fer in writing, to allow judgment to be taken against him for the sum specified therein. If the plaintiff accept the offer, and give notice thereof to the defendant, or his attorney, within five days after the offer and an affidavit that the notice of acceptance was delivered in the time limited, may be filed by the plaintiff, or the defendant may file the acceptance, with a copy of the offer verified by affidavit: and, in either case, the offer and acceptance shall be noted in the journal, and judgment shall be rendered accordingly. If the notice of acceptance be not given in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence, or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, he shall pay the defendant's costs from the time of the offer.

Sec. 494. The making of an offer pursuant to the provisions contained in the foregoing section, shall not be a cause for a continuance of an action, or a postponement of the trial.

CHAPTER II.

Submitting a controversy.

Sec. 495. Parties to a question which might be the subject of civil action, may without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction, if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of parties. The court shall, thereupon, hear and determine the case, and render judgment, as if an action were pending.

Sec. 496. The case, the submission and the judgment shall constitute the record.

Sec. 497. The judgment shall be with costs, may be enforced, and shall be subject to reversal in the same manner as if it had been rendered in an action, unless otherwise provided in the submission.

CHAPTER III.

Offer to confess judgment.

Sec. 498. After an action for the recovery of money is brought, the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action. Whereupon, if the plaintiff, being present, refuse to accept such confession of judgment in full of his demands against the defendant in the action, or having had such notice that the offer would be made, of its amount, and of the time of making it, as the court shall deem reasonable, fail to attend, and, on the trial, do not recover more than was so offered to be confessed, such plaintiff shall pay all the costs of defendant incurred after the offer. The offer shall not be deemed to be an admission of the cause of action or amount to which the plaintiff is entitled, nor be given in evidence upon the trial.

Sec. 499. Before an action for the recovery of money is brought against any person, he may go into the court of the county of his residence, or of that in which the person having the cause of action resides which would have jurisdiction of the action, and offer to confess judgment in favor of such person for a specified sum on such cause of action. Whereupon, if such person, having had such notice that the offer would be made, of its amount, and of the time and place of making it, as the court shall deem reasonable, do not attend to accept the confession, or attending, refuse to accept it, and should afterwards commence an action upon such cause, and not recover more than the amount so offered to be confessed, he shall pay all the costs of the action; and on the trial thereof, the offer shall not be deemed to be an admission of the cause of action, or amount to which the plaintiff is entitled, nor be given in evidence.

CHAPTER IV.

Proceedings by sureties.

Sec. 500. A surety may maintain an action against his principal, to compel him to discharge the debt or liability for which the surety is bound, after the same has become due.

Sec. 501. A surety may maintain an action against his principal, to obtain indemnity against the debt or liability for which he is bound, before it is due, whenever any of the grounds exist upon which, by the provisions of this code, an order may be made for arrest and bail, or for an attachment.

Sec. 502. In such action the surety may obtain any of the provisional remedies mentioned in Title eight, upon the grounds, and in the manner therein described.

CHAPTER V.

Motions and orders.

Sec. 503. A motion is an application for an order addressed to the court or a judge in vacation, by any party to a suit or proceeding, or one interested therein.

Sec. 504. Several objects may be included in the same motion if they all grow out of or are connected with the action or proceeding in which it is made.

Sec. 505. Where notice of a motion is required it must be in writing, and shall state the names of the parties to the action or proceeding in which it is made, the name of the court or judge before whom it is to be made the place where and the day on which it will be heard, the nature and terms of the order or orders to be applied for, and if affidavits are to be used on the hearing, the notice shall state that fact. It shall be served a reasonable time before the hearing.

Sec. 506. Notices of motions mentioned in this chapter may be served by a sheriff, coroner or constable, or by any disinterested person, and the return of any such officer, or affidavit of any such person, shall be proof of service. The service shall be on the party or his attorney of record, if the said party or his attorney be resident within the county in which the motion is made; and in case there is more than one party adverse to such motion, service shall be made upon each party or his attorney.

Sec. 507. The service of a notice shall be made as is required by law for the service of a summons, and when served by an officer he shall be entitled to like fees.

Sec. 508. Motions to strike pleadings and papers from the files, may be made with or without notice as the court or judge shall direct.

Sec. 509. Every direction of a court or judge made or entered in writing and not included in a judgment, is an order.

Sec. 510. Orders made out of court shall be forthwith entered by the clerk in the journal of the court, in the same manner as orders made in term.

TITLE XVI.

Error in Civil Cases.

Sec. 511. A judgment rendered or final order made by a probate court, justice of the peace, or any other tribunal, board, or officer, exercising judicial functions, and inferior in jurisdiction to the court of common pleas, may be reversed, vacated, or modified by the court of common pleas.

Sec. 512. An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment, and an order affecting a substantial right made in a special proceeding or upon a summary application in an action after judgment, is a final order which may be vacated, modified, or reversed, as provided in this title.

Sec. 513. A judgment rendered or final order made by the court of common pleas, superior court of Cleveland, or superior or commercial courts of Cincinnati, may be reversed, vacated, or modified by the district court, for errors appearing on the record.

Sec. 514. A judgment rendered or final order made by any court, board, or tribunal mentioned in the three preceding sections, may be reversed, vacated, or modified by the supreme court, for errors appearing on the record; but the petition in error, in such case, can be filed only by leave of the supreme court or a judge thereof.

Sec. 515. The proceedings to obtain such reversal, vacation, or modification, shall be by petition, to be entitled "petition in error," filed in a court having power to make such reversal, vacation, or modification, setting forth the errors complained of, and thereupon a summons shall issue and be served, or publication made, as in the commencement of an action. A service on the attorney of record in the original case shall be sufficient. The summons shall notify the adverse party, that a petition in error has been filed in a certain case, naming it, and shall be made returnable on or before the first day of the term of the court, if issued in vacation; if issued in term time, it shall be returnable on a day therein named; if the last publication or service of the summons shall be made ten days before the end of the term, the case shall stand for hearing at that term.

Sec. 516. The summons mentioned in the last section, shall, upon the written precipe of the plaintiff in error or his attorney, be issued by the clerk of the court in which the petition is filed, to the sheriff of any county in which the defendant in error or his attorney of record may be; and if the writ issue to a foreign county the sheriff thereof may return the same by mail to the clerk, and shall be entitled to the same fees as if the same had been returnable to the court of common pleas of the county in which such officer resides. The defendant in error or his attorney may waive in writing the issuing or service of the summons.

Sec. 517. The plaintiff in error shall file with his petition a transcript of the proceedings containing the final judgment or order sought to be reversed, vacated, or modified.

