

CHAPTER 7.

[H. B. 13.]

CIVIL PROCEDURE.

AN ACT relating to civil procedure; enacting sections 21 and 747, pages 6 and 151, Laws of 1877, sections 21 and 742, Code 1881 and RCW 4.08.140; amending section 3, page 98, Laws of 1879, section 1255, Code 1881 and RCW 4.24.070; amending section 5, page 98, Laws of 1879, section 1257, Code 1881 and RCW 4.24.080; amending section 2, page 98, Laws of 1879, section 1254, Code 1881 and RCW 4.24.090; amending section 230, page 56, Laws of 1869, section 230, page 47, Laws of 1877, section 226, Code 1881 and RCW 4.44.280; amending section 237, page 174, Laws of 1854, section 312, page 76, Laws of 1869, section 314, page 63, Laws of 1877, section 310, Code 1881, section 2, chapter 130, Laws of 1923 and RCW 4.64.080; amending section 3, chapter 60, Laws of 1929 and RCW 4.64.090 and 4.64.110; repealing section 3, page 133, Laws of 1879, section 2061, Code 1881 and RCW 4.24.110; repealing sections 8 through 12, inclusive, 14 through 16, inclusive, chapter 60, Laws of 1893, section 1, chapter 17, Laws of 1929 and RCW 4.80.060 through 4.80.130, inclusive; repealing sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 35, 36 and 38, chapter 61, Laws of 1893, section 1, chapter 31, Laws of 1901, sections 2, 7 and 9, chapter 104, Laws of 1915, section 1, chapter 49, Laws of 1899, section 2, chapter 116, Laws of 1913, sections 1 and 2, chapter 153, Laws of 1927 and RCW 4.88.010 through 4.88.250, 4.88.270, 4.88.280, and 4.88.300 through 4.88.320; and declaring an emergency.

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

RCW 4.08.140
enacted.

SECTION 1. Section 21, page 6, Laws of 1877, section 747, page 151, Laws of 1877, as last amended by section 21, Code 1881 and section 742, Code of 1881 (heretofore combined and codified as RCW 4.08.140) are each enacted to read as follows:

New party
entitled to
service of
summons.

When a new party is introduced into an action as a representative or successor of a former party, such new party is entitled to the same summons to be served in the same manner as required for defendants in the commencement of an action.

SEC. 2. Section 3, page 98, Laws of 1879, section 1255, Code 1881 and RCW 4.24.070 are each amended to read as follows:

RCW 4.24.070 amended.

All persons losing money or anything of value at or on any illegal gambling games shall have a cause of action to recover from the dealer or player winning, or from the proprietor for whose benefit such game was played or dealt, or such money or things of value won, the amount of the money or the value of the thing so lost.

Recovery of money lost gambling.

SEC. 3. Section 5, page 98, Laws of 1879, section 1257, Code of 1881 and RCW 4.24.080 are each amended to read as follows:

RCW 4.24.080 amended.

It shall be lawful for any person letting or renting any house, room, shop or other building whatsoever, or any boat, booth, garden, or other place, which shall, at any time, be used by the lessee or occupant thereof, or any other person, with his knowledge or consent, for gambling purposes, upon discovery thereof, to avoid and terminate such lease, or contract of occupancy, and to recover immediate possession of the premises by an action at law for that purpose.

Recovering leased premises used for gambling.

SEC. 4. Section 2, page 98, Laws of 1879, section 1254, Code of 1881 and RCW 4.24.090 are each amended to read as follows:

RCW 4.24.090 amended.

All notes, bills, bonds, mortgages, or other securities, or other conveyances, the consideration for which shall be money, or other things of value, won by playing at any unlawful game, shall be void and of no effect, as between the parties thereto and all other persons, except holders in good faith, without notice of the illegality of such contract or conveyance.

Validity of evidence of gambling debt.

SEC. 5. Section 230, page 56, Laws of 1869, section 230, page 47, Laws of 1877, section 226, Code of 1881 and RCW 4.44.280 are each amended to read as follows:

RCW 4.44.280 amended.

Admonitions to jury.

The jurors may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

RCW 4.64.080 amended.

