

CODE OF CIVIL PROCEDURE

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1 IN THE SENATE BY THE HOUSE JUDICIARY COMMITTEE  
2 HOUSE CS FOR SENATE BILL NO. 105  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SECOND LEGISLATURE - SECOND SESSION  
5 A BILL

6 For an Act entitled: "An Act to codify and revise the law relat-  
7 ing to civil procedure; and providing for  
8 an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 TITLE I. GENERAL PROVISIONS

11 Article I. Limitation of Actions

12 Sec. 1.01. GENERAL LIMITATIONS ON CIVIL ACTIONS. No person  
13 may commence a civil action except within the periods prescribed  
14 in this article after the cause of action has accrued, except  
15 when, in special cases, a different limitation is prescribed by  
16 statute.

17 Sec. 1.02. WHEN ACTION COMMENCED. An action shall be con-  
18 sidered commenced when the complaint is filed and the summons  
19 issued.

20 Sec. 1.03. ACTIONS TO RECOVER REAL PROPERTY IN 10 YEARS.  
21 No person may bring an action for the recovery of real property,  
22 or for the recovery of the possession of it unless commenced  
23 within 10 years. No action may be maintained for the recovery  
24 unless it appears that the plaintiff, his ancestor, predecessor,  
25 or grantor, was seized or possessed of the premises in question  
26 within 10 years before the commencement of the action.

27 Sec. 1.04. ACTION UPON JUDGMENT OR SEALED INSTRUMENT IN 10  
28 YEARS. No person may bring an action upon a judgment or decree  
29 of a court of the United States, or of a state or territory within

1 the United States, and no action may be brought upon a sealed in-  
2 strument, unless commenced within 10 years.

3 Sec. 1.05. ACTIONS TO BE BROUGHT IN SIX YEARS. No person  
4 may bring (1) an action upon a contract or liability, express or  
5 implied, excepting those mentioned in Sec. 1.03; (2) an action for  
6 waste or trespass upon real property; or (3) an action for taking,  
7 detaining, or injuring personal property, including an action for  
8 its specific recovery, unless commenced within six years.

9 Sec. 1.06. ACTIONS TO BE BROUGHT IN THREE YEARS. a. No  
10 person may bring an action against a peace officer or coroner  
11 upon a liability incurred by the doing of an act in his official  
12 capacity or by the omission of an official duty, including the  
13 nonpayment of money collected upon an execution, unless brought  
14 within three years. This section does not apply to an action for  
15 an escape.

16 b. No person may bring an action upon a statute for penalty  
17 or forfeiture where the action is given to the party aggrieved or  
18 to that party and the state, unless brought within three years,  
19 except where the statute imposing it prescribes a different limi-  
20 tation.

21 Sec. 1.07. ACTIONS TO BE BROUGHT IN TWO YEARS. No person  
22 may bring (1) an action for libel, slander, assault, battery,  
23 seduction, false imprisonment or for any injury to the person or  
24 rights of another not arising on contract and not specifically  
25 provided otherwise; (2) an action upon a statute for a forfeiture  
26 or penalty to the state; or (3) an action upon a liability  
27 created by statute, other than a penalty for forfeiture, unless  
28 commenced within two years.

29 Sec. 1.08. ACTIONS TO BE BROUGHT IN ONE YEAR. No person may

1 bring an action against a peace officer for the escape of a person  
2 arrested or imprisoned on civil process, unless commenced within  
3 one year.

4 Sec. 1.09. ACTIONS FOR PENALTY. No person may bring an  
5 action upon a statute for the penalty given in whole or in part to  
6 the person who will prosecute for the same unless commenced with-  
7 in one year after the commission of the offense. If the action  
8 is not commenced within one year by a private party, it may be  
9 commenced on behalf of the state within two years after the period  
10 of limitation by a private party has expired.

11 Sec. 1.10. OTHER ACTIONS IN 10 YEARS. An action for a  
12 cause not otherwise provided for may be commenced within 10 years  
13 after the cause of action has accrued.

14 Sec. 1.11. ACCRUAL OF CAUSE OF ACTION UPON MUTUAL, OPEN, AND  
15 CURRENT ACCOUNT. In an action brought to recover a balance due  
16 upon a mutual, open, and current account, where there have been  
17 reciprocal demands between the parties, the cause of action  
18 accrues from the date of the last item proved in the account on  
19 either side. But when a period of more than one year elapses  
20 between any of a series of items or demands, they are not included  
21 as part of the account.

22 Sec. 1.12. ACTIONS IN NAME OF STATE, POLITICAL SUBDIVISIONS,  
23 OR PUBLIC CORPORATIONS. An action brought in the name of or for  
24 the benefit of the state, any political subdivision, or public  
25 corporation, may be commenced only within six years of the date  
26 of accrual of the cause of action. However, if the action is for  
27 relief on the ground of fraud, the limitation shall commence from  
28 the time of discovery, by the aggrieved party, of the facts con-  
29 stituting the fraud.

1           Sec. 1.13. EFFECT OF ABSENCE FROM STATE OR CONCEALMENT.  
2 When the cause of action accrues against a person who is out of  
3 the state or concealed in the state, the action may be commenced  
4 within the periods provided in this article after his return to  
5 the state or when his concealment ceases. If he departs from the  
6 state or conceals himself after the cause of action accrues, the  
7 time of his absence or concealment is not part of the time limit-  
8 ed for the commencement of the action.

9           Sec. 1.14. DISABILITIES OF MINORITY, INSANITY, AND IMPRISON-  
10 MENT. If a person entitled to bring an action mentioned in this  
11 article is at the time the cause of action accrues either (1)  
12 under the age of 19 years, or (2) insane, or (3) imprisoned on a  
13 criminal charge, or in execution under sentence of a court for a  
14 term less than his natural life, the time of the disability is not  
15 a part of the time limited for the commencement of the action.  
16 But the period within which the action may be brought is not ex-  
17 tended in any case longer than two years after the disability  
18 ceases.

19           Sec. 1.15. DEATH OF A PARTY BEFORE EXPIRATION OF LIMITATION  
20 PERIOD. If a person entitled to bring an action dies before the  
21 expiration of the time limited for its commencement, and the cause  
22 of action survives, an action may be commenced by his personal  
23 representatives after the expiration of that time, and within one  
24 year from his death. If a person against whom an action may be  
25 brought dies before the expiration of the time limited for the  
26 commencement of the action, and the cause of action survives, an  
27 action may be commenced against his personal representatives after  
28 the expiration of that time, and within six months after the  
29 issuing of letters testamentary or of administration.

1           Sec. 1.16. DISABILITY OF ALIEN DURING WAR. When a person is  
2 an alien subject or citizen of a country at war with the United  
3 States, the time of the continuance of the war is not a part of  
4 the period limited for the commencement of the action.

5           Sec. 1.17. INJUNCTION AGAINST COMMENCEMENT OF ACTION. When  
6 the commencement of an action is stayed by injunction or a statu-  
7 tory prohibition, the time of the continuance of the injunction  
8 or prohibition is not a part of the time limited for the commence-  
9 ment of the action.

10          Sec. 1.18. DISABILITY. No person may avail himself of a  
11 disability unless it existed when his right of action accrued or  
12 began before the time for commencing the action expired.

13          Sec. 1.19. COEXISTING DISABILITIES. When two or more disa-  
14 bilities coexist at the time the right of action accrues, the  
15 limitation does not attach until they all are removed.

16          Sec. 1.20. ACKNOWLEDGMENT OR PROMISE. No acknowledgment or  
17 promise is sufficient evidence of a new or continuing contract to  
18 take the case out of the operation of this article, unless the  
19 acknowledgment or promise is contained in writing, signed by the  
20 party to be charged, and as to instruments affecting real estate,  
21 acknowledged and recorded in the office of the recorder of the  
22 district where the original contract was filed or recorded. This  
23 section does not alter the effect of any payment of principal or  
24 interest.

25          Sec. 1.21. PAYMENT ON ACCOUNT. When a past due payment of  
26 principal or interest is made upon any evidence of indebtedness,  
27 the running of the time within which an action may be commenced  
28 starts from the time the last payment is made.

29          Sec. 1.22. WHEN NONRESIDENT'S CAUSE OF ACTION BARRED. When

1 a cause of action has arisen in another state, or in a territory,  
2 or foreign country, between nonresidents of this state, and by the  
3 laws of the state, territory, or country where the cause of action  
4 arose that action cannot be maintained because of a lapse of time,  
5 the action shall not be maintained in this state.

6       Sec. 1.23. CERTAIN ACTIONS RELATING TO REAL PROPERTY. No  
7 person may bring an action for the determination of any right or  
8 claim to or interest in real property unless commenced within the  
9 limitations provided for actions for the recovery of the posses-  
10 sion of real property. But no person may bring an action to set  
11 aside, cancel, annul, or otherwise affect a patent to lands  
12 issued by this state or the United States, or to compel any person  
13 claiming or holding under a patent to convey the lands described  
14 in the patent or a portion of them to the plaintiff in the action,  
15 or to hold the lands in trust for or to the use and benefit of the  
16 plaintiff, or on account of any matter, thing, or transaction  
17 which was had, done, suffered, or transpired before the date of  
18 the patent, unless commenced within 10 years from the date of the  
19 patent. In an action upon a new promise, fraud, or mistake, the  
20 running of the time within which an action may be commenced starts  
21 from the making of the new promise or the discovery of the fraud  
22 or mistake. This section does not bar an equitable owner in  
23 possession of real property from defending his possession by means  
24 of his equitable title. The right of an equitable owner to defend  
25 his possession in an action, or by complaint for injunction, is  
26 not barred by lapse of time while an action for the possession of  
27 the real property is not barred by the provisions of this article.

28       Sec. 1.24. COMMENCEMENT OF ACTION AFTER DISMISSAL OR RE-  
29 VERSAL. If an action is commenced within the time prescribed and

1 is dismissed upon the trial, or upon appeal, after the time limit-  
2 ed for bringing a new action, the plaintiff, or if he dies and  
3 the cause of action in his favor survives, his heirs or represen-  
4 tatives, may commence a new action upon the cause of action with-  
5 in one year after the dismissal or reversal on appeal. All  
6 defenses available against the action, if brought within the time  
7 limited, are available against the action when brought under this  
8 provision.

9 Article II. Jurors

10 Sec. 2.01. QUALIFICATION OF JURORS. Any person is qualified  
11 to act as a juror if he is

- 12 (1) a citizen of the United States;
- 13 (2) a resident of the state;
- 14 (3) at least 21 years of age;
- 15 (4) of sound mind;
- 16 (5) in possession of his natural faculties; and
- 17 (6) able to read or speak the English language.

18 Sec. 2.02. DISQUALIFICATION OF JURORS. Any person is dis-  
19 qualified to act as a juror if he

- 20 (1) has served as a juror in the state within one year  
21 of his time of examination for service;
- 22 (2) has been convicted of a felony and his civil rights  
23 not restored.

24 Sec. 2.03. EXEMPTIONS. Any person may claim exemption and  
25 may be excused from service as a juror if it be shown that jury  
26 service will cause him to suffer material injury or destruction  
27 to his property or to the property entrusted to him, or if his  
28 health, the health or proper care of his family, or the sickness  
29 or death of a member of his family make it necessary for him to

1 be excused, or if he is

2 (1) a judicial officer;

3 (2) any other civil officer of the state or United  
4 States whose duties are at the time inconsistent with his attend-  
5 ance or service as a juror;

6 (3) an attorney;

7 (4) a minister of the gospel or priest of any denomi-  
8 nation;

9 (5) a teacher in a university, college, academy or  
10 school;

11 (6) a practicing physician.

12 Sec. 2.04. COMPLIANCE WITH STATUTE. The selection of jurors  
13 shall be made in substantial compliance with the following pro-  
14 visions. Any failure in substantial compliance which prejudices  
15 the rights of a party is reversible error.

16 Sec. 2.05. JURY LIST. At such times as the presiding judge  
17 of the superior court in each judicial district may designate,  
18 but not less than once every two years, the clerk of the superior  
19 court in each judicial district shall prepare a list of the  
20 names of residents of the district who are qualified by law for  
21 jury service and who voted in the preceding general election. If  
22 the superior court is located in different cities in the same  
23 judicial district, the clerk of the court located in each city  
24 shall prepare, at the times designated by the judge but at least  
25 every two years, a list of names of persons qualified for jury  
26 service and who voted in the preceding general election and who  
27 are residents of that portion of the judicial district designated  
28 by the presiding judge. The list shall be based on the voting  
29 list prepared by the secretary of state from the preceding general

1 election. A questionnaire for prospective jurors may be adopted  
2 and submitted to them by the administrative director of courts.  
3 A copy of the list shall be transmitted to each district magistrate  
4 within the judicial district, and shall be used to summon jurors  
5 residing within the immediate area of the court.

6 Sec. 2.06. USE OF JURY BOX. The clerk of the court shall  
7 write the names included in the list on separate pieces of paper  
8 or prepare metal, plastic, or other types of pieces to correspond  
9 to numbers on the jury list. As directed by the court, he shall  
10 deposit the named or numbered pieces in the jury box in a number  
11 and manner to assure a fair and impartial drawing of the jury  
12 panel. The jury box and the named or numbered pieces may be  
13 examined by the parties or by any attorney authorized to practice  
14 law in the state within limitations and under conditions prescrib-  
15 ed by the court.

16 Sec. 2.07. PUBLIC DRAWING OF JURORS FOR PANEL. Under the  
17 direction of the court the clerk shall conduct the public drawing  
18 of jurors for the panel by shaking the box to mix the named or  
19 numbered pieces. The clerk shall then draw as many names or  
20 numbers as are ordered by the court to fill the jury panel. If  
21 the name or number of any person is drawn from the box and the  
22 person is deceased, unqualified, disqualified, or the person's  
23 attendance cannot be obtained within a reasonable time or may in-  
24 volve a large and unnecessary expense, and the fact appears to  
25 the satisfaction of the court, through the use of questionnaires  
26 or otherwise, the court may reject the name of that person and  
27 direct that the name or number of another be drawn in his place.

28 Sec. 2.08. JURY PANEL. The jury panel for the trial of  
29 civil cases consists of at least 24 jurors or more as determined

1 by the court. If at any time the number of jurors on the panel  
2 falls below 24 or the regular panel is exhausted, the court shall  
3 order the clerk to complete the panel or secure additional jurors  
4 by drawing sufficient names from the jury box.

5 Sec. 2.09. IMPANELING THE TRIAL JURY. When a civil case  
6 which is to be tried by a jury is called for trial, the clerk  
7 shall draw from the trial jury box containing the names of those  
8 on the jury panel a number of names or numbers sufficient to name  
9 a jury of 12 unless the court directs otherwise. The prospective  
10 jurors shall be examined, challenged, and sworn as provided by  
11 rules of the supreme court.

12 Sec. 2.10. VERDICTS. In civil cases tried by a jury in any  
13 court, whether of record or not, not less than five-sixths of the  
14 jury may render a verdict which is entitled to the legal effect of  
15 a unanimous verdict at common law. Special verdicts need not be  
16 concurred in by the same jurors.

17 Article III. Witnesses and Evidence

18 Sec. 3.01. SERVICE ON CONCEALED WITNESS. If a witness is  
19 concealed in a building or vessel for the purpose of preventing  
20 the service of a subpoena, a peace officer may break into the  
21 building or vessel to serve the subpoena upon the witness.

22 Sec. 3.02. DISOBEDIENCE TO SUBPOENA. A witness who disobeys  
23 a subpoena served on him shall also forfeit to the party requiring  
24 his attendance the sum of \$50.00 and all damages which that party  
25 may sustain by the failure of the witness to attend. The for-  
26 feiture and damages may be recovered in a civil action.

27 Sec. 3.03. PROCEEDINGS FOR EXAMINATION OF PRISONER AS A  
28 WITNESS. a. If a witness is a prisoner confined in a prison in  
29 the state, a state court may order his temporary removal and

1 production before a state court for the purpose of being orally  
2 examined as follows:

3 (1) by the court or a judge of the court in which the  
4 action or proceeding is pending, unless it is a magistrate's  
5 court;

6 (2) by any judge of the superior or supreme court,  
7 when the action or proceeding is pending in a magistrate's court,  
8 or when the witness's oral examination is required before a judge  
9 or other person out of court.

10 b. In any other case, a state court may order the examina-  
11 tion in prison upon a deposition.

12 Sec. 3.04. COMPELLING PERSON TO TESTIFY. A person present  
13 in court, or before a judicial officer, may be required to testify  
14 in the same manner as if he were in attendance before the court  
15 or officer on a subpoena.

16 Sec. 3.05. WITNESSES ARE EXONERATED FROM CIVIL ARREST.  
17 Every person who has been served in good faith with a subpoena to  
18 attend as a witness before a court, judge, referee, or other  
19 official, is exonerated from arrest in a civil action while going  
20 to the place of attendance, necessarily remaining there, and  
21 returning from there. The arrest of a witness contrary to this  
22 section is void, and when wilfully made is a contempt of court.  
23 The officer wilfully making it is responsible to the witness  
24 arrested for double the amount of damages which may be assessed  
25 against him, and is also liable to an action at the suit of the  
26 party serving the witness with the subpoena for the damages sus-  
27 tained by him in consequence of the arrest.

28 Sec. 3.06. AFFIDAVIT AS PREREQUISITE TO OFFICER'S LIABILITY.

29 a. The officer making the arrest is not liable in any way

1 therefor, unless the person claiming exoneration from arrest, if  
2 required, makes an affidavit stating that

3 (1) he has been served a subpoena to attend as a wit-  
4 ness before a court, judge, referee, or other official, specify-  
5 ing the same, the place of attendance, and the action or proceed-  
6 ing in which the subpoena was issued; and

7 (2) he has not been served by his own procurement, with  
8 the intention of avoiding an arrest.

9 b. The affidavit may be taken by the officer, and exonerates  
10 him from liability for not making the arrest or for discharging  
11 the witness when arrested.

12 Sec. 3.07. DISCHARGE FROM IMPROPER ARREST. The court,  
13 judge, referee, or other person before whom the attendance of the  
14 witness is required, may discharge a witness from an arrest made  
15 in violation of Sec. 3.05.

16 Sec. 3.08. EXCLUSION OF WITNESSES FROM COURT ROOM. Upon  
17 the request of either party the judge may exclude from the court  
18 room any witness of the adverse party not under examination at  
19 the time, so that he may not hear the testimony of other witness-  
20 es.

21 Sec. 3.09. OFFICERS AUTHORIZED TO ADMINISTER OATHS OR  
22 AFFIRMATIONS. Every justice, judge, magistrate, clerk of a court,  
23 notary public, United States Postmaster, and the commanding  
24 officer of a vessel of the United States Coast Guard may adminis-  
25 ter oaths or affirmations.

26 Sec. 3.10. EFFECT OF PRIVATE SEALS AND SCROLLS. Private  
27 seals and scrolls as a substitute for seals are abolished. They  
28 are not required to any instrument, but when used their effect  
29 remains unchanged.

1           Sec. 3.11. STATUTE OF FRAUDS. a. In the following cases  
2 and under the following conditions an agreement, promise or  
3 undertaking is unenforceable unless it or some note or memorandum  
4 of it is in writing and subscribed by the party charged, or by his  
5 agent:

6           (1) an agreement that by its terms is not to be per-  
7 formed within a year from the making of it;

8           (2) an agreement the performance of which is not to be  
9 completed by the end of a lifetime. This provision includes a  
10 contract to bequeath property or make a testamentary disposition  
11 of any kind, a contract to assign or an assignment, with or with-  
12 out consideration to the promisor, of a life or health or accident  
13 insurance policy, or a promise, with or without consideration to  
14 the promisor, to name a beneficiary of that type of policy. But  
15 this provision does not include an insurer's promise to issue a  
16 policy of insurance, or any promise or assignment with respect to  
17 a policy of industrial life or health or accident insurance;

18           (3) a special promise to answer for the debt of  
19 another;

20           (4) an agreement by an executor or administrator to pay  
21 the debts of his testator or intestate out of his own estate;

22           (5) an agreement made upon consideration of marriage  
23 other than mutual promises to marry;

24           (6) an agreement for leasing for a longer period than  
25 one year, or for the sale of real property, or of any interest in  
26 real property or to charge or encumber real property;

27           (7) an agreement concerning real property made by an  
28 agent of the party sought to be charged, unless the authority of  
29 the agent is in writing;

1 (8) an agreement authorizing or employing an agent or  
2 broker to sell or purchase real estate for compensation or com-  
3 mission; however, if the note or memorandum of the agreement is  
4 in writing, subscribed by the party to be charged, or by his law-  
5 fully authorized agent, contains a description of the property  
6 sufficient for identification, authorizes or employs the agent or  
7 broker named in it to sell the property, and expresses with  
8 reasonable certainty the amount of the commission or compensation  
9 to be paid the agent or broker, the agreement of authorization or  
10 employment is not unenforceable for failure to state a consider-  
11 ation;

12 (9) an agreement to establish a trust;

13 (10) a subsequent or new promise to pay a debt dis-  
14 charged in bankruptcy;

15 (11) a conveyance or assignment of a trust in personal  
16 property;

17 (12) an agreement to pay compensation for services  
18 rendered in negotiating a loan, effecting the procurement of a  
19 business opportunity, or the purchase and sale of a business, its  
20 good will, inventory, fixtures or an interest in it, including a  
21 majority of the voting stock interest in a corporation and includ-  
22 ing the creating of a partnership interest, other than an agree-  
23 ment to pay compensation to an auctioneer, or an attorney at law.

24 b. No estate or interest in real property, other than a  
25 lease for a term not exceeding one year, nor any trust or power  
26 concerning the property, may be created, transferred, or declared,  
27 otherwise than by operation of law, or by a conveyance or other  
28 instrument in writing, subscribed by the party creating, trans-  
29 ferring, or declaring it or by his agent under written authority,

1 and executed with the formalities that are required by law. This  
2 subsection does not affect the power of a testator in the dis-  
3 position of his real property by will, nor prevent a trust arising  
4 or being extinguished by implication or operation of law, nor  
5 affect the power of a court to compel specific performance of an  
6 agreement in relation to the property.

