

TITLE 4.—OF THE JUDICIARY DEPARTMENT.

CHAPTER XII.

§815. In order to conduct, with certainty and system, the judicial power, and that the Government may be administered in accordance with law and justice, there shall be a department, to be styled the Judiciary Department, which shall be presided over by the Chief Justice and Chancellor of the Kingdom, whose duty it shall be to make a report to the Legislature, at each regular session thereof, of the business of said department, and the administration of justice throughout the Kingdom.

§816. Said department, and the several judges and other judicial officers thereof, shall, in all respects, be independent of both the executive and legislative departments. The King shall have no power to interfere with, alter, or overrule any judgment or decision of any judge, or other judicial officer; provided, however, that nothing herein contained shall be construed to prevent His Majesty from granting reprieves and pardons, after conviction, for all offenses, except in cases of impeachment.

Constitution
Article 27.

§817. The judicial power of the Kingdom is vested in one Supreme Court, and in such inferior courts as the Legislature may, from time to time, establish.

Constitution
Article 64.

§818. No person holding a seat on the Bench of the Supreme Court, the Circuit Court, or any Police or District Court, shall be eligible to a seat in the House of Representatives of this Kingdom.

Constitution
Article 20.

Constitution
Article 67.

§819. The judicial power shall extend to all cases in law and equity arising under the Constitution, any law of this Kingdom, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls, and to all cases of admiralty and maritime jurisdiction; and to all cases arising under the laws of nations.

Constitution

The King v
Paakaula, 3 H
R., 30.

§820. No person shall sit as judge in any case in which his relative is interested, either as plaintiff or defendant, or in the issue of which the said judge, either directly or through a relative, may have any pecuniary interest. Neither shall any judge sit alone on an appeal, or new trial, in any case in which he may have given a previous judgment.

§821. No Judge of the Supreme or any Circuit Court, shall exercise the profession or employment of counsel or attorney, or be engaged in the practice of law, and no judge of any other court shall be employed, nor allowed to appear as counsel or attorney before any court, in any suit which shall have been previously tried before him.

§822. All questions of law arising in any civil cause shall be decided by the court or judge before whom the matter is pending; and the instructions of such court or judge in relation to the law shall be binding upon the jury, if any be impanelled in the cause.

Section 14.

§823. The several courts may cite and adopt the reasonings and principles of the admiralty, maritime, and common law of other countries, and also of the Roman or civil law, so far as the same may be founded in justice, and not in conflict with the laws and customs of this Kingdom.

§824. The several courts of record shall have power to decide for themselves the constitutionality and binding effect of any law, ordinance, order or decree, enacted or put forth by the King, the Legislature, the Cabinet, or Privy Council. The Supreme Court

shall have the power to declare null and void any such law, ordinance, order or decree, as may upon mature deliberation appear to it contrary to the Constitution, or opposed to the laws of nations, or any subsisting treaty with a foreign power.

§825. The several courts, in their decisions, shall have due regard to vested rights.

§826. The several courts of record, in term time, and the respective justices thereof, at chambers, shall have power summarily to commit for trial any party appearing to the satisfaction of such court or justice, to have committed perjury in any trial or proceeding had before the same.

CHAPTER XIII.

OF THE SUPREME COURT.

§827. The Supreme Court shall consist of a Chief Justice and two Associate Justices, any of whom may hold the court. Constitution Article 65.

§828. The Justices of the Supreme Court shall hold their offices during good behavior, subject to removal as provided in the Constitution, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office. Constitution Article 66.

§829. The Supreme Court shall have jurisdiction of all cases in law or equity, civil or criminal, and of all admiralty or maritime cases, whether the same be brought before it, by original Constitution Article 67.

writ, by appeal, or otherwise. It shall have exclusive* jurisdiction of all suits or proceedings against ambassadors, or other public ministers, their attachés or servants, as far as any court can have consistently with the laws of nations; and of all actions against the Hawaiian Government, which can be instituted only by permission of the King in Privy Council. In all suits brought by ambassadors, or other public ministers, and in all suits in which a consul or vice-consul shall be a party, either plaintiff or defendant, it shall have jurisdiction, but such jurisdiction shall not be exclusive.

§830. The Supreme Court shall have the general superintendence of all courts of inferior jurisdiction, to prevent and correct errors and abuses therein, where no other remedy is expressly provided by law.

Act
1876,
Chap. XXXIX.

§831. The Supreme Court, or the Chief Justice, or first Associate Justice thereof at chambers, shall have the power to issue writs of error, *certiorari*, *mandamus*, *ne exeat regno*, *prohibition* and *quo warranto*, and all other writs and processes, to courts of inferior jurisdiction, to corporations and individuals, that shall be necessary to the furtherance of justice, and the regular execution of the laws.

Act
1862.

From and after the date of the passage of this Act, the like powers and duties as are possessed and exercised by the First Associate Justice of the Supreme Court, shall be possessed and exercised in like manner by the Second Associate Justice of the said Court.

§832. The Supreme Court shall have power to make and award all such judgments, decrees, orders and injunctions, to issue all such executions and other writs and processes, and to do all such other acts, as may be necessary to carry into full effect all the powers which are or may be given to it by the Constitution and laws of the Kingdom.

§833. The Supreme Court shall have power, from time to time, to make rules for regulating the practice and conducting

*Erroneously printed "conclusive" in the Civil Code.

the business of said court, in all cases not expressly provided for by law; and thereafter to revise said rules, so often as it may be found wise and necessary to simplify said practice, and remedy any abuses or imperfections that may be found to exist therein.

§834. Whenever any question of law shall arise in any trial or other proceeding, before the Supreme Court, when held by one justice, he may reserve the same for the consideration of the full court; and in such case shall report the case, or so much thereof as may be necessary for a full understanding of the question, to his associates..

§835. Any question may be reserved in like manner, upon the motion of either party, on account of any opinion, direction, or order of the justice, in any matter of law.

§836. If any party shall think himself aggrieved by any such opinion, direction, or order, and the justice shall not think fit to reserve the case upon his motion, the party may allege exceptions to such opinion, direction, or order, and the same being reduced to writing in a summary mode, and presented to the justice before the final adjournment of the court for the term, and being found conformable to truth, shall be allowed and signed by the justice; and if said justice shall refuse to allow and sign said exceptions, the truth of the allegations therein contained, may, nevertheless, be established before the full court, and the exceptions allowed by them.

Luka v. Poo-
hina, 3 H. R.,
733.

§837. Upon the allowance of such exceptions, the questions arising thereon shall be considered by the full court. If, however, the exceptions shall appear to the justice before whom the trial is had, to be frivolous, immaterial, or intended for delay, the judgment may be entered, and execution may be awarded or stayed, on such terms as the justice shall deem reasonable, notwithstanding the allowance of the exceptions.

Kamalu v.
Lovell, 4 H. R.

§838. When upon the hearing of a case, brought before the court upon exceptions alleged as before provided, it shall appear

that the exceptions are frivolous, or immaterial, or were intended for delay, the court may award against the party taking the exceptions, double costs from the time when the same were alleged, and also interest from the same time, at the rate of twenty per cent. per annum, on the sum, if any, found due for debt or damages, or may award any part of such additional costs and interest as it may deem proper.

252 §839. When judgment shall have been rendered in any case, in which exceptions have been allowed, the judgment may be vacated by the full court, without any writ of error, in like manner as if it had been entered by mistake, and thereupon such further proceedings shall be had in the case as to law and justice shall appertain.

§840. No trial by jury shall be prevented or delayed by the filing or allowance of such exceptions, but the verdict shall be received and such further proceedings shall be had in the case as the court may order in pursuance of the foregoing provisions.

Sec.1131-36 §841. Whenever a cause shall be at issue in the Supreme Court, and it shall appear that the trial of the same will require the examination of a long or complicated account, on either side, such court may, on the application of either party, or without such application, order such cause to be referred to three impartial and competent persons. Each party shall be entitled to name one of the referees, and the court shall appoint the third, and in case either party shall fail to nominate, the court shall do so for him.

§842. There shall be four several terms of the Supreme Court held in each year, commencing as follows:

On the first Mondays of January, April, July, and October; which said terms shall respectively be called the January, April, July, and October terms of the Supreme Court. The Court may however hold special terms at other times, whenever it shall deem it essential to the promotion of justice.

§843. The four regular terms shall be held at the court-house in the city of Honolulu: provided always, that the Chief Justice may, in case he shall deem it requisite by reason of war, pestilence, or other public calamity, or the danger thereof, order the same to be held at a different place, and it shall be so held until the order is revoked or a new place appointed. The several terms may be continued and held from the commencement thereof, until and including the fourth Saturday after the commencement of each term.

§844. When neither of the justices is present at the time and place appointed for holding the court, whether at the beginning of a term or at any adjournment thereof, it shall be the duty of the clerk of said court to adjourn the same from day to day, until one of the justices shall attend, or until an order in writing shall be received from one of them respecting such adjournment.

§845. In case of the absence, or sickness, of the Chief Justice, or of a vacancy in that office, all the duties thereof, both at chambers and in banco, shall be performed during such absence, sickness or vacancy, by the First Associate Justice, or such other justice as the King may appoint for the time.

§846. The Chief Justice of the Supreme Court shall receive an annual salary of five thousand dollars, the First Associate Justice an annual salary of four thousand dollars, and the Second Associate Justice an annual salary of four thousand dollars, which said salaries shall be paid in monthly payments, out of the treasury of the Kingdom

As amended
1876,
Chap. XXIX.

NOTE.—Concurrent jurisdiction is given to the Supreme Court and Circuit Courts in cases of Common Nuisance, by Act of 1870, Chap. IX.

ARTICLE XXXIII.—OF THE POWER AND DUTIES OF THE JUSTICES
OF THE SUPREME COURT AT CHAMBERS.