SEC. 6. Section 237, page 174, Laws of 1854, section 312, page 76, Laws of 1869, section 314, page 63, Laws of 1877, section 310, Code 1881, section 2, chapter 130, Laws of 1923 and RCW 4.64.080 are each amended to read as follows:

Entries in execution docket.

He shall leave space on the same page, if practicable, with each case, in which he shall enter, in the order in which they occur, all the proceedings subsequent to the judgment in said case until its final satisfaction, including the time when and to what county the execution is issued, and when returned, and the return or the substance thereof. When the execution is levied on personal property which is returned unsold, the entry shall be: "levied (noting the date) on property not sold." When any sheriff shall furnish the clerk with a copy of any levy upon real estate on any judgment the minutes of which are entered in his execution docket, the entry shall be: "levied upon real estate," noting the date. When any execution issued to any other county is returned levied upon real estate in such county, the entry in the docket shall be, "levied on real estate of , in county," noting the date, county, and defendants whose estate is levied upon; and when the money is paid, or any part thereof, the amount and time when paid shall be entered; also, when a judgment is appealed, modified, discharged, or in any manner satisfied, the facts in respect thereto shall be entered. The parties interested may also assign or discharge such judgment on such execution docket. When the judgment is fully satisfied in any way, the clerk shall write the word "satisfied," in

large letters across the face of the entry of such judgment.

SEC. 7. Section 3, chapter 60, Laws of 1929 (heretofore divided and codified as RCW 4.64.090 and 4.64.110) is divided and amended to read as set forth in sections 8 and 9 of this act.

Division and amendment.

SEC. 8. (RCW 4.64.090) The abstract of a judgment shall contain (1) the name of the party, or parties, in whose favor the judgment was rendered; (2) the name of the party, or parties, against whom the judgment was rendered; (3) the date of the rendition of the judgment; (4) the amount for which the judgment was rendered, and in the following manner, viz: Principal \$.; interest \$.; costs \$.; total \$.

RCW 4.64.090 enacted without amendment.

SEC. 9. (RCW 4.64.110) A transcript of the docket of a justice of the peace shall contain an exact copy of the judgment from the justice's docket.

RCW 4.64.110 enacted without amendment.

SEC. 10. The following sections are hereby repealed:

Repeal.

(1) Section 3, page 133, Laws of 1879, section 2061, Code 1881 and RCW 4.24.110;

(2) Section 8, chapter 60, Laws of 1893 and RCW 4.80.060;

(3) Section 9, chapter 60, Laws of 1893 and RCW 4.80.070;

(4) Section 10, chapter 60, Laws of 1893 and RCW 4.80.080;

(5) Section 11, chapter 60, Laws of 1893 and RCW 4.80.090;

(6) Section 12, chapter 60, Laws of 1893, section 1, chapter 17, Laws of 1929 and RCW 4.80.100;

(7) Section 14, chapter 60, Laws of 1893 and RCW 4.80.110;

(8) Section 15, chapter 60, Laws of 1893 and RCW 4.80.120;

(9) Section 16, chapter 60, Laws of 1893 and RCW 4.80.130;

Repeal.

- (10) Section 1, chapter 61, Laws of 1893, section 1, chapter 31, Laws of 1901 and RCW 4.88.010;
- (11) Section 2, chapter 61, Laws of 1893 and RCW 4.88.020;
- (12) Section 4, chapter 61, Laws of 1893 and RCW 4.88.030;
- (13) Section 5, chapter 61, Laws of 1893 and RCW 4.88.040;
- (14) Section 6, chapter 61, Laws of 1893 and RCW 4.88.050;
- (15) Section 7, chapter 61, Laws of 1893 and RCW 4.88.060;
- (16) Section 10, chapter 61, Laws of 1893, section 1, chapter 153, Laws of 1927 and RCW 4.88.070;
- (17) Section 11, chapter 61, Laws of 1893, section 2, chapter 153, Laws of 1927 and RCW 4.88.080;
- (18) Section 12, chapter 61, Laws of 1893 and RCW 4.88.090;
- (19) Section 13, chapter 61, Laws of 1893 and RCW 4.88.100;
- (20) Section 9, chapter 104, Laws of 1915 and RCW 4.88.110;
- (21) Section 7, chapter 104, Laws of 1915 and RCW 4.88.120;
- (22) Section 2, chapter 116, Laws of 1913, section 2, chapter 104, Laws of 1915 and RCW 4.88.130;
- (23) Section 16, chapter 61, Laws of 1893 and RCW 4.88.140;
- (24) Section 18, chapter 61, Laws of 1893 and RCW 4.88.150;
- (25) Section 19, chapter 61, Laws of 1893, section 1, chapter 49, Laws of 1899 and RCW 4.88.160;
- (26) Section 20, chapter 61, Laws of 1893 and RCW 4.88.170;
- (27) Section 21, chapter 61, Laws of 1893 and RCW 4.88.180;
- (28) Section 22, chapter 61, Laws of 1893 and RCW 4.88.190;

