

CHAPTER 51.

[S. B. 14.]

CIVIL PROCEDURE—SPECIAL PROCEEDINGS.

AN ACT relating to civil procedure; amending section 6, page 40, Laws of 1886, section 1, chapter 41, Laws of 1903 and RCW 7.12.060; amending section 16, page 42, Laws of 1886 and RCW 7.12.160; amending section 20, page 43, Laws of 1886 and RCW 7.12.190; amending section 25, page 44, Laws of 1886 and RCW 7.12.210; amending section 26, page 44, Laws of 1886 and RCW 7.12.220; amending section 12, chapter 65, Laws of 1895 and RCW 7.16.120; amending section 28, chapter 65, Laws of 1895 and RCW 7.16.280; amending section 678, page 170, Laws of 1869, section 741, page 150, Laws of 1877, section 736, Code 1881 and RCW 7.20.120; amending section 117, page 153, Laws of 1854, section 157, page 39, Laws of 1869, section 159, page 33, Laws of 1877, section 159, Code 1881 and RCW 7.40.080; amending section 2, chapter 42, Laws of 1891 and RCW 7.44.021; amending section 562, page 145, Laws of 1869, section 613, page 127, Laws of 1877, section 608, Code 1881 and RCW 7.48.040; amending section 8, page 80, Laws of 1875, section 1242, Code 1881 and RCW 7.48.200; amending section 520, page 136, Laws of 1869, section 570, page 119, Laws of 1877, section 567, Code 1881 and RCW 7.52.160; amending section 539, page 140, Laws of 1869, section 590, page 122, Laws of 1877, section 586, Laws of 1881, section 585, Code 1881 and RCW 7.52.340; amending section 103, page 150, Laws of 1854, section 143, page 36, Laws of 1869, section 145, page 30, Laws of 1877, section 145, Code 1881 and RCW 7.64.040; amending section 105, page 151, Laws of 1854, section 145, page 36, Laws of 1869, section 147, page 31, Laws of 1877, section 147, Code 1881 and RCW 7.64.060; amending section 106, page 151, Laws of 1854, section 146, page 37, Laws of 1869, section 148, page 31, Laws of 1877, section 148, Code 1881 and RCW 7.64.070; repealing section 488, page 219, Laws of 1854 and section 748, Code 1881 (uncodified); repealing section 493, page 220, Laws of 1854 and section 750, Code 1881 (uncodified); and declaring an emergency.

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

SECTION 1. Section 6, page 40, Laws of 1886, section 1, chapter 41, Laws of 1903 and RCW 7.12.060 are each amended to read as follows:

RCW 7.12.060
amended.

Attachments.

Before the writ of attachment shall issue the

plaintiff, or someone in his behalf, shall execute and file with the clerk a surety bond or undertaking in the sum in no case less than three hundred dollars, in the superior court, nor less than fifty dollars in the justice court, and double the amount for which plaintiff demands judgment, conditional 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 attachment, not exceeding the amount specified in such bond or undertaking, as the penalty thereof, should the same be wrongfully, oppressively or maliciously sued out. With said bond or undertaking there shall also be filed the affidavit of the sureties, from which it must appear that such sureties are qualified and that they are, taken together, worth the sum specified in the bond or undertaking, over and above all debts and liabilities, and property exempt from execution. No person not qualified to become surety as provided by law, shall be qualified to become surety upon a bond or undertaking for an attachment: *Provided*, That when it is desired to attach real estate only, and such fact is stated in the affidavit for attachment and the ground of attachment is that the defendant is a foreign corporation or is not a resident of the state, or conceals himself so that the ordinary process of law cannot be served upon him, or has absconded or absented himself from his usual place of abode, so that the ordinary process of law cannot be served upon him, the writ of attachment shall issue without bond or undertaking by or on behalf of the plaintiff: *And provided further*, That when the claim, debt or obligation whether in contract or tort, upon which plaintiff's cause of action is based, shall have been assigned to him, and his immediate or any other assignor thereof retains or has any interest therein, then the plaintiff and every assignor of said claim, debt or obligation who retains or has any interest therein,

Attachment
bond.

Proviso.

Proviso.

shall be jointly and severally liable to the defendant for all costs that may be adjudged to him and for all damages which he may sustain by reason of the attachment, should the same be wrongfully, oppressively or maliciously sued out.

RCW 7.12.160
amended.

SEC. 2. Section 16, page 42, Laws of 1886 and RCW 7.12.160 are each amended to read as follows:

Attachment.
Sale of
property be-
fore judgment.