7       Sec. 3.12. EXCEPTIONS TO STATUTE OF FRAUDS. A contract,  
8 promise or agreement which is subject to Sec. 3.11 which does not  
9 satisfy the requirements of that section, but which is otherwise  
10 valid, is enforceable if either

11               (1) there has been full performance on one side,  
12 accepted by the other in accordance with the contract; or

13               (2) there is a memorandum which would satisfy the  
14 requirements of Sec. 3.11 except for error or omission in the  
15 recital of past events; or

16               (3) there is a memorandum which would satisfy the re-  
17 quirements of Sec. 3.11 except for error or omission which could  
18 be corrected by reformation if it occurred in a formal contract;  
19 or

20               (4) the party against whom enforcement is sought ad-  
21 mits, voluntarily or involuntarily, in his pleadings or at any  
22 other stage of this or any other action or proceeding, the making  
23 of an agreement; or

24               (5) it is a contract of employment for a period not  
25 exceeding one year from the commencement of work under its terms.

26       Sec. 3.13. REPRESENTATIONS AS TO CREDIT, SKILL OR CHARACTER  
27 OF A THIRD PERSON. No evidence is admissible to charge a person  
28 upon a representation as to the credit, skill, or character of a  
29 third person, unless the representation, or some memorandum of it,

1 is in writing, and either subscribed by or in the handwriting of  
2 the party to be charged.

3 Sec. 3.14. RULES FOR CONSTRUING REAL ESTATE DESCRIPTIONS.

4 The following are the rules for construing the descriptive part of  
5 a conveyance of real property, when the construction is doubtful  
6 and there are no other sufficient circumstances to determine it:

7 (1) where there are certain definite and ascertained  
8 particulars in the description, the addition of others which are  
9 indefinite, unknown, or false, does not frustrate the conveyance,  
10 but it is to be construed by those particulars if they constitute  
11 a sufficient description to ascertain its application;

12 (2) when permanent and visible or ascertained boundar-  
13 ies or monuments are inconsistent with the measurement, either of  
14 lines, angles, or surfaces, the boundaries or monuments are  
15 paramount;

16 (3) between different measurements which are inconsist-  
17 ent with each other, that of angles is paramount to that of  
18 surfaces, and that of lines paramount to both;

19 (4) when a road, or stream of water not navigable, is  
20 the boundary, the rights of the grantor to the middle of the road  
21 or the thread of the stream are included in the conveyance, ex-  
22 cept where the road or bed of the stream is held under another  
23 title;

24 (5) when tidewater is the boundary, the rights of the  
25 grantor to low-water mark are included in the conveyance;

26 (6) when the description refers to a map, and that  
27 reference is inconsistent with other particulars, it controls them  
28 if it appears that the parties acted with reference to the map;  
29 otherwise the map is subordinate to other definite and ascertained

1 particulars.

2           Sec. 3.15. CONCLUSIVE EVIDENCE OF ADVERSE POSSESSION. The  
3 uninterrupted adverse notorious possession of real property under  
4 color and claim of title for seven years or more is conclusively  
5 presumed to give title to the property, except as against the  
6 state or the United States.

7           Sec. 3.16. SALE OR TRANSFER OF PERSONAL PROPERTY. Every  
8 sale or assignment of personal property, unless accompanied by the  
9 immediate delivery and the actual and continued change of posses-  
10 sion of the thing sold or assigned, is presumed prima facie to be  
11 a fraud against the creditors of the vendor or assignor, and  
12 subsequent purchasers in good faith and for a valuable considera-  
13 tion, during the time the property remains in the possession of  
14 the vendor or assignor, except that retention of possession in  
15 good faith and current course of trade by a merchant seller for a  
16 commercially reasonable time after a sale or identification is not  
17 fraudulent, and nothing contained herein shall supersede the pro-  
18 visions of the Uniform Commercial Code.

19           Sec. 3.17. EVIDENCE OF PUBLICATION. Evidence of the publi-  
20 cation of a document or notice required by law, to be published  
21 in a newspaper, may be given by the affidavit of the printer of  
22 the newspaper or his foreman or business manager, annexed to a  
23 copy of the document or notice, specifying the times when, and  
24 the paper in which, the publication was made.

25           Sec. 3.18. ADULTERY CONFESSION IN DIVORCE. In an action for  
26 divorce on the ground of adultery, a confession of adultery is not  
27 alone sufficient to justify a judgment of divorce.

28           Sec. 3.19. RIGHT TO RECEIPT UPON PAYMENT OR DELIVERY. Any  
29 person who pays money, or delivers an instrument or property, is

1 entitled to a receipt for it from the person to whom the payment  
2 or delivery is made, and may demand a proper signature to the  
3 receipt as a condition of the payment or delivery.

4       Sec. 3.20. DISPOSITION OF TAX INFORMATION. Any information  
5 in the possession of the Department of Revenue which discloses  
6 the particulars of the business or affairs of a taxpayer, or other  
7 person, is not a matter of public record, except for purposes of  
8 investigation and law enforcement. The information shall be kept  
9 confidential except when its production is required in an official  
10 investigation or court proceeding. These restrictions do not pro-  
11 hibit the publication of statistics presented in a manner that  
12 prevents the identification of particular reports and items or  
13 prohibit the publication of tax lists showing the names of tax-  
14 payers who are delinquent and relevant information which may  
15 assist in the collection of delinquent taxes.

16       Sec. 3.21. INSPECTION AND COPIES OF PUBLIC RECORDS. Unless  
17 specifically provided otherwise the books, records, papers, files,  
18 accounts, writings and transactions of all agencies and depart-  
19 ments are public records and are open to inspection by the public  
20 under reasonable rules during regular office hours. The public  
21 officer having the custody of public records shall give on request  
22 and payment of costs a certified copy of the public record.

23       Sec. 3.22. INSPECTION AND COPYING OF PUBLIC RECORDS. Every  
24 person has a right to inspect any public writing or record in the  
25 state, including public writings and records in recorders' offices  
26 except: (1) records of vital statistics and adoption proceedings  
27 which shall be treated in the manner required by Ch. 118, SLA  
28 1960; (2) records pertaining to juveniles; (3) medical and related  
29 public health records; (4) records required to be kept confidential

1 by any federal law or regulation or by state law. Every public  
2 officer having the custody of records not included in the excep-  
3 tions is bound to permit such inspection, and to give on demand  
4 and on payment of the legal fees therefor a certified copy of  
5 such writing or record, and such copy shall in all cases be evi-  
6 dence of the original. Recorders shall permit memoranda, trans-  
7 cripts, and copies of such public writings and records in their  
8 offices to be made by photography or otherwise for the purpose of  
9 examining titles to real estate described therein, making ab-  
10 stracts of title or guaranteeing or insuring the titles thereof,  
11 or building and maintaining title and abstract plants, and shall  
12 furnish proper and reasonable facilities therefor to persons  
13 having lawful occasion for access thereto for such purposes,  
14 subject to such reasonable rules and regulations, in conformity  
15 to the direction of the court, as shall be necessary for the pro-  
16 tection of such writings and records and to prevent interference  
17 with the regular discharge of the duties of such recorders and  
18 their employees.

19 Article IV. Judgments

20 Sec. 4.01. RECORDING COPY OF JUDGMENT AS LIEN. A certified  
21 copy of the judgment or decree of a court of this state, or a  
22 court of record of the United States upon which execution may  
23 issue, the enforcement of which has not been stayed, may be  
24 recorded with the recorder of a recording district. From the  
25 recording, the judgment or decree becomes a lien upon the real  
26 property of the defendant which is in the recording district,  
27 which is not exempt from execution, and which is owned by him at  
28 the time or acquired by him afterward but before the lien expires.  
29 The lien continues during the time execution may issue on the

1 judgment or decree but for not more than 10 years from date of  
2 entry of the judgment or decree. After expiration of the lien,  
3 the court may grant leave for issuance of execution upon the  
4 judgment or decree. From the date of recording the judgment or  
5 decree, together with the order allowing issuance of execution,  
6 the judgment or decree becomes a lien in the manner as above pro-  
7 vided.

8 Sec. 4.02. PRIORITY OF LIEN OF JUDGMENT. A conveyance of  
9 real property or interest in real property is void against a  
10 judgment lien that is docketed before the conveyance is recorded.

11 Sec. 4.03. JUDGMENT WHERE SUMMONS NOT SERVED ON ALL DEFEND-  
12 ANTS. When an action is against two or more defendants jointly  
13 indebted upon a contract and the summons is served on one or more  
14 but not all of them and judgment is recovered, it may be entered  
15 against all the defendants jointly indebted only so far that it  
16 may be enforced against the joint property of all the separate  
17 property of the defendants served, and if they are subject to  
18 arrest, against the persons of the defendants served.

19 Sec. 4.04. JUDGMENTS AGAINST BOROUGH AND CITIES. Where  
20 judgment is against a borough, city or other public corporation,  
21 no execution may issue on it but the judgment may be satisfied  
22 only as follows:

23 (1) the party in whose favor the judgment is given may,  
24 at any time within 10 years of the date of the judgment, present  
25 a certified copy of the judgment to the officer of the borough,  
26 city or other public corporation authorized to draw orders on its  
27 treasurer;

28 (2) upon presentation, the officer shall draw an order  
29 on the treasurer for the amount of the judgment in favor of the

1 party for whom the judgment was given. After that the order may  
2 be presented for payment, and paid, in the manner and with the  
3 effect of other orders upon the treasurer of a borough, city or  
4 other public corporation.

5 Sec. 4.05. CONFESSION OF JUDGMENT. A judgment by confession  
6 may be entered with or without action against a person for any  
7 amount or relief. The confession may be made only by the confes-  
8 sor in person or by his attorney in fact under a power of attorney  
9 so authorizing, or if the confessor is a corporation, only by a  
10 person who at that time has a relation to the corporation which  
11 would authorize the service of summons on him.

12 Sec. 4.06. PROPERTY LIABLE ON CONFESSION JUDGMENTS. When  
13 an action upon a contract is pending against one or more defend-  
14 ants jointly liable, judgment may be given on the confession of  
15 one or more defendants against all the defendants jointly liable,  
16 whether all defendants have been served with the summons or not.  
17 However, the judgment may be enforced only against their joint  
18 property and against the joint and separate property of the  
19 defendant making the confession.

20 Sec. 4.07. INTEREST ON JUDGMENTS. The rate of interest on  
21 judgments and decrees for the payment of money is six per cent per  
22 annum, except that a judgment or decree founded on a contract in  
23 writing providing for the payment of interest until paid at a  
24 specified rate exceeding six per cent per annum and not exceeding  
25 8 per cent per annum bears interest at the rate specified in the  
26 contract if the interest rate is set out in the judgment or decree.

27 Article V. Miscellaneous

28 Sec. 5.01. SUCCESSIVE ACTIONS. Successive actions may be  
29 maintained upon the same contract or transaction when a new cause

1 of action arises under the contract.

2       Sec. 5.02. CORPORATE SURETIES. When, by the laws of the  
3 state, or by a charter, ordinance, rule or regulation of a poli-  
4 tical subdivision, municipality, public corporation, or by a  
5 board, body, organization, court or judge, a recognizance, stipu-  
6 lation, bond, undertaking, or bail in an action, suit, proceeding  
7 or matter conditioned for the faithful performance of an act or  
8 duty, or for the doing of an act or thing, is permitted or requir-  
9 ed to be given with one or more sureties, it is sufficient com-  
10 pliance if the instrument is executed by a corporation which has  
11 complied with the laws of the state and is authorized by law to  
12 act as surety upon instruments and in proceedings, actions, suits  
13 and matters as set out above.

14       Sec. 5.03. PARTIES EXEMPT FROM GIVING BOND. In an action or  
15 proceeding in any court in which the state is a party, or in which  
16 the state is interested, no bond or undertaking is required of  
17 the state, or an officer of the state.

18       Sec. 5.04. LIS PENDENS. In an action affecting the title  
19 to, or the right of possession of real property, the plaintiff at  
20 the time of filing the complaint, or afterwards, and the defend-  
21 ant, when affirmative relief is claimed, at the time of filing  
22 the answer, or afterwards, may record in the office of the record-  
23 er of the recording district in which the property is situated,  
24 a notice of the pendency of the action, containing the names of  
25 the parties, and the object of the action or defense, and a  
26 description of the property affected in that district. From the  
27 time of filing the notice for record, a purchaser, holder of a  
28 contract or option to purchase, or encumbrancer of the property  
29 affected, has constructive notice of the pendency of the action,

1 and of its pendency against parties designated by their real  
2 names.

3       Sec. 5.05. JURISDICTION OF THE PARTIES. From the time of  
4 the service of a copy of the summons and complaint, or of the  
5 completion of the publication when service by publication is  
6 ordered, the court acquires jurisdiction and has control of all  
7 the subsequent proceedings. The voluntary appearance of the  
8 defendant is equivalent to personal service of a copy of the sum-  
9 mons and complaint upon him.

10       Sec. 5.06. DEATH OR DISABILITY OF A PARTY. In case of the  
11 death or disability of a party to an action, the court may at any  
12 time within two years after the death or disability, on motion,  
13 allow the action to be continued by or against his personal  
14 representatives or successor in interest.

15       Sec. 5.07. DEFENSE NOT PREJUDICED BY ASSIGNMENT. If there  
16 is an assignment of a thing in action, the action by the assignee  
17 is without prejudice to any setoff, or other defense existing at  
18 the time of, or before notice of, the assignment. But this sec-  
19 tion does not apply to a negotiable promissory note or bill of  
20 exchange, transferred in good faith, and upon valuable considera-  
21 tion before due.

22       Sec. 5.08. LIABILITY OF GUARDIAN AD LITEM FOR COSTS. No  
23 person appointed guardian ad litem by a court for an infant or in-  
24 competent defendant is liable for the costs of the action.

25       Sec. 5.09. GUARDIAN'S RESPONSIBILITY FOR ALLOWANCE AGAINST  
26 INFANT PLAINTIFF. When costs or disbursements are adjudged  
27 against an infant plaintiff or incompetent, the guardian by whom  
28 he appeared in the action is responsible for the payment and pay-  
29 ment may be enforced against him as if he were the actual

1 plaintiff.

2           Sec. 5.10. COSTS WHERE PARTY IS A REPRESENTATIVE. In  
3 actions in which an executor, administrator, trustee of an ex-  
4 press trust, or a person authorized to represent a party is a  
5 party, costs may be allowed as in other cases. However when costs  
6 are allowed against that party, they are chargeable solely upon  
7 the estate, fund, or party represented, unless the court orders  
8 the costs to be paid by that party personally for mismanagement  
9 or bad faith in the conduct of the action.

10           Sec. 5.11. COSTS AWARDED AGAINST STATE, BOROUGH, CITY,  
11 DISTRICT, OR OTHER PUBLIC AGENCIES. When the state or any  
12 borough, city, or other public agency or entity or any officer  
13 thereof in his official capacity is a party, costs shall be award-  
14 ed against it on the same basis as against any other natural  
15 person or party. However, when the action is brought upon the  
16 information of a natural person, that person shall be liable for  
17 costs awarded against the state. The costs shall not be recovered  
18 from the state until after execution has issued for the costs  
19 against that person and returned unsatisfied in whole or in part.

20           Sec. 5.12. SECURITY FOR COSTS WHERE PLAINTIFF A NONRESIDENT  
21 OR FOREIGN CORPORATION. When the plaintiff in an action resides  
22 out of the state, or is a foreign corporation, security for the  
23 costs and attorney fees, which may be awarded against the plain-  
24 tiff, may be required by the defendant. When required, all pro-  
25 ceedings in the action shall be stayed until an undertaking  
26 executed by one or more sufficient sureties is filed with the  
27 court, to the effect that they will pay the costs and attorney  
28 fees which are awarded against the plaintiff, not less than the  
29 sum of \$200.00. A new or an additional undertaking may be ordered

1 by the court, upon proof that the original undertaking is in-  
2 sufficient in amount or security.

3       Sec. 5.13. SUITS AGAINST LOCAL GOVERNMENTS AND PUBLIC  
4 CORPORATIONS. An action may be maintained against any unit of  
5 local government or public corporation in its corporate character  
6 and within the scope of its authority, or for an injury to the  
7 rights of the plaintiff arising from some act or omission of the  
8 unit of local government or public corporation.

9       Sec. 5.14. COSTS ALLOWED PREVAILING PARTY. Except as other-  
10 wise provided by statute, the supreme court of Alaska shall  
11 determine by rule or order what costs, if any, including attorney  
12 fees, shall be allowed the prevailing party in any case.

13                   TITLE II. SPECIAL CIVIL ACTIONS

14                               AND PROVISIONAL REMEDIES

15                                   Article VI. Adverse Claims

16       Sec. 6.01. ACTION TO DETERMINE ADVERSE CLAIM. Any person  
17 in possession, by himself or his tenant, of real property may  
18 bring an action against another who claims an estate or interest  
19 in the property adverse to him for the purpose of determining the  
20 claim.

21       Sec. 6.02. ACTION TO ESTABLISH BOUNDARIES. When any dis-  
22 pute exists between two or more owners of adjacent or contiguous  
23 lands concerning the boundary lines of their lands, any owner may  
24 bring an action for the purpose of having the dispute determined,  
25 and the boundary lines ascertained and marked.

26       Sec. 6.03. MARKING OF BOUNDARIES. In an action to estab-  
27 lish boundaries, the court shall appoint three disinterested  
28 referees, one of whom is a surveyor, to establish and mark the  
29 boundary lines as ascertained and determined by the court.



1 plaintiff shall give a written undertaking with sufficient sure-  
2 ties to the effect that if the defendant recovers judgment, the  
3 plaintiff will pay all costs that may be awarded to the defendant,  
4 and all damages which he may sustain by reason of the attachment,  
5 not exceeding the sum specified in the undertaking, and that if  
6 the attachment is discharged on the ground that the plaintiff was  
7 not entitled to it under this article, the plaintiff will pay all  
8 damages which the defendant may have sustained by reason of the  
9 attachment, not exceeding the sum specified in the undertaking.  
10 The sum specified in the undertaking shall be equal to the amount  
11 claimed by the plaintiff, but not less than \$100.00.

12 Sec. 7.03. PROPERTY SUBJECT TO ATTACHMENT. All property in  
13 the state not exempt from execution may be attached.

14 Sec. 7.04. THIRD PARTY LIABILITY. All persons having in  
15 their possession any personal property belonging to the defendant  
16 or owing a debt to the defendant at the time of service upon them  
17 of the writ and notice shall deliver, transfer or pay the proper-  
18 ty or debts to the peace officer, or be liable to the plaintiff  
19 for the amount of the property or debts until the attachment is  
20 discharged or any judgment recovered by plaintiff is satisfied.  
21 Debts and other personal property may be delivered, transferred,  
22 or paid to the peace officer without suit and the receipt of the  
23 officer is a sufficient discharge.

24 Sec. 7.05. LIEN ON REAL ESTATE. If real property is  
25 attached, the peace officer shall make a certificate containing  
26 the title of the cause, the names of the parties, a description of  
27 the property attached, the date of attachment, a statement that a  
28 writ of attachment has been issued, and the date of issuance, and  
29 shall within 10 days deliver the certificate to the recorder of

1 the recording district in which the real property is situated.  
2 The recorder shall file the certificate in his office and record  
3 it in a book to be kept for that purpose. When the certificate is  
4 filed for record the lien in favor of the plaintiff attaches to  
5 the real property described in the certificate from the date of  
6 the attachment, but if filed afterwards it only attaches, as  
7 against third persons, from the date of the subsequent filing.  
8 Whenever the lien is discharged, it is the duty of the recorder,  
9 when requested, to record the transcript of any order, entry of  
10 satisfaction of judgment, or other proceeding of record whereby  
11 it appears that the lien has been discharged.

12       Sec. 7.06. THIRD PARTY INDEBTED TO DEFENDANT OR POSSESSING  
13 PROPERTY OF DEFENDANT. Whenever a peace officer with a writ of  
14 attachment applies to any person for the purpose of attaching  
15 property mentioned in the attachment, the person shall furnish the  
16 peace officer with a statement designating the amount and descrip-  
17 tion of any personal property in his possession belonging to the  
18 defendant, or any debt he owes to the defendant. If such person  
19 refuses to do so, or if the statement is unsatisfactory to the  
20 plaintiff, the person may be ordered to appear before the court  
21 and be examined concerning the property or debt.

22       Sec. 7.07. SALE OF PERISHABLE PROPERTY. If any of the  
23 property attached is perishable, the peace officer shall sell the  
24 property in the manner in which property is sold on execution.  
25 The proceeds, and other property attached, shall be retained by  
26 him to answer any judgment that may be recovered in the action,  
27 unless sooner subjected to execution upon another judgment  
28 recovered previous to the levy of attachment.

29       Sec. 7.08. LIABILITY ON UNDERTAKING. In a proceeding  
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1 brought against the principal or his sureties upon an undertaking  
2 given to secure the release of attached property, it is a defense  
3 that the property for which the undertaking was given did not, at  
4 the execution of the writ of attachment, belong to the defendant  
5 against whom it was issued.

6       Sec. 7.09. DISPOSITION OF PROPERTY AFTER JUDGMENT IN PLAIN-  
7 TIFF'S FAVOR. When plaintiff recovers judgment, and property  
8 attached in the suit was not sold as perishable property or dis-  
9 charged from the attachment, the court shall order the property to  
10 be sold to satisfy the plaintiff's demands. If execution is  
11 issued upon the judgment, the peace officer shall apply the pro-  
12 perty attached by him, including money or the proceeds from the  
13 sale of the property, upon the execution. If there is any of the  
14 property or proceeds remaining after satisfying the execution,  
15 the peace officer shall, upon demand, deliver the property or  
16 proceeds to the defendant.

17       Sec. 7.10. RETURN OF PROPERTY UPON JUDGMENT FOR DEFENDANT.  
18 If the defendant recovers judgment against the plaintiff, and no  
19 appeal is taken, all the property attached, the proceeds from  
20 property attached, and the undertaking received in the action  
21 shall be delivered to the defendant upon his serving upon the  
22 peace officer a certified copy of the order discharging the  
23 attachment.

24       Sec. 7.11. DELIVERY OF PROPERTY TO DEFENDANT AND REDELIVERY  
25 BOND. The peace officer may deliver any of the property attached  
26 to the defendant, or to any person claiming it, upon his giving  
27 a written undertaking for the property, executed by one or more  
28 sufficient sureties, engaging to redeliver it or pay the value of  
29 the property to the peace officer to whom execution upon a

1 judgment obtained by the plaintiff in that action may be issued.

