

SEC. 3. Upon the giving of the notice or the filing of the written notice, as provided in the preceding section, it shall be the duty of the clerk of the superior court, as soon as may be, in due course of business, to make and certify a full and complete transcript of the record in such cause or proceeding, up to the time of the giving notice of appeal, and to cause such transcript to be filed with the clerk of the supreme court within the time provided by law.

AS TO FACTS NOT IN RECORD.

SEC. 4. In all cases and proceedings in which an appeal lies to the supreme court, any party feeling himself aggrieved may have any material fact or facts, not already a part of the record, made so by a statement of facts. Such facts shall be settled and agreed on in the following manner: The party desiring to settle a statement of facts shall prepare and file with the clerk of the superior court a statement of facts, complete and ready for signing, and shall, within thirty days after the decision, order or judgment to be appealed from was made or rendered, give notice to the opposite party, or his attorney, that the said statement has been prepared and filed, and that upon a day to be named in said notice, he will apply to the court or judge who tried the cause or made the decision, order or judgment complained of, at a place to be named in said notice, to settle and certify said statement of facts. Said notice shall be given within thirty days after the decision, order or judgment is made, and the day fixed for the settling and certifying of the statement shall be at least ten days and not more than thirty days after the day of service. The party upon whom such notice is served shall, within ten days thereafter, serve upon the opposite party a written notice in which shall be stated whether or not the correctness of said statement of facts is contested; and if contested, in what particular or particulars the said statement is deficient, incorrect or incomplete. Upon the day named in said notice the said parties, or their attorneys, may appear before the said court or judge, and it shall be the duty of said court or judge to settle between the parties what is the proper statement and to certify the same. The settling of said statement may be adjourned to a later day by order of said court or judge.

Duty of clerk.

AS TO FACTS NOT IN RECORD.

Limit of time.

Duty of court.

SEC. 5. The certificate of the judge that said statement ^{Certificate of judge.} contains all the material facts in the cause or proceeding shall be sufficient. In causes of equitable cognizance where the appeal is from the final judgment, the said statement of facts shall contain all the testimony on which the cause was tried below, together with any exceptions or objections taken to the reception or rejection of testimony. In cases at law, the statement of facts need contain no more than was necessary or proper in a bill of exceptions.

SEC. 6. In actions at law and in special proceedings which are appealable, the appellant instead of settling a statement of facts, as provided by this act, may have his exceptions and such facts as are material to the same made ^{Exceptions.} a part of the record by bill of exceptions, as provided by chapter nineteen (19) of the code of Washington relating to "exceptions."

SEC. 7. The supreme court is hereby authorized to make ^{Rules of supreme court.} all needful rules and regulations not inconsistent with law concerning practice and procedure in the supreme court in causes appealed thereto, and concerning the settlement of bills of exceptions and statement of facts, and concerning the time and manner of filing transcripts and briefs.

SEC. 8. A statement of facts or bill of exceptions may ^{Bill of exceptions.} be settled and certified by the judge trying the cause, or who rendered the decision, order or judgment to be appealed from, at any place in the state, but the time and place shall be stated in the notice given for the settling and certifying the same.

SEC. 9. The provisions of the code of Washington relating to procedure and practice in the supreme court ^{Procedure.} upon appeals and upon writs of error in civil and criminal cases shall, as far as applicable, govern the procedure and practice in causes appealed under this act.

SEC. 10. All appeals under this act shall be prosecuted ^{Limit for appeals.} within six months after the rendition of the decision, order or judgment complained of: *Provided*, That appeals in criminal cases may be prosecuted at any time within one year after final judgment, and the notice of appeal in such cases may be given within the same time.

SEC. 11. The method provided by this act for removing causes to the supreme court, and for securing a revision of the same shall be exclusive, and shall supersede all other methods heretofore provided.

Repealing.

SEC. 12. The act entitled "An act to amend chapter nineteen (19) of the code of Washington Territory; exceptions," approved February 3, 1886, which said act relates to the taking of exceptions and the settling of the same, is hereby repealed.

