

kill or have in their possession any of the food fishes im- Offense defined.
 planted in the creeks, rivers, lakes or bays of the State of
 Washington, except for propagating the same, for a period
 of three years after the same shall have been implanted,
 shall be guilty of a misdemeanor.

SEC. 2. Every person who shall, within the State of
 Washington, take, catch or destroy with any seine, net,
 weir, trap or other device, other than hook and line, any
 mountain trout, brook trout, bull trout or salmon trout, in
 any of the waters of the State of Washington, shall be
 guilty of a misdemeanor.

SEC. 3. An emergency is hereby declared to exist, and Emergency.
 this act shall be in force from and after its passage and ap-
 proval.

Approved March 6, 1891.

CHAPTER XCVI.

[S. B. No. 196.]

DEFINING FORCIBLE ENTRY, FORCIBLE DETAINER AND UNLAWFUL DETAINER OF REAL PROPERTY.

AN ACT defining forcible entry, forcible detainer and unlaw-
 ful detainer of real property, and providing remedies therefor by
 summary proceedings.

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—1. By breaking open windows, doors or other
 parts of a house, or by fraud, intimidation or stealth, or
 by any kind of violence or circumstance of terror, enters
 upon or into any real property; or—2. Who, after entering
 peaceably upon real property, turns out by force, threats
 or menacing conduct the party in actual possession.

SEC. 2. Every person is guilty of a forcible detainer Forcible de-
 tainer.
 who either—1. 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—2. Who in the night time, or during the absence of the occupant of any real property, enters thereon, and who, after demand made for the surrender thereof, refuses for the period of three days to surrender the same to such former occupant. The occupant of real property within the meaning of this subdivision is one who for the five days next preceding such unlawful entry was in the peaceable and undisturbed possession of such real property.

Unlawful de-
tainer.

SEC. 3. A tenant of real property for a term less than life is guilty of unlawful detainer either—1. When he holds over or 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. In all cases where real property is leased for a specified term or period by express or implied contract, whether written or by parol, the tenancy shall be terminated without notice at the expiration of such specified term or period; or—2. When he having leased real property for an indefinite time, with monthly or other periodic rent reserved, continues in possession thereof, in person or by sub-tenant, after the end of any such month or period, in cases where the landlord, more than twenty days prior to the end of such month or period, shall have served notice (in manner in this act provided) requiring him to quit the premises at the expiration of such month or period. 3. When he continues in possession in person or by sub-tenant after a default in the payment of any rent, and after a notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner hereafter in this act provided) in behalf of the person entitled to the rent upon the person owing the same, shall have remained uncomplished with for the period of three days after service thereof. Such notice may be served at any time after the rent becomes due; or—4. When he continues in possession in person or by sub-tenant after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held, including any covenant not to assign or sub-let, than one for the payment of rent, and after notice in writing requiring in the alternative the performance of such condition or covenant or the surrender of the

property, served (in the manner provided in this act) upon him, and if there be a sub-tenant in actual possession of the premises, also upon such sub-tenant, shall remain uncomplished with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any sub-tenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture; or—5. When he commits or permits waste upon the demised premises, or when he sets up or carries on therein or thereon any unlawful business, or when he erects, suffers, permits or maintains on or about said premises any nuisance, and remains in possession after service (in manner in this act provided) of three days' notice to quit upon him.

SEC. 4. 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, 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.

SEC. 5. Any notice provided for in this act shall be served either—1. By delivering a copy personally to the person entitled thereto; or—2. If he be absent from his place of business, by leaving there a copy, with some person of suitable age and discretion, and sending a copy through the mail addressed to the person entitled thereto at his place of residence; or—3. If the person to be notified be a tenant and his place of residence is not known, or if a person of suitable age and discretion there cannot be found, then by affixing a copy of the notice in a conspicuous place on the demised 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

Notice; how served.

to the tenant at the place where the demised property is situated. Service upon a sub-tenant may be made in the same manner. Any service in this act provided for may be made by any person who is over the age of twenty-one years.

Jurisdiction of proceedings.