Sec. 518. Judges of courts of probate, justices of the peace and other judicial tribunals having no clerk, and the clerks of every court of record shall, upon request and being paid the lawful fees therefor, furnish an authenticated transcript of the proceedings, containing the judgment or final order in said courts, to either of the parties to the same, or to any person interested in procuring such transcript.

Sec. 519. No proceeding to reverse, vacate, or modify any judgment or final order rendered in the probate court, court of common pleas, superior court of Cleveland, or superior or commercial court of Cincinnati, or district court, except as provided in the next section, and the fourth subdivision of this section, shall operate to stay execution, unless the clerk of the court in which the record of such judgment or final order shall be, shall take a written undertaking, to be executed on the part of the plaintiff in error to the adverse party, with one or more sufficient sureties, as follows:

1. When the judgment or final order sought to be reversed, directs the payment of money, the written undertaking shall be in double the amount of the judgment or order, to the effect that the plaintiff in error will pay the condemnation money and costs in case the judgment or final order shall be affirmed in whole or in part:

2. When it directs the execution of a conveyance, or other instrument, the undertaking shall be in such sum as may be prescribed by any court of record in this state or any judge thereof, to the effect that the plaintiff in error will abide the judgment, if the same shall be affirmed, and pay the costs:

3. When it directs the sale or delivery of possession of real property, the undertaking shall be in such sum as may be prescribed by any court of record of this state or any judge thereof, to the effect, that during the possession of such property by the plaintiff in error, he will not commit or suffer to be committed any waste thereon, and if the judgment be affirmed, he will pay the value of the use and occupation of the property from the date of the undertaking until the delivery of the possession, pursuant to the judgment, and all costs. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising from the sale, the undertaking must also provide for the payment of such deficiency:

4. When it directs the assignment or delivery of documents, they may be placed in the custody of the clerk of the court in which the judgment was rendered, to abide the judgment of the appellate court, or the undertaking shall be in such sum as may be prescribed as aforesaid, to abide the judgment, and pay costs, if the same shall be affirmed.

Sec. 520. Instead of the undertaking prescribed in the second subdivision of the last section, the conveyance or other instrument may be executed and deposited with the clerk of the court in which judgment was rendered or order made, to abide the judgment of the appellate court.

Sec. 521. Before the written undertaking mentioned in section five hundred and nineteen shall operate to stay execution of the judgment or order, the execution of the undertaking and the sufficiency of the sureties, must be approved by the court, in which the judgment was rendered or order made, or by the clerk thereof; and the clerk shall endorse said approval, signed by himself, upon the undertaking, and file the same in his office, for the defendant in error.

Sec. 522. In an action arising on contract, for the payment of money only, notwithstanding the execution of the undertaking in the last section mentioned to stay proceedings, if the defendant in error give adequate security to make restitution in case the judgment is reversed or modified, he may, upon leave obtained from the court below, or a judge thereof in vacation, proceed to enforce the judgment. Such security must be an undertaking executed to the plaintiff in error by at least two sufficient sureties, to the effect that if the judgment be reversed or modified, he will make full restitution to the plaintiff in error of the money by him received under the judgment.

Sec. 523. No proceeding for reversing, vacating, or modifying judgments or final orders shall be commenced unless within three years after the rendition of the judgment, or making of the final order complained of: or, in case the person entitled to such proceeding be an infant, a married woman, a person of unsound mind, or imprisoned, within three years as aforesaid, exclusive of the time of such disability.

Sec. 524. No proceeding to reverse, vacate, or modify any judgment rendered, or final order made by a justice of the peace, shall operate as a stay of execution, unless the clerk of the court of common pleas shall take a written undertaking to the defendant, executed on the part of the plaintiff in error, by one or more sufficient sureties, to the effect that the plaintiff will pay all the costs which have accrued, or may accrue on such proceedings in error, together with the amount of any judgment that may be rendered against such plaintiff in error, either on the further trial of the case, after the judgment of the court below shall have been set aside, or reversed, or upon, and after the affirmance thereof in the court of common pleas. The person entitled to such proceeding, shall have the same time for prosecuting the same, before he is barred, as is provided in the last section, unless the said judgment has been paid off, or satisfied prior to the commencement of such proceeding.

Sec. 525. Execution of the judgment, or final order of any judicial tribunal, other than those enumerated in this Title, may be stayed on such terms as may be prescribed by the court, or a judge thereof, in which the proceedings are pending.

Sec. 526. When a judgment, or final order shall be reversed, either in whole or in part, in the district court, or supreme court, the court reversing the same shall proceed to render such judgment as the court below should have rendered, or remand the cause to the court below for such judgment; and the court reversing any judgment, or final order, shall not issue execution in causes that are removed before them on error, on which they pronounced judgment, as aforesaid, but shall send a special mandate to the court below, as the case may require, to award execution thereupon; and the court to which such special mandate is sent, shall proceed in such cases in the same manner as if such judgment or final order, had been rendered therein. And on motion and good cause shown, it may suspend any execution made returnable before it by order of the district or supreme court, in the same manner as if such execution had been issued from its own court, but such order shall not extend further than to stay proceedings until the matter can be further heard by the district or supreme court, as the case may be.

Sec. 527. When a judgment, or final order is reversed, the plaintiff in error shall recover his costs, and when reversed in part, and affirmed in part, the costs shall be equally divided between the parties.

Sec. 528. A mistake, neglect or omission of the clerk, shall not be a ground of error, until the same has been presented and acted upon in the court in which the mistake, neglect or omission, occurred.

Sec. 529. Rendering judgment before the action stood for trial according to the provisions of this code, shall be deemed a clerical error.

Sec. 530. Writs of error and certiorari to reverse, vacate, or modify judgments, or final orders, in civil cases, are abolished, but courts shall have the same power to compel, complete, and perfect transcripts of the proceedings containing the judgment or final order sought to be reversed, to be furnished, as they heretofore had under writs of error and certiorari.

Sec. 531. If the judgment of a justice of the peace, taken on error as herein provided to the court of common pleas, be affirmed, it shall be the duty of such court to render judgment against the plaintiff in error, for the costs of suit, and to award execution therefor; and the court shall thereupon order the clerk to certify its decision in the premises, to the justice, that the judgment affirmed may be enforced as if such proceedings in error had not been taken, or such court may award execution, to carry into effect the judgment of such justice, in the same manner as if such judgment had been rendered in the court of common pleas.

Sec. 532. When the proceedings of a justice of the peace are taken on error, to the court of common pleas, in manner aforesaid, and the judgment of such justice shall be reversed or set aside, such court shall render judgment of reversal, and for the costs that have accrued up to that time, in favor of the plaintiff in error, and award execution therefor; and the cause shall be retained by the court for trial and final judgment, as in cases of appeal.

