

sioners that the state has no further use for such property and that it is for the best interests of the state to sell and dispose of the same.

Manner of  
sale.

SEC. 3. The public property commissioners must sell and dispose of any such property for cash, but may sell any such property either at private sale or public auction, and upon such notice as to them may seem for the best interests of the state.

SEC. 4. All money realized from the sale of any such personal property shall be paid over to the state treasurer, who shall give to the state auditor his receipt therefor, and the money so received shall go into the general fund of the state.

Approved February 24, 1893.

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## CHAPTER XXXV.

[H. B. No. 332.]

### ALLOWING SECOND APPEALS IN CERTAIN CASES.

AN ACT allowing a second appeal to the supreme court in certain cases where persons have been convicted of felony, and declaring an emergency.

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

SECTION 1. Whenever, heretofore or hereafter, any person shall have been convicted of a felony in this state and shall have appealed to the supreme court from the judgment entered against him, if his appeal shall have been disposed of, and the judgment against him affirmed without a hearing on the merits, and if the denial of a hearing upon the merits shall have been caused by the supreme court striking out or disregarding his bill of exceptions or statement of facts, for want of the lawful, regular or timely settlement or certification thereof, such person shall, upon giving the notice hereinafter provided for, be entitled to a new and second appeal to said supreme court at any time within sixty days

after the receipt of the *remittitur* from the supreme court on the determination of the first appeal by the clerk of the superior court from which the first appeal was taken, and it is hereby made the duty of the clerk of such superior court immediately upon the receipt by him of such *remittitur* to notify the defendant's attorney of record thereof: *Provided*, That in every case of the kind herein provided for and heretofore determined such new and second appeal may be taken within sixty days after the passage of this act.

Time within which appeal may be taken.

SEC. 2. In every case by this act provided for, the person desiring to take such second appeal shall, within the time in the foregoing section provided, by himself or attorney, give written notice to the prosecuting attorney of the county wherein the judgment was rendered, that he appeals anew from said judgment to the supreme court, and shall within said time for taking such new appeal file in the office of the clerk of said superior court the original of said notice of appeal with a verified proof of service or an admission of service thereon. And shall thereupon be entitled to prepare and file a new bill of exceptions or statement of facts in the case on such new appeal, or at his election may use and have his former bill of exceptions or statement of facts considered on such new appeal. And the bill of exceptions or statement of facts on such new appeal shall thereupon be settled and certified within the time and in the manner prescribed by law for the settlement and certification of bills of exceptions and statement of facts on a first appeal from such a judgment and for the purpose of determining the time within which the bill of exceptions or statement of facts on such second appeal shall be filed, settled and certified; the time therefor shall commence to run from the date of filing the notice of such second appeal in the office of the clerk of the superior court of the proper county: *Provided*, In case the judge who tried the cause, the judgment wherein is appealed from under the provisions of this act, is no longer in office as such judge, he is, notwithstanding, hereby empowered and required to settle and certify the statement of facts on such new appeal as if still in office, and such settlement and

Notice of appeal.

Bill of exceptions.

Statement of facts.

certification shall for all purposes be of the same force and effect as if such judge were still in office.

Time for taking appeal.

SEC. 3. The time for taking the appeal in this act provided for may be extended not to exceed thirty days by the written stipulation of the prosecuting attorney of the proper county and the attorney of record of the defendant in the case filed in the office of the clerk of the superior court of such county.

Staying of sentence.

SEC. 4. No sentence to confinement in the penitentiary shall be stayed by the taking of such second appeal, but every sentence to the death penalty shall be stayed thereby until the hearing and determination of such second appeal; and it is hereby made the duty of the clerk of the superior court which shall have issued any death warrant, immediately upon the notice of second appeal in such case herein provided for being filed in his office, to notify the judge of such court thereof and to exhibit to said judge such notice. And it is hereby made the duty of such court, upon such notice of appeal being to him exhibited, to forthwith recall such death warrant, and the execution of such warrant shall be thereupon suspended pending the hearing and determination of such second appeal, or in case such appeal is not perfected or prosecuted to a final determination until further and final proceedings are had in the cause in due course of law.