(29) Section 23, chapter 61, Laws of 1893 and Repeal.
RCW 4.88.200;

(30) Section 24, chapter 61, Laws of 1893 and
RCW 4.88.210;

(31) Section 25, chapter 61, Laws of 1893 and
RCW 4.88.220;

(32) Section 26, chapter 61, Laws of 1893 and
RCW 4.88.230;

(33) Section 27, chapter 61, Laws of 1893 and
RCW 4.88.240;

(34) Section 28, chapter 61, Laws of 1893 and
RCW 4.88.250;

(35) Section 35, chapter 61, Laws of 1893 and
RCW 4.88.270;

(36) Section 36, chapter 61, Laws of 1893 and
RCW 4.88.280;

(37) Section 38, chapter 61, Laws of 1893 and
RCW 4.88.300;

(38) Section 8, chapter 61, Laws of 1893 and
RCW 4.88.310;

(39) Section 9, chapter 61, Laws of 1893 and
RCW 4.88.320.

Sec. 11. This act is necessary for the immediate Emergency.
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 House January 28, 1957.

Passed the Senate February 11, 1957.

Approved by the Governor February 19, 1957.

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

Section 1: This section first appeared in 1854 p 219 § 485, the only difference being that the word "notice" was used instead of the word "summons", and the words "to be given in the same manner" were used instead of "to be served in the same manner". Subsequently the law was enacted twice in 1869 pp 6 and 172 §§ 21 and 684. Code of 1881 also published the section twice in different chapters. All former compilations combined these sections using the words "summons" and "service", see § 197 of Ballinger's, Rem. and Bal., Rem. Code 1915, RCS, and RRS. The few cases invoking the section have referred to "summons" and "service". See *Nevin v. Pacific Coast and N.P. Co.* (1919), 105 Wash. 192 and cases cited therein. The purpose of this re-

Explanatory
note.

enactment is to remove the redundancy from the law without any change therein.

Sec. 2: The words "said games" have been changed to read "illegal gambling games" since the former phrase has lost some of its meaning. This section was part of the territorial penal code and was only qualifiedly repealed by the 1909 criminal code. "Said games" and "such game" refer to the games enumerated in section 1, p 97, 1879 (Code 1881 § 1253) notwithstanding its repeal by section 52, chapter 249, Laws of 1909 and notwithstanding its implied repeal by section 218, chapter 249, Laws of 1909, since the act of 1879 has both criminal and civil aspects and the repeal by the 1909 law should be held to apply to the criminal aspects. See *O'Neil v. Crampton*, 18 Wn(2d) 579. The present enumerations of "said games" are presently found in RCW 9.47.010. Since this later section in RCW replaces the territorial section, and since such later provisions are more general in terms we have inserted the broad term in accordance with the intent of the later act.

Sec. 3: The part of this section which provides for an action at law "to be brought before any justice of the peace of the county in which such use shall be permitted" is apparently invalid under the state Constitution limiting original jurisdiction in cases at law involving the title or possession of real property to the superior court. See state Constitution Art. 4 §§ 6, 10 (Amendment 28); also RCW 3.20.020(a) and 3.20.030. Thus we have deleted the language which is in conflict with the state Constitution and have shortened the descriptive phrase so that the last portion allows a recovery of "immediate possession of the premises by an action at law for that purpose".