SEC. 13. The supreme court shall hear and determine all causes removed thereto, in the manner hereinbefore provided, upon the merits thereof, disregarding all technicalities.

Approved March 22, 1890.

REMOVING CAUSES FROM THE SUPERIOR TO THE SUPREME COURT.

AN ACT to amend section 1 of an act entitled "An act to provide a single and uniform method of removing causes from the Superior Courts to the Supreme Court, and to regulate the practice in the Supreme Court in such causes," approved March 22, 1890.

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

SECTION 1. That section 1 of an act entitled "An act to provide a single and uniform method of removing causes from the superior courts to the supreme court, and to regulate the practice in the supreme court in such causes," approved March 22, 1890, is amended to read as follows: An appeal may be taken to the supreme court from the superior courts in all actions and proceedings, excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or property when the original amount in controversy or the value of the property does not exceed the sum of two hundred (200)

dollars, unless the action involves the legality of a tax, impost, assessment, toll, municipal fine or the validity of a statute.

Approved March 27, 1890.

SUPERIOR COURTS ; COSTS IN.

AN ACT relating to costs in the Superior Court.

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

SECTION 1. In any action in the superior court of Washington the prevailing party shall be entitled to his costs and disbursements; but the plaintiff shall in no case be entitled to costs taxed as attorneys' fees in actions within the jurisdictions of a justice of the peace when commenced in the superior court.

SEC. 2. All acts conflicting in any manner with this act are hereby repealed.

Approved March 27, 1890.

COURT RECORDS ; TO PROVIDE FOR THE RESTORATION OF LOST.

AN ACT to provide for the restoration of court records and files which have been lost or destroyed by fire or otherwise, and declaring an emergency.

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

SECTION 1. Whenever a pleading, process, return, verdict, bill of exceptions, order, entry, stipulation or other act, file or proceeding in any action or proceeding pending

Papers in proceeding.

in any court of this state shall have been lost or destroyed by fire or otherwise, or is withheld by any person, such court may, upon the application of any party to such action or proceeding, order a copy or substantial copy thereof to be substituted.

Record of judgment or decree.

SEC. 2. Whenever the record required by law of the proceedings, judgment or decree in any action or other proceeding of any court in this state in which a final judgment has been rendered, or any part thereof, is lost or destroyed by fire or otherwise, such court may, upon the application of any party interested therein, grant an order authorizing such record or parts thereof to be supplied or replaced — *First*, by a certified copy of such original record, or part thereof, when the same can be obtained; *second*, by a duly certified copy of the record in the supreme court of such original record of any action or proceeding that may have been removed to the supreme court and remain recorded or filed in said supreme court; *third*, by the original pleadings, entries, papers and files in such action or proceeding when the same can be obtained; *fourth*, by an agreement in writing signed by all the parties to such action or proceeding, their representatives or attorneys, that a substituted copy of such original record is substantially correct.

Any interested party may apply.

SEC. 3. Whenever the record required by law, or any part thereof, of the proceedings or judgment or decree in any action or other proceeding of any court in this state in which the final judgment has been rendered, is lost or destroyed by fire or otherwise, and such loss cannot be supplied or replaced as provided in section two of this act, any person or party interested therein may make a written application to the court to which said record belongs, setting forth the substance of the record so lost or destroyed, which application shall be verified in the manner provided for the verification of pleadings in a civil action, and thereupon summons shall issue and actual service, or service by publication, shall be made upon all persons interested in or affected by said original judgment or final entry in the manner provided by law for the commencement of civil actions, provided the parties may

waive the issuing or service of summons and enter their appearance to such application; and upon the hearing of such application without further pleadings, if the court finds that such record has been lost or destroyed and that it is enabled by the evidence produced to find the substance or effect thereof material to the preservation of the rights of the parties thereto, it shall make an order allowing a record, which record shall recite the substance and effect of said lost or destroyed record, or part thereof, and the same shall thereupon be recorded in said court, and shall have the same effect as the original record would have if the same had not been lost or destroyed, so far as it concerns the rights of the parties so making the application, or persons or parties so served with summons, or entering their appearance, or persons claiming under them by a title acquired subsequently to the filing of the application.