If any of the property attached be perishable or in danger of serious and immediate waste or decay, the sheriff shall sell the same in the manner in which such property is sold on execution. Whenever it shall be made to appear satisfactorily to the court or judge that the interest of the parties to the action will be subserved by a sale of any attached property, the court or judge may order such property to be sold in the same manner as like property is sold under execution. Such order shall be made only upon notice to the adverse party or his attorney in case such party shall have been personally served with a summons in the action.

RCW 7.12.190
amended.

SEC. 3. Section 20, page 43, Laws of 1886 and RCW 7.12.190 are each amended to read as follows:

Attachment
of moneys in
court.

When the property to be attached is a fund in court, the execution of a writ of attachment shall be by leaving with the clerk of the court a copy thereof, with notice in writing specifying the fund.

RCW 7.12.210
amended.

SEC. 4. Section 25, page 44, Laws of 1886 and RCW 7.12.210 are each amended to read as follows:

Subjection of
attached
property to
judgment.

If judgment be recovered by the plaintiff the sheriff shall satisfy the same out of the property attached by him which has not been delivered to the defendant or claimant as in this chapter provided or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

(1) By applying on the execution issued on said judgment the proceeds of all sales of perishable or

other property sold by him, or so much as shall be necessary to satisfy the judgment.

(2) If any balance remain due he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands.

Notice of the sale shall be given and the sale conducted as in other cases of sales on execution.

SEC. 5. Section 26, page 44, Laws of 1886 and RCW 7.12.220 are each amended to read as follows:

If after selling all the property attached by him remaining in his hands, and applying the proceeds, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid the sheriff, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands and any proceeds of the property attached unapplied on the judgment.

RCW 7.12.220 amended.

Procedure when attached property insufficient.

Surplus to defendant.

SEC. 6. Section 12, chapter 65, Laws of 1895 and RCW 7.16.120 are each amended to read as follows:

The questions involving the merits to be determined by the court upon the hearing are:

RCW 7.16.120 amended.

Certiorari. Questions involving merits to be determined.

(1) Whether the body or officer had jurisdiction of the subject matter of the determination under review.

(2) Whether the authority, conferred upon the body or officer in relation to that subject matter, has been pursued in the mode required by law, in order to authorize it or to make the determination.

(3) Whether, in making the determination, any rule of law affecting the rights of the parties thereto has been violated to the prejudice of the relator.

(4) Whether there was any competent proof of all the facts necessary to be proved, in order to authorize the making of the determination.

(5) If there was such proof, whether there was,

upon all the evidence, such a preponderance of proof, against the existence thereof, rendered in an action in a court, triable by a jury, as would be set aside by the court, as against the weight of evidence.

RCW 7.16.280 amended.

SEC. 7. Section 28, chapter 65, Laws of 1895 and RCW 7.16.280 are each amended to read as follows:

Mandamus. Enforcement of writ—Penalty.

When a temporary mandate has been issued and directed to any inferior tribunal, corporation, board or person upon whom the writ has been personally served and such tribunal, corporation, board, or person has without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal or disobedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ.

RCW 7.20.120 amended.

SEC. 8. Section 678, page 170, Laws of 1869, section 741, page 150, Laws of 1877, section 736, Code 1881 and RCW 7.20.120 are each amended to read as follows:

Contempts. Offender may be indicted.

Persons proceeded against according to the provisions of this chapter, are also liable to indictment or information for the same misconduct, if it be an indictable offense, but the court before which a conviction is had on the indictment or information in passing sentence shall take into consideration the punishment before inflicted.

RCW 7.40.080 amended.

SEC. 9. Section 117, page 153, Laws of 1854, section 157, page 39, Laws of 1869, section 159, page 33, Laws of 1877, section 159, Code 1881 and RCW 7.40.080 are each amended to read as follows:

Injunctions. Injunction bond.

No injunction or restraining order shall be granted until the party asking it shall enter into a bond, in such a sum as shall be fixed by the court or judge granting the order, with surety to the satisfaction of the clerk of the superior court, to the adverse party affected thereby, conditioned to pay

all damages and costs which may accrue by reason of the injunction or restraining order. The sureties shall, if required by the clerk, justify as provided by law, and until they so justify, the clerk shall be responsible for their sufficiency.

SEC. 10. Section 2, chapter 42, Laws of 1891 and RCW 7.44.021 are each amended to read as follows:

RCW 7.44.021 amended.