2 Article VIII. Change of Name

3 Sec. 8.01. JURISDICTION IN ACTION FOR CHANGE OF NAME. Any  
4 person may bring an action for change of name in the superior  
5 court. No change of name of a person except a woman upon her  
6 marriage or divorce shall be made unless the court finds suffi-  
7 cient reasons for the change and also finds it consistent with  
8 the public interest.

9 Article IX. Civil Arrest

10 Sec. 9.01. ARREST AND BAIL IN CIVIL ACTIONS. The plaintiff  
11 in a civil action may have the defendant arrested and held to  
12 bail in the manner provided in this article. The writ of ne exeat  
13 is abolished.

14 Sec. 9.02. GROUNDS FOR ARREST. The defendant may be arrest-  
15 ed in an action for debt when the defendant is about to remove  
16 from the state with intent to defraud his creditors, or is  
17 absconding.

18 Sec. 9.03. ORDER FOR ARREST. An order for the arrest of  
19 the defendant may be obtained only from a judge of the court in  
20 which the action is brought. The order shall be made immediately  
21 whenever it appears to the judge that a sufficient claim and  
22 proper grounds exist.

23 Sec. 9.04. UNDERTAKING BY PLAINTIFF. Before making the  
24 order, the judge shall require an undertaking on the part of the  
25 plaintiff, with one or more sufficient sureties, to the effect  
26 that the plaintiff will pay all costs which may be adjudged to the  
27 defendant, and all damages which he may sustain by reason of the  
28 arrest, if the same be wrongful, or without sufficient cause, not  
29 exceeding the sum specified in the undertaking. The undertaking

1 shall be in a sum to be fixed by the judge, but not less than  
2 \$300.00.

3 Sec. 9.05. TIME FOR ORDER FOR ARREST. The order may be  
4 made at the time of the issuing of the summons or afterwards but  
5 before judgment. It shall require a peace officer to immediately  
6 arrest the defendant, and to hold him to bail in the amount  
7 specified.

8 Sec. 9.06. DISCHARGE ON BAIL OR DEPOSIT. The defendant, at  
9 any time before execution, shall be discharged from the arrest  
10 either upon giving bail or upon depositing the amount mentioned  
11 in the order for arrest.

12 Sec. 9.07. AMOUNT OF BAIL. The defendant may give bail by  
13 causing a written undertaking to be executed by one or more  
14 sufficient sureties, to the effect that they are bound in the  
15 amount mentioned in the order for arrest, that the defendant will  
16 render himself amenable to the process of the court during the  
17 pendency of the action, and to processes which may be issued to  
18 enforce the judgment, or that they will pay the plaintiff the  
19 amount of the judgment which may be recovered in the action.

20 Sec. 9.08. SURRENDER OF DEFENDANT BY BAIL OR IN PERSON. At  
21 any time before failure to comply with the undertaking the bail  
22 may surrender the defendant in their exoneration, or the defend-  
23 ant may surrender himself to a peace officer of the court where  
24 the action is pending.

25 Sec. 9.09. ARREST OF DEFENDANT BY OR ON AUTHORITY OF BAIL.  
26 For the purpose of surrendering the defendant, the bail, at any  
27 time and place before they are finally charged, may personally  
28 arrest him, or by a written authority endorsed on a certified  
29 copy of the undertaking, may empower a peace officer to do so.

1 Upon the arrest of the defendant by a peace officer, or upon his  
2 delivery to the officer by the bail, or upon his own surrender,  
3 the bail are exonerated, if the arrest, delivery, or surrender  
4 takes place at a time prior to judgment. But if the arrest,  
5 delivery, or surrender does not take place prior to judgment, the  
6 bail are finally charged on their undertaking, and bound to pay  
7 the amount of the judgment.

8 Sec. 9.10. EXONERATION OF BAIL. The bail are exonerated by  
9 the death of the defendant or his imprisonment in a penitentiary,  
10 or by his legal discharge from the obligation to render himself  
11 amenable to the process.

12 Sec. 9.11. MOTION TO VACATE ORDER FOR ARREST OR TO REDUCE  
13 BAIL. A defendant arrested may, at any time before judgment,  
14 apply on a motion to the court or a judge of the court in which  
15 the action is pending to vacate the order for arrest or to reduce  
16 the amount of bail. If upon the hearing of the motion it appears  
17 that there was not sufficient cause for the arrest, the order  
18 shall be vacated; or if it appears that the bail was fixed too  
19 high, the amount shall be reduced.

20 Article X. Contempt

21 Sec. 10.01. ACTS OR OMISSIONS CONSTITUTING CONTEMPT. The  
22 following acts or omissions, in respect to a court of justice or  
23 court proceedings, are contempts of the authority of the court:

24 (1) disorderly, contemptuous, or insolent behavior  
25 toward the judge while holding the court, tending to impair its  
26 authority or to interrupt the course of a trial or other judicial  
27 proceeding;

28 (2) a breach of the peace, boisterous conduct, or  
29 violent disturbance, tending to interrupt the course of a trial or

1 other judicial proceeding;

2 (3) misbehavior in office, or other wilful neglect or  
3 violation of duty by an attorney, clerk, peace officer, or other  
4 person appointed or elected to perform a judicial or ministerial  
5 service;

6 (4) deceit or abuse of the process or proceedings of  
7 the court by a party to an action or proceeding;

8 (5) disobedience of any lawful judgment, order, or  
9 process of the court;

10 (6) falsely pretending to act under authority of an  
11 order or process of the court;

12 (7) rescuing a person or property in the custody of an  
13 officer by virtue of an order or process of the court;

14 (8) unlawfully detaining a witness, or party to an  
15 action or proceeding while going to, remaining at, or returning  
16 from the court where the witness or party is for trial;

17 (9) any other unlawful interference with the process or  
18 proceedings of the court;

19 (10) disobedience of a subpoena duly served, or refus-  
20 ing to be sworn or answer as a witness;

21 (11) when summoned as a juror in a court, neglecting  
22 to attend or serve, or improperly conversing with a party to an  
23 action or proceeding to be tried at the court, or with any other  
24 person in relation to the merits of the action, or receiving a  
25 communication from a party or other person in respect to it with-  
26 out immediately disclosing it to the court;

27 (12) disobedience by an inferior court, magistrate,  
28 referee, master or officer of the lawful judgment, order or pro-  
29 cess of a higher court, or proceeding in an action or proceeding

1 contrary to law, after the action or proceeding is removed from  
2 the jurisdiction of that inferior court, magistrate, or officer.

3 Sec. 10.02. PENALTY. Any person who is guilty of contempt  
4 is punishable by fine not exceeding \$300.00 or imprisonment not  
5 exceeding six months. However, when the contempt is one  
6 mentioned in Secs. 10.01 (3) to 10.01 (12) inclusive, or in an  
7 action before a deputy magistrate, the person is punishable by a  
8 fine not exceeding \$100.00, unless it appears that a right or  
9 remedy of a party to an action or proceeding was defeated or  
10 prejudiced by the contempt, in which case the penalty shall be as  
11 prescribed for contempts described in Sec. 10.01 (1) and (2).

12 Sec. 10.03. JURY TRIAL. Any person who is charged with  
13 contempt of court, not committed in the presence of the court,  
14 where the act or thing so charged as a contempt is of such nature  
15 as to constitute also a criminal offense under any statute of the  
16 United States or any of the laws of the State of Alaska, has a  
17 right to jury trial.

18 Sec. 10.04. INDEMNIFICATION OF PARTY AGGRIEVED. If a loss  
19 or injury to a party in an action or proceeding has been caused  
20 by the contempt, the court, in addition to the punishment imposed  
21 for the contempt, may give judgment in favor of the party aggriev-  
22 ed and against the person guilty of contempt for a sum of money  
23 sufficient to indemnify him and to satisfy his costs and disburse-  
24 ments. The judgment and the acceptance of that amount is a bar  
25 to an action or proceeding by the aggrieved party for the loss or  
26 injury.

27 Sec. 10.05. IMPRISONMENT TO COMPEL PERFORMANCE OF AN ACT.  
28 When the contempt consists of the omission or refusal to perform  
29 an act which is yet in the power of the defendant to perform, he

1 may be imprisoned until he has performed it.

2       Sec. 10.06. PROSECUTION ON NONAPPEARANCE. If the defendant  
3 does not appear on the day ordered by the court, the court may  
4 order the undertaking to be prosecuted. If the undertaking is  
5 prosecuted, the measure of damages is the extent of the loss or  
6 injury sustained by the aggrieved party by reason of the miscon-  
7 duct for which the warrant was issued, and the costs of the pro-  
8 ceeding.

9                   Article XI. Declaration of Death

10       Sec. 11.01. PETITION AND INQUIRY. Whenever a petition is  
11 presented by an interested person to a district or deputy magis-  
12 trate alleging that a designated person has disappeared and after  
13 diligent search cannot be found, and when it appears to the  
14 satisfaction of the magistrate that the circumstances surrounding  
15 the disappearance afford reasonable grounds for the belief that  
16 the person has suffered death from accidental or other violent  
17 means, the magistrate shall summon and impanel a jury of six  
18 qualified persons to inquire into the facts surrounding and the  
19 presumption to be raised from the disappearance. If no one sub-  
20 mits a petition within 40 days, the magistrate may submit the  
21 petition from any knowledge he has of the case.

22       Sec. 11.02. VERDICT AND ENTRY OF ORDER. If the jury, by  
23 their unanimous verdict in writing find that sufficient evidence  
24 has been presented to them from which it fairly may be presumed  
25 that the missing person has met death, and if the magistrate  
26 approves the finding, then after a period of six months has  
27 elapsed, the person shall be presumed to be dead and the magis-  
28 trate shall enter an order to that effect. However, in cases  
29 where there is clear and convincing evidence of the presumed death

1 the magistrate, in his discretion, may sooner enter the order.

2       Sec. 11.03. COMPENSATION AND EXPENSES ALLOWED. The members  
3 of the jury and witnesses are entitled to the same compensation  
4 as in civil actions in a district magistrate's court, and the  
5 compensation and other incidental expenses shall be audited and  
6 allowed as in the case of other similar expenses. When the  
7 magistrate has submitted the petition in compliance with Sec.  
8 11.01 of this article and there is no interested party or an  
9 estate from which the costs of the proceedings can be audited and  
10 allowed, then the costs shall be paid from "The Relief Fund"  
11 created by the laws dealing with lost persons, upon vouchers made  
12 out, signed and sworn to by the magistrate.

13       Sec. 11.04. EFFECT OF PRESUMPTIVE DEATH CERTIFICATE. After  
14 the magistrate has entered an order declaring that the person is  
15 presumed to be dead, either under this article or under the laws  
16 dealing with missing persons, the magistrate shall make out and  
17 sign a certificate entitled "Presumptive Death Certificate" in  
18 the form and manner, and containing the information required by  
19 the Bureau of Vital Statistics. The certificate shall be recorded  
20 by the magistrate and then filed with the Bureau of Vital Statis-  
21 tics. Upon the entry of the order and the recording and filing  
22 of the "Presumptive Death Certificate" as herein provided, the  
23 missing person is presumed to be dead, and his estate may be  
24 administered in accordance with the then existing provisions of  
25 law applicable to the administration of the estates of deceased  
26 persons.

27       Sec. 11.05. CORRECTION OR REMOVAL OF PRESUMPTIVE CERTIFI-  
28 CATES. The Bureau of Vital Statistics shall make provisions for  
29 the correction, substitution or removal of the certificates where

1 the body of the person is later found, where additional facts are  
2 brought to light, or where the person is later discovered to be  
3 alive.

4 Article XII. Divorce and Annulment

5 Sec. 12.01. RIGHT OF ACTION BY HUSBAND OR WIFE FOR DIVORCE.

6 A husband or wife may maintain an action against the other for  
7 divorce or to have the marriage declared void.

8 Sec. 12.02. INCESTUOUS OR BIGAMOUS MARRIAGES ARE VOID. A  
9 marriage which is prohibited by law on account of consanguinity  
10 between the persons, or a subsequent marriage contracted by a  
11 person during the life of a former husband or wife which marriage  
12 has not been annulled or dissolved, is void.

13 Sec. 12.03. MARRIAGES WHICH MAY BE DECLARED VOID. A  
14 marriage may be declared void for any of the following causes  
15 existing at the time of the marriage:

16 (1) that the party in whose behalf it is sought to  
17 have the marriage declared void was under the age of legal consent  
18 and the marriage was contracted without the consent of his or her  
19 parents or guardian, or person having charge of him or her; unless  
20 after attaining the age of consent, the party for any time freely  
21 cohabited with the other as husband or wife;

22 (2) that either party was of unsound mind, unless that  
23 party, after coming to reason, freely cohabited with the other as  
24 husband or wife;

25 (3) that the consent of either party was obtained by  
26 fraud, unless that party afterwards, with full knowledge of the  
27 facts constituting the fraud, freely cohabited with the other as  
28 husband or wife;

29 (4) that the consent of either party was obtained by

1 force, unless that party afterwards freely cohabited with the  
2 other as husband or wife.

3       Sec. 12.04. ACTION TO DECLARE MARRIAGE VALID. When either  
4 the husband or wife claim or pretend that the marriage is void or  
5 voidable, the other spouse may bring an action to have the  
6 marriage declared valid. The court may determine if the marriage  
7 is void from the beginning or from the time of the judgment or  
8 that it is valid.

9       Sec. 12.05. GROUNDS FOR DIVORCE. A divorce may be granted  
10 for any of the following grounds:

11           (1) impotency existing at the time of the marriage and  
12 continuing at the commencement of the action;

13           (2) adultery;

14           (3) conviction of a felony;

15           (4) wilful desertion for a period of one year;

16           (5) either (a) cruel and inhuman treatment calculated  
17 to impair health or endanger life, or (b) personal indignities  
18 rendering life burdensome, or (c) incompatibility of temperament;

19           (6) habitual gross drunkenness contracted since  
20 marriage and continuing for one year prior to the commencement of  
21 the action;

22           (7) wilful neglect of the husband for a period of 12  
23 months to provide for his wife the common necessities of life, he  
24 having the ability to do so, or his failure to do so by reason of  
25 idleness, profligacy or dissipation.

26           (8) incurable mental illness when the spouse has been  
27 confined to an institution for a period of at least 18 months  
28 immediately preceding the commencement of the action. The status  
29 as to the support and maintenance of the mentally ill person is

1 not altered in any way by the granting of the divorce;

2 (9) addiction of either party, subsequent to the  
3 marriage, to the habitual use of opium, morphine, cocaine or a  
4 similar drug.

5 Sec. 12.06. RESIDENCE REQUIREMENTS FOR ACTION TO DECLARE  
6 MARRIAGE VOID. When a marriage has been solemnized in the state  
7 and the plaintiff is a resident of the state, an action to declare  
8 the marriage void may be brought at any time. If the marriage has  
9 not been solemnized in the state, the action may be maintained  
10 only when the plaintiff has been a resident for at least one year  
11 before the commencement of an action.

12 Sec. 12.07. RESIDENCE REQUIREMENT FOR DIVORCE. No person  
13 may commence an action for divorce until he has been a resident  
14 of the state for at least one year before the commencement of the  
15 action.

16 Sec. 12.08. USE OF HUSBAND'S RESIDENCE WHERE WIFE IS PLAIN-  
17 TIFF. Where the wife is plaintiff in an action for divorce or to  
18 declare void a marriage which was not solemnized in the state, the  
19 residence of the husband in this state inures to her benefit and  
20 she may institute the action if her husband is at the time of its  
21 commencement qualified as to residence to institute a similar  
22 action.

23 Sec. 12.09. MILITARY PERSONNEL DEEMED RESIDENTS. Persons  
24 serving in a military branch of the United States government who  
25 have been continuously stationed in any military base or install-  
26 ation in the state for a period of one year shall for the purposes  
27 of this article be deemed residents in good faith of the state.

28 Sec. 12.10. SEPARATE DOMICILE OR RESIDENCE. In actions for  
29 divorce wives may acquire a separate residence or domicile from

1 that of the husband, without reference among other factors to  
2 misconduct or consent of the husband.

3 Sec. 12.11. DEFENSES TO ADULTERY. In a divorce action for  
4 adultery, the following defenses may be made:

5 (1) procurement;

6 (2) connivance;

7 (3) the act has been expressly forgiven, or impliedly  
8 forgiven by the voluntary cohabitation of the parties after  
9 knowledge of the act;

10 (4) the plaintiff is also guilty of adultery and with-  
11 out procurement or connivance of the defendant and not forgiven  
12 as provided in the defenses to adultery; or

13 (5) the action has not been commenced within two years  
14 after the discovery of the act by the plaintiff.

15 Sec. 12.12. DEFENSES TO OTHER DIVORCE GROUNDS. When the  
16 divorce action is for any of the grounds provided in paragraphs  
17 (4), (5), or (6) of Sec. 12.05, the defense of procurement or that  
18 the defendant has been expressly forgiven may be made. When the  
19 divorce action is for the ground provided in paragraph (3) of Sec.  
20 12.05, the defense of procurement, or that the defendant has been  
21 expressly forgiven, or that the action was not brought within two  
22 years after conviction may be made.

23 Sec. 12.13. ORDERS DURING ACTION. a. During the pendency  
24 of the action, the court may provide by order:

25 (1) that the husband pay an amount of money as may be  
26 necessary to enable the wife to prosecute or defend the action;

27 (2) for the care, custody, and maintenance of the minor  
28 children of the marriage during the pendency of the action;

29 (3) for the freedom of the wife from the control of the

1 husband during the pendency of the action.

2 b. The court may restrain either or both parties from dis-  
3 posing of the property of either party during the pendency of the  
4 action.

5 Sec. 12.14. JUDGMENT. In a judgment in an action for  
6 divorce or action declaring a marriage void or at any time after  
7 judgment, the court may provide:

8 (1) for the care and custody of the minor children of  
9 the marriage as it considers just and proper, having due regard  
10 to the age and sex of the children, and, unless otherwise mani-  
11 festly improper, giving the preference to the party not in fault;

12 (2) for the payment from the party in fault, not allow-  
13 ed the care and custody of the children, an amount of money, in  
14 gross or installments, as may be just and proper for that party  
15 to contribute toward the nurture and education of the children;

16 (3) for the recovery from the party in fault an amount  
17 of money, in gross or in installments, as may be just and proper  
18 for the party to contribute to the maintenance of the other;

19 (4) for the delivery to the wife, when she is not the  
20 party in fault, of her personal property in the possession or  
21 control of the husband at the time of giving the judgment;

22 (5) for the appointment of one or more trustees to  
23 collect, receive, expend, manage, or invest, in the manner the  
24 court directs, any sum of money adjudged for the maintenance of  
25 the wife or the nurture and education of minor children committed  
26 to her care and custody;

27 (6) for the division between the parties of their  
28 joint property, or the separate property of each, in the manner  
29 as may be just, and without regard as to which of the parties is

1 the owner of the property; and to accomplish this end the judgment  
2 may require one of the parties to assign, deliver or convey any  
3 of his or her real or personal property to the other party;

4 (7) to change the name of the wife.

5 Sec. 12.15. MODIFICATION OF JUDGMENT. Any time after  
6 judgment, the court, upon the motion of either party, may set  
7 aside, alter, or modify so much of the judgment as may provide for  
8 alimony, or for the appointment of trustees for the care and  
9 custody of the minor children, or for their nurture and education,  
10 or for the maintenance of either party to the action.

11 Sec. 12.16. EFFECT OF DIVORCE. The effect of a judgment  
12 decreeing a divorce is to restore the parties to the state of un-  
13 married persons.

14 Article XIII. Eminent Domain

15 Sec. 13.01. USES FOR WHICH AUTHORIZED; RIGHTS OF WAY. a.  
16 The right of eminent domain may be exercised for the following  
17 public uses:

18 (1) all public uses authorized by the government of the  
19 United States;

20 (2) public buildings and grounds for the use of the  
21 state and all other public uses authorized by the legislature of  
22 the state;

23 (3) public buildings and grounds for the use of an  
24 organized or unorganized borough, city, town, village, school  
25 district, or other municipal division, whether incorporated or  
26 unincorporated; canals, aqueducts, flumes, ditches, or pipes con-  
27 ducting water, heat or gas for the use of the inhabitants of any  
28 organized or unorganized borough, city, town, or other municipal  
29 division, whether incorporated or unincorporated; raising the

1 banks of streams, removing obstructions from them and widening,  
2 deepening, or straightening their channels; roads, streets, and  
3 alleys, and all other public uses for the benefit of an organized  
4 or unorganized borough, city, town, or other municipal division,  
5 whether incorporated or unincorporated, or its inhabitants, which  
6 may be authorized by the legislature;

7 (4) wharves, docks, piers, chutes, booms, ferries,  
8 bridges of all kinds, private roads, plant and turnpike roads,  
9 railroads, canals, ditches, flumes, aqueducts, and pipes for  
10 public transportation, supplying mines and farming neighborhoods  
11 with water, and draining and reclaiming lands, and for floating  
12 logs and lumber on streams not navigable, and sites for reservoirs  
13 necessary for collecting and storing water;

14 (5) roads, tunnels, ditches, flumes, pipes, and dumping  
15 places for working mines; also outlets, natural or otherwise, for  
16 the flow, deposit, or conduct of tailings or refuse matter from  
17 mines; also an occupancy in common by the owners or possessors of  
18 different mines of any place for the flow, deposit, or conduct of  
19 tailings or refuse matter from their several mines, and sites for  
20 reservoirs necessary for collecting and storing water;

21 (6) private roads leading from highways to residences,  
22 mines, or farms;

23 (7) telephone lines;

24 (8) telegraph lines;

25 (9) sewerage of an organized or unorganized borough,  
26 city, town, village, or other municipal division, whether incor-  
27 porated or unincorporated, or any subdivision of it, or of a  
28 settlement consisting of not less than 10 families, or of public  
29 buildings belonging to the state or to a college or university;

1 (10) tramway lines;  
2 (11) electric power lines;  
3 (12) for the location of pipelines for gathering,  
4 transmitting, transporting, storing or delivering natural or  
5 artificial gas or oil or any liquid or gaseous hydrocarbons, in-  
6 cluding, but not limited to, pumping stations, terminals, storage  
7 tanks or reservoirs and related installations.