Court shall order new record.

SEC. 4. Upon the hearing of the application provided in section three, the court may admit in evidence oral testimony and any complete or partial abstract of such record, docket entries or indices, and any other written evidence of the contents or effect of such records and published reports concerning such actions or proceedings, when the court is of opinion that such abstracts, writings and publications were fairly and honestly made before the loss of such records occurred.

Competent evidence.

SEC. 5. Whenever a lost or destroyed judgment or order is one to which either party has a right to a proceeding in error or of appeal, the time intervening between the filing of the application mentioned in section three and the final order of the court thereon shall be excluded in computing the time within which such proceeding or appeal may be taken as provided by law.

In cases where right to appeal exists.

SEC. 6. The costs to be taxed, upon an application to restore a lost or destroyed record, shall be the same as are provided for like service in civil actions, and may be adjudged against either or any party to such proceeding or application, or may, in the discretion of the court, be apportioned between such parties.

Costs.

SEC. 7. In case of the loss or destruction by fire or otherwise of the records, or any part thereof, of any probate court or superior court having probate jurisdiction, the judge of any such court may proceed, upon its own motion or upon application in writing of any party in interest, to restore the records, papers and proceedings of either of said courts relating to the estates of deceased persons, including recorded wills, wills probated, or filed for probate in such courts, all marriage records and all other records and proceedings, and for the purpose of restoring said records, wills, papers or proceedings, or any part thereof, may cause citations or other process to be issued to any and all parties to be designated by him, and may compel the attendance in court of any and all witnesses whose testimony may be necessary to the establishment of any such record or part thereof, and the production of any and all written or documentary evidence which may be by him deemed necessary in determining the true import and effect of the original record, will, paper, or other document belonging to the files of said court; and may make such orders and decrees establishing such original record, will, paper, document or proceeding, or the substance thereof, as to him shall seem just and proper. The judge of the probate court may, in vacation, perform any of the duties imposed upon him by this section.

Relating to estates.

Marriage records, wills, etc.

Power of court.

SEC. 8. The costs incurred in the probate and superior courts in proceedings under sections six and seven shall be paid by the party or parties interested in such proceedings, or in whose behalf such proceedings are instituted.

SEC. 9. Whereas, by reason of the destruction by fire of the records of the courts of one or more counties of this state, an emergency exists for this act to take effect immediately; therefore, this act shall take effect and be in force from and after its passage.

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.]

SUPERIOR COURTS; ORGANIZATION OF.

AN ACT in relation to the organization, powers and duties of the Superior Courts, and declaring an emergency.

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

SECTION 1. There shall be in each of the organized counties of this state a superior court for which at least one judge shall be elected by the qualified electors of the county at the time provided by law: *Provided*, That until otherwise authorized by law, one judge shall be elected for the counties of Spokane and Stevens, and one additional judge for the county of Spokane; one judge shall be elected for the county of Whitman; one judge for the counties of Lincoln, Okanogan, Douglas and Adams; one judge for the counties of Walla Walla and Franklin; one judge for the counties of Columbia, Garfield and Asotin; one judge for the counties of Kittitas, Yakima and Klickitat; one judge for the counties of Clarke, Skamania, Pacific, Cowlitz and Wahkiakum; one judge for the counties of Thurston, Chehalis, Mason and Lewis; three judges for the county of Pierce; three judges for the county of King; one judge for the counties of Jefferson, Island, Kitsap, San Juan and Clallam, and one judge for the counties of Whatcom, Skagit and Snohomish: *Provided*, That this section shall be construed as including the additional superior judges authorized by law, passed during the present session of the state legislature, providing for additional judges of the superior courts for the counties of Spokane, Pierce and King.