SEC. 6. 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. 7. 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 any proceeding under this act, 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 person has become a sub-tenant of the premises in controversy after the service of any notice in this act provided for, the fact that such notice was not served on such sub-tenant shall constitute no defense to the action. All persons who enter the premises under the tenant, after the commencement of the action hereunder, shall be bound by the judgment the same as if they had been made parties to the action.

Complaint to recover.

SEC. 8. 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 said forcible entry or forcible or unlawful detainer, and claim damages therefor, or compensation for the occupation of the premises, or both; 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 nor more than twelve days from its date, except in cases where 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.

SEC. 9. The summons must state the names of the Summons. 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 in case of summons by publication, be served at least five days before the return day designated therein. The summons must be served and returned in the same manner as summons in other actions is served and returned. Upon the return of any summons issued under this act, when the same has not for any reason been served, or has not been served in time, the plaintiff may have a new summons issued the same as if no previous summons had been issued.

SEC. 10. The plaintiff, at the time of commencing an ac- Writ of restitu- tion of forcible entry or forcible detainer or unlawful de- tion. tainer, or at any time afterwards, may apply to the judge of the court in which the action is pending for a writ of restitution restoring to the plaintiff the property in the complaint described, and the judge shall 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 prior to judgment the plaintiff shall execute - to the defendant and file in court a bond in such a sum as the court or judge may 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.

SEC. 11. The sheriff shall, upon receiving the writ of Duty of sheriff. restitution, forthwith serve a copy thereof upon the defendant, his agent or attorney, or a person in possession of the premises, and shall not execute the same for three days

thereafter, within which time the defendant, or those in possession of the premises, may execute to the plaintiff a bond to be filed with and approved by the clerk of the court, in such a sum as may be fixed by the judge, with two or more sureties to be approved by the clerk of said court, conditioned that they will pay the plaintiff such sum as the plaintiff may recover for the use and occupation of the said premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of said premises, and also all the costs of the action. The plaintiff, his agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualifications and sufficiency of the sureties upon said bond before said bond shall be approved by the clerk.

Bond.

SEC. 12. The plaintiff or defendant at any time, upon two days' notice to the adverse party, may apply to the court or any judge thereof for an order raising or lowering the amount of any bond in this act provided for. Either party may, upon like notice, apply to the court or any judge thereof for an order requiring additional or other surety or sureties upon any such bond. Upon the hearing of any application made under the provisions of this section evidence may be given. The judge after hearing any such application shall make such an order as shall be just in the premises.

Judgment by default.

SEC. 13. If at the time appointed in the summons 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.

Issue of fact must be tried by jury.

SEC. 15. Whenever an issue of fact is presented by the pleadings it must be tried by a jury, unless such a 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; and in all cases actions under this act shall take precedence of all other civil actions.

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 a forcible entry complained of, that he was peaceably in the actual possession at the time of the forcible entry; or, in addition to a forcible detainer complained of, that he was entitled to the possession at the time of the forcible detainer.

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, in respect of the premises described in the complaint, 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 on 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 Judgment for restitution. 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 the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a 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 the lease, agreement or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the 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, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer or unlawful detainer for twice the amount of damages thus assessed and of the rent, if any, 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

Satisfaction of
Judgment.

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 of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his estate; but if payment, as herein provided, be not made within 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. If writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required.

Rules of pro-
cedure.

SEC. 19. 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.

SEC. 20. Except as otherwise provided in this act, the provisions of the laws of this state 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 such laws 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.

SEC. 21. The court may relieve a tenant against a forfeiture of a lease and restore him to his former estate, as in other cases provided by law, 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 first made.

SEC. 22. If either party feels aggrieved by the judgment 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 rents and other damages justly accruing to the plaintiff during the pendency of the appeal.

SEC. 23. 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. 24. 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 clerk of the court, under the direction of 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.

SEC. 25. The act of the legislature of the State of Washington, approved March 27, 1890, entitled "An act relating to summary proceedings for obtaining possession of real property in certain cases, and declaring an emergency," and all acts and parts of acts, and all code provisions relating to the subject matter of this act (other than provisions for criminal prosecutions), are hereby repealed: *Provided, however*, That this repeal shall in nowise affect vested rights: *And provided further*, That no proceeding pending in any court at the time this act shall go into effect shall be in anywise affected by this act.

Approved March 7, 1891.