8 b. The use of water for mining, power, and municipal pur-  
9 poses and the use of pole and tower lines for telephone and  
10 telegraph wires, for aerial trams and for the transmission of  
11 electric light and electric power, by whomever utilized, are each  
12 declared to be beneficial to the public and to be a public use  
13 within the provisions of this article. Rights-of-way across  
14 private property whenever they are necessary for the operation of  
15 the mine or other project in connection with which it is intended  
16 to be used may be condemned in the manner as for any other con-  
17 demnation. The right-of-way may extend only to a right-of-way  
18 along, upon, and across the surface of the lands to be condemned  
19 and to a strip of the land of sufficient width to permit the con-  
20 struction on the land of a ditch, flume, pipe line, canal, or  
21 other means of conveying water as is adequate for the purposes  
22 intended, for the setting of poles or the construction of towers  
23 upon which to string wires for telephone and telegraph lines and  
24 lines for the transmission of electric light or power for the  
25 operation of aerial trams and to permit maintaining the lines and  
26 keeping them in repair.

27 Sec. 13.02. CLASSIFICATION OF ESTATES AND LANDS SUBJECT TO  
28 BE TAKEN. The following is a classification of the estates and  
29 rights in lands subject to be taken for public use:

1 (1) a fee simple, when taken for public buildings or  
2 grounds, or for permanent buildings, for reservoirs and dams, and  
3 permanent flooding occasioned by them, or for an outlet for a  
4 flow, or a place for the deposit of debris or tailings of a mine,  
5 or when in the judgment of the Department of Public Works a fee  
6 simple is necessary for any of the purposes for which the depart-  
7 ment, on behalf of the state, is authorized by law to acquire  
8 real property by condemnation;

9 (2) an easement when taken for any other use;

10 (3) the right of entry upon an occupation of lands,  
11 and the right to take from the land earth, gravel, stones, trees,  
12 and timber as may be necessary for a public use.

13 Sec. 13.03. PRIVATE PROPERTY SUBJECT TO BE TAKEN. The pri-  
14 vate property which may be taken under this article includes:

15 (1) all real property belonging to any person;

16 (2) lands belonging to the state or to any organized  
17 or unorganized borough, city, town, village, or other municipal  
18 division, whether incorporated or unincorporated, not appropriated  
19 to a public use;

20 (3) property appropriated to public use; but the pro-  
21 perty shall not be taken unless for a more necessary purpose than  
22 that to which it has already been appropriated;

23 (4) franchises for a public utility, but those  
24 franchises shall not be taken unless for a more necessary public  
25 use;

26 (5) all rights-of-way for any of the purposes mentioned  
27 in Sec. 13.01, and any structures and improvements on the rights-  
28 of-way, and the lands held and used in connection with them shall  
29 be subject to be connected with, crossed, or intersected by any

1 other right-of-way or improvements or structures on them. They  
2 shall also be subject to a limited use, in common with the owner,  
3 when necessary; but the uses, crossings, intersections, and con-  
4 nections shall be made in the manner most compatible with the  
5 greatest public benefit and least private injury;

6 (6) all classes of private property not enumerated may  
7 be taken for public use when the taking is authorized by law.

8 Sec. 13.04. PREREQUISITES. Before property can be taken, it  
9 shall appear:

10 (1) that the use to which it is to be applied is a use  
11 authorized by law;

12 (2) that the taking is necessary to the use;

13 (3) if already appropriated to a public use, that the  
14 public use to which it is to be applied is a more necessary public  
15 use.

16 Sec. 13.05. ENTRY UPON LAND. In all cases where land is  
17 required for public use, the state, public entity, or person hav-  
18 ing the authority to condemn, or its agents in charge of the use,  
19 may enter upon the land and make examination, surveys, and maps  
20 and locate the boundaries; but it shall be located in the manner  
21 which will be most compatible with the greatest public good and  
22 the least private injury, and subject to the provisions of Sec.  
23 13.07. The entry shall constitute no cause of action in favor of  
24 the owners of the land, except for injuries resulting from negli-  
25 gence, wantonness, or malice.

26 Sec. 13.06. JURISDICTION. Eminent domain proceedings may be  
27 commenced in the superior court.

28 Sec. 13.07. POWERS OF COURT. The court has power:

29 (1) to regulate and determine the place and manner of

1 making the connections and crossings or of enjoying the common  
2 uses mentioned in paragraph (5), Sec. 13.03 of this article, and  
3 of the occupying of canyons, passes, and defiles for railroad  
4 purposes, as permitted and regulated by law.

5 (2) to limit the amount of property sought to be con-  
6 demned, if in its opinion the quantity sought to be condemned is  
7 not necessary;

8 (3) if the court determines that the property is to be  
9 taken for a public use, the court shall appoint a master to as-  
10 certain and determine the amount to be paid by the plaintiffs, to  
11 each owner or other person interested in the property as compen-  
12 sation and damages by reason of the appropriation of the property.

13 Sec. 13.08. HEARING. The master shall hear the allegations  
14 and evidence of persons interested and shall ascertain and assess  
15 the following:

16 (1) the value of the property sought to be condemned,  
17 and all improvements on it, pertaining to the realty and of each  
18 separate estate or interest in it; if it consists of different  
19 parcels, the value of each parcel and each estate or interest in  
20 each parcel shall be separately assessed;

21 (2) if the property sought to be condemned constitutes  
22 only a part of a larger parcel, the damages which will accrue to  
23 the portion not sought to be condemned by reason of its severance  
24 from the portion sought to be condemned, and the construction of  
25 the improvements in the manner proposed by the plaintiff;

26 (3) separately, how much the portion not sought to be  
27 condemned and each estate or interest in it will be benefited, if  
28 at all, by the construction of the improvements proposed by the  
29 plaintiff; and if the benefit is equal to the damages assessed

1 under paragraph (2) the owner of the parcel shall be allowed no  
2 damages except the value of the portion taken; but if the benefits  
3 are less than the damages so assessed, the former shall be deduct-  
4 ed from the latter, and the remainder shall be the only damages  
5 allowed in addition to the value;

6 (4) if the property sought to be condemned is for a  
7 railroad, the cost of good and sufficient fences along the line of  
8 the railroad, and the cost of cattle guards where fences may cross  
9 the line of the railroad;

10 (5) as far as practicable, compensation shall be  
11 assessed for each source of damage separately.

12 Sec. 13.09. RIGHT TO JURY TRIAL AS TO DAMAGES. The defend-  
13 ant may protest the master's award of damages and his valuation of  
14 the property in which case the defendant shall be entitled to trial  
15 by jury on the question of the amount of damages and the value of  
16 the property.

17 Sec. 13.10. COMPENSATION AND DAMAGES. For the purpose of  
18 assessing compensation and damages, the right to them accrues at  
19 the date of issuance of the summons, and its actual value at that  
20 date is the measure of compensation of the property to be actually  
21 taken, and the basis of damages to property not actually taken but  
22 injuriously affected in the cases where the damages are allowed.  
23 If an order be made letting the plaintiff into possession, as pro-  
24 vided in Sec. 13.15, the compensation and damages awarded shall  
25 draw lawful interest from the date of the order. No improvements  
26 put upon the property after the date of the service of summons  
27 shall be included in the assessment of compensation or damages.

28 Sec. 13.11. DEFECTIVE TITLE. If the title attempted to be  
29 acquired is found to be defective from any cause, the plaintiff

1 may again institute proceedings to acquire the same as provided  
2 in this article.

3       Sec. 13.12. TIME FOR PAYING COMPENSATION OR DAMAGES; BOND  
4 TO BUILD RAILROAD FENCES AND CATTLE GUARDS. The plaintiff shall,  
5 within 30 days after final judgment, pay the sum of money assess-  
6 ed. If the use is for railroad purposes, the plaintiff may, at  
7 the time of or before the payment, elect to build the fences and  
8 cattle guards. If he so elects, he shall execute to the defend-  
9 ant a bond, with one or more sureties to be approved by the court,  
10 in double the assessed cost of the same to build such fences and  
11 cattle guards within eight months from the time the railroad is  
12 built on the land taken. If the bond is given, the plaintiff  
13 need not pay the cost of the fences and cattle guards. In an  
14 action on the bond, the plaintiff may recover reasonable attorney  
15 fees.

16       Sec. 13.13. PAYMENT OR DEPOSIT AND EXECUTION. Payment may  
17 be made to the defendants entitled to payment, or the money may  
18 be deposited in court for the defendants and be distributed to  
19 those entitled to it. If the money is not so paid or deposited,  
20 the defendants may have execution as in civil cases. If the money  
21 cannot be obtained on execution, the court, upon a showing to that  
22 effect, shall set aside and annul the entire proceedings and re-  
23 store possession of the property to the defendant, if possession  
24 has been taken by the plaintiff.

25       Sec. 13.14. FINAL ORDER OF CONDEMNATION. When payments  
26 have been made and the bond given, if the plaintiff elects to give  
27 one as required by Sec. 13.12, the court shall make a final order  
28 of condemnation, which shall describe the property condemned and  
29 the purposes of the condemnation. A copy of the order shall be

1 filed in the office of the recording district where the land is  
2 located, at which time the property described in the order vests  
3 in the plaintiff for the purposes specified in the order.

4       Sec. 13.15. ORDER AUTHORIZING PLAINTIFF TO CONTINUE IN OR  
5 TAKE POSSESSION. Upon application of the plaintiff at any time  
6 after the master's report has been filed in the court, the court  
7 may make an order that upon payment into court of the amount of  
8 damages assessed in the report or by the jury, the plaintiff, if  
9 already in possession of the property sought to be condemned, may  
10 continue in possession, and if not in possession, the court may  
11 authorize the plaintiff to take possession of the property and  
12 use and possess it until the final conclusion of the proceedings,  
13 and that all actions and proceedings against the plaintiff on  
14 that account be stayed until that time. However, where an appeal  
15 is taken by the defendant, the court may also require the plain-  
16 tiff to give a bond or undertaking with sufficient sureties before  
17 continuing or taking possession. The bond or undertaking shall  
18 be approved by the court and shall be in the sum the court may  
19 direct, and conditioned to pay defendant any additional damages  
20 and costs given by the judgment over and above the amount assess-  
21 ed, and the damages which defendant sustains if the property is  
22 not taken for public uses. For the purposes of this section the  
23 amount assessed as damages in the report or by the jury shall be  
24 considered as just compensation for the property appropriated  
25 until reassessed or changed in further proceedings. However, the  
26 plaintiff, by payment into court of the amount assessed or by  
27 giving security as above provided, shall not be precluded from an  
28 appeal, but may appeal in the manner and with the effect as if no  
29 money had been deposited or security given. If the plaintiff

1 deposits the amount of the assessment and continues in possession  
2 or takes possession of the property and there is no dispute as to  
3 the ownership of the property, the defendant may at any time  
4 demand and receive from the court the money deposited, and the  
5 demand or receipt shall not bar or preclude him from his right of  
6 appeal. However, if the amount of the assessment is reduced on  
7 appeal by either party, the defendant who has received the amount  
8 of the assessment deposited shall be liable to the plaintiff for  
9 the difference between the amount received by him and the amount  
10 finally assessed, with legal interest from the time the defend-  
11 ant received the money deposited, and it may be recovered by  
12 action.

13       Sec. 13.16. ACQUISITION OF EASEMENTS; ADDITIONAL POWERS OF  
14 THE COURT TO REQUIRE SURRENDER OF POSSESSION TO PLAINTIFF. The  
15 right to take possession under this section is in addition to any  
16 other right to take possession provided in this article. In pro-  
17 ceedings for the acquisition of easements for the transmission  
18 and distribution of electric energy, communications, water, steam,  
19 and gas, the court may, upon motion, and after a hearing, fix the  
20 time during which and the terms upon which the parties in posses-  
21 sion are required to surrender possession to the plaintiff. If  
22 the court finds that urgent public necessity requires, it may  
23 grant the plaintiff possession at any time after the action has  
24 been commenced. Notice of the hearing shall be as provided in the  
25 Rules of Civil Procedure, except that, where service by publica-  
26 tion is required, notice may be given at any time following the  
27 date of the last publication by registered mail addressed to the  
28 defendant and to parties in possession at their last known  
29 addresses, as shown on the latest tax roll of the political sub-

1 division in which the premises are located or as indicated by  
2 other evidence which shall be satisfactory to the court.

3       Sec. 13.17. ACQUISITION OF EASEMENTS; DEPOSIT INTO COURT OF  
4 ESTIMATED COMPENSATION AND DAMAGES. The order given under the  
5 provisions of Sec. 13.16 requiring the parties in possession to  
6 surrender possession to the plaintiff shall require that the  
7 plaintiff deposit with the clerk of the court an amount of money  
8 determined by the court fairly to represent the estimated com-  
9 pensation and the estimated damages to the defendant and for the  
10 speedy occupation, including reasonable relocation costs, if  
11 required. In addition, the court shall include in its order a  
12 further requirement that the plaintiff execute and file with the  
13 clerk of the court a bond, approved as to form and as to suffi-  
14 ciency of the sureties by the court, in an amount equal to the  
15 amount of money required to be deposited, conditioned upon payment  
16 to the defendant of additional damages and costs found to be due  
17 to the defendant in the action. No costs or attorney fees shall  
18 be assessed against the defendant in any action brought under Sec.  
19 13.16.

20       Sec. 13.18. ACQUISITION OF EASEMENTS; WITHDRAWAL OF FUNDS  
21 BY PARTY IN INTEREST. The money deposited in the court, or a part  
22 of it, may be withdrawn by a party in interest in the manner pro-  
23 vided in Sec. 13.21, and the court shall have the power to direct  
24 the payment of delinquent taxes and special assessments out of the  
25 amount determined to be just compensation and to make orders with  
26 respect to encumbrances, liens, rents, insurance, and other charges  
27 as shall be just and equitable.

28       Sec. 13.19. DECLARATION OF TAKING BY STATE, FIRST CLASS CITY  
29 PUBLIC UTILITY DISTRICT OR SCHOOL DISTRICT. Where a proceeding is  
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1 instituted pursuant to this article by the state, public utility  
2 district, or school district, it may file a declaration of taking  
3 with the complaint or at any time after the filing of the com-  
4 plaint but before judgment. Where a proceeding is instituted  
5 pursuant to this article by a first class city in the exercise of  
6 eminent domain for street or highway, school, sewer, water,  
7 telephone, electric, other utility, and slum clearance purposes  
8 or use granted to cities of the first class, the governing body  
9 of the first class city may exercise the power through the filing  
10 of a declaration of taking with the complaint or at any time after  
11 the filing of the complaint but before judgment. The declaration  
12 of taking procedure may not be used with relation to the property  
13 of rural electrification or telephone cooperatives or nonprofit  
14 associations receiving financial assistance from the federal  
15 government under the Rural Electrification Act.

16 Sec. 13.20. CONTENTS OF DECLARATION OF TAKING. The declara-  
17 tion of taking shall contain:

18 (1) a statement of the authority under which the  
19 property or an interest in it is taken;

20 (2) a statement of the public use for which the pro-  
21 perty or an interest in it is taken;

22 (3) a description of the property sufficient for the  
23 identification of it;

24 (4) a statement of the estate or interest in the  
25 property;

26 (5) a map or plat showing the location of the property;

27 (6) a statement of the amount of money estimated by  
28 the plaintiff to be just compensation for the property or the  
29 interest in it.

1           Sec. 13.21. VESTING OF TITLE AND COMPENSATION. a. Upon the  
2 filing of the declaration of taking and the deposit with the  
3 court of the amount of the estimated compensation stated in the  
4 declaration, title to the estate as specified in the declaration  
5 vests in the plaintiff and that property is condemned and taken  
6 for the use of the plaintiff and the right to just compensation  
7 for it vests in the persons entitled to it. The compensation  
8 shall be ascertained and awarded in the proceeding and established  
9 by judgment. The judgment shall include interest at the rate of  
10 six per cent per year on the amount finally awarded which exceeds  
11 the amount paid into court under the declaration of taking. The  
12 interest runs from the date title vests to the date of payment of  
13 the judgment.

14           b. Upon motion of a party in interest and notice to all  
15 parties, the court may order that the money deposited, or any part  
16 of it, be paid immediately to the person or persons entitled to it  
17 for or on account of the just compensation to be awarded in the  
18 proceedings. If the compensation finally awarded exceeds the  
19 amount of money deposited, the deposit shall be offset against the  
20 award. If the compensation finally awarded is less than the  
21 amount of money deposited, the court shall enter judgment in favor  
22 of the plaintiff and against the proper parties for the amount of  
23 the excess.

24           Sec. 13.22. RIGHT OF ENTRY AND POSSESSION. a. Upon the  
25 filing of the declaration of taking and the deposit of the esti-  
26 mated compensation, the court may, upon motion, fix the time dur-  
27 ing which and the terms upon which the parties in possession are  
28 required to surrender possession to the petitioner. However, the  
29 right of entry shall not be granted the plaintiff until after the

1 running of the time for the defendant to file an objection to the  
2 declaration of taking. Where the party in possession withdraws  
3 any part of the award and remains in possession, the court may fix  
4 a reasonable rental for the premises to be paid by that party to  
5 the plaintiff during such possession.

6 b. The court may direct the payment of delinquent taxes and  
7 special assessments out of the amount determined to be just com-  
8 pensation, and make orders with respect to encumbrances, liens,  
9 rents, insurance, and other charges, as shall be just and equit-  
10 able.

11 c. The right to take possession and title in advance of  
12 final judgment where a declaration of taking is filed shall be in  
13 addition to any other right to take possession provided in this  
14 article.

15 Sec. 13.23. EFFECT OF APPEAL. a. No appeal or any bond or  
16 undertaking given operates to prevent or delay the vesting of  
17 title to real property or the right to possession of it.

18 b. The plaintiff may not be divested of any title acquired  
19 except where the court finds that the property was not taken for  
20 a public use. In the event of that finding, the court shall enter  
21 the judgment necessary (1) to compensate the persons entitled to  
22 it for the period during which the property was in the possession  
23 of the plaintiff and (2) to recover for the plaintiff any award  
24 paid to any person.

25 Article XIV. Escheat

26 Sec. 14.01. PROPERTY SUBJECT TO ESCHEAT. When a person dies  
27 intestate, without heirs, leaving real or personal property in the  
28 state, or when no claim of ownership has been made to bank  
29 deposits, cash or personal property for more than seven years,

1 the property escheats to and becomes the property of the state.

2 Sec. 14.02. ENFORCEMENT OF RIGHTS BY STATE. The state may  
3 maintain an action to recover the possession of escheated proper-  
4 ty, or for the enforcement of its rights to the property.

5 Sec. 14.03. TRANSMITTAL OF PERSONAL PROPERTY TO STATE.

6 Whenever the administrator of any estate finds that his intestate  
7 left no heirs, or after due search fails to find that his inte-  
8 state left heirs, he shall certify these facts to the superior  
9 court. When the administrator's final account is settled, the  
10 court shall enter a decree adjudging that the balance of the  
11 estate has escheated to and become the property of the state. The  
12 administrator shall transmit to the commissioner of revenue a  
13 certified copy of the decree with the money or personal property  
14 which has escheated.

15 Sec. 14.04. ACTION BY ATTORNEY GENERAL. When the attorney  
16 general is informed or has reason to believe that any real or  
17 personal property has escheated to the state, he shall bring an  
18 action in the superior court to establish whether or not the  
19 property has escheated to the state.

20 Sec. 14.05. CLAIM TO ESCHEATED PROPERTY. Within seven years  
21 after the judgment, a person not a party to the escheat proceeding  
22 may bring an action in the superior court to prove his claim to  
23 the property. If the plaintiff establishes his claim and that he  
24 had no knowledge of the prior escheat proceeding, the court shall  
25 award the property to the plaintiff. If it is determined that the  
26 plaintiff is entitled to the property or the proceeds from the  
27 sale of the property, the commissioner of revenue shall deliver  
28 the property or the proceeds to the plaintiff upon payment of the  
29 costs of the escheat proceedings, the cost of sale, and other

1 expenses connected with the conversion of the property to cash.  
2 Any rents, profits, interest or dividends which accrue to the  
3 state during its possession of the property are the property of  
4 the state and may not be recovered. The time limitation of seven  
5 years does not apply to any minor or person of unsound mind, but  
6 such person may bring an action to prove his claim only within  
7 one year after his disability ceases.

8 Sec. 14.06. SALE OF PROPERTY BY STATE. a. The commissioner  
9 of revenue may sell personal property which has escheated to the  
10 state as he considers advantageous and shall execute the proper  
11 conveyance. When the value of the property exceeds \$50.00, the  
12 sale shall be at public auction to the highest and best bidder  
13 after public notice of the time and place of the auction has been  
14 given by posting notices in three public places in the political  
15 subdivision where the property is to be sold and by publication  
16 once in a newspaper of general circulation nearest the place of  
17 sale 10 days before the auction.

18 b. The commissioner of revenue may sell real property which  
19 has escheated to the state with the approval of the governor and  
20 the governor shall sign the conveyance on behalf of the state.  
21 Sale of real property shall be at public auction to the highest  
22 and best bidder after public notice of the time and place of the  
23 auction has been given by publication once a week for four weeks  
24 in a newspaper of general circulation nearest the property to be  
25 sold.

26 Sec. 14.07. CLAIMS TO ESCHEATED PROPERTY. Whenever proper-  
27 ty, or the proceeds from the sale of the property, which has  
28 escheated to the state amounts to \$1,000.00 or less and a rightful  
29 heir or owner is discovered and makes a written claim to the

1 property, supported by convincing proof of his heirship or owner-  
2 ship, the commissioner of revenue, with approval of the attorney  
3 general, shall either return the property, if still unliquidated,  
4 or issue a voucher for the amount of the proceeds, or for the  
5 amount of money which has escheated, in favor of the heir or  
6 owner.

7 Sec. 14.08. BANKS AND FINANCIAL INSTITUTIONS; DUTY TO REPORT  
8 ESCHEATED PROPERTY. Every bank, banker, or financial institution  
9 having custody of a fund or other property to which no owner is  
10 known to them, or the owner of which has not been heard from by  
11 them for more than seven years, shall inform the attorney general  
12 of that fact.

13 Sec. 14.09. ESCHEAT OF MONEY OR PROPERTY OF DEFUNCT ORGANI-  
14 ZATIONS OR CORPORATIONS. Whenever any organization or corporation  
15 becomes defunct and leaves money or property belonging to it, and  
16 no person institutes any proceeding to have the money or property  
17 distributed within four years after the organization becomes  
18 defunct, the money or property escheats to the state and shall be  
19 delivered to the commissioner of revenue. If the person in  
20 possession of the money or property refuses to deliver it to the  
21 state, the attorney general shall bring an action to recover the  
22 money or property for the state.