Sec. 533. The final orders, or decrees of courts of chancery heretofore rendered, or which may hereafter be rendered in any chancery proceeding pending at the time this code takes effect, may be reviewed in the same manner, and within the same time, as if this code had not taken effect; and all suits in chancery pending at that time may be prosecuted to final decree in like manner.

Proceedings to reverse, vacate, or modify judgments and orders in the courts in which they are rendered.

Sec. 534. A court of common pleas, or district court, shall have power to vacate, or modify its own judgments, or orders, after the term at which such judgment, or order, was made:

1. By granting a new trial for the cause, within the time, and in the manner prescribed in section three hundred and one:
2. By a new trial granted in proceedings against defendants constructively summoned, as provided in section seventy:
3. For mistake, 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 an infant, married woman, or person of unsound mind, where 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 errors in a judgment shown by an infant in twelve months after arriving at full age, as prescribed in section three hundred and eighty-six:
9. For taking judgments, upon warrants of attorney, for more than was due to the plaintiff, when the defendant was not summoned, or otherwise legally notified of the time and place of taking such judgment.

Sec. 535. The proceedings to correct mistakes or omissions of the clerk, or irregularity in obtaining a judgment, or order, shall be by motion, upon reasonable notice to the adverse party, or his attorney in the action. The motion to vacate a judgment because of its rendition before the action regularly stood for trial, can be made only in the first three days of the succeeding term.

Sec. 536. The proceedings to vacate or modify the judgment or order on the grounds mentioned in subdivisions four, five six, seven, eight and nine of section five hundred and thirty-four, shall be by petition verified by affidavit, setting forth the judgment or order, the grounds, to vacate, or modify it, and the defence to the action, if the party applying was defendant. On such petition a summons shall issue and be served as in the commencement of an action.

Sec. 537. The court may first try and decide upon the grounds to vacate, or modify a judgment, or order, before trying, or deciding upon the validity of the defence or cause of action.

Sec. 538. A judgment shall not be vacated on motion or petition, until it is adjudged that there is a valid defence to the action in which the judgment is rendered; or if the plaintiff seeks its vacation, that there is a valid cause of action; and where a judgment is modified, all liens and securities obtained under it, shall be preserved to the modified judgment.

Sec. 539. The party seeking to vacate or modify a judgment or order, may obtain an injunction suspending proceedings on the whole or part thereof, which injunction may be granted by the court or any judge thereof, upon its being rendered probable, by affidavit or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified.

Sec. 540. When the judgment was rendered before the action stood for trial, the suspension may be granted as provided in the last section, although no valid defence to the action is shown; and the court shall make such orders concerning the executions to be issued on the judgment, as shall give to the defendants the same rights of delay he would have had, if the judgment had been rendered at the proper time.

Sec. 541. Proceedings to vacate, or modify a judgment, or order, for the causes mentioned in subdivisions four, five and seven of section five hundred and thirty-four, must be commenced within two years after the judgment was rendered, or order made, unless the party entitled thereto be an infant, married woman, or person of unsound mind, and then within two years after removal of such disability. Proceedings for the causes mentioned in subdivisions three and six of the same section, shall be within three years, and in subdivision nine within one year after the defendant has notice of the judgment.

Sec. 542. The provisions of this title subsequent to section 533, shall apply to the supreme court, and probate court, so far as the same may be applicable to the judgments, or final orders of such courts. The parties shall be limited to the same time in which to commence proceedings, and in estimating time, the Probate Court shall, for this purpose, be considered as holding, in each year, three terms of four months each, the first commencing on the first of January of each year.

TITLE XVII.

Costs.

CHAPTER I.

Sec. 543. In all cases in which the plaintiff is a non-resident of the county in which the action is to be brought, before commencing such action the plaintiff must furnish a sufficient surety for costs. The surety must be a resident of the county where the action is to be brought, and approved by the clerk. His obligation shall be complete, simply by endorsing the summons, or signing his name on the complaint as security for costs. He shall be bound for the payment of all costs, which may be adjudged against the plaintiff in the court, in which the action is brought, or in any other to which it may be carried, and for the costs of the plaintiff's witnesses, whether the plaintiff obtained judgment, or not.

Sec. 544. An action in which security for costs is required by the last section, and has not been given, shall be dismissed on the motion and notice by the defendant at any proper time before judgment, unless in a reasonable time to be allowed by the court, such security for costs be given.

Sec. 545. If the plaintiff in an action, after its commencement, become a non-resident of the county in which it is brought he shall give security for costs, in the manner, and under the restrictions provided in the two preceding sections.

Sec. 546. In an action in which security for costs has been given, the defendant may at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion the court be satisfied that the surety has removed from this State, or is not sufficient, the action may be dismissed, unless, in a reasonable time to be fixed by the court, sufficient security be given by the plaintiff.

Sec. 547. After final judgement has been rendered in an action, in which security for costs has been given, as required by this chapter, the court, on motion of the defendant, or any other person having a right to such costs, or any part thereof, after ten days notice of such motion, may enter up judgment in the name of the defendant, or his legal representatives, against the surety for costs, his executors, or administrators, for the amount of costs adjudged against the plaintiff, or so much thereof as may be unpaid. Execution may be issued on such judgment, as in other cases, for the use and benefit of the persons entitled to such costs.

Sec. 548. If any informer, under a penal statute, to whom the penalty, or any part thereof, if recovered, is given, shall dismiss his suit or prosecution, or fail in the same, he shall pay all costs accruing on such suit, or prosecution, unless he be an officer, whose duty it is to commence the same.

Sec. 549. Where defendants disclaim having any title, or interest in land, or other property, the subject matter of the action, they shall recover their costs, unless for special reasons, the court decide otherwise.

Sec. 550. Unless otherwise provided by statute, the costs of motions, continuances, amendments, and the like, shall be taxed and paid, as the court, in its discretion, may direct.

Sec. 551. Where it is not otherwise provided by this and other statutes, costs shall be allowed, of course, to the plaintiff upon a judgment in his favor, in actions for the recovery of money only, or for the recovery of specific real or personal property.

Sec. 552. If it shall appear that a justice of the peace has jurisdiction of an action, and the same has been brought in any other court, the plaintiff shall not recover costs: and in all actions for libel, slander, malicious prosecution, assault, assault and battery, false imprisonment, criminal conversation, or seduction, actions for nuisance, or against a justice of the peace for misconduct in office, if the damages assessed be under five dollars, the plaintiff shall not recover any costs.

Sec. 553. Costs shall be allowed, of course, to any defendant upon a judgment in his favor in the actions mentioned in the last two sections.