§847. The Chief Justice of the Supreme Court is the Chancellor of the Kingdom, and as such shall possess all the powers incident to that office at common law. He shall have power at chambers to decree the foreclosure of mortgages, and generally, to hear and determine all matters in equity, bankruptcy, or admiralty: And the First Associate Justice shall act as vice-chancellor, and have full and concurrent jurisdiction in all matters at chambers with said chancellor.

§848. The several Justices of the Supreme Court shall have power at chambers, to compel the attendance of parties and witnesses, and to compel the production of books, papers, and accounts, and take all other steps necessary for the promotion of justice, in the matters pending before them at chambers, in like manner as the Supreme Court may do in term time.

§849. The said justices shall severally have power to issue warrants for the apprehension, in any part of the Kingdom, of any person accused under oath, of a crime or misdemeanor, and to examine and commit such person to prison for trial.

§850. The Justices of the Supreme Court shall have power to prescribe the rules of practice to be observed at chambers.

§851. The several Justices of the Supreme Court shall have the powers at chambers, to grant probate of wills, to appoint guardians, and administrators, and again to compel all guardians, administrators, and executors, to perform their respective trusts, and to account in all respects for the discharge of their official duties. They may in case of moral unfitness, or other good and sufficient cause, remove any administrator, guardian, or executor, appointed by will or otherwise.

NOTE.—Second Associate Justice has like powers. See, after Sec. 831.

§852. Said justices shall severally have power at chambers, to admeasure dower and partition real estate. When the dower in real estate cannot be set apart without great injury to the owners, the judge may ascertain the value of such dower in money, and order the same to be paid on such terms as shall be just and reasonable. When the partition of real estate cannot be made without great prejudice to the parties, the judge may order a sale of the premises and divide the proceeds.

Dower. Sec.
1299 et seq.

§853. Said Justices shall severally have power at chambers, to grant (divorces and) separations, and decree alimony; to legalize the adoption of children; and to decree the affiliation of bastards.

See Divorce Act
1870,
Chapter XVI.

§854. The several Justices of the Supreme Court shall have power, subject to challenge for cause by either party, to select and impanel a special jury of inquiry of idiocy, lunacy, or *de ventre inspiciendo*, or in any other matter to be tried before any of said Justices at chambers, and they shall receive and act upon the verdict of such jury as equity and good conscience may require.

Section 1241.

§855. The several Justices of the Supreme Court shall have power at chambers, upon any sworn application made in writing, to issue writs of *habeas corpus* for inquiring into the cause of any alleged unlawful imprisonment or restraint, or of *ad testificandum*, and they may enlarge on bail persons rightfully confined, in all bailable cases.

Hab. Cor. Act,
1870,
Chap. XXXII.

§856. Any Justice of the Supreme Court, at chambers or in banco, upon the application of either party, may require either the plaintiff or defendant to give security for costs in any case, upon such terms and conditions as he may deem just.

§857. The Supreme Court in term time, or the Chief Justice or First Associate Justice thereof at chambers, upon satisfactory proof that a fair and impartial trial cannot be had in any case pending in said court, or in any circuit court, may, after hearing the opposite party, or without such hearing should he fail to appear after due notice, change the *venue* to some other circuit, and order the record to be transferred thereto.

Any Jus. Sup.
C't. Sec. 831,
etc.

Act
1868.

TO ENLARGE THE JURISDICTION OF THE SUPREME COURT.

For Power to
change venue
see also Act
1876, Chap. XL,
Sec. 13.

SECTION 1. Any indictment pending in any Circuit Court of this Kingdom, for any felony, may be removed to the Supreme Court, sitting in Honolulu, within the Island of Oahu, and for all the islands of this Kingdom, upon motion of the Attorney-General, by consent of the defendant, if in the judgment of the court the interests of justice will be subserved thereby.

SECTION 2. All motions for removal of indictments shall be in writing, with the reason therefor fully set forth.

SECTION 3. Witnesses required to attend the Supreme Court sitting in Honolulu, as aforesaid, who are not residents of the Island of Oahu, shall be paid four cents per mile for each mile actually traveled, and one dollar for each day of actual attendance.

SECTION 4. The Supreme Court shall make general rules relating to the custody and transmission of papers in the cases provided for in this Act.

§858. If at the time fixed for the hearing of any matter before a justice of the Supreme Court at Chambers, he is absent, or unable to hear it, the same may be transferred by his order to some other justice of said court, who may be willing to hear the same.

§859. An appeal may be taken to the full court, in banco, from any decision, judgment, order, or decree, made by any justice of the Supreme Court at chambers, and said Supreme Court in banco shall have power to review, reverse, affirm, amend, modify, or remand for new hearing at chambers, such decision, judgment, order or decree, in whole or in part, and as to any or all of the parties. Every such appeal shall be taken upon the record, and no new evidence shall be introduced in the court above: provided always, that the court above may in case evidence is offered, which is clearly newly discovered evidence, and material to the just decision of the appeal, admit the same. Nothing in this section contained shall be construed to permit an appeal to be taken from any order by any justice allowing any warrant, attachment, writ, or other process; or for the taxation of costs; or any other order of a like nature.

Within 10 days
Rule IV.

ARTICLE XXXIV.—OF THE CLERK OF THE SUPREME COURT.

§860. The clerk of the Supreme Court shall be appointed by the Justices thereof, and hold his office subject to their pleasure. He shall have charge of the seal of the court, which shall be impressed upon all its process. He shall have power to issue process in all suits and matters brought before the Supreme Court, or before the Chief Justice or any Associate Justice thereof at chambers. He shall also have power to administer oaths, to take the depositions of witnesses, to assess damages upon notes, bonds, bills of exchange, orders, and other liquidated obligations, in all cases in which default shall have been made, or on reference by the court, and all other powers and duties in relation to the drawing of jurors, and in all other matters which lawfully pertain to his office, or are necessary to the transaction of the business of the Supreme Court. He shall also be *ex officio* a master in chancery.

§861. He shall be sworn to the faithful discharge of all the duties of his office, by one of the justices of the Supreme Court; and before entering on the performance of such duties, he shall give a bond to the Minister of Finance, with one or more sufficient sureties, and in such sum as may be approved by the Supreme Court, conditioned for the faithful discharge of all his official duties.

§862. He shall attend and record the proceedings of the court, and have the care and custody of all the records, books, papers, and moneys appertaining to the court or to his office, subject however, to the orders of the court.

§863. In equity, admiralty, or maritime cases, and in all matters heard before any justice of the Supreme Court at chambers, the clerk shall attend and record such part of the proceedings as shall be directed by the court, either by general rules, or by special order of the justice hearing the case.

§864. He shall keep in every book of records, an alphabetical list of the names of all parties to any suit or judgment therein recorded, with a reference to the page where it is recorded; and where there are several persons, either plaintiffs or defendants, the name of every person, with a like reference, shall be inserted in its appropriate place in said list.

§865. The Justices of the Supreme Court shall inspect the doings of the clerk, from time to time, and see that the records are made up seasonably and kept in good order; and if necessary, said justices may employ a deputy clerk, to assist said clerk in keeping up his records, and in the discharge of his other duties. If the records are left incomplete for more than three months at any one time, such neglect, unless caused by sickness or other good reason, shall be adjudged a forfeiture of the clerk's bond.

§866. The clerk shall exhibit the records, at every term, to the Justices of the Supreme Court, and at such other times as may be required by any justice, so that the court may have notice of any errors or defects in the keeping of the records, and may cause the same to be corrected.

§867. In case of the absence or death of the clerk, his deputy shall act as clerk, until the clerk shall resume the discharge of his duties, or until another shall be appointed by the court. In case there be no deputy, the court shall appoint a clerk *pro tempore*, who shall receive for his services such compensation as the court shall think proper, to be paid from the appropriation for the standing clerk, or from the public treasury, as the court may direct, by order upon the Minister of Finance, out of any moneys not otherwise appropriated.

§868. The Clerk of the Supreme Court shall keep exact accounts of all fines, costs, and fees, received by him, and shall render quarterly accounts of the same, under oath, to the Minister of Finance.

§869. The Clerk of the Supreme Court shall receive an annual salary of two thousand dollars, which shall be paid in monthly payments out of the treasury of the Kingdom.

CHAPTER XIV.

OF THE CIRCUIT COURTS.

§870. The Kingdom shall be divided into four judicial circuits, as at present constituted, that is to say:

For Am'ndm'ts affecting first circuit, see following Sec.'885.

The first circuit shall consist of the Island of Oahu, whose seat of justice shall be at Honolulu; (a)

The second circuit shall consist of the Islands of Maui, Molokai, Lanai and Kahoolawe, whose seat of justice shall be at Lahaina, on the Island of Maui; (a)

The third circuit shall consist of the Island of Hawaii, whose seat of justice shall be at Hilo and Waimea;

The fourth circuit shall consist of the Islands of Kauai and Niihau, whose seat of justice shall be at Nawiliwili, on the Island of Kauai.

§871. The terms of the respective circuit courts shall be held as follows, that is to say:

SECTION 1. A term of the Circuit Court shall be holden at Waimea, in the Island of Hawaii, within and for the Third Circuit of the Kingdom, on the first Tuesday of November in each year.

Act
1868.

SECTION 2. The term of the Circuit Court now appointed by law to be holden on the first Tuesday of September, within and for the said Third Circuit, shall hereafter be holden at Hilo, on the first Tuesday of May of each year.

SECTION 3. Either term may be adjourned to the other seat of justice in the Island of Hawaii, appointed for holding said

NOTE—The result of amendments is as follows: There is no term of the first circuit. Seven circuit terms are held: first Tuesday of February at Nawiliwili, Kauai; first Tuesday of May at Hilo, Hawaii; first Tuesday of June at Wailuku, Maui; first Tuesday of August at Nawiliwili, Kauai; first Thursday of September at Waiohinu, Hawaii; first Tuesday of November at Waimea, Hawaii; first Tuesday of December at Lahaina, Maui.