23 Sec. 14.10. RECOVERY BY CLAIMANT OF MONEY OR PROPERTY OF  
24 DEFUNCT ORGANIZATIONS OR CORPORATIONS. A person having a claim  
25 or interest in money or property of a defunct organization or  
26 corporation may bring an action for recovery of escheated money  
27 or property only within seven years after the corporation or  
28 organization becomes defunct.

29 Article XV. Execution

1           Sec. 15.01. JUDGMENTS ENFORCEABLE BY EXECUTION. The party  
2 in whose favor a judgment is given which requires the payment of  
3 money, the delivery of real or personal property, or either of  
4 them, may have a writ of execution issued for its enforcement.

5           Sec. 15.02. ISSUANCE OF EXECUTION AFTER FIVE YEARS. When a  
6 period of five years has elapsed after the entry of judgment and  
7 without an execution being issued on the judgment, no execution  
8 may issue except by order of the court in which judgment is  
9 entered. The court shall grant the motion if the court determines  
10 that there are just and sufficient reasons for the failure to  
11 obtain the writ of execution within five years after the entry of  
12 judgment.

13           Sec. 15.03. SUBSTANCE OF WRIT. Writs of execution may be  
14 against the property of the judgment debtor, another against his  
15 person, and a third for the delivery of the possession of real or  
16 personal property, including damages for withholding the property.  
17 A writ of execution shall require the officer or person to whom  
18 it is directed to proceed substantially as follows:

19           (1) If the writ is against the property of the judgment  
20 debtor and the judgment directs particular property to be sold, it  
21 shall require the officer or person to sell the particular proper-  
22 ty and apply the proceeds as directed by the judgment. Otherwise,  
23 it shall require the officer or person to satisfy the judgment,  
24 with interest, out of the personal property of the debtor, and if  
25 sufficient personal property cannot be found, then out of the real  
26 property belonging to the debtor on the day when the judgment  
27 became a lien or at any time after that day.

28           (2) If the writ is against real or personal property in  
29 the hands of the judgment debtor's personal representatives, heirs,

1 devisees, legatees, tenants or trustees, it shall require the  
2 officer or person to satisfy the judgment, with interest, out of  
3 that property.

4 (3) If the writ is against the person of an absconding  
5 judgment debtor, it shall require the officer or person to arrest  
6 the debtor and commit him to jail until he pays the judgment, with  
7 interest, or is discharged according to law. If the writ is  
8 against the person of any judgment debtor and the application for  
9 the writ is made under oath, upon probable cause and describing  
10 the things to be seized as in a warrant, the officer may search  
11 and seize valuables from that debtor.

12 (4) If the writ is for the delivery of the possession  
13 of real or personal property, it shall require the officer or  
14 person to deliver the possession of the property, describing it,  
15 to the party entitled to it, and may at the same time require the  
16 officer or person to satisfy any costs, charges, damages, rents,  
17 or profits recovered by that judgment out of the personal property  
18 of the person against whom it was rendered, and the value of the  
19 property for which the judgment was recovered to be specified in  
20 the writ, if a delivery cannot be had; and if sufficient personal  
21 property cannot be found, then out of the real property as pro-  
22 vided in paragraph (1) of this section.

23 Sec. 15.04. EXECUTION AGAINST PERSON. Execution against the  
24 person of the judgment debtor may issue after the return of the  
25 execution against his property unsatisfied in whole or in part if  
26 it appears that the action is one in which the defendant might be  
27 provisionally arrested as provided in Sec. 9.02. The execution  
28 against the person may be applied for, allowed, and the defendant  
29 discharged, in the manner provided in Article IX of this Code, but

1 the undertaking shall not be for an amount exceeding the judgment.

2 Sec. 15.05. IMPRISONMENT ON EXECUTION. A person arrested on  
3 execution shall be imprisoned in jail and kept at his own expense  
4 until satisfaction of the execution or his legal discharge.

5 Sec. 15.06. EXECUTION AFTER DEATH OF JUDGMENT DEBTOR. If  
6 the judgment debtor dies after judgment, execution may be issued  
7 on the judgment in the manner and with the effect as if he were  
8 still living, except that no action may be taken within six months  
9 from the granting of letters testamentary or of administration  
10 upon the estate of the deceased without leave of the court having  
11 jurisdiction over the probate of the estate.

12 Sec. 15.07. PROPERTY LIABLE. All goods, chattels, monies or  
13 other property, both real and personal, or any interest in the  
14 property, of the judgment debtor not exempt by law, and all  
15 property and rights of property seized and held under attachment  
16 in the action are liable to execution.

17 Sec. 15.08. EXEMPTIONS. The following property is exempt  
18 from execution, except as otherwise specifically provided when  
19 selected and reserved by the judgment debtor or his agent at the  
20 time of the levy, or as soon after levy and before sale as the  
21 existence of the levy becomes known to him:

22 (1) the earnings of the judgment debtor received for  
23 his personal services rendered at any time within 30 days immedi-  
24 ately preceding the levy, but not exceeding \$350.00 if he is the  
25 head of a family, and the amount of \$200.00 if he is a single man  
26 and when it appears by the debtor's affidavit or otherwise that  
27 the earnings are necessary for his use or for the use of his  
28 family which is supported in whole or in part by his labor;

29 (2) books, pictures, and musical instruments belonging

1 to the judgment debtor not to exceed \$300.00 in value;

2 (3) necessary wearing apparel belonging to the judgment  
3 debtor for the use of himself or his family; watches or jewelry  
4 not to exceed \$200.00 in value;

5 (4) the tools, implements, apparatus, motor vehicles,  
6 books, office furniture, business files, animals, laboratory, and  
7 any other article necessary to enable any person to carry on the  
8 trade, occupation, or profession by which that person habitually  
9 earns his living to the value of \$1,800.00, including sufficient  
10 quantity of food to support the animals, if any, for six months;

11 (5) the following property belonging to the judgment  
12 debtor and in actual use or kept for use by and for his family:  
13 animals, household goods, furniture, and utensils to the value of  
14 \$1,200.00, including food sufficient to support the animals, if  
15 any, for six months, and provisions actually provided for family  
16 use and necessary for the support of that person and family for  
17 six months;

18 (6) all property of a public or municipal corporation;

19 (7) no article of property mentioned in this section  
20 is exempt from execution issued on a judgment recovered for its  
21 price, and in the event the article of property has been sold or  
22 exchanged for other property, the proceeds of the sale or the  
23 article for which it was exchanged is not exempt from execution.

24 Sec. 15.09. HOMESTEAD EXEMPTION. The homestead of any  
25 family is, or the proceeds of the homestead are, exempt from  
26 judicial sale for the satisfaction of any liability contracted or  
27 judgment on debt except as provided in this section. The home-  
28 stead consists of the actual abode of and owned by the family or  
29 some member of the family. It shall not exceed \$8,000.00 in

1 value, and not exceed 160 acres in extent if located outside a  
2 town or city laid off into blocks or lots, or not exceed one-  
3 fourth of one acre if located in any such town or city. This  
4 section does not apply to decrees for the foreclosure of any  
5 mortgage or deed of trust properly executed. If the owners of a  
6 homestead are married, it shall be executed by husband and wife.  
7 When any officer levies upon a homestead, the owner or the wife,  
8 husband, agent or attorney of such owner may notify the officer  
9 that he claims the premises as his homestead, describing it by  
10 metes and bounds, lot or block, or legal subdivision. The offi-  
11 cer shall notify the creditor of the claim, and if the homestead  
12 exceeds the maximum in this section, and he deems it of greater  
13 value than \$8,000.00, then he may apply to the court for the  
14 appointment of three disinterested persons to appraise the home-  
15 stead, commencing with the 20 acres of the lot upon which the  
16 dwelling is located, appraising each lot or 20 acres separately;  
17 and if the homestead exceeds \$8,000.00, then the officer shall  
18 proceed to sell all in excess of \$8,000.00 by lots or smallest  
19 legal subdivisions offering them in the order directed by the  
20 judgment debtor, if he chooses to direct; otherwise he shall sell  
21 them so as to leave the homestead as compact as possible. The  
22 homestead is exempt from sale or any legal process after the  
23 death of the person entitled to the homestead for the collection  
24 of any debts for which it could not have been sold during his  
25 lifetime.

26       Sec. 15.10. EXECUTION AGAINST PROPERTY. The person to whom  
27 the writ is directed shall execute the writ against property of  
28 the judgment debtor until the judgment is satisfied.

29       Sec. 15.11. EXECUTION PROCEDURE. All property shall be

1 levied upon or released from levy in the manner that similar  
2 property is attached or released from attachment, and the proceed-  
3 ings against garnishee and the liability of the garnishee are the  
4 same. Until a levy, property is not affected by the execution.  
5 Any excess in proceeds over the judgment and costs shall be  
6 returned to the judgment debtor.

7       Sec. 15.12. RETENTION OF PERSONAL PROPERTY BY JUDGMENT  
8 DEBTOR. The judgment debtor may retain the personal property  
9 levied upon or any of the property which is in his possession  
10 until the day of sale upon executing a written undertaking with  
11 sufficient surety in double the value of the property to the  
12 effect that the property will be delivered to the person levying  
13 the execution at the time and place of sale.

14       Sec. 15.13. THIRD PARTY CLAIMS. If property levied upon is  
15 claimed by a third person as his property by an affidavit of his  
16 title to the property, or right to the possession of the property  
17 and the ground of the title or right, stating the value of the  
18 property, and delivered to the person making the levy, that person  
19 shall release the property. However, the plaintiff, on demand of  
20 the person, may give the person an undertaking executed by two  
21 sufficient sureties in a sum equal to double the value of the  
22 property levied upon. The undertaking shall be in favor of and  
23 shall indemnify the third person against loss, liability, damages  
24 and costs, by reason of the taking or sale of the property by the  
25 person.

26       Sec. 15.14. NOTICE OF SALE ON EXECUTION. Before the sale  
27 of property on execution, notice of the sale shall be given as  
28 follows:

29               (1) Notice of the sale of personal property is given

1 by posting a written or printed notice of the time and place of  
2 sale in three public places within five miles of the place where  
3 the sale is to be held, not less than 10 days prior to the day of  
4 sale. One of the notices shall be posted at the post office  
5 nearest to the place where the sale is to take place.

6 (2) Notice of the sale of real property is given by  
7 posting a similar notice particularly describing the property not  
8 less than four weeks prior to the day of sale in three public  
9 places, as provided in paragraph (1) of this section, and publish-  
10 ing a copy of the notice four times, once a week for four  
11 successive weeks in a newspaper of general circulation published  
12 nearest to the place of sale.

13 Sec. 15.15. SALE. All sales of property upon execution  
14 shall be made at auction between nine o'clock in the morning and  
15 four o'clock in the afternoon. After sufficient property has  
16 been sold to satisfy the execution, no more may be sold. Neither  
17 the officer holding the execution nor his deputy may become a  
18 purchaser or be interested in any purchase at the sale. When the  
19 sale is of personal property capable of manual delivery, it shall  
20 be within view of those who attend the sale, unless the court  
21 directs the sale to be at some other place. The property shall  
22 be sold in parcels which are likely to bring the highest price.  
23 When the sale is of real property consisting of several known lots  
24 or parcels, they shall be sold separately or otherwise, as is  
25 likely to bring the highest price. When a portion of real proper-  
26 ty is claimed by a third person, he may require it to be sold  
27 separately.

28 Sec. 15.16. POSTPONEMENT OF SALE. a. If, at the time  
29 appointed for the sale, the person conducting it considers it to

1 the advantage of all concerned to postpone the sale for want of  
2 purchasers, or other sufficient cause, he may postpone the sale  
3 from time to time, but each postponement may not exceed one week.  
4 Notice of every postponement shall be made by public proclamation.  
5 Whenever a request in writing is made by the judgment creditor  
6 for a postponement of the sale to a later date and hour and is  
7 given to the person conducting the sale, he shall by public  
8 declaration postpone the sale to the date and hour so fixed.

9 b. If for any reason the sale cannot be held at the time  
10 appointed, or within 30 days from the original sale date in the  
11 case of real property, the officer who is to conduct the sale  
12 shall notify the parties or their attorneys and designate a future  
13 day for the sale and give notice in the manner provided in Sec.  
14 15.14.

15 Sec. 15.17. BILL OF SALE FOR PERSONAL PROPERTY. When the  
16 purchaser of any personal property capable of manual delivery,  
17 and not in the possession of a third person, association, or cor-  
18 poration, shall pay the purchase money, the peace officer shall  
19 deliver to him the property, and if desired shall give him a bill  
20 of sale containing an acknowledgment of the payment. In all other  
21 sales of personal property the peace officer shall give the  
22 purchaser a bill of sale with the like acknowledgment.

23 Sec. 15.18. CONFIRMATION OF SALE OR RESALE. a. Where real  
24 property executed upon has been sold, the judgment creditor may,  
25 upon motion, apply for an order confirming the sale. The judgment  
26 debtor may object to the confirmation of the sale on the grounds  
27 that there were substantial irregularities in the proceedings of  
28 sale which caused probable loss or injury to the judgment debtor.

29 b. If the court finds that there were substantial

1 irregularities in the proceedings concerning the sale, to the  
2 probable loss or injury of the party objecting, it shall deny the  
3 motion and direct that the property be resold, in whole or in  
4 part, as upon an execution.

5 c. Upon a resale the bid of the purchaser at the former  
6 sale shall be considered to be renewed and continued in force, and  
7 no bid may be taken except for a greater amount. If the property  
8 sells to any person other than the former purchaser, he shall be  
9 repaid his bid out of the proceeds of the resale.

10 d. An order confirming a sale is a conclusive determination  
11 of the regularity of the proceedings concerning the sale, as to  
12 all persons, in any other action or proceeding.

13 Sec. 15.19. EVICTION OF PURCHASER. If the purchaser of  
14 real property sold on execution, or his successor in interest, is  
15 evicted from the property because of irregularities in the pro-  
16 ceedings concerning the sale or the reversal or discharge of the  
17 judgment, he may recover the price paid with interest, costs, and  
18 disbursements from the judgment creditor.

19 Sec. 15.20. CONTRIBUTION AMONG JOINT JUDGMENT DEBTORS. When  
20 property liable to an execution against several persons is sold  
21 and more than a due proportion of the judgment is satisfied out  
22 of the proceeds of the sale of the property of one of them or one  
23 of them pays more than his proportion without a sale, he may com-  
24 pel contributions from the others. When a judgment is against  
25 several, and is upon an obligation of one of them as security for  
26 another and the surety pays the amount or a part of it, either by  
27 sale of his property or before sale, he may compel repayment from  
28 the principal. In that case the person so paying or contributing  
29 is entitled to the benefit of the judgment to enforce contribution

1 or repayment if he files notice of his payment and claim to con-  
2 tribution or repayment with the court where the judgment was  
3 rendered, within 30 days after his payment.

4 Sec. 15.21. ABSOLUTE SALES AND RIGHT OF REDEMPTION. Sales  
5 of real property, when the estate is less than a leasehold of two  
6 years unexpired term, are absolute. In all other cases the real  
7 property or interest in real property is subject to redemption.  
8 The person conducting the sale shall give to the purchaser a  
9 certificate of the sale which indicates the date of the judgment  
10 under which the sale was made, and contains:

- 11 (1) a particular description of the real property sold;
- 12 (2) the price bid for each distinct lot or parcel;
- 13 (3) the whole price paid; and
- 14 (4) whether the property is subject to redemption.

15 Sec. 15.22. REDEMPTION. Property sold subject to redemp-  
16 tion, or any part separately sold, may be redeemed by the follow-  
17 ing persons or their successors in interest:

- 18 (1) the judgment debtor; and
- 19 (2) a creditor having a lien by judgment or mortgage on  
20 the property sold or on some part of it subsequent in time to that  
21 on which the property was sold. A lien creditor, after having re-  
22 deemed the property, is a redemptioner.

23 Sec. 15.23. REDEMPTION BY LIEN CREDITOR FROM PURCHASER. A  
24 lien creditor may redeem the property at any time within 60 days  
25 after the date of the order confirming the sale on paying the  
26 amount of the purchase money, with interest at the rate of eight  
27 per cent per annum from the date of the sale, together with the  
28 amount of any taxes which the purchaser may have paid. If the  
29 purchaser is also a creditor having a lien prior to that of the

1 redemptioner, he shall also pay the amount of that lien with  
2 interest. When unpatented mining claims are redeemed, taxes in-  
3 clude the annual assessment work required by law to be performed.

4 Sec. 15.24. SUBSEQUENT REDEMPTIONS. The property may be  
5 again, and as often as any lien creditor or redemptioner is dis-  
6 posed, redeemed from the previous redemptioner, within 60 days  
7 after the last redemption, on paying the sum paid on the last  
8 redemption with interest at eight per cent a year from the date  
9 of the last redemption, together with any taxes which the last  
10 redemptioner may have paid and the amount of any liens held by the  
11 last redemptioner previous to his own.

12 Sec. 15.25. REDEMPTION BY JUDGMENT DEBTOR OR SUCCESSOR. The  
13 judgment debtor or his successor in interest may redeem the  
14 property before the confirmation of sale on paying the amount of  
15 the purchase money, with interest at the rate of eight per cent  
16 from the date of sale, together with the amount of any taxes, and  
17 in the case of unpatented mining claims, the annual assessment  
18 work required to be performed by law which the purchaser may have  
19 paid after the purchase. If the judgment debtor does not redeem  
20 before the confirmation of the sale, he may only redeem within 12  
21 months from the order of confirmation.

22 Sec. 15.26. CONVEYANCE OF PROPERTY. If no redemption is  
23 made within the time prescribed, the purchaser or last redemption-  
24 er is entitled to a conveyance. If the judgment debtor redeems,  
25 the effect of the sale is terminated and he is restored to his  
26 estate.

27 Sec. 15.27. PROCEDURE FOR REDEMPTION. a. Redemption is  
28 made by paying the sum required to the peace officer. Upon a re-  
29 demption, the peace officer shall give the person redeeming a

1 certificate of redemption containing the sum paid on redemption,  
2 from whom redeemed, and the date of such redemption, and he shall  
3 immediately give notice of the redemption to the party from whom  
4 redeemed.

5 b. A judgment debtor or redemptioner shall submit to the  
6 peace officer:

7 (1) a copy of the judgment under which he claims the  
8 right to redeem, certified by the clerk of the court; or, if he  
9 redeems upon a mortgage, the certificate of the record of the  
10 mortgage;

11 (2) a copy of any assignment necessary to establish  
12 his claim, verified by the affidavit of himself or agent;

13 (3) an affidavit by himself or agent showing the amount  
14 then actually due on the judgment or mortgage.

15 Sec. 15.28. PRIORITY OF REDEMPTION. If more than one person  
16 applies to the peace officer at the same time to redeem, the person  
17 having the prior lien is entitled to redeem first.

18 Sec. 15.29. REDEMPTION; PAYMENT OF MONEY BY PEACE OFFICER;  
19 REFUSAL TO PERMIT REDEMPTION. The peace officer shall immediately  
20 pay the money over to the person from whom the property is re-  
21 deemed. A person's right to redeem shall not be prejudiced by the  
22 refusal of the peace officer to allow the redemption.

23 Sec. 15.30. WASTE. Until the expiration of the time allowed  
24 for redemption, the court may restrain the commission of waste on  
25 the property by order granted with or without notice on the appli-  
26 cation of the purchaser or judgment creditor. It is not waste for  
27 the person in possession of the property at the time of sale, or  
28 entitled to possession afterwards, to continue to use it during  
29 the period allowed for redemption in the same manner in which it

1 was previously used, or to use it in the ordinary course of  
2 husbandry, or to make the necessary repairs to buildings or  
3 fences, or to use wood or timber on the property for the repairs  
4 or for fuel for his family while he occupies the property.

5       Sec. 15.31. RIGHTS OF PURCHASER AND REDEMPTIONER. The pur-  
6 chaser, from the time of sale until a resale or a redemption, or  
7 a redemptioner, from the time of his redemption until another  
8 redemption, is entitled to the possession of the property purchas-  
9 ed or redeemed. Where the property is in the possession of a  
10 tenant, the purchaser or redemptioner is entitled to receive the  
11 rents of the property, or the value of the use and occupation of  
12 the property.

13       Sec. 15.32. ARREST OF JUDGMENT DEBTOR AND UNDERTAKING. The  
14 court may order a peace officer to arrest the judgment debtor and  
15 bring him before the court upon satisfactory proof that he is  
16 leaving the state with intent to defraud his creditors or abscond-  
17 ing. Upon being brought before the court he may be ordered to  
18 enter into an undertaking with one or more sufficient sureties  
19 that he will appear before the court when directed, and that he  
20 will not, during the pendency of the proceedings, dispose of any  
21 portion of his property not exempt from execution. In default of  
22 entering into the undertaking, he may be committed to jail.

23       Sec. 15.33. SATISFACTION OF JUDGMENT WHEN JUDGMENT DEBTOR  
24 IS CREDITOR OF STATE OR POLITICAL SUBDIVISION. Any salary, wages,  
25 credits, or other personal property in the possession or under the  
26 control of the state, or any organized or unorganized borough,  
27 city, incorporated town, school district, or other political sub-  
28 division, or any board, institution, commission, or officer of the  
29 state, belonging or owed to any person, is subject to attachment

1 and execution in the manner and with the effect as property in  
2 the possession of private persons. No clerk or officer of any  
3 court is required to answer as to any monies or property in his  
4 possession in the custody of the law.

5 Article XVI. Actions on Official Bonds

6 and for Fines and Forfeitures

7 Sec. 16.01. SUITS ON UNDERTAKINGS. a. The official under-  
8 taking or other security of a public officer to the state, any  
9 borough, city, town, or other municipal or public corporation of  
10 like character therein, is considered a security to the state or  
11 to the borough, city, town, or other municipal or public corpora-  
12 tion, as the case may be, and also to all persons severally for  
13 the official delinquency against which it is intended to provide.

14 b. When a public officer, by official misconduct or neglect  
15 of duty forfeits his official undertaking or other security, or  
16 renders his sureties liable upon the undertaking or other secur-  
17 ity, a person injured by the misconduct or neglect, or who is by  
18 law entitled to the benefit of the security may maintain an action  
19 thereon in his own name against the officer and his sureties to  
20 recover the amount to which he may be entitled.

21 Sec. 16.02. SUBSEQUENT ACTIONS ON SAME UNDERTAKING. A  
22 judgment in favor of a party for one delinquency shall not pre-  
23 clude the same or another party from maintaining another action  
24 on the same undertaking, or other security, for another delinquen-  
25 cy.