Sec. 554. In other actions the court may award and tax costs, and apportion the same between the parties on the same or adverse sides, as in its discretion it may think right and equitable.

Sec. 555. Where several actions are brought on one bill of exchange, promissory note, or other obligation or instrument in writing, against several parties, who might have been joined as defendants in the same action, as allowed by section thirty-eight, no costs shall be recovered by the plaintiff in more than one of such actions, if the parties proceeded against in the other actions, were at the commencement of the previous action, openly within the State.

Sec. 556. When a summons is issued to another county than that in which the action or proceeding is pending, it may be returned by mail, and the sheriff shall be entitled to the same fees as if the summons had issued in the county of which he is sheriff.

TITLE XVIII.

Actions and Proceedings in particular cases.

CHAPTER 1. Actions concerning real property.
2. Actions on official securities.
3. Actions for the partition of real property.
4. Proceedings upon mandamus.

CHAPTER I.

Actions concerning Real Property.

Sec. 557. An action may be brought by any person in possession by himself or tenant, of real property, against any person, who claims an estate or interest therein, adverse to him, for the purpose of determining such adverse estate or interest.

Sec. 558. In an action for the recovery of real property, it shall be sufficient, if the plaintiff state in his petition, that he has a real estate therein and is entitled to the possession thereof, describing the same, as required by section one hundred and twenty-six, and that the defendant unlawfully keeps him out of the possession. It shall not be necessary to state how the plaintiff's estate or ownership is derived.

Sec. 559. It shall be sufficient, in such action, if the defendant in his answer deny, generally, the title alleged in the petition, or that he withholds the possession, as the case may be; but if he deny the title of the plaintiff, possession by the defendant shall be taken as admitted. Where he does not defend for the whole premises, the answer shall describe the particular part for which defence is made.

Sec. 560. In an action by a tenant in common of real property, against a co-tenant, the plaintiff must state, in addition to what is required in section five hundred and fifty-eight, that the defendant either denied the plaintiff's right or did some act amounting to such denial.

Sec. 561. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover for withholding the property.

Sec. 562. In an action for the recovery of real property, the party against whom judgment is rendered, may, at any time during the term, at which the judgment is rendered, demand another trial by notice on the journal, and thereupon the judgment shall be vacated, and the action shall stand for trial at the next term.

Sec. 563. No further trial can be had in such action, except upon appeal, unless for good cause shown as in other actions.

Sec. 564. The parties in an action for the recovery of real property, may avail themselves, if entitled thereto, of the relief of the statutes in force for the relief of occupying claimants of land.

Sec. 565. The action of waste is abolished, but any proceedings heretofore commenced, or judgment rendered, or right acquired, shall not be affected thereby: and where the action of waste is specially mentioned and authorized in any statute, it may be used until otherwise provided; but it shall be commenced and proceeded in throughout, in the manner prescribed for the civil action of this code. Wrongs heretofore remediable by actions of waste, are subjects of action as other wrongs, and the same relief shall be granted, as may now be granted under the action of waste.

CHAPTER II.

Actions on Official Securities.

Sec. 566. When an officer, executor or administrator, within this State, by misconduct or neglect of duty, forfeits his bond or renders his securities liable, any person injured thereby, or who is, by law, entitled to the benefit of the security, may bring an action thereon, in his own name, against the officer, executor, or administrator, and his sureties, to recover the amount, to which he may be entitled, by reason of the delinquency. The action may be instituted and proceeded in on a certified copy of the bond, which copy shall be furnished by the person holding the original thereof.

Sec. 567. A judgment in favor of a party for one delinquency, does not preclude the same or another party, from an action on the same security, for another delinquency.

CHAPTER III.

Actions for the partition of Real Property.

Sec. 568. The provisions of the existing statutes relating to the partition of lands, tenements and hereditaments, are not affected by this code, and partition may be made under the same, as heretofore, until the legislature shall otherwise provide. The provisions of such statutes shall, also, apply to actions for such partition brought under this act, so far as the same can be so applied to the substance and subject matter of the action, without regard to its form.

CHAPTER IV.

Proceedings upon Mandamus.

Sec. 569. The writ of mandamus may be issued to any inferior tribunal, corporation, board or person, to compel the performance of an act, which the law specially enjoins as a duty resulting from an office, trust or station. But though it may require an inferior tribunal to exercise its judgment or proceed to the discharge of any of its functions, it cannot control judicial discretion.

Sec. 570. This writ may not be issued in any case, where there is a plain and adequate remedy in the ordinary course of the law. It may issue on the information of the party beneficially interested.

Sec. 571. The writ is either alternative or peremptory. The alternative writ must state consisely the facts showing the obligation of the defendant to perform the act, and his omission to perform it, and command him, that immediately upon the receipt of the writ, or at some other specified time, he do the act required to be performed, or show cause before the court whence the writ issued, at a specified time and place, why he has not done so; and that he, then and there, return the writ, with his certificate of having done as he is commanded. The peremptory writ must be in a similar form, except that the words requiring the defendant to show cause why he has not done as commanded, must be omitted.

Sec. 572. When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance. In all other cases, the alternative writ must be first issued.

Sec. 573. The motion for the writ must be made upon affidavit, and the court may require a notice of the application to be given to the adverse party, or may grant any order to show cause why it should not be allowed, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

Sec. 574. The allowance of the writ must be endorsed thereon, signed by a judge of the court granting it, and the writ must be served personally upon the defendant. If the defendant duly served neglect to return the same, he shall be proceeded against, as for a contempt.

Sec. 575. On the return-day of the alternative writ, or such further day, as the court may allow, the party on whom the writ shall have been served, may show cause, by answer made, in the same manner as an answer to a petition, in a civil action.

Sec. 576. If no answer be made, a peremptory mandamus must be allowed against the defendant. If an answer be made, containing new matter, the same shall not in any respect, conclude the plaintiff, who may on the trial or other proceeding, avail himself of any valid objection to its sufficiency, or may countervail it by proof, either in direct denial or by way of avoidance.

Sec. 577. No other pleading or written allegation is allowed, than the writ and answer. These are the pleadings in the case, and have the same effect and are to be construed & may be amended in the same manner, as pleadings in a civil action; & the issues thereby joined, must be tried and the further proceedings thereon had in the same manner, as in a civil action.

Sec. 578. If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained, to be ascertained, by the court or a jury or by referees, in a civil action, and costs; and a peremptory mandamus shall, also, be granted to him without delay.

Sec. 579. A recovery of damages by virtue of this chapter, against a party, who shall have made a return to a writ of mandamus, is a bar to any other action against the same party for the making of such return.