Upon such affidavit and complaint being filed, the clerk shall issue an order of arrest and bail, directed to the sheriff, which shall be issued, served and returned in all respects as such orders in other cases; before such order shall issue the plaintiff shall file in the office of the clerk a bond, with sufficient surety, to be approved by the clerk, conditioned that the plaintiff will pay the defendant such damages and costs as he shall wrongfully sustain by reason of the action, which surety shall justify as provided by law.

Re exeat. Arrest and bail—Bond.

SEC. 11. Section 562, page 145, Laws of 1869, section 613, page 127, Laws of 1877, section 608, Code 1881 and RCW 7.48.040 are each amended as follows:

RCW 7.48.040 amended.

At any time before the order is made or the warrant issues, the defendant may, on motion to the court or judge thereof, have an order to stay the issue of such warrant for such period as may be necessary, not exceeding six months, to allow the defendant to abate the nuisance himself, upon his giving bond to the plaintiff in a sufficient amount with one or more sureties, to the satisfaction of the court or judge thereof, that he will abate it within the time and in the manner specified in such order. The sureties shall justify as provided by law. If the defendant fails to abate such nuisance within the time specified, the warrant for the abatement of the nuisance may issue as if the same had not been stayed.

Nuisances. Stay of issuance of warrant.

RCW 7.48.200 amended.

SEC. 12. Section 8, page 80, Laws of 1875, section 1242, Code 1881 and RCW 7.48.200 are each amended to read as follows:

Nuisances. Remedies.

The remedies against a public nuisance are: Indictment or information, a civil action, or abatement. The remedy by indictment or information shall be as regulated and prescribed in this chapter. When a civil action for damage is resorted to, the practice shall conform to RCW 7.48.010 through 7.48.040.

RCW 7.52.160 amended.

SEC. 13. Section 520, page 136, Laws of 1869, section 570, page 119, Laws of 1877, section 567, Code 1881 and RCW 7.52.160 are each amended to read as follows:

Partition. Clerk's certificate of unsatisfied judgment liens.

If an order of sale be made before the distribution of the proceeds thereof, the plaintiff shall produce to the court the certificate of the clerk of the county where the property is situated, showing the liens remaining unsatisfied, if any, by judgment or decree upon the property or any portion thereof, and unless he do so the court shall order a referee to ascertain them.

RCW 7.52.340 enacted.

SEC. 14. Section 539, page 140, Laws of 1869, section 590, page 122, Laws of 1877, section 586, Laws of 1881, section 585, Code 1881 and RCW 7.52.340 are each enacted to read as follows:

Partition. Contingent or vested estates.

In all cases of sales in partition, when it appears that any person has a vested or contingent future right or estate therein, the court shall ascertain and settle the proportionate value of such contingent or vested right or estate, and shall direct such proportion of the proceeds of sale to be invested, secured or paid over in such manner as to protect the rights and interests of the parties.

RCW 7.64.040 amended.

SEC. 15. Section 103, page 150, Laws of 1854, section 143, page 36, Laws of 1869, section 145, page 30, Laws of 1877, section 145, Code 1881 and RCW 7.64-.040 are each amended to read as follows:

The defendant may, within three days after the service of a copy of the affidavit and bond, give notice to the sheriff that he excepts to the sufficiency of the sureties; if he fail to do so, he shall be deemed to have waived all objections to them. When the defendant excepts, the sureties shall justify on notice as provided by law, and the sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived as above provided, or until they shall justify, or new sureties shall be substituted and justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in RCW 7.64.050.

Replevin.
Objections to
bond.

Justification
of sureties.

SEC. 16. Section 105, page 151, Laws of 1854, section 145, page 36, Laws of 1869, section 147, page 31, Laws of 1877, section 147, Code 1881 and RCW 7.64.060 are each amended to read as follows:

RCW 7.64.060
amended.

The defendant's sureties, upon a notice to the plaintiff or his attorney, of not less than two, nor more than six days, shall justify as provided by law; upon such justification, the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until justification is completed, or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Replevin.
Justification of
defendant's
sureties.

SEC. 17. Section 106, page 151, Laws of 1854, section 146, page 37, Laws of 1869, section 148, page 31, Laws of 1877, section 148, Code 1881 and RCW 7.64.070 are each amended to read as follows:

RCW 7.64.070
amended.

The qualification of sureties and their justification shall be as prescribed by law.

Replevin.
Qualifications
of sureties.

SEC. 18. The following sections are repealed:

Repeal.

(1) Section 488, page 219, Laws of 1854 and section 748, Code 1881 (uncodified); and

Repeal.

(2) Section 493, page 220, Laws of 1854 and section 750, Code 1881 (uncodified).