26 Sec. 16.03. AMOUNT OF JUDGMENT. In an action upon an  
27 official undertaking or other security, if judgment has already  
28 been recovered against the surety therein, other than by confes-  
29 sion, equal in the aggregate to the penalty or any part of the

1 penalty of the undertaking or other security, and if the recovery  
2 be established on the trial, judgment shall not be given against  
3 the surety for an amount exceeding the penalty or such portion of  
4 the penalty as is not already recovered against him.

5 Sec. 16.04. ACTIONS FOR FINES OR FORFEITURES. Fines and  
6 forfeitures may be recovered by an action in the name of the  
7 state or the officer or person to whom they were given by law, or  
8 in the name of the state, officer, or person who is authorized to  
9 prosecute for them.

10 Sec. 16.05. AMOUNT WHICH MAY BE CLAIMED AND RECOVERED.  
11 When an action is commenced for a penalty which by law is not to  
12 exceed a certain amount, the action may be commenced for that  
13 amount, and if judgment is given for the plaintiff, it may be for  
14 that amount or less, in the discretion of the court, in propor-  
15 tion to the offense.

16 Sec. 16.06. COLLUSIVE JUDGMENT NOT A BAR TO ANOTHER ACTION.  
17 Recovery of a judgment for a penalty or forfeiture obtained by  
18 collusion between the plaintiff and defendant, with intent to  
19 save the defendant wholly or partially from the consequences con-  
20 templated by law, in cases where penalty or forfeiture is given  
21 wholly or partly to the person who prosecutes, does not bar the  
22 recovery of a penalty or forfeiture by another person in a separ-  
23 ate action.

24 Article XVII. Forcible Entry and Detainer

25 Sec. 17.01. PROHIBITION OF USE OF FORCE FOR ENTRY ON REALTY.  
26 No person may enter upon any land, tenement, or other real  
27 property except in cases where entry is given by law. In those  
28 cases the entry shall not be made with force but only in a peace-  
29 able manner.

1           Sec. 17.02. ACTION FOR FORCIBLE ENTRY OR DETENTION. a.  
2 When a forcible entry is made upon any premises, or when an entry  
3 is made in a peaceable manner and the possession is held by force,  
4 the person entitled to the premises may maintain an action to  
5 recover the possession.

6           b. The plaintiff may unite a cause of action for arrears of  
7 rent on the property in question or for damage to the premises and  
8 all the causes are considered to arise out of the same transaction.

9           Sec. 17.03. UNDERTAKING ON APPEAL. If judgment is rendered  
10 against the defendant for the restitution of the real property  
11 described in the complaint or any part of it, no appeal may be  
12 taken by the defendant from the judgment until he gives, in addi-  
13 tion to any undertaking required upon appeal, an undertaking to  
14 the adverse party, with two sureties. The sureties shall justify,  
15 in the manner as bail upon arrest, for the payment to the plain-  
16 tiff of twice the rental value of the real property of which  
17 restitution shall be adjudged from the rendition of the judgment  
18 until final judgment in the action, if the judgment is affirmed  
19 upon appeal.

20           Sec. 17.04. UNLAWFUL HOLDING BY FORCE. The following are  
21 cases of unlawful holding by force within the meaning of this  
22 article:

23           (1) when the tenant or person in possession of any  
24 premises fails or refuses to pay any rent due on the lease or  
25 agreement under which he holds, or deliver up the possession of  
26 the premises for 10 days after demand made in writing for the  
27 possession;

28           (2) when, after a notice to quit as provided in this  
29 article, a person continues in the possession of the premises at

1 the expiration of the time limited in the lease or agreement under  
2 which that person holds, or contrary to a condition or covenant  
3 in the lease or agreement, or without a written lease or agree-  
4 ment;

5 (3) when, after a notice to terminate the tenancy as  
6 provided in this code with reference to termination of estates at  
7 will or by sufferance, a person continues in possession of the  
8 premises after expiration of the time for determining the  
9 tenancy.

10 Sec. 17.05. REQUISITES OF NOTICE TO QUIT. A notice to quit  
11 shall be in writing and shall be served upon the tenant or person  
12 in possession by being delivered to him or left at the premises,  
13 in case of his absence from the premises, or the notice may be  
14 sent by registered or certified mail in which case an additional  
15 three days shall be added to the 10 days.

16 Sec. 17.06. PERIOD BETWEEN SERVICE OF NOTICE AND ACTION  
17 BROUGHT. An action for the recovery of the possession of the  
18 premises may be maintained in the cases specified in paragraph (2)  
19 of Sec. 17.04 when the notice to quit has been served upon the  
20 tenant or person in possession for the period of 10 days before  
21 the commencement of the action, unless the leasing or occupation  
22 is for the purpose of farming or agriculture, in which case the  
23 notice shall be served 90 days before commencement of the action.

24 Sec. 17.07. SUMMONS; CONTINUANCE. Summons in actions for  
25 forcible entry and detainer shall be served not less than two nor  
26 more than four days before the date of trial. No continuance  
27 shall be granted for a longer period than two days, unless the  
28 defendant applying therefor shall give an undertaking to the  
29 adverse party, with sureties approved by the court conditioned to

1 the payment of the rent that may accrue if judgment is rendered  
2 against the defendant.

3 Sec. 17.08. ACTION AGAINST PERSON PAYING RENT IN ADVANCE.

4 The service of a notice to quit upon a tenant or person in posses-  
5 sion does not authorize an action to be maintained against him  
6 for the possession of the premises until the expiration of any  
7 period for which that tenant or person may have paid rent for the  
8 premises in advance. To authorize an action against a tenant or  
9 person in possession who has paid rent in advance, notice must be  
10 given at least 10 days prior to the date the rent is due again in  
11 case of a month to month tenancy or at least three days before in  
12 the case of a week to week tenancy.

13 Sec. 17.09. AGRICULTURAL TENANT. When the leasing or occu-  
14 pation is for the purpose of farming or agriculture, the tenant  
15 or person in possession shall, after the termination of the lease  
16 or occupancy, have free access to the premises to cultivate and  
17 harvest or gather any crop or produce of the soil planted or sown  
18 by him before the service of the notice to quit.

19 Sec. 17.10. INQUIRY INTO MERITS OF TITLE. In an action to  
20 recover the possession on any land, tenement, or other real  
21 property, where the entry is forcible or when the possession is  
22 unlawfully held by force, there shall be no inquiry into the  
23 merits of the title. Three years' quiet possession of the  
24 premises immediately preceding the commencement of the action by  
25 the party in possession, or those under whom he holds, may be  
26 pleaded in bar thereof, unless the estate of the party in the  
27 premises is ended.

28 Sec. 17.11. ACTIONS FOR POSSESSION OF REALTY. In an action  
29 to recover the possession of real property, as provided in Sec.

1 25.01, notice to quit, when necessary, may be given as prescribed  
2 in this article, and nothing in this article shall be construed  
3 so as to prevent such an action being maintained for the recovery  
4 of the possession.

5 Article XVIII. Foreclosure of Liens

6 on Real Property

7 Sec. 18.01. JUDGMENT ON FORECLOSURE OF LIEN. A person  
8 having a lien upon real property, other than that of a judgment,  
9 whether created by mortgage or otherwise, to secure a debt or  
10 other obligation may bring an action to foreclose the lien. In  
11 the action the court may direct the sale of the encumbered pro-  
12 perty, or a portion of it, and the application of the proceeds of  
13 the sale to the payment of costs, expenses of sale, and the  
14 amount due the plaintiff. The judgment shall also determine the  
15 personal liability of any defendant for the payment of the debt  
16 secured by the lien and be entered accordingly.

17 Sec. 18.02. SALE OF ENCUMBERED PROPERTY. The sale of the  
18 encumbered property shall be conducted in the same manner as the  
19 sale of real property on execution. Any deficiency between the  
20 amount of the judgment and the sale price may be enforced by  
21 execution.

22 Sec. 18.03. REDEMPTION AFTER FORECLOSURE OF LIEN. Property  
23 sold upon a judgment of foreclosure may be redeemed in the manner  
24 and with the effect as real property sold on an execution issued  
25 upon a judgment for the payment of an unsecured debt.

26 Sec. 18.04. EFFECT OF ACTION TO RECOVER DEBT. During or  
27 after the pendency of an action for the recovery of a debt secured  
28 by a lien mentioned in Sec. 18.01, an action cannot be maintained  
29 for the foreclosure of the lien unless judgment is given in that

1 action that the plaintiff recover the debt or a part of it, and  
2 an execution issued in the action against the property of the  
3 defendant is returned unsatisfied in whole or in part.

4 Sec. 18.05. PROCEEDINGS WHEN DEBT SECURED IS NOT ALL DUE.  
5 When an action is commenced to foreclose a lien by which a debt  
6 is secured, which debt is payable in installments, either of  
7 interest or principal, and any of the installments is not then  
8 due, the court shall adjudge a foreclosure of the lien, and may  
9 also adjudge a sale of the property for the satisfaction of the  
10 whole of the debt, or so much of it as may be necessary to satisfy  
11 the installment then due, with costs of action. In the latter  
12 case the judgment of foreclosure as to the remainder of the  
13 property may be enforced by an order of sale, in whole or in part,  
14 whenever default shall be made in the payment of the installments  
15 not then due.

16 Sec. 18.06. EFFECT OF PAYMENT BEFORE JUDGMENT OR SALE. If,  
17 before a judgment is given, the amount then due, with the costs  
18 of action, is brought into court and paid to the clerk, the action  
19 shall be dismissed, and if the same be done after judgment and  
20 before sale, the effect of the judgment as to the amount then due  
21 and paid shall be terminated, and the execution, if any have  
22 issued, be recalled by the clerk. When an installment not due  
23 is adjudged to be paid, the court shall determine and specify in  
24 the judgment what sum shall be received in satisfaction thereof,  
25 which sum may be equal to such installment or otherwise, according  
26 to the present value thereof.

27 Article XIX. Injunction

28 Sec. 19.01. AUTHORIZATION FOR INJUNCTION. When it appears  
29 (1) that the plaintiff is entitled to the relief demanded, and the

1 relief or any part of it includes restraining the commission or  
2 continuance of some act, the commission or continuance of which  
3 during the litigation would produce injury to the plaintiff; or  
4 (2) that the defendant is doing, or threatens or is about to do,  
5 or is procuring or suffering to be done, some act in violation of  
6 the plaintiff's rights concerning the subject of the action and  
7 tending to render the judgment ineffectual; or (3) that the  
8 defendant threatens or is about to remove or dispose of his  
9 property, or a part of it, with intent to delay or defraud his  
10 creditors; an injunction may be allowed to restrain such act,  
11 removal, or disposition.

12 Article XX. Abatement of Lewd Houses

13 Sec. 20.01. ABATEMENT OF PLACES USED FOR IMMORAL ACT. Who-  
14 ever erects, establishes, continues, maintains, uses, owns, or  
15 leases a building, structure or other place used for the purposes  
16 of lewdness, assignation, or prostitution or any other immoral  
17 act, is guilty of maintaining a nuisance, and the building,  
18 structure or place, or the ground itself, in or upon which, or in  
19 any part of which the lewdness, assignation, or prostitution is  
20 conducted, permitted, or carried on, continues or exists, and the  
21 furniture, fixtures, and other contents constitute a nuisance  
22 and may be enjoined and abated.

23 Sec. 20.02. INJUNCTION. Whenever there is reason to believe  
24 that a nuisance as defined in this article exists, the attorney  
25 general shall, or any citizen may, bring an action to perpetually  
26 enjoin the nuisance, the person maintaining it, and the owner,  
27 lessee, or agent of the building or ground upon which the nuisance  
28 exists.

29 Sec. 20.03. DISMISSAL. If the complaint is filed by a

1 citizen, the action may be dismissed only upon approval of the  
2 attorney general and affidavit of the complainant and his attorney  
3 giving the reasons why the suit should be dismissed. The court  
4 may refuse to dismiss the suit and may direct the attorney general  
5 to prosecute the action.

6 Sec. 20.04. CONTEMPT PROCEEDING. If an injunction granted  
7 under the provisions of this article is violated, the court may  
8 summarily try and punish the offender. A party found guilty of  
9 contempt under the provisions of this article is punishable by a  
10 fine of not more than \$1,000.00, or by imprisonment for not less  
11 than three months nor more than six months, or by both fine and  
12 imprisonment.

13 Sec. 20.05. ORDER OF ABATEMENT. Upon judgment that a  
14 nuisance exists, an order of abatement shall be entered directing  
15 the removal from the building or place of the fixtures, furniture,  
16 and movable property used in the nuisance and their sale in the  
17 manner provided for the sale of chattels under execution. The  
18 order shall also direct the closing of the building or place  
19 against its use for any purpose for a period of one year, unless  
20 sooner released. If a person breaks and enters or uses a build-  
21 ing, structure, or other place so directed to be closed, he is  
22 guilty of contempt and shall be punished for contempt as provided  
23 in Sec. 20.04.

24 Sec. 20.06. PROCEEDS OF SALE. a. The proceeds of the sale  
25 of the contents shall be applied as follows:

26 (1) to the payment of fees and costs of the removal  
27 and sale;

28 (2) to payment of the allowances and costs of closing  
29 and keeping closed the buildings or places;

1 (3) to the payment of plaintiff's costs;  
2 (4) to the payment of any balance remaining to the  
3 owner of the property sold.

4 b. If the proceeds do not fully discharge all the costs,  
5 fees, and allowances, the premises may also be sold under execu-  
6 tion issued upon the order of the court and the proceeds of the  
7 sale applied in like manner. However, the building or realty in  
8 which the nuisance is conducted, or real estate on which it  
9 stands, may not be subject to any lien, judgment, or costs unless  
10 the owner, his agent or representative, has been duly served with  
11 process in the action and been given an opportunity to show his  
12 good faith and to immediately abate the nuisance.

13 Sec. 20.07. RELEASE OF PREMISES TO OWNER. If the owner of  
14 the premises has not been guilty of a contempt in the proceedings,  
15 and appears and pays all costs, fees, and allowances which are a  
16 lien on the premises, and files a bond with sureties approved by  
17 the court in the full value of the property, as determined by the  
18 court, to the effect that he will abate the nuisance that exists  
19 at the building or place and prevent the nuisance from being  
20 established within a period of one year thereafter, the court may  
21 order the premises to be delivered to the owner, and cancel the  
22 order of abatement. The release of the property does not release  
23 it from a judgment, lien, penalty or liability to which it may be  
24 subject by law.

25 Sec. 20.08. FINE FOR CONTEMPT AS LIEN ON PREMISES. Any fine  
26 imposed as punishment for contempt against the owner is a lien  
27 upon the premises to the extent of the interest of that person in  
28 the premises and is enforceable and collectible by execution  
29 issued by the order of the court.

1 Article XXI. Nuisances

2 Sec. 21.01. ACTION TO ABATE OR ENJOIN PRIVATE NUISANCE. An  
3 action may be brought by a person whose property is injuriously  
4 affected, or whose personal enjoyment is lessened by a private  
5 nuisance, and by the judgment in the action the nuisance may be  
6 enjoined or abated as well as damages recovered.

7 Sec. 21.02. MANNER OF ABATEMENT. If judgment is in favor of  
8 the plaintiff, an order may issue at any time within six months  
9 of the date of the judgment at plaintiff's request directing the  
10 issuance of a warrant to a peace officer to abate the nuisance.  
11 The expense of abating the nuisance is a part of the judgment and  
12 may be enforced by execution against the property of the defend-  
13 ant.

14 Sec. 21.03. ORDER STAYING ISSUE OF WARRANT. At any time  
15 before the order is made the defendant may apply to the court for  
16 an order to stay the issuance of the warrant for a period not  
17 exceeding six months to allow the defendant to abate the nuisance.  
18 The court may grant the stay if the defendant gives an undertak-  
19 ing to the plaintiff in a sufficient amount and with satisfactory  
20 sureties that the nuisance will be abated within the time and in  
21 the manner specified in the order. If the defendant fails to  
22 abate the nuisance within the time specified, an order directing  
23 the issuance of the warrant for the abatement of the nuisance may  
24 be made.

25 Article XXII. Partition

26 Sec. 22.01. RIGHT OF ACTION FOR PARTITION OR SALE. When  
27 several persons own real property as tenants in common, in which  
28 one or more of them have an estate of inheritance, or for life or  
29 years, or when real property is subject to a life estate with

1 remainder over, an action may be brought by one or more of those  
2 persons or by the life tenant for a portion of it according to  
3 the respective rights of the interested persons, and for a sale  
4 of the property, or a part of it, if it appears that a partition  
5 cannot be had without great prejudice to the parties.

6 Sec. 22.02. LIEN ON UNDIVIDED INTEREST. When a lien is on  
7 an undivided interest or estate of any of the parties and a parti-  
8 tion is made, the lien is then only upon the share assigned to  
9 that party, but the share shall first be charged with its just  
10 proportion of the costs of the partition, in preference to the  
11 lien.

12 Sec. 22.03. DETERMINATION OF RIGHTS OF PARTIES. The rights  
13 of the several parties may be determined in the action. If a  
14 party having a share or interest in or lien upon the property is  
15 unknown, or any of the known parties reside out of the state, or  
16 cannot be found in the state, the summons may be served upon the  
17 absent or unknown party by publication as in other actions. Where  
18 a sale of the property is necessary, the title shall be ascertain-  
19 ed by proof to the satisfaction of the court before the sale may  
20 be ordered.

21 Sec. 22.04. ORDER FOR PARTITION OR SALE. If it appears that  
22 the property or a part of it is so situated that partition cannot  
23 be made without great prejudice to the owners, the court may  
24 order a sale of the property. Otherwise, upon the requisite  
25 proofs being made, the court shall order a partition according to  
26 the respective rights of the parties as ascertained by it, may  
27 appoint one or more referees to partition the property, and shall  
28 designate the portion to remain undivided for the owners whose  
29 interests remain unknown or are not ascertained.

1           Sec. 22.05. REPORT OF REFEREES. In making the partition the  
2 referees shall divide the property and allot its several portions  
3 to the respective parties, quality and quantity relatively con-  
4 sidered, according to the respective rights of the parties as  
5 determined by the court, and designating the several portions by  
6 proper landmarks. The referees may employ a surveyor with the  
7 necessary assistants to aid them.

8           Sec. 22.06. EFFECT OF JUDGMENT. Upon hearing and confirma-  
9 tion of the report, the court shall give judgment that the  
10 partition be effectual forever, which judgment is binding and  
11 conclusive:

12           (1) on all parties named as parties to the action, and  
13 their legal representatives, who have at the time an interest in  
14 the property divided or a part of it as owners in fee or as  
15 tenants for life or for years or as entitled to the reversion,  
16 remainder, or inheritance of the property, or a part of it, after  
17 the termination of a particular estate, and who by any contingency  
18 may be entitled to a beneficial interest in the property or who  
19 have an interest in an undivided share of it as tenants for years  
20 or for life;

21           (2) on persons interested in the property, who may be  
22 unknown, to whom notice was given of the action for partition by  
23 publication;

24           (3) on other persons claiming from the parties or  
25 persons or either of them.

26           Sec. 22.07. TENANT NOT AFFECTED BY JUDGMENT. The judgment  
27 and partition shall not affect tenants for years or for life of  
28 the whole of the property which is the subject of partition, and  
29 shall not preclude any person, except those specified in Sec.

1 22.06 from claiming title to the property in question or from  
2 contraverting the title of the parties between whom the partition  
3 was made.

4 Sec. 22.08. ORDER OF SALE. If it appears by evidence to the  
5 satisfaction of the court that a partition cannot be made without  
6 great prejudice to the owners, it shall order a sale of the  
7 property.

8 Sec. 22.09. ESTATE OF LIFE OR YEARS. When a part of the  
9 property only is ordered to be sold, if there is an estate for  
10 life or years in an undivided share of the property, the estate  
11 may be set off in a part of the property not ordered to be sold.

12 Sec. 22.10. REFERENCE TO DETERMINE LIENS. If it appears  
13 that there are outstanding liens upon the property or a part of  
14 it, and the persons holding the liens were not made parties to  
15 the action, the court may appoint a referee to ascertain whether  
16 those liens have been paid, and if not paid, what amount remains  
17 due and their order among the liens severally held by those  
18 persons and the parties to the action.

19 Sec. 22.11. APPEARANCE OF LIENHOLDERS BEFORE REFEREE. Per-  
20 sons having outstanding liens shall be notified to appear before  
21 the referee at a specified time and place to prove the amount due  
22 or to become due, contingently or absolutely.

23 Sec. 22.12. EFFECT OF CONFIRMATION OF REPORT. If the report  
24 of the referee is confirmed by the court, the order of confirma-  
25 tion is binding and conclusive on the parties to the action and  
26 upon the lien creditors who have been duly served with notice to  
27 appear before the referee.

28 Sec. 22.13. APPLICATION OF PROCEEDS FROM SALE OF ENCUMBERED  
29 PROPERTY. The proceeds of the sale of the encumbered property

1 shall be applied under the direction of the court as follows:

2 (1) to pay its just proportion of the general cost of  
3 the action;

4 (2) to pay the costs of the reference;

5 (3) to satisfy the several liens, in their order of  
6 priority, by payment of the sums due and to become due;

7 (4) the residue among the owners of the property sold,  
8 according to their respective shares, as found by the court.

9 Sec. 22.14. LIENHOLDER HAVING OTHER SECURITIES. Whenever a  
10 party to an action or a person who holds a lien upon the property  
11 or a part of it has other securities for the payment of the  
12 amount of the lien, the court may order the securities to be  
13 exhausted before a distribution of the proceeds of sale or may  
14 order a just deduction to be made from the amount of the lien on  
15 the property on that account.

16 Sec. 22.15. DISTRIBUTION OF PROCEEDS OF SALE. The proceeds  
17 of sale and the securities taken by the referees, or any part of  
18 the proceeds, shall be distributed to the persons entitled to them  
19 whenever the court directs. But if no direction is given, all the  
20 proceeds and securities shall be paid into court.

21 Sec. 22.16. CONTINUATION OF ACTION TO DETERMINE CLAIMS TO  
22 PROCEEDS. When the proceeds of the sale of a share or parcel  
23 belonging to persons who are parties to the action are paid into  
24 court, the action may be continued as between the parties for the  
25 determination of their respective claims to the proceeds, which  
26 shall be ascertained and adjudged by the court. Further testimony  
27 may be taken in court or by a referee at the discretion of the  
28 court, and the court may, if necessary, require the parties to  
29 present the facts or law in controversy by pleadings, as in an

1 original action.