Circuit Court, whenever, in the opinion of the Justice of the Supreme Court presiding at the same, the interest of public justice shall require such adjournment.

Act
1888.

The term of the Circuit Court now appointed by law to be holden at Nawiliwili, within and for the fourth circuit of this Kingdom, on the first Tuesday of May in each year, shall be holden hereafter at Nawiliwili, on the first Tuesday of August, in each year.

Act
1872,
Chapter XIX.

A term of the Circuit Court within and for the Fourth Judicial Circuit, shall be holden at Nawiliwili on the first Tuesday of February in each year in addition to the term now prescribed by law.

Act
1874,
Chap. XVIII.

TO AMEND SECTION 870 OF THE CIVIL CODE, AND PROVIDING TWO PLACES FOR HOLDING THE TERMS OF THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT.

SECTION 1. The terms of the Circuit Court for the Second Judicial Circuit, provided for in Section 870 of the Civil Code, consisting of the Islands of Maui, Molokai, Lanai and Kahoolawe, the seat of justice of which to be at Lahaina, shall hereafter be held at Lahaina on the first Tuesday of December, and at Wailuku in the Court House thereat on the first Tuesday of June in each year.

Act
1882,
Chapter XIV.

TO PROVIDE FOR THE HOLDING OF AN ADDITIONAL TERM OF THE CIRCUIT COURT FOR THE THIRD JUDICIAL CIRCUIT.

SECTION 1. There shall be held on the first Thursday of September in every year, at Waiohinu, in the District of Kau, Island of Hawaii, a term of the Circuit Court of the Third Judicial Circuit of the Kingdom.

SECTION 2. Only cases arising within the Districts of Puna, Kau, North and South Kona, of the said Island of Hawaii, shall

be heard at said term of the the Court, but cases arising within other Districts of the said Island of Hawaii may be heard by consent of parties.

SECTION 3. If there shall be only five cases or a lesser number to be tried at the term of the Court by this Act established, then it shall be lawful for the Chief Justice of the Supreme Court to order, giving due publication of the same, that the said term be not held, and that the said cases be transferred to be tried at the regular term of the Circuit Court to be holden at Waimea, in the Island of Hawaii, in November.

SECTION 4. This Act shall take effect upon its passage.

Approved this 21st day of July, A. D. 1882.

§872. It shall be the duty of one of the Justices of the Supreme Court to attend and preside over each term of the Circuit Courts; and the expenses of any Justice of the Supreme Court in attending, holding, and returning from any such court, shall be paid from the annual appropriation for the expenses of said courts.

TO PROVIDE FOR THE ADJOURNMENT OF COURTS IN THE
ABSENCE OF THE PRESIDING JUSTICE.

Act
1868.

SECTION 1. If no Justice of the Supreme Court shall attend any Circuit Court at the time which it is appointed to be holden, the Circuit Judge, or if no Circuit Judge be in attendance, the sheriff may open the Court and adjourn the same from day to day, and from time to time, until the attendance of some Justice of the Supreme Court; but no such adjournment shall be for a longer time than three days, unless there shall be produced and recorded by the clerk, at the time of such adjournment, a written order by the Chief Justice of the Supreme Court, fixing the day to which said Circuit Court shall stand adjourned.

SECTION 2. The 873d Section of the Civil Code is hereby repealed, and so much of the 885th Section of said Code as pro-

vides that the sessions of the Circuit Courts shall not extend, during any one term, beyond the period of fourteen days, is also repealed.

§874. All persons bound to appear at any circuit court, which shall have failed, as mentioned in the last preceding section, shall be bound to appear at the next term of said court.

§875. The seals of the several circuit courts shall be those already devised, and now in use by said courts.

§876. His Majesty the King, (by and with the advice of the Privy Council,) shall appoint a sufficient number of circuit judges, not exceeding three for each judicial circuit. Said circuit judges shall hold office (during good behavior,) subject, however, to removal as provided in the Constitution.

See Constit't'n
Article 71.

TO REGULATE THE TERM OF SERVICE OF JUDGES OTHER THAN
THOSE OF THE SUPREME COURT.

Act
10th January.
1865.

SECTION 1. That all Circuit Judges, who now are, or may hereafter be appointed, shall hold their offices for the term of four years from the date of their several appointments.

SECTION 2. All District Justices shall hold their offices for the term of two years from the date of their several appointments.

As amended
1862.

§877. The Circuit Judge of the First Circuit shall receive an annual salary of six hundred dollars. That of the Second Circuit shall receive an annual salary of twelve hundred dollars. That of the Fourth Circuit shall receive an annual salary of one thousand dollars, and those of the Third Circuit shall receive nine hundred dollars each per annum: Provided that only two judges be appointed for the Third Circuit; but if three judges be appointed for the Third Circuit, the salary of each shall be six hundred dollars per annum. These salaries shall be paid by monthly payments out of the Treasury of the Kingdom.

§878. The Circuit Judges shall have power in their respective circuits, to hear and determine, at chambers, all appeals made to them by any party from the decision of any district or police justice, within their jurisdiction.

Section 1005.

§879. To constitute a Circuit Court, in either of the judicial circuits, at least one Circuit Judge of such circuit shall be associated on the bench with a justice of the Supreme Court: provided, however, that in case of the inability of all the circuit judges of the circuit to attend, the Justice of the Supreme Court in attendance may hold the court alone.

§880. The respective Circuit Courts shall have original jurisdiction to hear and determine all civil suits between individuals, or in which the Government is plaintiff, involving a greater amount of indebtedness or claim than one hundred dollars, and appellate jurisdiction in all such suits when the amount claimed does not exceed one hundred dollars. They shall have power to hear and determine all private actions arising within their jurisdiction, sounding in consequential injury or damages, without limit as to amount of claim. They shall also have power to partition real estate; to grant writs of ejectment and of possession; to admeasure dower; to affiliate bastards; to grant warrants of summary arrest and imprisonment; to restrain by writs of *ne exeat*, injunction and attachment; to issue commissions for the examination of foreign or domestic witnesses; to depute the power of administering oaths; to change the venue of trial at the request of either party to any cause depending before them, to some other circuit; to grant continuances and postponements; to grant writs of *habeas corpus*; to enlarge prisoners on bail; to decree the annulment of the marriage contract, and grant (divorces and) separations, for legal causes, and decree alimony; and to decree the foreclosure of mortgages upon real estate or chattel property.

Nathaniel Keknewa
v.
Kuan, 4 H. R.

Venue Sec. 857.

Divorce see,
Act 1870, Chap.
XVI.

§881. The criminal jurisdiction of the circuit courts shall be co-extensive with the circuits for which they are created. It

As amended
1860.

shall be appellate from the district and police courts thereof in all cases cognizable before those courts, and original in all other cases.

Section 829.

§882. The jurisdiction of the circuit courts shall not extend to the enforcement of maritime liens and hypothecations ; but in all such cases the said courts, or any judge thereof at chambers, may grant process of attachment, seizure or arrest, returnable before the Chief Justice of the Supreme Court sitting as a court of admiralty, and may summon the respondent to appear before the said Chief Justice to show cause. Neither shall the jurisdiction of said circuit courts extend to actions instituted against the Hawaiian Government.

§883. The respective circuit judges, in the Second, Third and Fourth Judicial Circuits, shall have power at chambers, to grant writs of *habeas corpus* ; to appoint guardians and administrators, and again to compel all guardians, administrators and executors, to perform their respective trusts, and to account in all respects for the discharge of their official duties. They may, in case of moral unfitness, or other good and sufficient cause, remove any administrator, guardian or executor, appointed by will or otherwise. The said judges shall severally have power to admeasure dower, and partition real estate, having the like discretion therein as is given to the Justices of the Supreme Court, in Section 852. They shall also have cognizance of the probate of wills, and of the affiliation of bastards.

The several Circuit Judges throughout the Kingdom shall be, and they are hereby empowered, to certify and legalize the adoption of children, in like manner with the Justices of the Supreme Court.

§884. The respective circuit courts shall have power, from time to time, to make rules for regulating the practice and conducting the business of said courts, and for regulating the practice and conducting the business of the circuit judges of their several circuits, in all cases not expressly provided for by law ; and thereafter to revise said rules at their discretion.

§885. (The sessions of the several circuit courts shall not extend during any one term beyond the period of fourteen days, and all causes not reached upon the calendar, or not within that period disposed of, shall be continued to the next term of said court): provided, however, that the Chief Justice of the Supreme Court may order a special term of any circuit court to be held, whenever he may deem it essential to the promotion of justice.

Repealed, see
Act following
Sec. 872.

ARTICLE XXXV.—OF THE CLERKS OF THE CIRCUIT COURTS.

§886. The Justices of the Supreme Court shall appoint the clerks of the several circuit courts, who shall hold office during the pleasure of said Justices. Said clerks shall severally have the charge of the seals of their respective courts, and shall have power to issue all writs and processes required by the practice of said courts.

§887. The said clerks shall attend all the said courts held in their respective circuits, and record their proceedings, and shall have the care and custody of all records, books and papers appertaining to their respective offices, and filed and deposited therein.

§888. The clerks of the several circuit courts shall each be sworn to the faithful discharge of his duties, and give a bond to the Minister of Finance, to be approved by one of the Justices of the Supreme Court, in the sum of five hundred dollars, with one or more sufficient sureties, conditioned for the faithful discharge of his official duties.

§889. Each circuit court clerk shall keep an exact account of all fees and costs received by him, and shall, quarterly, render a

faithful account of the same, under oath, to the Minister of Finance.

§890. In keeping their records they shall be governed by the rules prescribed in that respect for the clerk of the Supreme Court.

§891. The clerks of the several circuit courts shall receive for their services an annual salary of two hundred and fifty dollars each.

Act
1880,
Chapter XVI.