Sec. 580. Whenever a peremptory mandamus is directed to any public officer, body or board, commanding the performance of any public duty specially enjoined by law, if it appear to the court, that such officer, or any member of such body, or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine not exceeding five hundred dollars, upon every such officer or member of such body or board. Such fine; when collected, shall be paid into the treasury of the county, where the duty ought to have been performed; and the payment thereof, is a bar to an action for any penalty incurred by such officer, or member of such body or board, by reason of his refusal or neglect to perform the duty so enjoined.

GENERAL PROVISIONS APPLICABLE TO THE WHOLE CODE.

CHAPTER 1. Process.
2. Duties of Clerks.
3. Duties of Sheriffs.
4. Miscellaneous provisions.
5. Provisions respecting existing actions.
6. Provisions as to the operation of the Code.

CHAPTER I.

Process.

Sec. 581. The style of all process shall be, "The State of Ohio —— county." It shall be under the seal of the court from whence the same shall issue, shall be signed by the clerk and dated the day it issued.

Sec. 582. An order for a provisional remedy or any other process, in an action wherein the sheriff is a party, or is interested, shall be directed to the coroner. If both these officers are interested, the process shall be directed to and executed by a person appointed by the court or judge.

Sec. 583. The court or judge, for good cause, may appoint a person to serve a particular process or order, who shall have the same power to execute it, which the sheriff has. The person may be appointed on the motion of the party obtaining the process or order, and the return must be verified by affidavit. He shall be entitled to the fees allowed to the sheriff for similar services.

CHAPTER II.

Duties of Clerks.

Sec. 584. All writs and orders for provisional remedies, and process of every kind shall be issued by the clerks of the several courts. Before they shall be issued, a precipe shall be filed with the clerk demanding the same.

Sec. 585. It is the duty of the clerk of each of the courts to file together and carefully preserve in his office, all papers delivered to him for that purpose, in every action or special proceeding.

Sec. 586. He shall endorse upon every paper filed with him, the day of filing it; and upon every order for a provisional remedy, and upon every undertaking given under the same, the day of its return to his office.

Sec. 587. He shall, upon the return of every summons served, enter upon the docket the name of defendant or defendants summoned, and the day of the service upon each one. The entry shall be evidence of the service of the summons, in case of the loss thereof.

Sec. 588. He shall keep the records, and books and papers appertaining to the court, and record its proceedings.

Sec. 489. The provision of Article VIII. of Title IX. prescribing the duties of clerks of the court of common pleas, shall, as far as they are applicable, apply to the clerks of other courts of record.

Sec. 590. The clerk of each of the courts shall exercise the powers and perform the duties conferred and imposed upon him by other provisions of this code, by other statutes, and by the common law. In the performance of his duties, he shall be under the direction of his court.

CHAPTER III.

Duties of Sheriffs.

Sec. 591. The sheriff shall indorse upon every summons, order or arrest, or for the delivery of property, or of attachment or injunction, the day and the hour it was received by him.

Sec. 592. He shall execute every summons, order or other process, and return the same as required by law; and if he fail to do so, unless he make it appear to the satisfaction of the court, that he was prevented by inevitable accident, from so doing, he shall be amerced by the court in a sum not exceeding one thousand dollars, and shall be liable to the action of any person aggrieved by such failure.

Sec. 593. If the judge of a court having but one judge, or if a quorum of the judges of any court having two or more, fail to attend at the time and place appointed for holding their respective courts, the sheriff shall have power to adjourn the court from day to day, until the single judge attends, or a quorum is convened; but, if the single judge be not present in his court or the quorum of judges in their court, within two days the first day of the term, then such court shall stand adjoured for the term.

Sec. 594. The sheriff shall exercise the powers and perform the duties conferred and imposed upon him by other provisions of this code, by other statutes, and the common law.

CHAPTER IV.

Miscellaneous Provisions.

Sec. 595. Any duty enjoined upon this code upon a ministerial officer, and any act permitted to be done by him, may be performed by his lawful deputy.

Sec. 596. Whenever an oath is required by this code, the affirmation of a person conscientiously scrupulous of taking an oath, shall have the same effect.

Sec. 597. The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last: if the last day be Sunday, it shall be excluded.

Sec. 597. Section three hundred and seventy-six shall not be construed to impair the right of a party to a jury, if he appear at the trial by himself or attorney, and demand the same.

Sec. 599. The ministerial officer, whose duty it is to take security in any undertaking provided for by this code, shall have the right to require the person offered as surety, to make an affidavit of his qualifications, which affidavit may be made before such officer. The taking of such an affidavit shall not exempt the officer from any liability, to which he might otherwise be subject, for taking insufficient security.

Sec. 600 The surety in every undertaking provided for by this code, must be a resident of this State, and worth double the sum to be secured, beyond the amount of his debts, and have property liable to execution in this State, equal to the sum to be secured. Where there are two or more sureties in the same undertaking, they must in the aggregate, have the qualifications prescribed in this section.

Sec. 601. The judges of the supreme court shall, during the month of the first January after this code shall take effect, and every two years thereafter, meet at the capitol of the State and revise their general rules, and make such amendments thereto as may be necessary to carry into effect the provisions of this code: and they shall make such further rules consistent therewith, as they may deem proper. The rules so made shall apply to the supreme court, the district courts, and the courts of common pleas.

CHAPTER V.

Provisions Respecting Existing Actions.

Sec. 602. The provisions of this code do not apply to proceedings in actions, or suits pending when it takes effect. They shall be conducted to final judgement, or decree, in all respects, as if it had not been adopted: but the provisions of this code shall apply after a judgement, order, or decree heretofore, or hereafter rendered, to the proceedings to enforce, vacate, modify, or reverse it, except as provided in section five hundred and thirty-three.

CHAPTER VI.

Provisions as to the Operation of the Code.

Sec. 603. Rights of civil action given, or secured by existing laws, shall be prosecuted in the manner provided by this code, except as provided in section six hundred and four. If a case ever arise, in which an action for the enforcement or protection of a right, or the redress or prevention of a wrong, cannot be had under this code, the practice heretofore in use may be adopted, so far as may be necessary to prevent a failure of justice.

Sec. 604. Until the legislature shall otherwise provide, this code shall not affect proceedings on habeas corpus, quo warranto, or to assess damages for private property taken for public uses; nor proceedings under the statutes for the settlement of estates of deceased persons; nor proceedings under statutes relating to dower, divorce, or alimony; or to establish, or set aside a will; nor proceedings under statutes relating to apprentices, arbitration, bastardy, insolvent debtors; nor any special statutory remedy not heretofore obtained by action; but such proceedings may be prosecuted under the code, whenever it is applicable.