SEC. 2. In any county where there shall be more than one superior judge, there may be as many sessions of the superior court at the same time as there are judges thereof, and whenever the governor shall direct a superior judge to hold court in any county other than that for which he has been elected, there may be as many sessions of the superior court in said county at the same time as there are judges therein or assigned to duty therein by the governor, and the business of the court shall be so

Districts defined.

In case of more than one judge in a county.

distributed and assigned by law, or, in the absence of legislation therefor, by such rules and orders of court as shall best promote and secure the convenient and expeditious transaction thereof. The judgments, decrees, orders and proceedings of any session of the superior court held by any one or more of the judges of such court shall be equally effectual as if all the judges of said court presided at such session.

Terms of office. SEC. 3. The superior judges elected under the constitution, at the election held October 1st, 1889, shall hold their offices for the period of three years, and until their successors shall be elected and qualified, and the additional judge to be elected at the general election of 1890, and thereafter the term of office of all superior judges in this state shall be for four years from the second Monday in January next succeeding their election, and until their successors are elected and qualified.

Vacancies. SEC. 4. If a vacancy occur in the office of judge of the superior court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall be at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term.

Original jurisdiction. SEC. 5. The superior court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to one hundred dollars, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce and for annulment of marriage, and for such special cases and proceedings as are not otherwise provided for; and shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court, and shall have the power of naturalization and to issue papers therefor. Said courts

and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition and writs of habeas corpus on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued on legal holidays and non-judicial days. Powers.

SEC. 6. The superior courts shall have such appellate jurisdiction in cases arising in justice's and other inferior courts in their respective counties as may be prescribed by law. Appellate jurisdiction.

SEC. 7. The superior courts are courts of record, and shall be always open, except on non-judicial days. They shall hold their sessions at the county seats of the several counties, respectively. They shall hold regular and special sessions in the several counties of this state at such times as may be prescribed by the judge or judges thereof. Open except on non-judicial days.

SEC. 8. Adjournments from day to day, or from time to time, are to be construed as recesses in the sessions, and shall not prevent the court from sitting at any time. Recess.

SEC. 9. The process of the superior courts shall extend to all parts of the state: *Provided*, That all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon, real estate, shall be commenced in the county in which the real estate, or any part thereof, affected by such action or actions is situated. Process.

SEC. 10. A judge of any superior court may hold the superior court in any county, at the request of the judge or judges of the superior court thereof, and upon the request of the governor it shall be his duty to do so, and in either case the judge holding the court shall have the same power as a judge thereof. Powers of judge beyond his district.

SEC. 11. A case in the superior court of any county may be tried by a judge *pro tempore*, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the case; and his action in the trial of such cause shall have the same effect as if he were a judge of such court. A judge *pro tempore* shall, before entering upon his duties in any cause, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, Temporary judge.

as the case may be,) that I will support the constitution of the United States and the constitution of the State of Washington, and that I will faithfully discharge the duties of the office of judge *pro tempore* in the cause wherein _____ is plaintiff and _____ defendant, according to the best of my ability." He shall receive a compensation of ten dollars for each day engaged in said trial, to be paid in the same manner as the salary of the superior judge.

Compensation.

SEC. 12. Every case submitted to a judge of a superior court for his decision shall be decided by him within ninety days from the submission thereof: *Provided*, That if within said period of ninety days a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such rehearing, and upon willful failure of any such judge so to do, he shall be deemed to have forfeited his office.

Must decide within.

SEC. 13. The judges of the superior courts shall, from time to time, establish uniform rules for the government of the superior courts.

Rules.

SEC. 14. Superior judges shall, on or before the first day of November in each year, report in writing to the judges of the supreme court, such defects and omissions in the laws as their experience may suggest.

Report to supreme court.

SEC. 15. Every judge of a superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the constitution of the United States and the constitution of the State of Washington, and will faithfully and impartially discharge the duties of judge to the best of his ability, which oath shall be filed in the office of the secretary of state. Such oath or affirmation to be in form substantially the same as prescribed for judges of the supreme court.

Oath of office.