Emergency.

SEC. 19. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate January 24, 1957.

Passed the House February 28, 1957.

Approved by the Governor March 8, 1957.

Explanatory note.

(The above measure, being remedial legislation introduced at the request of the Statute Law Committee, was accompanied by the following explanatory note.)

Section 1. The language relating to bail upon arrest has been deleted since the law relating to bail on arrest in civil actions has been repealed and under present practice the qualification and justification of sureties appears to be governed generally by chapter 19.72 as to personal sureties and by chapter 48.28 as to corporate sureties. These statutes relating to bail upon arrest in civil actions were repealed by 1927 c 162 § 4 which was introduced by the joint committee on the revision of laws in 1927 Senate Bill 61. Appended to that printed bill was an analysis stating that the law would simply be repealed were it not for the fact that other statutes referred to the bail upon arrest provisions in defining the qualifications and justification of sureties. This section in the proposed bill is one of those other statutes. As indicated in that 1927 analysis it was necessary, as part of such act, to enact original provisions relating to personal sureties, now codified as RCW 19.72.020—19.72.050. Since sureties in these cases should qualify and justify as in other cases, and in order to avoid unnecessary amendment in the future, the amendatory language adopts the law as to sureties generally in preference to reference to specific code sections.

Sec. 2. The words deleted in the proposed bill relating to debts and credits appear in the territorial statute, 1886 p 42 § 16. While other sections of the act of 1886 have been repealed or amended (RCW 7.12.130 and 7.12.200) to delete provisions relating to debts and credits, this section was not so amended. The repeals and amendments were effected by 1927 Senate Bill No. 39 (chapter 100, Laws of 1927) which was introduced by the joint committee on revision of laws. The following note appears at the end of the printed bill:

"NOTE: We recommend the amendment of Sections 13 [RCW 7.12.130] and 21 [RCW 7.12.200] of the Act of 1885-6, pages 42 and 43, by omitting therefrom the clauses which related to the attachment of debts and personal property in the hands of third persons, and the repeal of Sections 18, 22, 23 and 24 of the same act relating to the same subject, for the reason that they are entirely superseded and impliedly repealed by Chapter LVI (56) of the Laws of 1893 relating to garnishments.

"In *Palto v. Aetna Casualty and Surety Co.*, 119 Wash. 101, at page 105, the court says:

"Under the attachment statute of 1886, garnishment was effected by service upon a debtor of the defendant of a copy of the writ of attachment, together with an appropriate notice of garnishment. The legislature of 1893 enacted the present garnishment statute, which in effect superseded the garnishment provisions of the attachment statute."

The garnishment provisions are presently found in chapter 7.32. All former compilations omitted the debts and credits language (except 2

Hill's Code § 303) seemingly relying upon *Wooding v. Puget Sound National Bank*, 11 Wash. 527; *Pierce v. Commercial Investment Company*, 30 Wash. 272.

Explanatory
note.

Sec. 3. The bracketed words "[a copy]" were added by the reviser to correct a manifest clerical omission. The section is amended to add these words.

Sec. 4. In subdivision (1) the language relating to debts and credits has been deleted, see note to section 2, *supra*.

Sec. 5. The language relating to debts and credits has been deleted, see note to section 2, *supra*.

Sec. 6. In subdivision (5) the bracketed word "[as]" was added by the reviser to correct a manifest clerical omission. The section is amended to add these words.

Sec. 7. The bracketed words "[and such tribunal, corporation, board, or person]" were added by the reviser to provide a complete and understandable sentence which had been incomplete by virtue of this clerical omission. The section is amended to add these words.

Sec. 8. The bracketed words "[or information]" were added in two instances by the reviser to conform to existing practice. The section is derived from Code 1881 § 736; however, since the adoption of the state Constitution such actions are proceeded upon by information in nearly every case. For a case arising under this section where an information was filed, see *State v. Tugwell*, 19 Wash. 243; see also state Constitution Art. 1 § 25. The section is amended to add these words.

Sec. 9. The language relating to bail on arrest in civil actions has been deleted, and new matter added, see note to section 1, *supra*.

Sec. 10. The language relating to bail on arrest in civil actions has been deleted, and new matter added, see note to section 1, *supra*.

Sec. 11. The language relating to bail on arrest in civil actions has been deleted, and new matter added, see note to section 1, *supra*.

Sec. 12. The bracketed words "[or information]" were added in two instances by the code reviser to conform to existing practice. This section is amended to add these words. See note to section 8, *supra*.