Sec. 605. Where, by statute, a civil action, legal or equitable, is given, and the mode of proceeding therein is prescribed, this code shall not affect the proceedings under such statute, until the legislature shall otherwise provide; but the parties may, if they see fit, proceed under this act: and in all such cases, as far as it may be consistent with the statute giving such action and practicable under this code, the proceedings shall be conducted in conformity thereto. Where the statute designates by name or otherwise, the kind of action, but does not prescribe the mode of proceeding therein, such action shall be commenced and prosecuted in conformity to this code, where the statute gives an action, but does not designate the kind of an action, or prescribe the mode of proceeding therein, such action shall be held to be the civil action of this code, and proceeded in accordingly.

TITLE XX.

Acts Repealed and other Provisions.

Sec. 606. The following acts and parts of acts are hereby repealed:

An act allowing and regulating writs of attachment, passed January 17, 1824.

An act pointing out the manner in which suits may be prosecuted on the bonds of executors, administrators and officers, passed February 23, 1816.

An act to provide for the taking of depositions, passed March 3, 1831.

An act to amend an act entitled "An act to provide for the taking of depositions," passed February 24, 1834.

An act to amend an act entitled "An act dispensing with proof in certain cases," passed March 9, 1838.

An act dispensing with proof in certain cases, passed December 18, 1823.

An act providing the mode of perpetuating testimony in certain cases, passed February 6, 1824.

Section VII, of an act to regulate the taxation and collection of costs, passed March 9, 1835.

An act regulating judgement and executions, passed March 1, 1831.

An act to amend an act entitled "an act regulating judgements and executions," passed April 3, 1837.

An act to abolish imprisonment for debt, passed March 19, 1838.

An act amendatory of an act entitled "an act to abolish imprisonment for debt," passed March 16, 1839.

The first seven sections of an act concerning mesne process in civil and criminal cases, passed February 10, 1831.

An act to regulate the practice of the judicial courts, passed March 8, 1831.

An act to amend the act to regulate the practice of the judicial courts, passed February 24, 1834.

An act to amend the act entitled "An act to regulate the practice of the judicial courts," passed March 9, 1835.

An act further to amend the act to regulate the practice of the judicial courts, passed March 14, 1837.

An act directing the mode of proceeding in chancery," passed March 1831.

An act to amend an act entitled "An act directing the mode of proceeding in chancery,' passed March 14, 1838.

Section 3 of an act in relation to incorporated religious societies, passed March 5, 1836.

An act allowing and regulating writs of replevin, passed February 17, 1831.

An act to amend an act allowing and regulating writs of replevin, passed February 13, 1833.

An act to amend the act allowing and regulating writs of replevin, passed March 10, 1837.

An act allowing mutual debts and demands to be set off, and concerning tenders, passed February 19, 1824.

An act for the relief of sureties and bail in certain cases, passed February 22, 1820.

Section nineteen of an act to provide for the regulation of turnpike companies, passed January, 7, 1817.

An act further to amend the act entitled "An act to abolish imprisonment for debt," passed March 19, 1838.

An act to amend the act entitled "An act to amend an act entitled an act directing the mode of proceeding in chancery," passed March 13, 1843.

An act to amend an act entitled "An act defining the powers and duties of justices of the peace, and constables in civil cases," passed March 12, 1844.

An act to dispense with taking records in certain cases and recording depositions, passed March 12, 1844.

An act to regulate the practice of the judicial courts, passed March 12, 1844.

Section two of an act to regulate judicial proceedings, where banks and bankers are parties, passed March 8, 1845.

An act to regulate the judicial courts and the practice thereof, passed March 12, 1845.

An act to amend an act entitled "An act to amend the act to regulate the practice of the judicial courts," passed March 12, 1845.

An act to amend an act entitled "An act directing the mode of proceeding in chancery," passed March 12, 1845.

Section three and four of an act to amend the act entitled "An act defining the powers and duties of justices of the peace and constables," passed February 17, 1816, and sections eighty-eight and eighty-nine of an act defining the powers and duties of justices of the peace and constables in civil cases, passed March 14, 1831.

An act to provide for the attendance of witnesses where the venue is changed, and in other cases, passed January 22, [illegible].

An act in relation to writs of error, passed January 21, 1846.

An act to amend an act directing the mode of proceeding in chancery, passed February 21, 1846.

An act to authorize suits upon contracts of insurance to be brought in the county in which the contract is made, passed January 21, 1847.

An act authorizing subpoenas to run into any county in civil cases in which the State is a party in interest, passed February 5, 1847.

An act to amend the act regulating judgments and executions, passed February 8, 1847.

An act to amend section CV., of the practice act, passed January 11, 1848.

An act to provide for the service of process in local actions, passed February 2, 1848.

Section two of an act to amend an act fixing the rate of interest, passed February 1[illegible], 1848.

An act to amend an act entitled "An act to regulate the practice of the judicial courts," passed February 24, 1848.

An act to amend "An act directing the mode of proceedings in chancery," passed February 25, 1848.

An act further to amend the act entitled "An act to regulate the practice of the judicial courts," passed February 23, 1849.

An act to amend an act entitled "An act to amend an act directing the mode of proceeding in chancery," passed March 21, 1849.

An act to amend "An act allowing and regulating attachments, and an act allowing and regulating writs of attachment before justices of the peace," passed February 6, 1850.

An act in amendment of the practice of the judicial courts, passed March 21, 1850.

An act further to amend the act regulating judgments and executions, passed March 20, 1850.

An act to amend the several acts directing the mode of proceeding in chancery, passed March 22, 1850.

An act to improve the law of evidence, passed March 23, 1850.

Section four of an act directing the manner of serving mesne process against railroad companies, passed March 21, 1850.

Sections three and four of an act to amend the act entitled "An act to regulate the practice of the judicial courts," passed January 25, 1851.

An act further to amend the act entitled "An act to regulate the practice of the judicial courts," passed March 7, 1851.

Section three, of an act to amend the act entitled "An act to amend the act to regulate the practice of the judicial courts," passed February 24, 1848; also to amend the act passed March 21, 1850, "in amendment of the practice of the judicial courts;" passed March 20, 1851.

An act to provide for the service of mesne process in certain cases therein named, passed March 20, 1851.

An act to amend an act entitled "An act to improve the law of evidence," passed March 22, 1851.

Section three, of an act for the more speedy collection of debts, &c., from executors, administrators, and guardians in certain cases, passed March 1?, 1851.