TO PROVIDE FOR THE SAFE CUSTODY OF WILLS AND TESTAMENTARY PAPERS.

SECTION 1. Whenever any will or testamentary paper shall be admitted to probate by any Circuit Judge, it shall be the duty of such Circuit Judge, within one month after such will or testamentary paper shall have been so admitted to probate, to forward the same to the clerk of the Supreme Court, to be by him filed and preserved in the office of such court.

SECTION 2. It shall be the duty of all circuit judges and the clerks of the several circuit courts, as soon as conveniently may be after the passage of this Act, to forward all original wills and testamentary papers which may be in their custody and theretofore admitted to probate, to the said clerk of the Supreme Court, to be by him filed and preserved as aforesaid.

SECTION 3. The several circuit judges and clerks of the circuit courts shall retain copies of all wills and testamentary papers so forwarded by them under the provisions of this Act.

Act
1870,
Chapter IX.

RELATING TO THE ABATEMENT OF NUISANCES.

SECTION 1. The Supreme Court and the several Circuit Courts shall have jurisdiction concurrently with the District and Police Courts, of all cases of common nuisances.

SECTION 2. Whenever any person shall be convicted in the Supreme Court or any Circuit Court of maintaining a common nuisance, the Court shall order that said nuisance be abated. Such order shall not operate to suspend or vacate the sentence imposed, but shall be a wholly cumulative remedy. In case the order shall not have been made at the time of imposing the sentence, it may be made at any regular term of the same Court, or of the Supreme Court, holden within two years thereafter, upon motion by the Attorney General, and reasonable notice to the defendant. Upon the hearing of such motion, the judgment previously rendered, shall be conclusive evidence of the maintenance of the nuisance.

SECTION 3. All orders for the abatement of a nuisance shall direct, under a penalty, that the same be abated, within a time to be limited in such order, and that, if the same be not abated within such time, that the proper executive officer of the law, do forthwith abate the same at the cost of the defendant, who shall also be liable to the full amount of the penalty specified in such order, for which, as well as for all costs and expenses arising in such case, execution shall duly issue.

TO ABOLISH THE OFFICE OF CIRCUIT JUDGE OF THE ISLAND OF
OAHU.

Act
1874,
Chapter IX.

SECTION 1. That from and after the passage of this Act the office of Circuit Judge for the Island of Oahu be and the same is hereby abolished.

SECTION 2. All appeals from the police magistrate and the district justices of the Island of Oahu shall be taken before any Justice of the Supreme Court at Chambers in like manner as such appeals are taken before the circuit judges of the other judicial

NOTE—By Act of 10th January, 1865, to abolish the Circuit Court for the first Judicial Circuit, provision was made for the appointment of an Intermediary Judge, to be styled Circuit Judge of the Island of Oahu. This Act is repealed by the following Act of 1874, Chapter IX.

districts, and any person deeming himself aggrieved by the decision of the said Justice of the Supreme Court may appeal to the Supreme Court.

SECTION 3. All trials and other business which were pending before the Circuit Judge for the Island of Oahu last appointed, at the date of his resignation shall be, and the same are hereby transferred to any one of the Justices of the Supreme Court sitting alone, and he is hereby fully empowered to hear, try and determine the said cases.

SECTION 4. The appeal cases under this Act may be heard by any Justice of the Supreme Court at Chambers in Honolulu, or in the districts where such appeal cases may have arisen, and one of the Justices of the said Supreme Court, is hereby required to make a circuit of the Island of Oahu, as often as may be necessary for the purpose of hearing appeals and other business which may be brought before him; and at least one week's previous notice shall be given in each district of the time and place of the hearing of such appeals, by causing notice of the same to be posted in some conspicuous place in the district, and any justice hearing any appeal case by the authority of this Statute shall have all the powers which are by law conferred upon the Circuit Judges of other Judicial Circuits in like appeal cases.

As amended
1876,
Chapter VI.

SECTION 5. The costs chargeable in appeal cases under the provisions of this Act, shall be the same as those chargeable by law in the police court of Honolulu.

SECTION 6. When for any cause, any police or district justice is legally disqualified to hear and determine any case, civil or criminal, which would by law come under his jurisdiction on the Island of Oahu, the same may be brought by direct suit or complaint before any one of the Justices of the Supreme Court sitting alone, to be heard and determined by such Justice, in like manner as if it had been brought before him by appeal. The same costs shall be charged in such cases as would have been charged if the suit had been brought before the police or district justice.

SECTION 7. All laws or parts of laws inconsistent with the provisions of this Act, as well as an Act entitled "An Act to abolish the Circuit Court for the First Judicial District," approved on the 10th day of January, A. D. 1865, are hereby repealed.

CHAPTER XV.

§892. One of the District Justices appointed for the first District of Oahu shall, by appointment, be Police Justice for the Port of Honolulu ; and one of those appointed for the first District of Maui shall be Police Justice for the Port of Lahaina ; and one of those appointed for the second District of Maui shall be Police Justice for the Wailuku District ; and one of those appointed for the first District of Hawaii shall be Police Justice for the Port of Hilo ; and one of those appointed for the second District of Hawaii shall be Police Justice for the District of North Kohala.

As amended
1882,
Chapter VIII.

§893. The several Police Justices shall, in all cases, preserve in written detail, the minutes and proceedings of their trials, transactions and judgments. They shall have original jurisdiction of torts and of wrongs arising upon the high seas, and upon the waters within His Majesty's maritime jurisdiction, and of controversies arising between the masters and crews of vessels, domestic or foreign, not however to interfere with the jurisdiction of foreign consuls under treaty stipulations ; and in cases of felony committed upon the high seas, they shall have jurisdiction to examine and perpetuate the evidence thereof, to commit the accused for probable cause, and to certify the facts and reasons of such commitment, to be used in evidence abroad, upon the remission of the offender to his domestic forum. They shall have exclusive original jurisdiction, within their respective districts, over all police cases proper, and over all cases where the amount of property in dispute shall not exceed two hundred dollars. Their criminal jurisdiction shall be co-extensive with their respective circuits, for the purpose of the arrest, examination, commitment, and enlargement of parties accused.

As amended
1868.

TO ENLARGE THE JURISDICTION OF POLICE COURTS.

Act
1870,
Chapter II

SECTION 1. The several police courts shall have concurrent criminal jurisdiction, co-extensive with the several judicial circuits, of all officers whereof the district courts now have jurisdiction.

Act
1870,
Chapter VII.

TO ENLARGE THE JURISDICTION OF THE POLICE COURTS IN
CERTAIN CASES OF AGGRAVATED ASSAULT.

SECTION 1. The several police courts of Honolulu, Hilo and Lahaina shall have concurrent jurisdiction with the Supreme Court and Circuit Courts, of all cases of assault with knives, sword canes and other weapons, obviously and imminently dangerous to life, except as is hereinafter provided.

SECTION 2. In cases where the offense is not of a highly aggravated character said police courts may punish the offender by fine not exceeding two hundred dollars and by imprisonment not exceeding two years; but in cases where such punishment would be inadequate, the offender shall be committed for trial according to existing provisions of law.

Act
1880,
Chapter X.

TO INCREASE THE JURISDICTION OF DISTRICT JUSTICES IN CASES
OF SERIOUS ASSAULT.

SECTION 1. A like jurisdiction with that conferred upon the Supreme and Circuit and Police Courts of Honolulu, Hilo and Lahaina, is hereby conferred upon all police and district courts of this Kingdom in all cases of felonious assault by knife, sword, sword-cane or other dangerous weapon injurious to life excepting the cases hereinafter mentioned as being excepted.

As amended
1882,
Chapter VI.

SECTION 2. In cases where the offense is not of a highly aggravated character the said courts may punish the offender by fine not exceeding two hundred dollars and by imprisonment not ex-

ceeding two years ; but in cases where such punishment would be inadequate, the offender shall be committed for trial according to existing provisions of law.

§894. The said police justices, when applied to and tendered the costs of process, shall issue summons to any party or parties defendant, within their respective jurisdictions, commanding such party or parties to appear and show cause why judgment should not be rendered upon the plaintiff's demand. If a defendant so summoned do not appear at the time and place cited in such summons, the oath of the officer that it was duly served upon the defendant personally, shall authorize the justice, if the claim be upon a note due, to render judgment therefor, and for the costs, as by default, without further proof ; if upon an account or book debt, he shall take *ex parte* proof that the debt honestly accrued, and render judgment according to the evidence, *ex parte* upon default ; if upon a contract, agreement or promise, written or verbal, other than a note or book debt, the justice, if the defendant has been personally served with summons, and do not appear at the time set, shall, upon hearing the plaintiff's evidence *ex parte*, award judgment for default of appearance, according to the right of the matter involved. If the defendant appear and deny the liability, the justice shall allow him full latitude to show cause, and for this purpose may grant sufficient time by adjournment, may subpoena witnesses and compel their attendance by attachment, and shall decide the matter at issue between the parties, allowing any offsets in deduction of a plaintiff's demand, that may have been proven by a defendant, and in case such offsets exceed the plaintiff's demand, he shall render judgment for such excess in favor of the defendant.

§895. The summons so to be issued by the police justices, shall contain a notification to the defendant, that if he fails to attend at the time and place of trial designated in the summons, judgment will be rendered against him *ex parte*, by default.

§896. Each of said justices shall keep a docket, in which he shall enter every cause by him determined, with the substance of

the testimony and facts upon which his decision rests. He shall conclude each case with the particular nature of the judgment or decision rendered; and in civil cases the amount thereof, if in money, or the object thereof, if not sounding in money.