2       Sec. 22.17. SALE PROCEDURE. All sales of real property made  
3 by the referee shall be made at public auction to the highest  
4 bidder, in the manner required for the sale of real property on  
5 execution. The notice shall state the time, place, and terms of  
6 sale, and if the property or a part of it is to be sold subject  
7 to a prior estate, charge, or lien, that shall be stated in the  
8 notice.

9       Sec. 22.18. CREDIT TERMS. In the order of sale the court  
10 shall direct the terms of credit which may be allowed for the  
11 purchase money of a portion of the premises of which it may direct  
12 a sale on credit, and for that portion of which the purchase money  
13 is required, by the provisions contained in this article, to be  
14 invested for the benefit of unknown owners, infants, and parties  
15 out of the state.

16       Sec. 22.19. CREDIT SECURITY. Separate mortgages and other  
17 securities may be taken for the whole or convenient portions of  
18 the purchase money of those parts of the property directed by the  
19 court to be sold on credit in the name of any known owner of full  
20 age, otherwise competent, or in the name of the clerk of the  
21 court as the court directs.

22       Sec. 22.20. DISPOSAL OF ESTATE FOR LIFE OR YEARS. When the  
23 estate of a tenant for life or years, in an undivided part of the  
24 property in question, is admitted by the parties or ascertained  
25 by the court to be existing at the time of the order of sale, and  
26 the person entitled to that estate is a party to the action, the  
27 estate may be first set off out of a part of the property and a  
28 sale made of that part, subject to the unsold estate of that  
29 tenant in that part. But, if in the judgment of the court a due

1 regard to the interest of all the parties requires the sale of  
2 that estate also, the sale may be ordered.

3       Sec. 22.21. COMPENSATION FOR SALE OF ESTATE FOR LIFE OR  
4 YEARS. A person entitled to an estate for life or years in an  
5 undivided part of the property, whose estate has been sold, is  
6 entitled to receive a sum as reasonable satisfaction for the  
7 estate, the sum being based on principles of law applicable to  
8 annuities. The person so entitled shall consent to accept the  
9 sum for their estate by an instrument duly acknowledged or proved  
10 in the same manner as deeds for the purpose of record and filed  
11 with the clerk of court.

12       Sec. 22.22. DETERMINATION OF VALUE OF ESTATE FOR LIFE OR  
13 YEARS SOLD WITHOUT CONSENT. If the consent is not given, as pro-  
14 vided in Sec. 22.21, before the report of sale, the court shall  
15 determine what proportion of the proceeds of the sale, after  
16 deducting expenses, is a just and reasonable sum to be invested  
17 for the benefit of the person entitled to the estate for life or  
18 years, and shall order the sum to be deposited in court for in-  
19 vestment.

20       Sec. 22.23. RULES FOR DETERMINING VALUE. a. The proportion  
21 of the proceeds of the sale to be invested as provided in Sec.  
22 22.22 shall be determined as follows:

23       (1) if an estate in dower is included in the order of  
24 sale, its proportion shall be one-third of the proceeds of the  
25 sale of the property, or of the sale of the undivided share in  
26 the property on which the claim of dower existed;

27       (2) if an estate for life or years be included in the  
28 order of sale, its proportion shall be the whole proceeds of the  
29 sale of the property, or of the sale of the undivided share in

1 which that estate may be.

2 b. In all cases, the proportion of the expenses of the pro-  
3 ceeding shall be deducted from the proceeds of the sale.

4 Sec. 22.24. PROTECTION OF UNKNOWN TENANTS. If the persons  
5 entitled to the estate for life or years are unknown, the court  
6 shall provide for the protection of their rights in a similar  
7 manner, as far as possible, as if they were known and had appear-  
8 ed.

9 Sec. 22.25. INCHOATE RIGHT OF DOWER AND VESTED OR CONTINGENT  
10 FUTURE RIGHTS OR ESTATES. In cases of sales in partition, when it  
11 appears that a married woman has an inchoate right of dower or  
12 that any person has a vested or contingent future right or estate  
13 in any of the property sold, the court shall determine the pro-  
14 portional value of the inchoate, contingent, or vested right or  
15 estate according to the principles of law applicable to annuities  
16 and survivorship, and shall direct that proportion of the proceeds  
17 of the sale to be invested, secured, or paid over, in a manner  
18 which will protect the rights and interests of the parties.

19 Sec. 22.26. SEPARATE SALES OF FARMS OR LOTS. The terms of  
20 sales of property shall be known at the time of sale, and if the  
21 premises consist of distinct farms or lots, they shall be sold  
22 separately unless the court directs otherwise.

23 Sec. 22.27. PERSONS INELIGIBLE TO PURCHASE. A referee or  
24 any person for the benefit of a referee shall not be interested  
25 in any purchase. A guardian of an infant party shall not be  
26 interested in the purchase of real property being the subject of  
27 the action except for the benefit of the infant. All sales con-  
28 trary to the provisions of this section are void.

29 Sec. 22.28. REPORT OF SALE. After the sale of property

1 ordered to be sold, a report shall be made to the court, with a  
2 description of the different parcels of lands sold to each pur-  
3 chaser, the name of the purchaser, the price paid or secured, the  
4 terms and conditions of the sale, and any securities taken.

5 Sec. 22.29. CONFIRMATION OR VACATION OF SALE. a. After the  
6 filing of the report, a party entitled to a share of the proceeds  
7 may move the court to confirm or set aside the sale or sales  
8 reported. If the sale is set aside, the court may order a new  
9 sale. If the sale is confirmed, the court shall enter an order  
10 directing conveyances to be executed and securities to be taken  
11 under the sale.

12 b. . The order confirming the sale discharges the property of  
13 the estate or interest of every person mentioned in Sec. 22.06  
14 and of tenants for life or years of the property sold, and is  
15 binding and conclusive on all those persons in the same manner as  
16 a judgment of partition. The order is conclusive evidence as to  
17 the regularity of the proceedings relating to the sale.

18 Sec. 22.30. INVESTMENT OF PROCEEDS BELONGING TO UNKNOWN OR  
19 NONRESIDENT OWNER. When there are proceeds of a sale belonging  
20 to an unknown owner or to a person outside the state who has no  
21 legal representatives within it, or when there are proceeds aris-  
22 ing from the sale of an estate subject to the prior estate of a  
23 tenant for life or years, which are paid into the court or other-  
24 wise deposited by order of the court, the court may order the  
25 proceeds to be invested in securities bearing interest for the  
26 benefit of the persons entitled to the proceeds.

27 Sec. 22.31. SECURITY TAKEN AND INVESTMENTS MADE IN NAME OF  
28 COURT CLERK. When the security for the proceeds of sale is taken  
29 or when an investment of any proceeds is made, it shall be done,

1 except as herein otherwise provided, in the name of the clerk of  
2 the court, who shall hold the same for the use and benefit of the  
3 parties interested, subject to the order of the court.

4 Sec. 22.32. SECURITY TAKEN IN NAMES OF PARTIES WHEN INTER-  
5 ESTS ASCERTAINED. When security is taken on a sale, and the  
6 parties interested in the security agree on the shares and pro-  
7 portions to which they are respectively entitled or when shares  
8 and proportions have been previously adjudged by the court, the  
9 securities shall be taken in the names of and payable to the  
10 parties respectively entitled to them, and shall be delivered to  
11 the parties.

12 Sec. 22.33. DUTIES OF CLERK IN SECURITIES AND INVESTMENTS.  
13 The clerk in whose name a security is taken or by whom an invest-  
14 ment is made shall receive the interest and principal as it be-  
15 comes due, and apply and invest it as the court may direct. The  
16 clerk shall deposit in his office all securities taken, and keep  
17 an account in a book provided and kept for that purpose in the  
18 clerk's office, free for inspection by all persons, of investments  
19 and money received by him from the investments, and its disposi-  
20 tion.

21 Sec. 22.34. COMPENSATION FOR UNEQUAL PARTITION. When it  
22 appears that partition cannot be made equal between the parties,  
23 according to their respective rights, without prejudice to the  
24 rights and interests of some of them, and a partition is ordered,  
25 the court may adjudge compensation to be made by one party to  
26 another on account of the inequality. However, the compensation  
27 shall not be required to be made to others by owners unknown, nor  
28 by infants, unless it appears that the infant has personal  
29 property sufficient for that purpose and that his interest will be

1 promoted by giving compensation.

2       Sec. 22.35. PAYMENT TO GUARDIAN OF SHARE OF INFANT. When  
3 the share of an infant is sold, the proceeds of the sale may be  
4 paid to his general guardian or the special guardian appointed for  
5 him in the action, upon the guardian giving the security required  
6 by law or directed by order of the court.

7       Sec. 22.36. PAYMENT TO GUARDIAN OF SHARE OF INSANE OR IN-  
8 COMPETENT PERSON. The guardian who may be entitled to the custody  
9 and management of the estate of an insane person or other person  
10 adjudged incapable of conducting his own affairs, whose interest  
11 in real property has been sold, may receive in behalf of that  
12 person his share of the proceeds of the real property on execut-  
13 ing an undertaking, with sufficient sureties and approved by the  
14 judge of the court, that he will faithfully discharge the trust  
15 reposed in him and will render a true and just account to the  
16 person entitled or to his legal representatives.

17       Sec. 22.37. APPORTIONMENT OF COST OF PARTITION. The costs  
18 of partition, including fees of referees and other disbursements,  
19 shall be paid by the parties respectively entitled to share in  
20 the lands divided, in proportion to their respective interests in  
21 the property, and may be included and specified in the judgment.  
22 In that case they are a lien on the several shares, and the  
23 judgment may be enforced by execution against the parties separ-  
24 ately. When, however, a litigation arises between some of the  
25 parties only, the court may require the expenses of the litigation  
26 to be paid by any or all of the parties to the litigation.

27                                   Article XXIII. Receivers

28       Sec. 23.01. APPOINTMENT OF RECEIVERS. A receiver may be  
29 appointed by the court in any action or proceeding except an

1 action for the recovery of specific personal property:

2 (1) provisionally, before judgment, on the application  
3 of either party, when his right to the property, which is the  
4 subject of the action or proceeding and which is in the posses-  
5 sion of an adverse party, is probable, and where it is shown that  
6 the property or its rents or profits are in danger of being lost  
7 or materially injured or impaired;

8 (2) after judgment to carry the judgment into effect;

9 (3) after judgment to dispose of the property accord-  
10 ing to the judgment, or to preserve it during the pendency of an  
11 appeal, or when an execution has been returned unsatisfied and  
12 the debtor refuses to apply his property in satisfaction of the  
13 judgment;

14 (4) in the cases when a corporation has been dissolved,  
15 or is insolvent, or in imminent danger of insolvency, or has for-  
16 feited its corporate rights;

17 (5) in the cases when a debtor has been declared in-  
18 solvent.

19 Sec. 23.02. OATH AND UNDERTAKING OF RECEIVER. Before enter-  
20 ing upon his duties, a receiver shall be sworn to perform them  
21 faithfully, and shall file with the clerk of the court an under-  
22 taking, with one or more sufficient sureties, in whatever sum the  
23 court may direct, to the effect that he will faithfully discharge  
24 the duties of receiver and obey the orders of the court.

25 Article XXIV. Recovery of Personal Property

26 Sec. 24.01. CLAIM FOR DELIVERY OF PERSONAL PROPERTY. In an  
27 action to recover possession of personal property, the plaintiff  
28 may, at any time after the action is commenced and before  
29 judgment, claim the immediate delivery of the property to him.

1           Sec. 24.02. UNDERTAKING. A peace officer shall not take  
2 personal property into custody until the plaintiff delivers to  
3 him the affidavit and undertaking of sufficient sureties to the  
4 effect that they are bound in double the value of the property for  
5 the prosecution of the action and the return of the property to  
6 the defendant, if return be adjudged, and for the payment to the  
7 defendant of any sum which may be recovered against the plaintiff.

8           Sec. 24.03. UNDERTAKING FOR RETURN OF PROPERTY TO DEFENDANT.  
9 The defendant may, within the time set by the court, require the  
10 return of the property upon delivering to the peace officer having  
11 custody of his property, a written undertaking approved by the  
12 clerk of court and executed by sufficient sureties to the effect  
13 that they are bound in double the value of the property, for the  
14 delivery of the property to the plaintiff, if such delivery be  
15 adjudged, and for the payment to him of such sum as may, for any  
16 cause, be recovered against the defendant.

17           Sec. 24.04. PROPERTY CONCEALED IN BUILDING OR ENCLOSURE;  
18 DEMAND; ENTRY TO EFFECT SEIZURE. If the property, or any part of  
19 it, is concealed in a building or enclosure, the peace officer  
20 shall publicly demand its delivery. If it is not delivered, he  
21 shall cause the building or enclosure to be broken open and take  
22 the property into his possession.

23           Sec. 24.05. CUSTODY OF PROPERTY SEIZED. When the peace  
24 officer has taken the property into custody, he is responsible for  
25 it and shall keep it in a secure place and deliver it to the party  
26 entitled to it upon receiving his lawful fees for taking and his  
27 necessary expenses for keeping it.

28           Sec. 24.06. THIRD PARTY CLAIMS. If the property taken is  
29 claimed by any person other than the defendant and that person

1 makes an affidavit of his title to the property or his right to  
2 the possession of it, stating the grounds of the title or right,  
3 and serves it upon the peace officer taking the property while  
4 the property is still in his custody, the peace officer may  
5 release the property unless the plaintiff, on demand of the offi-  
6 cer, indemnifies him against the third party claim by a written  
7 undertaking approved by the clerk of court and executed by  
8 sufficient sureties.

9 Article XXV. Recovery of Real Property

10 Sec. 25.01. ACTIONS FOR RECOVERY OF REAL PROPERTY. Any  
11 person who has a legal estate in real property and has a present  
12 right to the possession of the property may bring an action to  
13 recover the possession of the property with damages for withhold-  
14 ing it.

15 Sec. 25.02. DAMAGES FOR WITHHOLDING PROPERTY; VALUE OF IM-  
16 PROVEMENTS AS SETOFF. When property is recovered from a defendant  
17 who, in good faith, holds the property under color of title  
18 adversely to the claim of the plaintiff, the value of any per-  
19 manent improvements which the defendant or those under whom he  
20 claims have made to the property shall be allowed as a setoff  
21 against damages allowed for the withholding of the property. The  
22 plaintiff may recover damages for withholding the property for a  
23 term of six years before the commencement of the action and for  
24 the period from the commencement to the verdict, both excluding  
25 the use of permanent improvements made by the defendant.

26 Sec. 25.03. TERMINATION OF RIGHT TO RECOVER PROPERTY DURING  
27 PENDENCY OF ACTION. Where the plaintiff shows a right to recover  
28 at the time the action was commenced, but it appears that his  
29 right has terminated during the pendency of the action, he may

1 only recover damages for the withholding of the property.

2 Sec. 25.04. ORDER FOR SURVEY AND MEASUREMENT OF PROPERTY.

3 The court in which the action is pending may allow a party and  
4 his surveyors to go on the property to make a survey for the  
5 purposes of the action.

6 Sec. 25.05. EFFECT OF ALIENATION BY PERSON IN POSSESSION.

7 An action for the recovery of the possession of real property  
8 against a person in possession cannot be prejudiced by an aliena-  
9 tion made by that person either before or after the commencement  
10 of the action. If the alienation is made after the commencement  
11 of the action and the defendant does not satisfy the judgment  
12 recovered for damages for withholding the possession, the damages  
13 may be recovered by action against the purchaser.

14 Sec. 25.06. MORTGAGE NOT A CONVEYANCE. A mortgage of real  
15 property is not a conveyance which will enable the owner of the  
16 mortgage to recover possession of the real property without a  
17 foreclosure and sale.

18 Sec. 25.07. FAILURE TO PAY RENT. Unless otherwise provided  
19 in the lease, a landlord has a right to re-enter leased premises  
20 when a tenant fails to pay rent, and may bring action to recover  
21 the possession of the premises and the action is equivalent to a  
22 demand of the rent. If at any time before judgment the lessee or  
23 his successor in interest pays the amount of rent in arrears with  
24 interest and costs of the action, and performs the other covenants  
25 or agreements, he is entitled to continue in possession unless  
26 otherwise provided in the lease.

27 Sec. 25.08. JUDGMENT IN ACTIONS TO RECOVER POSSESSION. The  
28 judgment in an action to recover the possession of real property  
29 is conclusive as to the estate in the property and the right to

1 the possession so far as it is determined, upon the party against  
2 whom it is given and against all persons claiming from, through,  
3 or under that party after the commencement of the action. How-  
4 ever, when service of the summons is by publication, and judgment  
5 is given for failure of a party to answer, that party or his  
6 successor in interest is at any time within two years from the  
7 entry of the judgment, upon application to the court, entitled to  
8 an order vacating the judgment and granting him a new trial upon  
9 the payment of the costs of the action.

10 Sec. 25.09. POSSESSION WHEN NEW TRIAL GRANTED. If the  
11 judgment is set aside and a new trial granted, as provided in  
12 Sec. 25.08, after the plaintiff has taken possession of the  
13 property, he shall remain in possession. But if judgment is  
14 given for the defendant in the new trial, the defendant shall be  
15 entitled to restitution by execution as if he were plaintiff.

16 Sec. 25.10. ACTIONS TO RECOVER POSSESSION BY TENANT IN  
17 DOWER. In an action to recover the possession of real property  
18 by a tenant in dower or his successor in interest, execution on  
19 the judgment may not issue until admeasurement of dower. If the  
20 dower has not been admeasured prior to the commencement of the  
21 action, the dower may be admeasured after entry of the judgment,  
22 as follows:

23 (1) Upon motion of either party, the court shall con-  
24 duct proceedings to admeasure the dower out of the real property  
25 recovered in the action in the manner provided in actions for  
26 partition, unless it appears probable that a partition of the  
27 property would prejudice the interests of the other owners. If  
28 the court finds that a partition would prejudice the interests of  
29 the other owners, it shall deny the motion. The plaintiff shall

1 then proceed for partition or sale of the real property by inde-  
2 pendent action in the manner provided in actions for partition.

3 (2) At any time after the confirmation of the report  
4 of the referees the plaintiff may have execution for the delivery  
5 of the possession of the property according to the admeasurement  
6 and for the damages recovered.

7 Article XXVI. Tort Claims Against State

8 Sec. 26.01. ACTIONABLE CLAIMS AGAINST THE STATE. Any person  
9 or corporation having a claim against the state may bring an  
10 action against the state in the superior court. However, no  
11 action may be brought under this section if the claim:

12 (1) is based upon an act or omission of an employee of  
13 the state, exercising due care, in the execution of a statute or  
14 regulation, whether or not such statute or regulation is valid,  
15 or based upon the exercise or performance or the failure to  
16 exercise or perform a discretionary function or duty on the part  
17 of a state agency or an employee of the state, whether or not the  
18 discretion involved is abused;

19 (2) is for damages caused by the imposition or estab-  
20 lishment of a quarantine by the state;

21 (3) arises out of assault, battery, false imprisonment,  
22 false arrest, malicious prosecution, abuse of process, libel,  
23 slander, misrepresentation, deceit, or interference with contract  
24 rights.

25 Sec. 26.02. UNDERTAKING. At the time of filing the complaint  
26 in an action against the state, the plaintiff shall file an under-  
27 taking in a sum fixed by the court. The undertaking shall be  
28 conditioned upon payment by the plaintiff of costs incurred by  
29 the state in the action if the plaintiff fails to prosecute the

1 action or fails to recover judgment.

2       Sec. 26.03. PAYMENT OF JUDGMENT AGAINST THE STATE. No  
3 attachment or execution shall issue against the state. Whenever  
4 a final judgment is rendered against the state in an action, the  
5 clerk of the court shall immediately transmit a certified copy of  
6 the judgment to the Department of Administration which shall  
7 either approve payment of the judgment against the state, if a  
8 sufficient appropriation exists for payment, or audit the amount  
9 and transmit a copy to the legislature with the recommendation  
10 that an appropriation be made for its payment.

11       Sec. 26.04. JUDGMENT FOR PLAINTIFF. If judgment is rendered  
12 for the plaintiff, it shall be for the legal amount found due from  
13 the state, with legal interest only from the date of judgment,  
14 without punitive damages.

15       Sec. 26.05. TRIAL BY COURT. Actions against the state under  
16 this article shall be tried by the court without a jury.

17       Sec. 26.06. COMPROMISE BY ATTORNEY GENERAL. The attorney  
18 general may, with the approval of the court, arbitrate, compromise,  
19 or settle any action filed under this article.

20                           Article XXVII. Trespass

21       Sec. 27.01. TRESPASS BY CUTTING OR INJURING TREES OR SHRUBS.  
22 Any person who cuts down, girdles, or otherwise injures, or  
23 carries off a tree, timber, or shrub on the land of another person,  
24 or on the street or highway in front of a person's house, village,  
25 town, or city lot, or cultivated grounds, or on the commons or  
26 public grounds of a village, town, or city, or on the street or  
27 highway in front of them, without lawful authority, is liable to  
28 the owner of that land, or to the village, town or city, for  
29 treble the amount of damages which may be assessed in a civil

1 action. However, if the trespass was casual or involuntary, or  
2 the defendant had probable cause to believe that the land on  
3 which the trespass was committed was his own or that of the person  
4 in whose service or by whose direction the act was done, or where  
5 the timber was taken from unenclosed woodland for the purpose of  
6 repairing any public highway or bridge upon the land or adjoining  
7 it, only actual damages may be recovered.

8 Article XXVIII. Usurpation

9 Sec. 28.01. ACTION FOR USURPATION OF OFFICE OR FRANCHISE.

10 An action may be brought by the attorney general upon his own  
11 information or upon complaint of a private party against (1) any  
12 person who usurps, intrudes into, or unlawfully holds or exercises  
13 any public office, civil or military, or any franchise, or any  
14 office in a corporation, either public or private; (2) any public  
15 officer who has acted to forfeit his office; or (3) any number of  
16 persons acting as a corporation without being incorporated.

17 Sec. 28.02. ACTION ON INFORMATION OR APPLICATION OF PRIVATE  
18 PARTY. When the action is brought upon the information or appli-  
19 cation of a private party, the attorney general may require that  
20 party to enter into an undertaking with sureties to be approved by  
21 the attorney general conditioned on that party paying a judgment  
22 for costs or damages recovered against the plaintiff and costs and  
23 expenses incurred in the prosecution of the action.