An act to repeal the 57th section of an act directing the mode of proceeding in chancery, passed March fourteenth, one thousand eight hundred and thirty one, and to direct the manner of, and terms upon which decrees may be opened in causes where the same have been rendered against parties without actual notice, passed March 24, 1852.

An act to authorize courts of common pleas to appoint receivers in cases of attachment, and to repeal section four, of the act entitled "An act allowing and regulating writs of attachment," passed November 24, 1852.

Section nineteen of an act for opening and regulating roads and highways, passed January nineteen, eighteen hundred and fifty-three.

"An act to facilitate the administration of justice in Hamilton county, passed February 20, 185[illegible], is not repealed by this code.

An act to fix permanently the terms and manner of holding the courts of common pleas and the district court of Hamilton county, and to provide for the organization and practice thereof, passed January 23, 1852, is not repealed by section three hundred and seven, or any other section of this code.

Sec. 607. Executors, administrators and guardians who have given bond in this State with sureties, according to law, are not required to give the undertaking mentioned in section five hundred and nineteen.

Sec. 608. If the district court affirm a judgment on petition in error, it shall also render judgment against the plaintiff in error for five per cent upon the amount due from him to the defendant in error, unless the court shall enter upon its minutes that there was reasonable ground for the proceedings in error.

Sec. 609. A summons in error shall not be issued in any case in which there is upon the minutes of the court, or among the files of the case, a waiver of error by the party, or his attorney, endeavoring to commence such proceedings, unless the court in which the petition is to be filed, or a judge thereof, shall endorse on the same, permission to issue such summons.

Sec. 610. Cases pending in appellate courts on writs of error or otherwise, when this code takes effect, shall be conducted to final judgment, as if it had not been adopted, and the liens of judgment, and decrees rendered when it takes effect, shall be preserved. They shall be enforced as provided in section six hundred and two; but process already issued at such time, shall be carried on and executed.

Sec. 611. The court of common pleas may appoint in each county such number of persons as shall be necessary to be master commissioners, who shall hold their office for the term of three years, unless removed by the court for good cause.

Sec. 612. Before entering upon the duties of his office, a master commissioner must be sworn to perform them faithfully, and with one or more sureties approved by the court, execute an undertaking to the State of Ohio, in such sum as the court shall direct, to the effect that he will pay over all moneys and faithfully discharge the duties of his office. The undertaking shall be filed in the office of the county auditor, and may be sued upon as provided in section five hundred and sixty six.

Sec. 613. A master commissioner shall be allowed such fees as are allowed for similar services to other officers.

TITLE XXI.

Sec. 614. This act shall take effect on the first day of July, eighteen hundred and fifty-three.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

Defining the Jurisdiction and regulating the Practice of Probate Courts.

CHAPTER I.

Jurisdiction of Probate Courts.

Sec. 1. Be it enacted by the General Assembly of the State of Ohio, There is established in each county of this State, a Probate Court, which shall be held at the county seat of each county.

Sec. 2. The probate court shall have exclusive jurisdiction in probate and testamentary matters, except as hereinafter provided.

1. To take the proof of wills, and to admit to record authenticated copies of wills executed, proved and allowed in the courts of any other state, territory or country:
2. To grant and revoke letters testamentary, and of administration:
3. To direct and control the conduct, and settle the accounts of executors and administrators:
4. To enforce the payment of the debts and legacies of deceased persons, and the distribution of the estates of intestates:
5. To appoint and remove guardians, to direct and control their conduct, and to settle their accounts:
6. To grant marriage licenses, and licenses to ministers of the Gospel to solemnize marriages:
7. To make inquests respecting lunatics, insane persons, idiots and deaf and dumb persons subject by law to guardianship:
8. To make inquests of the amount of compensation to be made to the owners of real estates, when appropriated by any corporation legally authorized to make such appropriations:
9. In the criminal cases hereinafter specified:
10. To try contests of the election of justices of the peace.

Sec. 3. Probate courts shall have concurrent jurisdiction:

1. In the sale of lands on petition by executors, administrators and guardians, and the assignment of dower in such cases of sale:
2. In the completion of real contracts on petition of executors and administrators:
3. In allowing and issuing writs of habeas corpus, and in determining the validity of the caption and detention of the persons brought before them on such writs of habeas corpus.

Sec. 4. Probate judges shall have power to administer oaths in all cases, where oaths are required by law; to take the acknowledgment of deeds, mortgages, and other instruments of writing, required by law to be acknowledged, and to take depositions in all cases where the same are authorized to be taken by the laws of this State.

Sec. 5. The jurisdiction acquired by any probate court over a matter or proceeding, is exclusive of that of any other probate court, except where otherwise provided by law.

CHAPTER II.

Organization of the Court.

Sec. 6. Before any probate judge shall enter upon the discharge of the duties of his office, he shall take an oath or affirmation to support the constitution of the United States, the constitution of the State of Ohio, and that he will faithfully; diligently and impartially discharge the duties of probate judge to the best of his skill and ability. He shall also give an undertaking to the State of Ohio, with sufficient security to be approved by the board of county commissioners of the proper county; or in the absence of any two of said commissioners from the county, by the auditor and recorder of the proper county, in any sum not less than five thousand dollars, to the effect that he will truly and faithfully pay over all moneys that may by him be received in his official capacity, that he will enter and record all the orders, judgments and proceedings of said court, and proceedings of said court, and faithfully and impartially discharge and perform all the duties of his said office; which undertaking, with his oath or affirmation endorsed upon the same, shall be lodged with the county treasurer, and such additional or further undertaking may be required by the county commissioners from said probate judge, from time to time, as the state of business in his office may render necessary.

Sec. 7. No probate judge shall practice or be associated with another as a partner in the practice of law in any of the courts of record of this State, or appear as counsel before any justice of the peace or board of arbitrators, or referees; but nothing in this section contained shall prevent any probate judge of this State from finishing any business by him commenced prior to the passage of this act, not connected with his official business.

Sec. 8. No probate judge shall act as executor or administrator of any estate, or as guardian for any minor, idiot, or lunatic; and if he shall be interested as heir, legatee, devisee, or in any other manner, in any estate which may be required to be settled in the county where he resides, all such estates and accounts of guardianship shall be settled by the court of common pleas of such county; but any probate judge who was acting as executor, administrator or guardian on the 25th day of February, 1852, may continue to discharge the duties thereof, till said trusts can be duly closed and settled.

Sec. 9. The probate court shall have a seal to be provided by the commissioners of the proper county, having the same device as the seals of the court of common pleas except there shall be engraved around the margin thereof, in addition to the name of the proper county, the words "Probate Court," instead of the words "Common Pleas." All writs and process issuing from said court shall be under the seal thereof, and shall be dated and signed by the judge issuing the same, and all transcripts issuing from said court under the seal thereof, and signed by the judge thereof, shall be received as evidence of the facts therein contained in all the courts of this State.