Sec. 13. The bracketed word "[clerk]" was added by the reviser since the section is derived from a territorial law which imposed the duties herein upon the county auditor. Presently the county clerk performs such duties (see chapters 4.56, 4.64 and 36.23). The section is amended to substitute "clerk" for "auditor."

Sec. 14. This section is reenacted in RCW language since the territorial laws from which it is derived contains obsolete language. All compilations following the Code of 1881 have omitted such language. Section 590 of the 1877 law and section 585 of the 1881 law included language which reads as follows:

"In all cases of sales in partition, when it appears that a married woman has an inchoate right of dower in any of the property sold, or that any person has a vested or contingent future right or estate therein, the court shall ascertain and settle the proportionate value of such inchoate, contingent or vested right or estate, and shall direct such proportion of the proceeds of sale to be invested, secured or paid over in such manner as to protect the rights and interests of the parties."

The language relating to dower and curtesy is manifestly obsolete in view of our probate and community property laws. See RCW, Title 11 and chapter 26.16. See also RCW 11.04.060 which reads:

"The provisions of RCW 11.04.020, as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedents; and take the place of tenancy in dower and tenancy by curtesy, which are hereby abolished."

Compare also Code 1881 § 2414 which reads:

"No estate is allowed the husband as tenant by curtesy, upon the death of his wife, nor is any estate in dower allotted to the wife, upon the death of her husband."

Explanatory
note.

Court decisions indicate that the inchoate right of dower, as it existed in the Washington territory prior to the law which abolished such right, is conclusively gone. See *Ebey v. Ebey*, 1 W. T. 185; *Richards v. Bellingham Bay Land Co.*, 54 F. CCA 290.

Sec. 15. The language relating to bail on arrest in civil actions has been deleted, and new matter added, see note to section 1, *supra*.

Sec. 16. The language relating to bail on arrest in civil actions has been deleted, and new matter added, see note to section 1, *supra*.

Sec. 17. The language relating to bail on arrest in civil actions has been deleted, and new matter added, see note to section 1, *supra*.

Sec. 18:

Subdivision (1): Section 748, Code of 1881 was first enacted in 1854 as part of an act to regulate practice and proceedings in civil actions and was reenacted in 1881 under a similarly entitled act. The section relates to examination of sureties and has been superseded by section 3, chapter 162, Laws of 1927 (RCW 19.72.050).

Subdivision (2): Section 750, Code of 1881 was first enacted in 1854 as part of an act to regulate practice and proceedings in civil actions and was reenacted in 1881 under a similarly entitled act. The section relates to the giving of cash bail and its only application would appear to be limited to cases of civil arrest which has been abolished. The sections covering cash bail in criminal proceedings are RCW 10.19.070 and 10.04.040.

CHAPTER 52.

[S. B. 9.]

BUSINESSES AND PROFESSIONS—REGULATION.

AN ACT relating to businesses and professions; amending section 1, chapter 75, Laws of 1923, section 1, chapter 211, Laws of 1927 and RCW 18.15.010; amending sections 3, 5 and 17, chapter 215, Laws of 1937, sections 2, 3, 4 and 9, chapter 180, Laws of 1951 and RCW 18.18.050, 18.18.060, 18.18.070, 18.18.150, 18.18.160, 18.18.170, 18.18.190, 18.18.210, 18.18.260 and 18.18.270; amending section 14, chapter 38, Laws of 1917 and RCW 18.22.160 and 18.22.180; amending section 1, chapter 240, Laws of 1943, sections 6 and 25, chapter 112, Laws of 1935, section 3, chapter 92, Laws of 1941, section 1, chapter 130, Laws of 1951, section 1, chapter 93, Laws of 1953 and RCW 18.32.020 and 18.32.030; amending section 11, chapter 112, Laws of 1935, section 3, chapter 93, Laws of 1953 and RCW 18.32.050, 18.32.060 and 18.32.170; amending section 4, chapter 112, Laws of 1935, section 2, chapter 92, Laws of 1941, section 2, chapter 130, Laws of 1951, sections 4 and 5, chapter 93, Laws of 1953 and RCW 18.32.090 through 18.32.120; amending section 9, chapter 112, Laws of 1935, section 6, chapter 93, Laws of 1953 and RCW 18.32.240 through 18.32.280; amending section 18, chapter 112, Laws of 1935, section 1, chapter 45, Laws of 1937, section 7, chapter 93, Laws of 1953 and RCW 18.32.350 and 18.32.360; amending section 18, chapter 252, Laws of 1941, section 4, chapter 118, Laws of 1943, section 7, chapter 111,