§897. Upon sworn complaint being made, in writing, to either of said justices, by a party plaintiff, or some person on his behalf, setting forth that his demand was contracted in a fraudulent or deceitful manner, or upon false or unfounded pretences by the debtor, or that the debtor having honestly contracted the debt or obligation, seeks to avoid the payment thereof, by secreting his property, or by intention to transfer the same to some third person with that object, or is about to remove his property out of the district or if not triable before the police justice, that he is about to remove it from the circuit, or is eluding the service of summons, or is about to quit the circuit, said justice may issue an attachment against the property of such debtor at the suit of the plaintiff, which may be in the following form :

To any Constable of the District of, Island of, H. I.:

You are commanded to attach and safely keep the property of....., if any can be found within this district, subject to the order of this court, (or other court as the case may be) at the sworn information and suit of , plaintiff, to answer to a debt (or obligation, as the case may be) alleged to be due him from said.....; and having so attached, you are further commanded to summon the said....., if he can be found in this district, to appear and answer the complaint and demand of said plaintiff, before me at, on the..... day of, (or before another court, as the case may be, stating the time) and then and there show cause, if any he has, why judgment should not be rendered against him, and the property attached subject to execution, levy and sale, for the payment of said demand, interest and costs.

Notify the said....., that upon default to attend at the time and place above mentioned, judgment will be rendered against him *ex parte* by default.

Given under my hand this....., day of, 18....

.....,

Police Justice.

§898. In case such sworn application be made to either of the said justices, in any matter of indebtedness greater in alleged

amount than one hundred dollars, the summons and attachment shall be made returnable to the Circuit or Supreme Court, and the constable shall return the same to the court. In any such case it shall not be lawful for the justice to issue attachment, until the applicant shall have deposited with him a bond in a penal sum at the discretion of the justice, with one or more sureties to be approved by said justice, conditioned for the payment of all the costs of the proceeding, both on the part of the plaintiff and the defendant, the costs of court, and the damages sustained by the defendant, by reason of the attachment, in case the plaintiff shall not duly appear and substantiate the truth of his complaint, at the return of the writ, or in case the attachment shall be dissolved before that time, by order of a justice of the Supreme Court at Chambers.

§899. In case such application be made for attachment to an amount not exceeding one hundred dollars, the summons and attachment shall be returnable within ten days after summons served, before the justice issuing the same, and shall be by him dissolved, in case the applicant fail to establish his claim, on appearance and contest of the merits by the defendant; but in case the defendant make default, or appearing, the plaintiff substantiate his demand, the property attached shall be liable to execution at his instance, and shall be levied on, advertised and sold, as in other cases, subject to the right of appeal, and subject to the rights of property in third persons.

§900. Every attachment issued as aforesaid, shall be imposed by placing the property in security without removing the same from defendant's premises, except for greater safety. The officer so attaching shall take an inventory thereof, and append a copy of the same to his return of the attachment. He shall also furnish a copy of the inventory to the defendant, and if the property attached be lands or tenements, post in a conspicuous place upon the premises, a public notice of the following import:

These premises are attached by virtue of a writ from....., Esquire, Police Justice of....., returnable at....., on the..... day of....., at the suit and complaint of....., for.....dollars.

Dated..... day of....., 18....

Which notice, if the attachment be dissolved by a Justice of the Supreme Court at Chambers, or by non-appearance of the plaintiff on the day indicated for return, or by failure to sustain his claim by satisfactory proof, or by the recovering of an offset balance by the defendant, shall be removed from the property. If the property attached be removable; the said constable shall post in three conspicuous places within the district, a notice as follows:

By virtue of a writ from....., Esquire, Police Justice of....., returnable at....., on the..... day of....., at the suit of....., for.....dollars, I have attached, subject to a demand to be proved, the following articles of property, viz.:

All persons having rights in said property are notified to prove their claims on or before the return day above named.

Dated.....day of., 18....

.....

In case the attachment and summons be returnable at the Circuit or Supreme Court, the sheriff of the island shall, in addition to the above local notice from the constable, post the like notice, signed by him or his deputy, in three public places at the seat of such court.

§901. Upon application made to either of said justices, under oath, showing good and satisfactory reasons for believing that any person within his district is wrongfully secreting property of another, or of his own, to the prejudice of another, and upon bond to the said suspected person, filed with said justice as in the next succeeding section prescribed, said justice shall have power to grant a warrant to search the person or premises of said suspected person, and to take the property secreted by him, for some judicial purpose to be stated in the application, and the legality of which shall be determined by said justice. Said warrant may be in the following form:

To any Constable of the District of....., Island of., H. I.:

Information having been given to my satisfaction, by the oath of, that....., residing or being in said district, is wrongfully secreting (here specify the property if possible) belonging

to said informant, (or any other person for whom he applies) with intent to defraud the said informant, (or other person in whose behalf he applies) and the said.....having deposited a bond, with approved security, conditioned to answer the said....., for all damages, costs and charges to arise in consequence of his act in this respect, if adjudged to be a wrongful trespass:

You are commanded to search the person and premises of the said, to discover if possible, the property aforesaid, and for that purpose, if necessary, to break locks, doors and bolts; and if opposed, to secure the persons opposing, until you shall have completely searched his person and premises. And having found, to safely keep the same, to the end that justice may be done to the said....., in the premises.

You are also further commanded to apprehend the said....., and to bring him forthwith before me, to answer to an allegation of (wrongful, fraudulent or felonious, as the case may be) concealment, as alleged against him by the said

Make return of this writ, and of your proceedings thereon, with all convenient speed.

Given under my hand this.....day of.....18....

.....

Police Justice.

§902. The bond so required to be given shall be in such penal sum, and with such surety or sureties, as the justice shall approve, and shall be conditioned for the payment to the party complained against, of all lawful damages costs and charges, wrongfully sustained by him in consequence of the warrant and search, or of the taking of the property, that shall be awarded to him.

§903. The said justices shall not have power to try actions for slander, libel, defamation of character, malicious prosecution, breach of promise of marriage, false imprisonment, or seduction. (a) Neither shall they have jurisdiction to try and determine any crime or misdemeanor which the laws of this Kingdom require to be tried by a jury; but they shall have power, subject to appeal, to try without a jury, and to render and enforce judgment, in all cases of crimes and misdemeanors coming within their jurisdiction.

TO EXTEND THE JURISDICTION OF POLICE AND DISTRICT JUSTICES
TO CASES OF CRIMINAL CONVERSATION AND SEDUCTION.

WHEREAS, it is expedient, with a view to the suppression and punishment of *crim. con.* and seduction, to confer upon all Police and District Justices of this Kingdom, power to hear, try and determine civil actions for damages for the same in certain cases; therefore,

Be it Enacted by the King and the Legislative Assembly of the Hawaiian Islands in the Legislature of the Kingdom assembled:

Act
1864.

SECTION 1. That the jurisdiction of the several police and district justices of this Kingdom be, and the same is hereby extended to the hearing, trial and determination of all actions or suits for the recovery of damages for criminal conversation, seduction, (or other unlawful carnal intercourse,) in which the amount of damages claimed shall not exceed the sum of one hundred dollars.

Section 2 repealed 1876, Chapter XXXI.

SECTION 3. Nothing contained in this Act shall be held to affect the right of appeal, as regulated by law.

§904. In all cases of crimes or misdemeanors, in which a warrant of arrest shall be issued by either of said justices on the information of some person cognizant thereof, such information shall be verified by the oath of the informant, that he has knowledge of, or reason to believe, the commission of such crime or misdemeanor, by some person whose name or description, if possible, shall be alleged in the information, as well as the place where the violation of the law took place, and the names of the witnesses, if any. Such warrant of arrest may be in the following form:

To any constable of the district of....., Island of....., H. I.:

You are commanded on the information of....., verified by oath, forthwith to arrest and take the body of....., accused of....., if he can be found; and forthwith have his body before me at my office

in....., at any time between the hours ofA. M. and.....P. M., (to answer to the said accusation, or to show cause why he should not be committed for trial at the Circuit or Supreme Court, as the case may be). And you are also commanded, having arrested the said....., to summon as witnesses of accusation....., if they can be found, and to make due return of your proceedings upon this writ.

Given under my hand this.....day of....., 18....

.....,

Police Justice.

§905. In all cases of arrest for crimes or misdemeanors cognizable before a jury, the magistrate in whose jurisdiction or on whose warrant the accused was arrested, shall, upon the bringing up of the accused, proceed to consider whether there is probable cause to believe that a jury would, upon the evidence adduced, convict the accused of the offense with which he is charged. Said justice shall reduce to writing the substance of the evidence adduced, with the names of the witnesses, and if in his opinion the testimony do not warrant commitment for trial, he shall release the prisoner, noting that fact upon his docket; but if in his opinion there is probable cause to believe that conviction would take place before a jury, he shall make out, and deliver to a constable, a mittimus, which may be in the following form :

To ———, or any other constable of the district of ———, Island of ———, H. I.:

It appearing to my satisfaction, that there is reason to believe that ———, who was arrested for ———, on the information of ———, (or otherwise as the case may be) would be convicted upon the indictment for the said offense:

You are commanded to deliver him the said ———, to the sheriff of the Island of ———, or his deputy, who is hereby authorized to commit him to the jail of said Island, for trial, (at the Supreme or Circuit Court, as the case may be) and have you then there this writ, with full return of your proceedings thereon.

Given under my hand this ——— day of ———, 18—

———,

Police Justice.

§906. Neither of the said justices shall have power to determine any civil matter required by law to be tried by jury, nor to appoint referees in any cause.

§907. Any person indebted to another, or liable to another in law, for money to an amount not exceeding five hundred dollars may, with or without suit first instituted against him, appear in person, or by duly empowered attorney, before either of said justices, and there confess judgment against himself and his property, for such sum with costs. And the justice shall, in every such case, enter up judgment in the same manner as if he had rendered the same upon default, or upon evidence of indebtedness, and issue execution thereon in like manner, and with the like effect: provided, that no such judgment confessed without suit shall have the effect in law to cover or conceal the property of a debtor, nor take precedence of other judgments subsequently rendered, if it appear that the same was collusively or fraudulently confessed, or confessed without legal consideration, or with the view of giving fraudulent and undeserved precedence to one creditor over another.