24 Sec. 28.03. DETERMINATION OF RIGHTS OF DEFENDANT AND CLAIM-  
25 ANT. Whenever the action is brought and the claim is made that  
26 another person is rightfully entitled to the office, judgment may  
27 be given upon the right of the defendant, and also upon the right  
28 of the person so claimed to be entitled, or only upon the right  
29 of the defendant as justice may require.

1           Sec. 28.04. JUDGMENT FOR CLAIMANT. If judgment is for the  
2 person claiming the franchise or office, he is entitled to the  
3 possession and enjoyment of the franchise, or to take upon himself  
4 the execution of the office, after qualifying himself as required  
5 by law.

6           Sec. 28.05. RECOVERY OF DAMAGES BY CLAIMANT. If judgment is  
7 for the person claiming the franchise or office he may recover  
8 the damages which he may have sustained by reason of the usurpa-  
9 tion of the office by the defendant. In the action the defendant  
10 may be provisionally arrested and held to bail in the manner as  
11 in actions where the defendant is subject to arrest.

12           Sec. 28.06. MULTIPLE CLAIMANTS. When several persons claim  
13 to be entitled to the same office or franchise, one action may be  
14 brought against all those persons in order to try their respective  
15 rights to that office or franchise.

16           Sec. 28.07. JUDGMENT AGAINST DEFENDANT. If a defendant is  
17 adjudged guilty of usurping, or intruding into, or unlawfully  
18 holding or exercising an office or franchise, judgment shall be  
19 given that the defendant be excluded from holding or exercising  
20 the office or franchise. The court may also, in its discretion,  
21 impose a fine upon the defendant not exceeding \$2,000.00. If a  
22 corporation is defendant and a judgment is given which causes the  
23 corporation to cease to exist, the corporation shall dissolve.

24           Sec. 28.08. ENFORCEMENT OF JUDGMENT FOR COSTS. A judgment  
25 given in any action provided for in this article in respect to  
26 costs and disbursements may be enforced by execution as a judgment  
27 which requires the payment of money.

28                           Article XXIX. Waste

29           Sec. 29.01. RIGHT OF ACTION FOR WASTE. If a guardian,

1 tenant for life or years, or tenant in common of real property,  
2 commits waste on the property, any person injured by the waste  
3 may bring an action for damages for the injury. In an action for  
4 waste there may be judgment for treble damages. Where the plain-  
5 tiff has a reversionary interest and the injury due to waste  
6 equals or exceeds the value of the interest held by the one com-  
7 mitting the waste, or the waste is committed with malice, judgment  
8 may be for forfeiture of the estate and eviction.

9 Article XXX. Miscellaneous

10 Sec. 30.01. PARENT OR GUARDIAN MAY SUE FOR INJURIES OR  
11 DEATH TO CHILD. A father, or in case of his death or desertion  
12 of his family, the mother, may maintain an action as plaintiff for  
13 the injury or death of a child below the age of majority. A  
14 guardian may maintain an action as plaintiff for the injury or  
15 death of his ward.

16 Sec. 30.02. PARENTS OR GUARDIAN MAY SUE FOR SEDUCTION OF  
17 DAUGHTER. A father, or in case of his death or desertion of his  
18 family, the mother, may maintain an action as plaintiff for the  
19 seduction of a daughter below the age of majority. The guardian  
20 may maintain an action as plaintiff for the seduction of a ward.  
21 The action may be maintained even though the daughter or ward is  
22 not living with or in the service of the plaintiff at the time of  
23 the seduction or afterwards, and there is no loss of service.

24 Sec. 30.03. UNMARRIED FEMALES MAY SUE FOR SEDUCTION. An  
25 unmarried female over the age of majority may maintain an action  
26 as plaintiff for her own seduction, and may recover any damages  
27 assessed in her favor.

28 Sec. 30.04. JOINING UNKNOWN HEIRS AS DEFENDANTS IN REAL  
29 PROPERTY SUITS. When the heirs of a deceased person are proper

1 parties defendant to an action relating to real property in this  
2 state, and when the name and residences of the heirs are unknown,  
3 the heirs may be proceeded against under the name and title of  
4 "the unknown heirs" of the deceased.

5 Sec. 30.05. SERVICE ON UNKNOWN HEIRS BY PUBLICATION. Upon  
6 presenting an affidavit to the court or judge, showing to his  
7 satisfaction that the heirs of the deceased person are proper  
8 parties to the action, and that their names and residences cannot  
9 with the use of reasonable diligence be ascertained, the court or  
10 judge may grant an order that service of the summons in the action  
11 may be made on the "unknown heirs" by publication of the summons  
12 in the same manner as in actions against nonresident defendants.

13 Sec. 30.06. UNKNOWN CLAIMANTS IN REAL PROPERTY SUITS. In  
14 any action brought to determine an adverse claim, estate, lien  
15 or interest in real property, or to quiet title to real property,  
16 the plaintiff may include as a defendant in the action, and insert  
17 in the title of the action, in addition to the names of the  
18 persons or parties which appear of record to have, and other per-  
19 sons or parties who are known to have, some title, claim, estate,  
20 lien or interest in the lands in controversy, the following:

21 "Also all other persons or parties unknown claiming any right,  
22 title, estate, lien or interest in the real estate described in  
23 the complaint in this action." Service of summons may be had  
24 upon all the unknown persons or parties defendant by publication  
25 as provided by law in cases of nonresident defendants.

26 Sec. 30.07. RIGHTS OF UNKNOWN HEIRS AND PARTIES SERVED BY  
27 PUBLICATION. All the unknown heirs of deceased persons, and all  
28 the unknown persons or parties served by publication as provided  
29 in Sec. 30.06 of this Act, have the same rights as are provided

1 by law in case of all other defendants upon whom service is made  
2 by publication, and the action shall proceed against the unknown  
3 heirs, or unknown persons or parties, in the same manner as  
4 against defendants who are named, upon whom service is made by  
5 publication, and with the same effect. Any of the unknown heirs  
6 or unknown persons or parties who have or claim any interest,  
7 right, estate or lien in the said real property in controversy,  
8 at the time of the commencement of the action, who are served as  
9 aforesaid, shall be bound and concluded by the judgment or decree  
10 in the action, as effectually as if the action was brought against  
11 the defendant by his name and constructive service of summons  
12 obtained.

13 TITLE III. FORMAL PROVISIONS

14 Sec. 31.01. SHORT TITLE. This Act may be cited as the "Code  
15 of Civil Procedure."

16 Sec. 31.02. REPEALS. The following laws and parts of laws  
17 are repealed: Secs. 55-1-1 through 55-11-86, ACLA 1949, inclusive,  
18 as amended by Ch. 45, SLA 1949, Ch. 74, SLA 1953, Ch. 138, SLA  
19 1953, Ch. 44, SLA 1955, Ch. 52, SLA 1955, Ch. 49, SLA 1957, Ch. 61,  
20 SLA 1957, Ch. 65, SLA 1957, and Ch. 37, SLA 1959; Secs. 56-1-1  
21 through 56-6-9, ACLA 1949, inclusive, as amended by Ch. 119, SLA  
22 1949, Ch. 136, SLA 1957, Ch. 22, SLA 1959, and Ch. 51, SLA 1959;  
23 Secs. 57-1-1 through 57-9-2, ACLA 1949, inclusive, as amended by  
24 Ch. 5, SLA 1949, Ch. 50, SLA 1951, Ch. 91, SLA 1953, and Ch. 9,  
25 SLA 1957; Secs. 58-1-1 through 58-9-6, ACLA 1949, inclusive, as  
26 amended by Ch. 32, SLA 1955, Ch. 96, SLA 1955, Ch. 13, SLA 1957,  
27 and Ch. 54, SLA 1957; Secs. 67-1-1 through 67-1-9, ACLA 1949, in-  
28 clusive, as amended by Ch. 17, SLA 1949; Secs. 68-1-1 through 68-  
29 9-15, ACLA 1949, inclusive, as amended by Ch. 69, SLA 1955; Secs.

1 1 through 3, Ch. 22, SLA 1951, inclusive; Secs. 1 through 7, Ch.  
2 89, SLA 1953, inclusive, as amended by Ch. 21, SLA 1955; Secs. 1  
3 through 6, Ch. 90, SLA 1953, inclusive, as amended by Ch. 138,  
4 SLA 1955, and Ch. 146, SLA 1959; Secs. 1 through 10, Ch. 170, SLA  
5 1957, inclusive; Sec. 1, Ch. 87, SLA 1959; and Secs. 1 through 6,  
6 Ch. 134, SLA 1960, inclusive.

7       Sec. 31.03. HOW CODE TO TAKE EFFECT. This Act takes effect  
8 on January 1, 1963. It governs all proceedings in actions brought  
9 after that date and all further proceedings in actions then pend-  
10 ing, except to the extent that, in the opinion of the court, their  
11 application in a particular action pending when the rules take  
12 effect would not be feasible, or would work injustice, in which  
13 event, the laws repealed by this Act apply.

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HOUSE CS FOR SB #105  
REPORT OF HOUSE JUDICIARY COMMITTEE  
CODE OF CIVIL PROCEDURE (CS FOR SB #105)

A. Introduction

This report is supplementary to similar report made by the House Judiciary Committee with regard to House CS for SB #119 (Code of Criminal Procedure) which report is entered in the 1962 House Journal, pages 224 to 231.

The first three parts of that report on CS for SB #119 are incorporated in this report. They deal with introductory matter (Part A) with the history of the Code of Civil Procedure in the Legislative Council and Legislature (Part B) -- with the standards used in determining what is considered procedural matter and what is considered substantive law (Part C). Some of the illustrations used in showing how the distinction was followed in practice drew on SB 105.

The questions remaining and which will be discussed in this report are:

- B. Purpose and Object of the Code of Civil Procedure
- C. Senate Amendments
- D. House Judiciary Amendments - Major and Minor
- E. Conclusion

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B. Purpose and Object of the Code of Civil Procedure

Rules of Civil Procedure are the judicial processes for enforcing rights and duties; the Code of Civil Procedure is the rights and duties recognized by the legislature.

The Code is made up of the law which gives or defines rights; the rules are made up of the mode of proceeding or the means by which these rights are enforced.

In the report on the Code of Criminal Procedure, we saw how the committee and the Legislative Council and all interested parties separated the law from the rules; the same tests have been applied in this bill and what we have in

the bill is the law relating to the giving of or the enunciation of basic rights and duties, basic principles of settled often historic state policy -- with the rules for justly and fairly administering those rights and duties removed, for inclusion in the Supreme Court's some 105 or more Rules of Civil Procedure. Bear in mind that this separation process is a continuing one as pointed out in the above referred to Judiciary Report on the Code of Criminal Procedure (CSSB 119).

The Code of Civil Procedure includes statutes of limitations, but not the Rules as to how to plead these matters; matters concerning jurors and their eligibility and drawing, but not their examination, challenging or swearing in because this is machinery to be treated by Rule; witnesses, but not the Rules as to the machinery of subpoenaing them to court; the important Statute of Frauds, but not the method of raising the rights and duties contained in it, which is a matter of rule and of procedure; the basic law dealing with judgments, but not all matters as to their contents, such as costs, service of findings of fact, attorney fees, and the like because this matter is the proper subject of the many court Rules of Civil Procedure treating of it, including Rules 54, 73, 78, 79 and 82.

The Code deals in its second title with Special Actions and Provisional Remedies -- i.e., actions with regard to adverse claims; declarations of death, divorce and annulment, eminent domain, escheat, forcible entry and detainer, foreclosure of liens on land, injunctions, abatement of lewd houses, nuisances, partition or division of properties, recovery of personal property and real property, tort claims against the state, trespass, usurpation of office, waste and miscellaneous matters dealing with parties.

The second title also deals with civil arrest, attachment, execution, contempt of court, and receivership -- these are not actions but provisional proceedings that may or may not be used in connection with actions; again the basic right to them is in the Code -- the machinery in the rules.

Always the Code deals only with the basic right or duty -- not the machinery for administering or enforcing it -- this latter is for the Supreme Court to handle by Rule of Court. Thus, for example, Rules 40(e) and 43(f) apply to Divorce and Annulment (Title II, Art. XII); Rule 72 to Eminent Domain (Title II, Art. XIII); Rules 65 and 62(c) to Injunctions (Title II, Art. XIX); Rule 64 relates to Civil Arrest (Title II, Art. IX) and Attachment (Title II, Art. VII); and Rule 69 relates to Execution (Title II, Art. XV).

All of the actions and provisional proceedings are subject to many general rules that apply to all actions and proceedings.

Here is a typical Code provision -- a basic right -- this is the entire Code provision dealing with Injunctions (Art. XIX, Title II, pages 78, 79, CSSB 105).

"Article XIX. Injunction

Sec. 19.01. AUTHORIZATION FOR INJUNCTION. When it appears (1) that the plaintiff is entitled to the relief demanded, and the relief or any part of it includes restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the plaintiff; or (2) that the defendant is doing, or threatens or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights concerning the subject of the action and tending to render the judgment ineffectual; or (3) that the defendant threatens or is about to remove or dispose of his property, or a part of it, with intent to delay or defraud his creditors; an injunction may be allowed to restrain such act, removal, or disposition."

Here is the corresponding Rule of the Supreme Court in its entirety (Pages 98, 99, and 100 of Rules of Civil Procedure, revised). Compare the two and see how the distinction is carried out in practice.

"Rule 65. Injunctions.

(a) Preliminary - Notice. No preliminary injunction shall be issued without notice to the adverse party.

(b) Temporary Restraining Order - Notice - Hearing - Duration. No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at

the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the state or of an officer or agency thereof, or unless otherwise ordered by the court, in domestic relations actions or proceedings.

A surety upon a bond or undertaking under this rule submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise."

C. Senate Amendments to SB #105

March 30, 1961, the Senate amended the bill by means of 87 amendments. Eight of these may be considered of major consequence in that they changed

existing law to a considerable extent. These 8 amendments (references are to sections in SB 105) treated matters of privilege communications as substantive law, radically changed the law as to adverse possession (Sec. 3.17), changed the law as to fleeing debtors (Sec. 9.02, 5.03(3), 15.32), restored the law, erroneously revised, as to residence for military divorce (Sec. 12.09), modernized law relating to notice to quit (Sec. 17.05), clarified law relating to notices to quit where rent is paid in advance (Sec. 17.07), clarified law as to foreclosure (Sec. 18.06), changed effective date of bill (Sec. 31.03).

The remaining 79 Senate amendments corrected errors where the law from ACLA 1949 was incorrectly copied; clarified archaic language, corrected section references necessitated by changes, inserted explanatory matter, and made other changes in form or changes of a most minor nature in substance, such as increasing a cost bond from \$200.00 to \$500.00 (Sec. 5.10).

#### D. House Judiciary Amendments

##### Major

In approaching its task, the House first combined the Senate amendments in a draft of a substitute.

House Judiciary Committee made major changes in 31 areas of the bill as amended in the Senate and minor changes in 47, for a total of 78.

Here is a list of the 31 House amendments of consequence:

- 1 - A topical index was included for ease in reference.
- 2 - Qualifications of jurors are couched in the language of the Constitution - e.g., "read or speak" (p. 7, Sec. 2.01 - SB 105; p. 7, Sec. 2.01, CS for SB 105).
- 3 - Constitutional language added re restoration of civil rights (p. 7, Sec. 2.02, SB 105; p. 7, Sec. 2.02, CS for SB 105).
- 4 - Matters re privilege, included in Senate amendments, are omitted because they are procedural.
- 5 - Exoneration of arresting officer corrected (p. 11, Sec. 3.05, SB 105; p. 11, Sec. 3.06, CS for SB 105).
- 6 - Unique Alaskan procedural provision re Statute of Frauds requiring denial of agreement as condition to raise defense

deleted as contrary to accepted law and Uniform Commercial Code (p. 14, Sec. 3.11(b), SB 105; p. 13, Sec. 3.11(b) of CS for SB 105). Matter re "boats" deleted and placed in Uniform Commercial Code (p. 14, Sec. 3.11(13), SB 105; p. 13, Sec. 3.11 of CS for SB 105).

- 7 - Matter re frauds memo re auctions deleted as covered by Uniform Commercial Code (p. 14, Sec. 2.12, SB 105).
- 8 - Adverse possession law restored as before and Senate limitations matter deleted (p. 16, Sec. 3.17, SB 105; p. 17, Sec. 3.15 of CS for SB 105).
- 9 - Matter re sales of personal property and continued possession is tied in with the Uniform Commercial Code (p. 17, Sec. 3.18, SB 105; p. 17, Sec. 3.16 of CS for SB 105).
- 10 - Affidavit of "business manager" not "principal clerk" is permitted in connection with proof of publication (p. 17, Sec. 3.19, SB 105; p. 17, Sec. 3.17 of CS for SB 105).
- 11 - Material dealing with objections to tender is omitted as contrary to Uniform Commercial Code (p. 17, Sec. 3.22, SB 105 omitted).
- 12 - Material re inspection and copying of public records is restored because incorrectly revised (pp. 18, 19, Sec. 3.25, SB 105; pp. 18, 19, Sec. 3.22, CS for SB 105).
- 13 - Law as to interest on judgments included so as to round out Art. IV, Title I (p. 21, new Sec. 4.07 added after Sec. 4.06, SB 105; See Sec. 4.07, p. 21, of CS for SB 105).
- 14 - Old law as to security for costs by nonresident plaintiffs restored (p. 23, Sec. 5.10, SB 105; p. 24, Sec. 5.12, CS for SB 105).
- 15 - Law as to redelivery bond in attachment included to cure substantial omission (p. 28, new Sec. 7.11 added after Sec. 7.10, SB 105; See Sec. 7.11, p. 29, CS for SB 105).
- 16 - Law re arrest for debt tied in with Constitution (p. 29, Sec. 9.02, SB 105; p. 30, Sec. 9.02, CS for SB 105).
- 17 - Last sentence deleted as not in accord with Constitution (p. 30, Sec. 9.07, SB 105; p. 31, Sec. 9.07 of Substitute).

- 18 - Deputy magistrates given jurisdiction in actions involving declaration of death (p. 34, Sec. 11.01, SB 105; pp. 35, 36, Secs. 11.01 - 11.05, CS for SB 105).
- 19 - Art. XI rewritten to conform to original law except jury not limited to residents of community of disappearance (p. 34, Sec. 11.01, SB 105; pp. 35, 36, Secs. 11.01 through 11.05, CS for SB 105).
- 20 - Court in divorce can change wife's name regardless of fault (p. 39, Sec. 12.14(7), SB 105; p. 41, Sec. 12.14, CS for SB 105).
- 21 - Duties of masters in condemnation proceedings spelled out (pp. 44, 45, Sec. 13.07, SB 105; p. 47, Sec. 13.07(2) (4), CS for SB 105).
- 22 - New Sec. 13.09 retaining right to jury trial in condemnations inserted (p. 46 after Sec. 13.08, SB 105; p. 48, Sec. 13.09, CS for SB 105).
- 23 - Jury trial again recognized and section rewritten (p. 50, Sec. 13.15, SB 105; pp. 50, 51, Sec. 13.15, CS for SB 105).
- 24 - No costs for plaintiff in suits for condemnation of easements -- old substantive law erroneously omitted now restored (p. 49, Sec. 13.16, SB 105; p. 52, Sec. 13.17, CS for SB 105).
- 25 - Arrest of judgment debtor lined up with Constitution (p. 68, Sec. 15.32, SB 105; p. 71, Sec. 15.32, CS for SB 105).
- 26 - New sections, 16.01 through 16.03, added to replace old Secs. 16.01 and 16.02, and to replace former law (p. 69, Secs. 16.01, 16.02, SB 105; p. 72, Secs. 16.01 through 16.03, CS for SB 105).
- 27 - Present law re forcible entry restored by addition of new Sec. 17.02 (p. 70, Sec. 17.02, SB 105; p. 74, Sec. 17.02, CS for SB 105).
- 28 - Settled policy re speedy service of summons and no delays in forcible entry cases retained as substantive law by new Sec. 17.07 (p. 71, after Sec. 17.06, SB 105; p. 75, Sec. 17.07, CS for SB 105).

- 29 - Substantive matter re "color of title" restored (p. 90, Sec. 25.02, SB 105; p. 95, Sec. 25.02, CS for SB 105).
- 30 - Substantive law clarified to provide that parties may contract in lease for forfeiture for failure to pay rent (p. 91, Sec. 25.07, SB 105; p. 96, Sec. 25.07, CS for SB 105).
- 31 - Too specific and misleading matter re married women's rights deleted because it will appear elsewhere in another title in revision (p. 97, Sec. 30.01, SB 105, deleted).

#### Minor

Changes in the naming of titles (Title II); Articles (Articles XI, XVI, XVIII, XX and XXVI); Sections (Sec. 3.29, now 3.25; Sec. 13.01; Sec. 13.15, now 13.16; Sec. 13.16, now 13.17; Sec. 13.17, now 13.18; and Sec. 26.01) accounted for 12 of the 47 minor amendments.

5 changes corrected clerical errors (p. 6, line 13, p. 15, line 32, and p. 93, line 5, of SB 105. References are to original SB 105 where possible, otherwise they are in Senate amendments or typing errors in House amendments).

7 changes involve renumbering of sections.

16 involve clarification of language (line 7, Sec. 9.04; line 22, Sec. 9.07; line 12, Sec. 10.01(12); line 19, Sec. 10.02; lines 2, 4, Sec. 12.16; line 26, Sec. 13.11; line 21, Sec. 15.08(1); line 12, Sec. 15.12; line 10, Sec. 15.14(2); lines 6, 7, 8, 9, Sec. 15.18(c); p. 74, Sec. 18.06, delete last sentence; line 2, Sec. 22.04; and line 2, line 3, Sec. 31.01, and the title.

7 pertain to corrections of grammar (line 27, Sec. 4.01; line 16, Sec. 5.02; line 26, Sec. 15.08(3); line 19, Sec. 15.13; line 10, Sec. 17.04(3); line 5, Sec. 18.02; and line 27, Sec. 25.03.

#### E. Conclusion

Judiciary Committee believes the committee substitute to be a good major first step in providing Alaska with clear and modern substantive law dealing with civil procedure. This lengthy report is necessary to enable a full understanding of the bill and of the methods used by the committee in preparing the substitute.