Sec. 4: The words "said games" have been changed to read "any unlawful game". See note to Sec. 2, above.

Sec. 5: The language appearing in the territorial law of Code 1881 § 226 relating to the keeping together of the jurors is apparently superseded and now redundant in the light of later laws. See RCW 2.36.140 (derived from 1911 c 57 § 8) which reads in part:

"In no action or proceeding whatever, except felony cases shall the jury sworn to try the issues therein be kept together and in the custody of the officers of the court, save during the actual progress of the trial, until the case shall have been finally submitted to them for their decision. Whenever the jury are kept together in the custody of the officers when the trial is not in progress, they shall be supplied with meals at regular hours, and with comfortable sleeping and toilet accommodations."

See also RCW 4.44.300 relating to the care of the jury while deliberating and RCW 10.49.110, relating to the custody of the jury in a criminal case.

Sec. 6: The language deleted in this section relates to a "writ of error" which had application when the territorial law was in force but since has become obsolete. The writ of error appears to have been superseded by the modern method of appeal. Our courts appear to have treated the terms as interchangeable. See for example: *Philadelphia Mtge. and Trust Co. v. Palmer*, 32 Wash. 455; *Tischner v. Rutledge*, 35 Wash. 285; and *Williams v. McCauley*, 7 Wn(2d) 1.

Secs. 8 and 9: Sections 8 and 9 divided and amended herein derive from a single session law section (1929 c 60 § 3). Former compilations as well as RCW have divided this section on the basis that it contains two separate subjects. In dividing these sections we have also eliminated the unnecessary language "provided for in this act" without changing the substance of the law. Thus section 8 now provides what the abstract of judgment contains and section 9 what a transcript of the docket of the justice of the peace shall contain.

Sec. 10: *Subdivision (1)* repeals RCW 4.24.110 which provides:
"Any owner or lessor of real estate, who pays any money on

account of his liability incurred under RCW 4.24.100, for any act of his tenant, may, in a civil action, recover of such tenant the money so paid."

Explanatory note.

and is expressly dependent upon the existence of RCW 4.24.100. RCW 4.24.100 having been repealed by 1955 c 372 § 1, it appears that RCW 4.24.110 is no longer operative and should be repealed. Subdivisions (2) through (39) are herein repealed since these statutes have been superseded and abrogated by RULES OF COURT, Appeal - Rule 65 (effective January 3, 1956); see also Appeal - Rules 35,36,34,37,38,40,39; Pleading - Rule 17.

CHAPTER 8.

[H. B. 14.]

ENFORCEMENT OF JUDGMENTS.

AN ACT relating to civil procedure; amending section 1, chapter 25, Laws of 1929 and RCW 6.04.030; amending section 7, chapter 25, Laws of 1929 and RCW 6.04.070; amending section 499, page 220, Laws of 1854, section 694, page 174, Laws of 1869, section 757, page 152, Laws of 1877, section 752, Code 1881 and RCW 6.04.120; amending section 4, page 378, Laws of 1854, section 334, page 85, Laws of 1869, section 342, page 71, Laws of 1877, section 338, Code 1881 and RCW 6.08.030; amending section 256, page 179, Laws of 1854, section 347, page 89, Laws of 1869, section 354, page 75, Laws of 1877, section 351, Code 1881 and RCW 6.20.020; amending section 15, chapter 53, Laws of 1899, section 1, chapter 93, Laws of 1927, section 1, chapter 94, Laws of 1939 and RCW 6.24.210; amending section 1, chapter 133, Laws of 1893, section 1, chapter 93, Laws of 1899 and RCW 6.32.010; and declaring an emergency.

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

SECTION 1. Section 1, chapter 25, Laws of 1929 and RCW 6.04.030 are each amended to read as follows:

RCW 6.04.030 amended.

When any judgment of a court of record of this state requires the payment of money, or the delivery of real or personal property, the same may be enforced in those respects by execution. When it requires the performance of any other act, a certified copy of the judgment may be served on the party against whom it is given, or the person or officer who is required thereby, or by law, to

Execution in particular cases.