Prosecuting attorney.

SEC. 5. In any case in which a notice of second appeal has been given and a death warrant is by reason thereof withdrawn, as herein provided, and the appeal is not perfected as by law required or prosecuted to a final determination, the prosecuting attorney of the proper county shall, upon the expiration of the time for perfecting such appeal, or if such appeal be perfected at any time thereafter that it appears that said appeal is not being prosecuted in good faith to a final determination, serve a written notice on the attorney of record for the defendant, or, if such attorney cannot for any reason be served with such notice, upon the defendant himself, that said prosecuting attorney will, at a time in said notice specified and which shall not be less than thirty days or more than sixty days from the date of said notice, move the supreme court for

Notice of motion to dismiss.

an order dismissing the proceedings under said notice of second appeal. Said notice of motion shall be so served on the defendant or his attorney of record not less than thirty days from the time therein specified for the hearing for [of] the motion for dismissal, and shall briefly state the grounds of such motion. And the original of the notice of motion for dismissal with verified proof of service or admission of service of the same indorsed thereon or thereto attached, shall be immediately, upon the service thereof, filed by the county attorney in the office of the clerk of the superior court of the proper county. And said clerk shall thereupon forthwith transmit to the clerk of the supreme court a full certified transcript of the files and records in his office pertaining to said second appeal and not previously transmitted by him to said clerk, which transcript shall be filed by the clerk of the supreme court in his office.

SEC. 6. Upon the hearing of the motion for dismissal, the defendant may controvert the grounds for dismissal stated in the notice of such motion by affidavits, copies of which shall be served on the prosecuting attorney not less than ten days before the date of hearing such motion specified in the notice, to which affidavits on behalf of defendant the prosecuting attorney may interpose counter affidavits, copies of which shall be served on the defendant not less than two days before the specified date of hearing.

SEC. 7. If upon the hearing of said motion it shall appear to the satisfaction of the supreme court that said second appeal is wrongfully taken, that the same was not perfected as required by law by reason of the culpable neglect of the defendant, or that the same is not prosecuted in good faith, the supreme court shall quash and dismiss said second appeal, reaffirm the judgment appealed from and remit the case back to the superior court with an appropriate order for carrying the judgment so reaffirmed into effect: *Provided*, That the supreme court may in its discretion relieve an appellant in any case in this act provided for from any default or disability resulting from mistake, inadvertence, surprise or accident, and shall in the furtherance of substantial justice disregard any and all technical irregularities and informalities.

Emergency.

SEC. 8. Whereas, there are at present no adequate provisions under the laws of this state for the taking of the appeal in this act provided for; and, whereas, legal provision for such an appeal is deemed essential to the proper and complete administration of justice and the protection of the substantial rights of persons convicted of felony: therefore, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval by the governor.

STATE OF WASHINGTON, HOUSE OF REPRESENTATIVES,  
OLYMPIA, March 2, 1893.

HON. J. H. PRICE, *Secretary of State, Olympia, Wash.:*

HONORED SIR—The following order was made by the house of representatives this day: “The chief clerk be instructed to transmit House Bill No. 332 to the office of the secretary of state, for record, for the reason that the veto message and bill were not returned to the house within the time prescribed by the constitution.” If for any reason you refuse to receive this bill please return the same, with your reasons in writing.

Very respectfully, T. G. NICKLIN, *Chief Clerk.*

## CHAPTER XXXVI.

[H. B. No. 216.]

### TO PERMIT VALIDATION OF CERTAIN WARRANTS AND OTHER EVIDENCES OF INDEBTEDNESS ON THE PART OF CITIES AND TOWNS.

AN ACT to provide means for the validation of certain warrants and other evidences of indebtedness on the part of cities and towns, issued by the corporate authorities thereof in excess of their legal authority, in cases where any such city or town has, since such attempted incurring of indebtedness, or may hereafter, become consolidated with any other city or town, or has annexed or may hereafter annex any new territory; and declaring an emergency.

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

SECTION 1. In any case where any city or town formerly having a corporate existence in this state has since or may hereafter become consolidated, according to law, with any