

CHAPTER 9.

[H. B. 15.]

CIVIL PROCEDURE—ENFORCEMENT OF JUDGMENTS—
SPECIAL PROCEEDINGS.

AN ACT relating to civil procedure; amending section 24, page 7, Laws of 1877, section 24, Code 1881, and RCW 4.08.200; and section 239, page 49, Laws of 1877 and section 235, Code 1881, and RCW 4.44.350; and section 259, page 52, Laws of 1877 and section 255, Code 1881 and RCW 4.48.080; and section 438, page 96, Laws of 1877 and section 436, Code 1881 and RCW 4.72.010; and section 7, page 340, Laws of 1890 and RCW 5.48.060; and section 341, page 71, Laws of 1877 and section 337, Code 1881 and RCW 6.08.060; and section 7, page 85, Laws of 1890 and RCW 7.08.080; and section 10, page 86, Laws of 1890 and RCW 7.08.110; and section 15, page 42, Laws of 1886 and RCW 7.12.150; and section 671, page 138, Laws of 1877 and section 668, Code 1881 and RCW 7.36.040; and section 153, page 32, Laws of 1877 and section 153, Code 1881 and RCW 7.40.010; and section 166, page 34, Laws of 1877 and section 166, Code 1881 and RCW 7.40.150; and repealing section 36, page 46, Laws of 1886 and RCW 7.12.320; and section 173, page 35, Laws of 1877 and section 173, Code 1881 and RCW 7.40.220; and declaring an emergency.

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

SECTION 1. Section 24, page 7, Laws of 1877, section 24, Code of 1881 and RCW 4.08.200 are each amended to read as follows:

RCW 4.08.200
amended.

When leave is given to intervene, a copy of the intervenor's complaint shall be served upon the parties to the action or proceedings who have not appeared, or publication of a notice of the intervention containing a brief statement of the nature of the intervenor's demand shall be made in all cases where there are absent or nonresident defendants. The notice shall be published in the same manner and for the same length of time as prescribed for publication of summons. And the complaint shall also be served upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint. The court shall determine upon the

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intervention.

rights of the intervenor at the same time the action is decided, and if the claim of the party intervening is not sustained, he shall pay all costs incurred by the intervention: *Provided*, That no intervention shall be cause for delay in the trial of an action between the original parties thereto.

Proviso.

RCW 4.44.350 amended.

SEC. 2. Section 239, page 49, Laws of 1877, section 235, Code 1881 and RCW 4.44.350 are each amended to read as follows:

Court recess while jury is out.

While the jury is absent the court may adjourn from time to time, in respect to other business, but it is nevertheless to be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged.

RCW 4.48.080 amended.

SEC. 3. Section 259, page 52, Laws of 1877, section 255, Code 1881 and RCW 4.48.080 are each amended to read as follows:

Proceedings on filing referee's report.

The report shall be filed with the clerk. Either party may, within such time as may be prescribed by the rules of the court, or by special order, move to set the same aside, or for judgment thereon, or such order or proceeding as the nature of the case may require.

RCW 4.72.010 amended.

SEC. 4. Section 438, page 96, Laws of 1877, section 436, Code 1881 and RCW 4.72.010 are each amended to read as follows:

Vacation, modification of judgments—Causes for.

The superior court in which a judgment or final order has been rendered, or made, shall have power to vacate or modify such judgment or order:

(1) By granting a new trial for the cause, within the time and in the manner, and for any of the causes prescribed by the rules of court relating to new trials.

(2) By a new trial granted in proceedings against defendant served by publication only as prescribed in RCW 4.28.200.

(3) For mistakes, neglect or omission of the

clerk, or irregularity in obtaining a judgment or order.

(4) For fraud practiced by the successful party in obtaining the judgment or order.

(5) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings.

(6) For the death of one of the parties before the judgment in the action.

(7) For unavoidable casualty, or misfortune preventing the party from prosecuting or defending.

(8) For error in a judgment shown by a minor, within twelve months after arriving at full age.

SEC. 5. Section 7, page 340, Laws of 1890 and RCW 5.48.060 amended to read as follows:

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 courts; and may make

RCW 5.48.060 amended.
Replacement of lost or destroyed probate records.

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.

RCW 6.08.060 amended.

SEC. 6. Section 341, page 71, Laws of 1877, section 337, Code 1881 and RCW 6.08.060 are each amended to read as follows:

Stay of execution—Judgment against sureties.

If the judgement is not satisfied, at any time after the expiration of the period for which execution has been stayed, the plaintiff, may, upon motion supported by an affidavit that such judgment or any part thereof is unpaid, and stating how much still remains due thereon, have judgment against the sureties upon said bond, for the balance remaining due, and have an execution therefor, upon which no stay shall be allowed.

RCW 7.08.080 amended.

SEC. 7. Section 7, page 85, Laws of 1890 and RCW 7.08.080 are each amended to read as follows:

Assignment for benefit of creditors—Exceptions to claims.

Any person interested may appear within three months after filing such report and file with said clerk any exceptions to the claim or demand of any creditor, and the clerk shall forthwith cause notice thereof to be given to the creditor, which shall be served and returned as in case of summons, and the said court shall proceed to hear proof of the parties in the premises, and shall render such judgment therein as shall be just, and may allow a trial by jury thereon.

RCW 7.08.110 amended.

SEC. 8. Section 10, page 86, Laws of 1890 and RCW 7.08.110 are each amended to read as follows:

Assignment for benefit of creditors—Not void, when.