Sec. 10. The judges of said courts shall have the care and custody of all files, papers, books and records belonging to the probate office, and are hereby authorized and empowered to perform the duties of clerks of their own courts.—Every probate judge shall have power to appoint a deputy clerk or clerks, each of whom shall, previously to entering upon the duties of his appointment, take an oath or affirmation, faithfully to perform all his duties as deputy clerk, and when so qualified, said deputy may do and perform any and all the duties appertaining to the office of clerk of said court. Every probate judge may take such security from his deputy, as he may deem necessary to secure the faithful performance of the duties of his appointment.

Sec. 11. The following books shall be kept by the probate court, and blank books for the purpose, shall be procured by the county auditor, at the expense of the county:

1. A criminal record, in which shall be made a fair and accurate entry of all criminal actions instituted in said court, with the proceedings had therein:
2. A civil docket, in which shall be noted the names of parties to all actions and proceedings, and the name of the deceased person, infant, insane person, idiot, or lunatic, in the matter of whose estate the said court shall exercise jurisdiction. It shall also contain a minute of the time of the commencement of such actions and proceedings, and filing the papers relating to any matter in such court, and also a brief note of all orders made in such action, proceeding, or matter, and the time of entering the same:
3. A journal, in which shall be kept minutes of all official business transacted in the probate court, or by the Probate Judge in all civil actions and proceedings:
4. A record of wills in which shall be recorded all wills proven in such court, with a certificate of the probate thereof, and all wills proven elsewhere, with the certificate of probate, authenticated copies of which have been admitted to record by said court:
5. A final record, which shall contain a complete record in each cause or matter of all petitions, answers and demurrers, motions, returns, reports, verdicts, awards, orders and judgments; and which record shall be made up and completed within ninety days after the final order or judgment shall have been made in any of the matters aforesaid; and he shall also, within thirty days after the return of the same, record all inventories, sale bills, and allowances to widows, in a book to be provided for that purpose:
6. A final record of accounts, which shall contain an entry of the appointment of executors, administrators and guardians, and all partial and final accounts of executors, administrators and guardians, and the orders and proceedings of the courts thereon:
7. An execution docket in which shall be entered a memorandum of all executions issued by the probate judge both in civil and criminal cases, stating the names of the parties, the name of the person to whom delivered and his return thereon. It shall also contain the date of issuing the execution and the amount ordered to be collected, stating the costs separately from the fine or damages, and all payment thereon and the satisfaction thereof when the same is satisfied.

Sec. 12. To each of said books shall be attached an index securely bound in the volume, which shall at all times be kept up with the entries therein, and refer to such entries alphabetically, by the names of the parties or person in which it is originally entered, indicating the page of the book where the entry is made.

Sec. 13. The probate judge must keep an office at the county seat, open at all reasonable hours suitable for the transaction of business, and for the deposit and safe keeping of the public books, records and papers under his charge.—Such office shall be furnished by the county commissioners, and provided with suitable cases, for the safe keeping and preservation of the books and papers of such court; and also with such stationery as may be required by such judge in the discharge of his official duties, at the expense of the county.

CHAPTER III.

Powers and Duties of the Probate Judge in Civil Cases.

Sec. 14. The several probate judges shall, from time to time, make rules not inconsistent with the laws of the State, for regulating the practice and conducting the business in their respective courts; and they shall within one year after this act shall take effect, return a statement of their rules and course of proceedings to the supreme court, and shall make a like return of all their rules thereafter made, as soon as convenient after making the same; and the supreme court shall have power to alter and amend all such rules, and to make other and further rules, from time to time, for regulating the proceedings in all the probate courts of this State, as they shall judge necessary in order to introduce and maintain regularity and uniformity in the said proceedings.

Sec. 15. Orders for the payment of money may be enforced by execution or otherwise, in the same manner as judgements in the courts of common pleas. All such executions shall be directed to the sheriff, or in his absence or disability, to the coroner.

Sec. 16. If any person shall neglect or refuse to perform any order or judgment of a probate court, other than for the payment of money, he shall be deemed guilty of contempt of court, and said probate judge shall issue a summons directing him to appear before said Judge within two days from the service thereof, and show cause why he should not be punished for contempt; or if it appear to such judge that he is secreting himself to avoid the process of the court, or is about to leave the county for such purpose, said judge may issue an attachment instead of the summons above mentioned, commanding the officer to whom the attachment shall be directed, forthwith to bring such person before such judge to answer for his contempt; and if no sufficient excuse be shown, he shall be punished in the same manner as provided for the punishment of contempts in the court of common pleas.

Sec. 17. If any sheriff, coroner or constable shall neglect or refuse to serve and return any process issued by said probate judge, and to him directed and delivered, or shall neglect or refuse to pay over any moneys by him collected, to the probate judge, or any other person, when so directed by such probate judge, he shall be subject to fine and amercement, as in the next section provided.

Sec. 18. In the cases enumerated in the preceding section, it shall be the duty of the probate judge to issue a summons directed to the sheriff, or other officer therein named, commanding him to summon the officer guilty of such misconduct, to appear within two days after the service of such summons, and show cause why he should not be amerced, specifying the cause for such amercement; and in case of neglect or refusal to serve or return any process issued by such probate judge, and directed and delivered to such officer, if no sufficient excuse be shown, such officer shall be fined by said probate judge in any sum not exceeding one hundred dollars, to be paid into the county treasury; and he and his sureties shall moreover be liable upon his official bond for all damages sustained by any person by reason of such misconduct; and in case of refusal to pay over any moneys by him collected, to the probate judge, or any other person, when so directed by such probate judge, he shall be amerced for the use of the parties interested, in the amount by such process required to be collected, together with ten per cent thereon; and such probate judge may enforce the collection thereof by execution or other process, or by imprisonment, as for a contempt of court, or both: the delinquent officer and his sureties, shall moreover be liable on his official bond for the amount of such amercement at the suit of the person or persons interested.

Sec. 19. Depositions taken according to the provisions of the law for taking depositions to be used on the trial of civil causes, may be taken and used on the trial of any question before the probate court, where such testimony may be proper.

Sec. 20. It shall be the duty of the probate judge to cause notice to be published in some newspaper of the county, if any be published therein, or if not, by posting the same upon the door of the court house of said county, of the filing of any accounts by executors, administrators or guardians, specifying the time when such accounts will be heard, which shall not be less than three weeks after the publication of such notice, at which time it shall be competent for said probate judge, for cause, to allow further time

(CONCLUSION NEXT WEEK.)