Section 1227.
Mele Lindsay
v.
Kainana, 4th
H. R.

§908. No judgment rendered in either of said justices' courts, shall be a lien upon real property, until a transcript thereof, certified by such justice, shall have been docketed in the office of the clerk of the Supreme Court. Such justices' judgment shall be a lien upon the moveable property of the defendant in execution, not exempted by law from levy, from the time, and according to the priority of levy.

Section 1221.

§909. The said justices shall have power to administer oaths, to perpetuate testimony under commissions issued to them from other justices or judges of the same, or any other island, and to issue commissions for the perpetuation of testimony to be used in controversies depending before them.

Act
1876,
Chap. XXXIX,
Section 7.

§910. The said respective justices shall, on complaint of the Government, or of any party conceiving himself aggrieved, be liable to *mandamus*, prohibition or injunction, from any of the courts of record. Such *mandamus*, prohibition or injunction, shall be on pain of removal from office, as provided in the Constitution.

As amended
1834.

§911. The police justices of Honolulu, Lahaina and Hilo, shall receive for their services such compensation as the Legislature shall, from time to time, determine and appropriate.

ARTICLE XXXVII.—OF THE DISTRICT COURTS.

§912. For judicial purposes the Kingdom is divided into districts, the boundaries of which are the same as those of the taxation districts, more particularly described in section 498. ~~§. 135.~~

§913. The respective Governors, by and with the advice of the Justices of the Supreme Court, or a majority thereof, shall appoint one or more District Justices not exceeding two for each of the districts in their respective jurisdiction, but in case a foreigner is appointed he must be proficient in the Hawaiian language.

As amended
1876,
Chan. XVIII.

§914. Said District Justices shall hold office for the term of two years from the date of their appointment; provided, however, that any District Justice against whom a complaint may be made by the Attorney General of the Kingdom, or any duly authorized Deputy of the Attorney General, or by any Governor of an Island, for good cause shown, may be removed by the Justices of the Supreme Court, or a majority of them at any time, or by the Circuit Court of the Judicial Circuit in which the District of the Justice so complained of may be situated.

As amended
1866.

§915. Each of said District Justices shall have jurisdiction, subject to appeal, to hear and determine all civil cases wherein the property involved in controversy or the amount of plaintiff's demand does not exceed two hundred dollars, in which the party defendant is resident, or for the time being is found within his district, whether the parties be natives or foreigners, except that in any district where there is a Police Justice, the District Justice shall not have jurisdiction in any case in which either party is a foreigner by birth.

As amended
1874,
Chapter XXII.

§916. Each of said justices shall have jurisdiction to hear and determine, subject to appeal, all cases of offenses against any law of this Kingdom wherein the fine shall not exceed one hundred

NOTE—See Act of 1882 Chapter XXVII following Sec. 924.

dollars, in which the party prosecuted is resident, or for the time being is found, within his district, except that in any districts where there is a police justice, the district justice, shall not have jurisdiction in any case wherein the party accused is a foreigner by birth. Nothing in this section contained shall be held to alter or extend the jurisdiction conferred upon district justices by the fifty-third chapter of the Penal Code.

Act
1860.

The several police and district justices throughout the Kingdom shall have jurisdiction to hear and determine, subject, to appeal, all complaints for any violation of the license laws, without limit in respect to the amount of penalty to be imposed for such violations.

§917. Every district justice shall have power to issue a warrant, for the arrest and examination of any person charged with an offense not within his jurisdiction, where the party accused is resident, or for the time being is found, within his district, and upon satisfactory evidence of the probable guilt of such person, to commit him to prison for trial at the ensuing term of the Supreme Court, or the Circuit Court of the island.

§918. In all cases of commitment for trial by any district justice, he shall forward without delay, to the district attorney of the island where the trial is to take place, a transcript of the evidence upon which the commitment is founded.

§919. Every district justice shall have all the necessary powers in and for the administration of justice, in all cases coming within his jurisdiction. He shall not be confined to forms, nor shall he be compelled in any case to preserve any other record of his proceedings than the mere conclusion, determination, or judgment, at which he may arrive.

§920. The district justices shall not have power to try actions for slander, libel, defamation of character, malicious prosecution, breach of promise of marriage, false imprisonment, or seduction;* and all the provisions of Section 903, shall be applicable to said district justices as well as to police justices.

*See Act following section 903.

§921. Said justices shall have power to cite parties by oral message or in writing, and in like manner to cite witnesses from any place within their respective judicial circuits, and taking equitable consideration of the controversy depending before them, to render judgment according to law. They shall also have the like power to grant adjournments, as is conferred by law upon police justices.

§922. The several district justices shall receive for their services, such compensation as the Legislature shall from time to time determine and appropriate; provided, however, that hereafter, upon the appointment of any district justice, it shall be lawful for the governor appointing him, with the approval of the Justices of the Supreme Court, to provide that such justice shall receive as compensation, in lieu of a fixed salary, all the costs of court accruing and collected in cases tried before him.

NOTE—See Act of 1882, Chap. XXVI, following Sec. 924.

§923. In case of the illness, or temporary absence of any district justice, some other person may be appointed in the manner prescribed in Section 913, to perform his duties for the time being.

TO REPEAL SECTION 924 OF THE CIVIL CODE.

WHEREAS, it is injurious to the public interest that one person should be appointed as judge for two districts widely separated; therefore,

Act
1880,
Chap. XXIX.

Be it Enacted by the King and the Legislative Assembly of the Hawaiian Islands, in the Legislature of the Kingdom assembled:

SECTION 1. That Section 924 of the Civil Code be and the same is hereby repealed. For judicial purposes, the provisions of Section 498 of the Civil Code, as amended by the Act, approved on the 1st day of August, A. D. 1878, shall be observed. *p. 135.*

TO AMEND SECTIONS 913 AND 922 OF THE CIVIL CODE.

SECTION 1. That Section 913 of the Civil Code be and the same is hereby amended by striking out the words "by and with

Act
1882,
Chapter XXVI.

the advice of the justices of the Supreme Court," so that the said section shall read as follows:

"SECTION 913. The respective governors shall appoint one or more district justices not exceeding two for each of the districts in their respective jurisdiction."

SECTION 2. That Section 922 of the Civil Code be and the same is hereby amended by striking out the the words "with the approval of the Justices of the Supreme Court," so that the said section shall read as follows:

"SECTION 922. The several district justices shall receive for their services such compensation as the Legislature shall from time to time determine and appropriate; provided, however, that hereafter upon the appointment of any district justice, it shall be lawful for the governor appointing him to provide that such justice shall receive as compensation in lieu of a fixed salary all the costs accruing and collected from cases tried before him."

TO PROVIDE FOR REPORTS OF JUDICIAL BUSINESS.

Act
1863.

It shall be the duty of the circuit judges and district justices, on or before the first Monday of January in each year, to make reports to the clerk of the Supreme Court, of the amount and kind of public business done in their respective courts. Such reports shall set forth particularly the amount and kind of official business done in each circuit and district during the year preceding, the number of persons prosecuted, the crimes and misdemeanors for which such prosecutions were had, and the results thereof and the punishments awarded against any person convicted thereon. The Chief Justice of the Supreme Court shall direct the form in which such reports shall be made, and the clerk of said court shall issue blanks in conformity with such direction.

Act
1860.

TO EXTEND THE CIVIL JURISDICTION OF THE DISTRICT JUSTICE OF NORTH HILO.

The district justice of North Hilo is hereby authorized to exercise all such jurisdiction in civil cases, as is by law conferred on

the police justice at Hilo, to be exercised within such territorial limits as shall from time to time be prescribed by the Governor of Hawaii : provided, however, that this Act shall not be construed as permitting said justice to arrest and imprison in civil cases.

CHAPTER XVI.

OF PROCEEDINGS IN SPECIAL CASES.

ARTICLE XXXVIII.—OF THE SETTLEMENT OF DISPUTES BY ARBITRATION.

§925. All controversies, which might be the subject of a personal action at law, or of a suit in equity, may be submitted to the decision of one or more arbitrators, in the manner provided in this article.

§926. The parties to any such controversy may agree in writing, to submit the same to the decision of one or more arbitrators, named in the agreement, or to be appointed in such manner as the parties shall agree upon, stipulating that the award of such arbitrators when rendered, shall be entered up as a judgment of any court of record, or police court, of the Kingdom, mentioned in such agreement.

§927. The parties shall appear personally, or by attorney, before the police justice, or any justice of the court of record, agreed upon, and upon their acknowledging the execution of the written submission, and producing the same, before such justice, he shall cause the same to be entered as a rule of court: after which neither party shall have a right to revoke the submission, without the consent of the other.

§928. All the matters submitted to the decision of the arbitrators, shall be specified in the agreement of submission; or in a written statement annexed thereto.

§929. The parties may stipulate in the agreement of submission, as to the time within which the award is to be made and reported to the court, and no award made after that time shall be held to bind the parties, unless by their mutual consent before the court.

§930. The arbitrators shall give notice to the parties of the time and place appointed for hearing, and if either of the parties shall neglect to appear before the arbitrators, after due notice, the arbitrators may proceed to hear and determine the cause, upon the evidence produced by the other party.

§931. All the arbitrators must meet and hear the parties, but a majority of them may make the award, which shall be as valid as if signed by all of them, unless the concurrence of the whole be expressly required in the submission.

§932. The award shall be delivered by one of the arbitrators, to the police justice, or to the clerk of the court of record, by whom the submission was made a rule of court.

§933. If there is no provision in the submission, concerning the costs of the proceedings, the arbitrators may make such award respecting the costs; as they shall judge reasonable, including a compensation for their own services; but the court may reduce the sum, charged for the compensation of the arbitrators, if it shall appear to the court unreasonable.