No assignment shall be declared fraudulent or void for want of any list or inventory as provided in RCW 7.08.010 through 7.08.170. The court or judge may, upon application of the assignee, or any creditor, compel the appearance in person of the debtor before such court or judge to answer under oath such matters as may then and there be inquired of him; and such debtor may then and there be fully

examined under oath as to the amount and situation of his estate, and the names of the creditors, and amounts due to each, with their places of residence, and the court may compel the delivery to the assignee of any property or estate embraced in the assignment.

SEC. 9. Section 15, page 42, Laws of 1886 and RCW 7.12.150 are each amended to read as follows:

The court before whom the action is pending may at any time appoint a receiver to take possession of property attached under the provisions of this chapter, and to collect, manage and control the same and pay over the proceeds according to the nature of the property and the exigency of the case.

RCW 7.12.150
amended.

Attachment—
Appointment
of receiver
for property.

SEC. 10. Section 671, page 138, Laws of 1877, section 668, Code 1881 and RCW 7.36.040 are each amended to read as follows:

Writs of habeas corpus may be granted by the supreme court or superior court, or by any judge of either court, and upon application the writ shall be granted without delay.

RCW 7.36.040
amended.

Habeas corpus
—Who may
grant writ.

SEC. 11. Section 153, page 32, Laws of 1877, section 153, Code 1881 and RCW 7.40.010 are each amended to read as follows:

Restraining orders and injunctions may be granted by the superior court, or by any judge thereof.

RCW 7.40.010
amended.

Injunctions—
Who may
grant.

SEC. 12. Section 166, page 34, Laws of 1877, section 166, Code 1881 and RCW 7.40.150 are each amended to read as follows:

Whenever it shall appear to any court granting a restraining order or an order of injunction, or by affidavit, that any person has wilfully disobeyed the order after notice thereof, such court shall award an attachment for contempt against the party charged or an order to show cause why it should not issue. The attachment or order shall be issued by the clerk

RCW 7.40.150
amended.

Injunctions—
Contempt for
disobedience.

of the court, and directed to the sheriff, and shall be served by him.

Repeal.

SEC. 13. Section 36, page 46, Laws of 1886 and RCW 7.12.320, and section 173, page 35, Laws of 1877, section 173, Code 1881 and RCW 7.40.220 are each hereby repealed.

Emergency.

SEC. 14. 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 House January 28, 1957.

Passed the Senate February 11, 1957.

Approved by the Governor February 19, 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.)

I. Generally:

The Statute Law Committee has recently completed a comprehensive review of Titles 4, 6 and 7 of the Revised Code of Washington relating to civil procedure, enforcement of judgments and special proceedings. In the course of this work the committee encountered several statutes, enacted prior to the adoption of the state Constitution, which contain references to terms and vacations of court. While the concept of terms and vacations is not consistent with our Constitution which provides that the supreme court and the superior courts shall always be open for the transaction of business except on nonjudicial days (Constitution Art. IV §§ 4, 6, and Amendment 28) the statutes have never been amended to delete the obsolete language, although the various code compilers have more or less consistently omitted the language from their respective publications. The primary purpose of this bill is to accomplish the deletion of such obsolete language.

The provisions of this bill were also considered and approved by the Judicial Council at its meeting of March 3, 1956.

Relating to terms and vacations of court, see *Skagit, etc., Lumber Company v. Cole*, 1 Wash. 330 (1890); *Coyle v. Seattle Electric Company*, 31 Wash. 181; *Gordon v. Hillman*, 102 Wash. 411; also state Constitution Art. IV §§ 4, 6, and Amendment 28; also RCW 2.04.030, 2.04.040, 2.08.030 and 2.08.040; also Rules Peculiar to the Business of the Supreme Court, Rules 4 and 5. See also *Peterson v. Dillon*, 27 Wash. 78; *State ex rel. Romano v. Yakey*, 43 Wash. 15, and *State ex rel. Lockhart v. Claypool*, 132 Wash. 374. The words "district court" are herein amended to read "superior court"; see state Constitution Art. XXVII.

II. Additional comments relating to particular sections.

Section 1: RCW and all earlier compilations have ended this section after the word "thereto". This construction is apparently approved by our supreme court, see *Schnebly v. Rehmke*, 78 Wash. 565 (1914).

Sec. 4: In the first paragraph, the language relating to terms of court has been deleted and the remainder of the paragraph has been reworded to clarify language remaining after deletion.

Subdivision (1) is amended to refer to "Rules of Court" since the grounds for new trial are now enumerated in General Rules of Superior Court, Rule 16. Explanatory note.

Sec. 12. The words "a restraining order or" added upon recommendation of the Judicial Council. See in this respect *State v. Nicoll*, 40 Wash. 517.

The words "an order" substituted for the words "a rule" to conform with current practice.

Sec. 13: This section repeals:

(1) 1886 p 46 § 36, RCW 7.12.320, relating to attachments, which provided:

"The judge of any district court shall have power to make every order in vacation which, by the provisions of this chapter, may be made by the court term time."

and

(2) 1869 p 41 § 71, Code 1881 § 173, RCW 7.40.220, relating to injunctions, which provides:

"The judge of the district court shall have power to make every order in vacation which, by the provisions of this chapter, may be made by the court in term time."

Terms and vacations of court having been abolished by Art. IV §§ 4, 6 (Amendment 28) of our state Constitution, it would seem to follow that the above statutes, granting authority during vacations, cannot have any present scope of operation. By reason of the abovementioned sections of the Constitution, the power formerly given to the court in term time is now effective at all times.