SEC. 16. Whenever the judge of the superior court of any county, elected or appointed, shall have qualified, the several causes then pending in the district court of the territory, except such causes as would have been within the exclusive jurisdiction of the United States district court, had such court existed at the time of the commencement of such causes within such county, and the records, papers and proceedings of said district court, and

How filed.

Disposition of pending causes, records and seals.

the seal and other property pertaining hereto, shall pass into the jurisdiction and possession of the superior court for such county. And where the same judge is elected for two or more counties it shall be the duty of the clerk of the district court having custody of such papers and records to transmit to the clerk of such county or counties other than that in which such records are kept, the original papers in all cases pending in such district court, and belonging to the jurisdiction of such county or counties, together with transcript of so much of the records of said district court as relates to the same; and until the district courts of the territory shall be superseded in manner aforesaid, the said district courts and the judges thereof shall continue with the same jurisdiction and powers, to be exercised in the same judicial districts, respectively, as heretofore constituted under the laws of the territory.

Duty of clerk of district court.

Transition.

SEC. 17. The seals of the superior courts of the several counties of the state shall be, until otherwise provided by law, the vignette of General George Washington, with the words "Seal of the superior court of ——— county, State of Washington," surrounding the vignette.

Form of seals.

SEC. 18. On the organization of the superior courts in the respective counties, the books, records, papers and proceedings of the probate court in each county, and all causes and matters of administration pending therein, shall, upon the expiration of the term of office of the probate judges, on the second Monday in January, 1891, pass into the jurisdiction and possession of the superior court of the same county or district, and the said court shall proceed to final judgment or decree, order or other determination in the several matters and causes, as the territorial probate court might have done. And until the expiration of the term of office of the probate judges, such probate judges shall perform the duties now imposed upon them by the laws of the territory. The superior courts shall have appellate and revisory jurisdiction over the decisions of the probate courts, as now provided by law, until such latter courts expire by limitation.

Records of probate courts.

Appellate and revisory jurisdiction of superior courts.

SEC. 19. Whereas, there are no acts of the legislature relating to the organization, power and duties of the supe-

rior courts, and there being an immediate necessity therefor, therefore an emergency is declared to exist, and this act shall take effect and be in force from and after its passage.

Approved March 27, 1890.

ADDITIONAL JUDGES FOR THE COUNTIES OF
SPOKANE, KING AND PIERCE.

AN ACT providing for an additional number of Superior Court Judges,
and declaring an emergency to exist.

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

SECTION 1. That in each of the following named counties, additional superior court judges shall be elected as follows, that is to say: One superior judge in the county of Spokane, two superior judges in the county of Pierce, and two superior judges in the county of King, with like powers and jurisdiction as are conferred by the constitution and laws of the State of Washington upon the judges of superior courts.

The governor shall appoint.

SEC. 2. The governor shall appoint in each of said counties persons learned in the law judges of the superior courts, as hereinbefore provided to be elected, who shall hold their offices until the next general election, and until their successors shall have been elected and qualified: *Provided, however,* That one of the said additional superior court judges hereby authorized for the county of Pierce shall be appointed by the governor, and hold his office until the next general election; the intent of this act, so far as the additional superior court judges for said Pierce county, being that one shall be appointed upon the passage of this act, and that two additional superior court judges shall be elected at the general election in 1890, as provided in section 3 of this act.

Appointees serve until next election.

SEC. 3. At the general election in 1890, there shall be elected in the county of Spokane one superior judge, and in the county of Pierce two superior judges, and in the county of King two superior judges, for said counties, in addition to the judges now provided for by law in said counties, who shall hold their offices for the term of four years from and after the second Monday in January, 1891.

SEC. 4. Whereas, the business of said superior courts in said counties named has accumulated so greatly as to render it impossible for the dispatch of business, and such accumulation and growing business so delays the trial of causes as to amount, practically, to a denial of justice, an emergency is declared to exist; therefore, this act shall take effect and be in force from and after its approval by the governor.

Approved March 3, 1890.