§934. Upon the coming in of the award, either party may, after four days notice to the other party, move the police justice, or any justice of the court of record, as the case may be, to cause the award to be entered up as a judgment of court; and unless the other party shall satisfy the justice, that the award has not been made in accordance with the terms of the submission, or that it has been made by collusion or fraud, he shall cause the same to be entered up as a judgment of court; but if the opposing party sustains his objections to the satisfaction of the justice, he shall declare the award null and void.

See Merrill v.
Lenehan, 4 H.R.

§935. After such award has been entered up as a judgment of court, execution may be issued thereon as in other cases.

§936. Any party deeming himself aggrieved, by the decision of the justice before whom motion is made for judgment upon the award, may take an appeal to the Supreme Court, in *banco*, upon filing written notice of his intention so to appeal, within five days after the rendition of such decision.

ARTICLE XXXIX.—OF THE TRIAL OF CAUSES IN CASE OF THE DISQUALIFICATION OF THE CIRCUIT JUDGES, POLICE AND DISTRICT JUSTICES.

§937. When for any cause any police or district justice is legally disqualified to hear and determine any case, civil or criminal, which would by law come under his jurisdiction, the same may be brought by direct suit or complaint, before any circuit judge* of the circuit in which such police or district justice holds office, to be heard and determined by such circuit judge, in like manner as if it had been brought before him by appeal. The

*On Oahu, see Act 1874, Chapter IX following section 885.

same costs shall be charged in such case, as would have been charged if the suit had been brought before the police or district justice.

§938. When any party deems himself aggrieved by the decision of any police or district justice, in any case, civil or criminal, and the circuit judge to whom appeal might be taken, is legally disqualified to hear and determine the case, said party may take an appeal direct to the Supreme Court, or to the Circuit Court of the circuit in which he resides, upon conforming to the conditions upon which appeals may be taken to a circuit judge at chambers.

ARTICLE XL—OF SUMMARY PROCEEDINGS TO RECOVER POSSESSION
OF LAND IN CERTAIN CASES.

§939. Whenever any lessee or tenant of any lands or tenements, or any person holding under such lessee or tenant, shall hold possession of such lands or tenements without right, after the determination of such tenancy, either by efflux of time or by reason of any forfeiture, under the conditions or covenants in any such lease; or, if a tenant by parole, by a notice to quit of at least ten days, the person entitled to such premises may be restored to the possession thereof in manner hereinafter provided.

As amended
1894.

Kaaihue v.
Crabbe, 9 H. R.
768.

§940. The person entitled to the possession of the premises, may apply to any police or district justice for a writ, in the form used for an original summons in common civil actions before

such justices, in which the defendant shall be summoned to answer the complaint of the plaintiff, for that the defendant is in the possession of the lands or tenements in question, describing them, which he holds unlawfully, and against the right of the plaintiff, and no other declaration shall be recognized.

§941. Such summons shall be served either:

1. By delivering to the tenant, to whom it shall be directed, a true copy thereof, and at the same time showing him the original, or,

2. If such tenant be absent from his last or usual place of residence, by leaving a copy thereof at such place, with some person of mature age residing in the premises.

§942. The summons shall be returnable within such time as shall appear reasonable to the justice, not less than three, nor more than five days; and the suit shall be conducted like other civil actions before such justices.

§943. If the defendant shall be defaulted, or if on the trial it shall be proved to the satisfaction of the justice, that the plaintiff is entitled to the possession of the premises, he shall have judgment for the possession thereof, and for his costs, and execution shall issue accordingly.

The writ of possession shall issue to the marshal, or to any sheriff or constable of the city or district where the premises are situated, commanding him to remove all persons from said premises, and to put the plaintiff, or his agent, into the full possession thereof.

§944. The officer to whom such warrant for delivering possession shall be directed and delivered, is hereby required to execute the same according to the tenor thereof.

§945. Whenever a warrant shall be issued as aforesaid for the removal of any tenant, the contract for the use of the premises, if any such exists, and the relation of landlord and tenant between the parties, shall be deemed to be cancelled and annulled.

§946. The issuing of such warrant of removal shall be stayed in the case of a proceeding for the non-payment of rent, if the person owing such rent, shall, before such warrant be actually issued, pay the rent due, and all the costs and charges of the proceedings; or give such security for the payment thereof, within five days, as shall be satisfactory to the justice, or to the plaintiff.

§947. Any justice before whom a suit may be pending for the recovery of premises may, upon the request of either party, adjourn the hearing of the suit, for the purpose of enabling such party to procure his witnesses, when it shall appear to be necessary; but such adjournment shall, in no case, exceed five days.

§948. Either party may appeal from the judgment of the justice, at any time within twenty-four hours after the entry of the judgment, to any circuit judge, or to the Supreme Court; but the appellant shall, before the allowance of his appeal, file with the justice a bond, with sufficient surety or sureties, to the adverse party, in the sum of one hundred dollars, with condition to prosecute his appeal without delay, and to pay all the costs arising from the appeal, in case the decision of the justice is affirmed.

Oopa's case, 3
H. R. p. 407.

§949. When the defendant is proceeded against for the non-payment of rent, and the justice decides that the plaintiff should have possession, the defendant shall not be allowed to keep possession and take his appeal, unless he first gives a bond to the plaintiff, with good and sufficient surety or sureties, to pay all rent that may accrue and become due after the appeal, provided it shall be finally determined that the plaintiff was entitled to the possession.

§950. If any tenant, being in arrear for rent, shall desert the demised premises, and leave the same unoccupied and uncultivated, any police or district justice may, at the request of the landlord, and upon due proof that the premises have been so deserted, by such tenant, leaving rent in arrear, go upon and view

said premises; and upon being satisfied, upon such view, that the premises have been so deserted, he shall affix a notice in writing upon a conspicuous part of the premises, requiring the tenant to appear and pay the rent due, at some time in the notice specified: not less than ten, nor more than thirty days after the date thereof

§951. At the time specified in such notice, the justice shall again view the premises, and if the tenant shall appear and pay the rent, or deny that any rent is due to the landlord, all proceedings shall cease. If, upon the second view, the tenant or his agent shall not appear and pay the rent in arrear, or deny that any rent is due, then said justice may put the landlord into possession of the premises; and any demise of the premises, to such tenant shall, from thenceforth, become void.

§952. An appeal from the proceedings of any justice under the last two preceding sections, may be taken by the tenant to any circuit judge at chambers, or to the Supreme Court, at any time within one month after possession delivered, by serving notice in writing thereof upon such justice, and by giving a bond in the sum of one hundred dollars, with good and sufficient sureties, to be approved by the justice, to pay to the landlord all costs of such appeal which may be adjudged against the tenant; and thereupon such justice shall send up a copy of the proceeding had before him, within ten days after appeals.

TO FACILITATE THE RECOVERY OF RENTS.

SECTION 1. That whenever any tenant or sub-tenant of any lands, tenements or premises held by him, either by written or parole contract, for any term, at a rent stipulated by such contract, shall make default in payment of such rent, and allow the same to become in arrears, it shall be lawful for the landlord, or party entitled to such rent, to enter upon and into such lands, tenements or premises, in respect to which such rent shall be in arrears, without any legal process, and there to distrain and remove to a

place of safe custody, any goods and chattels of such defaulting tenant, found on such premises, to satisfy such arrears; and, in case of non-payment of such arrears, and costs of such distress and removal, within fifteen days after such distress and removal, it shall be lawful for such landlord, or party making such distress, at the expiration of fifteen days' public notice, to cause such goods and chattels to be sold at public auction, and to apply the proceeds of such sale to the payment of such arrears as shall be due at the time of such sale, together with the costs of such distress, removal, custody and sale, paying over to such tenant such surplus of such proceeds, if any, as shall be remaining after the payments aforesaid.

SECTION 2. That no goods or chattels of any tenant or occupier of any lands, tenements, or premises held by such tenant or occupier under any such contract as above mentioned, shall be liable to be taken on execution on any pretence whatsoever, unless the party at whose suit such execution shall be sued out shall, before the removal of such goods under such execution, pay to such landlord or owner of such premises, all such arrears of rent as shall be due to him thereanent; provided, such arrears of rent do not exceed one year, if such tenancy be by the year; and, in case such tenancy shall be by the week or month, such landlord or owner shall not have any lien or claim on such goods for any arrears of rent accruing during four of such weekly or monthly terms.

ARTICLE XLI.—OF THE ARREST OF DEBTORS.

§953. Upon a complaint verified by the oath of the plaintiff in any suit, or some person on his behalf, being filed with the clerk of any court of record, or before any police court, in this Kingdom, stating that a defendant has contracted a debt in a fraudulent manner, or seeks to evade the payment of any debt, or

any other liability due to such plaintiff, by secreting his property, or by transferring, or intending to transfer the same to any third party, or is about to remove the same out of the jurisdiction of such court, or is about to quit the Kingdom, it shall be lawful for such court, upon the filing of the bond hereinafter provided, to issue process for the arrest and detention of such defendant, until he shall have entered into security, with sufficient sureties, to abide the result of such suit, and to pay the amount of such judgment as shall be rendered thereon: provided, however, that no such process of constraint shall be issued by such court until such plaintiff, or some person on his behalf, shall have filed a sufficient bond, in a reasonable amount, for the re-imbursement to such defendant of all damages and costs which he shall sustain in consequence of such arrest, in case the plaintiff shall fail to sustain such suit.

§954. Whenever any defendant, in one or more civil actions; is arrested and imprisoned as a fraudulent debtor, the expense of supporting such defendant during his imprisonment, shall be borne by the party or parties at whose suit he has been arrested.

§955. For that purpose, the party or parties at whose suit the defendant has been arrested, shall pay to the officer having him in custody, the sum of fifty cents per diem, and in case the allowance for the defendant's support is unpaid at any time for more than ten days, the officer having the defendant in custody shall release him from imprisonment.

TO CONSOLIDATE AND AMEND THE LAW RELATING TO THE
GARNISHEE PROCESS TO FACILITATE THE COLLECTION OF
DEBTS.

Act
1876,

*Be it Enacted by the King and the Legislative Assembly of the
Hawaiian Islands, in the Legislature of the Kingdom assembled:*

Chap. XXXV.

SECTION 1. Whenever the goods or effects of a debtor are concealed in the hands of his attorney, agent, factor or trustee, so that they cannot be found to be attached or levied upon, or when

debts are due from any person to a debtor, any creditor may bring his action against such debtor, and in his petition for process may request the court to insert therein a direction to the officer serving the same, to leave a true and attested copy thereof with such attorney, agent, factor or trustee, or at the place of his or their usual place of abode, and to summon such attorney, agent, factor or trustee to appear personally upon the day or term mentioned and appointed in said process for hearing the said cause, and then and there on oath to disclose whether he has, or at the time said copy was served, had any of the goods or effects of the defendant in his hands, and if so, the nature, amount and value of the same, or is indebted to him, and the nature and amount of such debt; which summons and direction shall be signed and issued in the same manner as summonses are usually issued in civil actions, and shall be served by the officer according to such direction, and from the time of leaving such copy all the goods and effects in the hands of such attorney, agent, factor or trustee, and every debt due from such debtor to the defendant, shall be secured in his hand to pay such judgment as the plaintiff shall recover, and may not be otherwise disposed of by such attorney, agent, factor or trustee, and such notice shall be sufficient notice to the defendant to enable the plaintiff to bring his action to trial, unless the defendant be an inhabitant of this Kingdom, or has sometime resided therein, and then a like copy shall be served personally upon him, or left at his last and usual place of abode.

SECTION 2. Such attorney, agent, factor or trustee upon his desire, shall be admitted to defend his principal in such suit, and if judgment be rendered in favor of the plaintiff, all the goods and effects in the hands of such attorney, agent, factor or trustee, and the debt due from such debtor or such part thereof as may be sufficient for that purpose, shall be liable to pay the same, and the plaintiff on praying out execution may direct the officer serving the same to make demand of such attorney, agent, factor or trustee of the goods and effects of the defendant in his hands, whose duty it will be to expose the same to be taken on the execution, and also to make demand of such debtor for any debt

or such part thereof as may satisfy said judgment as may be due to the defendant, and it shall be the duty of the said debtor to pay the same, and if such attorney, agent, factor or trustee, shall have in any manner disposed of the goods and effects of his principal which were in his hands when the copy of the writ was left with him, and shall not expose and subject them to be taken on execution, or if such debtor shall not pay to the officer, when demanded, the debt due to the defendant at the time the copy of the writ was left with him, such attorney, agent, factor, trustee or debtor shall be liable to satisfy such judgment out of his own estate, as his proper debt, if the goods or effects or debts be of sufficient value or amount, if not, then to the value of such goods or effects or to the amount of such debt.

SECTION 3. If the said attorney, agent, factor, or trustee or debtor fail to appear upon the day and hour of hearing named in the summons or writ above mentioned, or if, having appeared, he refuse to disclose upon oath whether he has goods or effects of the defendant in his hands, and their nature and value, or whether a debt is due from him to the debtor and its amount, the case shall proceed to trial, and if the plaintiff recover a judgment, execution shall issue at his request, against the estate of such contumacious attorney, agent, factor, trustee or debtor, for the amount of such judgment as his own proper debt, and the lawful costs; provided that if it appear on the trial that the goods and effects are of less value and the debt of less amount than the judgment recovered against the debtor, judgment shall be rendered against garnishee's to the value of the goods or the amount of the debt, and if it appears that the garnishee has no goods or effects of such debtor in his hands, or is not indebted to him, then he shall recover his lawful costs. But if he appear and on oath disclose fully whether he has in his hands the goods or effects of, or is indebted to the defendant, and it appears to the court that he has no such goods or effects or is not so indebted, then judgment shall be given for him, and he shall recover his lawful costs.

SECTION 4. It shall be lawful for any creditor who has obtained a judgment in any court, to apply to the court or a judge

thereof for a rule, order or summons, that the judgment debtor shall be orally examined before a judge of such court, or such other person as such court or judge, if of a court of record, shall appoint as to any and what debts are owing to him, and the court or judge may make such rule or order for the examination of such judgment debtor, and for the production of any books or documents, and the examination shall be conducted in the same manner as in the case of oral examination of witnesses under the Act in that case made and provided.

SECTION 5. It shall be lawful for a judge of any court upon the ex parte application of such judgment creditor either before or after such oral examination and upon affidavit by the judgment creditor or his attorney stating that judgment has been recovered and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, to order that all debts owing or accruing from such third person (hereinafter called the "garnishee") to the judgment debtor, shall be attached to answer the judgment debt, and by the same or any subsequent order it may be ordered that the garnishee shall appear before the judge to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the judgment debt. Provided that the judge may in his discretion, refuse to interfere when from the smallness of the amount to be recovered, or of the debt sought to be attached or otherwise, the remedy sought would be worthless or vexatious.

SECTION 6. Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee in such manner as the judge shall direct, shall bind such debts in his hands.

SECTION 7. If the garnishee does not forthwith pay into court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the judge may order execution to issue, and it may be sued forth accordingly without any previous

writ or process to levy the amount due from such garnishee towards satisfaction of the judgment debt.

SECTION 8. If the garnishee disputes his liability the judge, instead of making an order that execution shall issue, may order that the judgment creditor shall be at liberty to proceed against the garnishee by writ calling upon him to show cause why there should not be execution against him for the alleged debt or for the amount due to the judgment debtor, if less than the judgment debt and for costs of suit, and the proceedings upon such suit shall be the same as nearly as may be as upon a writ of revivor. Whenever it is suggested by the garnishee that the debt sought to be attached belong to some third person who has a lien or charge upon it, the judge may order such third person to appear before him and state the nature and particulars of his claim upon such debt, and after hearing the allegations of such third person under such order and of any other person whom by the same or any subsequent order the judge may think fit to call before him, or in case of such third person not appearing before him upon such summons, the judge may order execution to issue to levy the amount due from such garnishee, or the judgment creditor to proceed against the garnishee as herein provided, and he may bar the claim of such third person or make such other order as he shall think fit, upon such terms in all cases with respect to the lien or charge (if any) of such third person and to costs as he shall think just and reasonable.

SECTION 9. The taking of any goods or effects of any debtor, or the payment of any debt due him as aforesaid, or payment made by, or execution levied upon the garnishee upon any such proceeding as aforesaid, shall be a valid discharge to him as against the judgment debtor to the amount paid or levied, although such proceeding may be set aside or the judgment may be reversed.

SECTION 10. Every such attorney, agent, factor or trustee shall be paid his traveling fees and expenses for his attendance before any court under the provisions of this Act, on the same scale and at the same rate as witnesses required by subpoena to attend on the trial of any civil suit in said courts.

SECTION 11. Whensoever any person summoned as an attorney, agent, factor or debtor of any defendant may be desirous of so doing, he may apply to the magistrate or any justice of the court from whom or which the said summons may have issued, and the magistrate or justice having caused reasonable notice to be given to the plaintiff in the action, shall proceed to take the deposition of the person thus summoned, and make such order as may be proper in the premises, at any time previous to the day appointed for hearing the cause, and the person so summoned as agent, factor, trustee or debtor of the defendant, shall be taken to have obeyed the summons.

SECTION 12. If upon disclosure made on oath by such debtor it appear that such garnishee is indebted to the defendant, but that such debt is not payable and become due until some future time, then such judgment as the plaintiff may recover shall constitute a lien upon such debt, until, at the time it shall fall due and payable.

SECTION 13. The provisions of this Act and the powers conferred therein shall extend to all the common law courts of this Kingdom, according to their jurisdiction, as at present or in future organized.

SECTION 14. The foregoing Section 11 shall be printed or written conspicuously on every summons issuing out of any court of this Kingdom which may be intended to be served on any alleged attorney, factor, trustee or debtor of a defendant in any suit.

SECTION 15. The following laws and parts of laws shall be and the same are hereby repealed. Sections numbered 956 to 961 of the Civil Code both inclusive, an Act approved on the 17th day of June, A. D. 1862, entitled "An Act to amend Article XLII of the Civil Code of the garnishee process to facilitate the collection of debts," an Act approved on the 3d day of January, A. D. 1865, entitled "An Act to amend Section 956 of the Civil Code."

Approved this 19th day of September, A. D. 1876.

ARTICLE XLIII.—OF PROCEEDINGS IN BANKRUPTCY.

§962. Every person owing debts to the amount of two thousand dollars, who shall refuse or fail to make payment of any of his just demands, for ten days after the same shall have matured, and been presented for payment to him or to his agent: or who shall depart the Kingdom with the intent to defraud or delay his creditors; or secrete himself, or keep his house to avoid his creditors, or the service of legal process for the collection of any debts; or make any fraudulent conveyance of his property to a friend or secret trustee, or make any secret removal or other disposition of his property for the purpose of delaying or defrauding any creditor, may upon petition to any justice of the Supreme Court by any one creditor to the amount of four hundred dollars, or by any two or more creditors, the sum of whose debts shall amount to one thousand dollars, be declared bankrupt: provided, however, that every such person owing debts to the amount of one thousand dollars, which shall not have been created in consequence of a defalcation as a public officer, or as executor, administrator, guardian or trustee, or while acting in any other fiduciary capacity, may, upon finding himself insolvent, appear before any justice of the Supreme Court, and upon making oath of such insolvency, declare himself a bankrupt.

Fallon v.
Robinson, 2 H.
R. p. 227.

Cleghorn v.
Austin, 3 H. R.
p. 44.

§963. Every petition to declare a person a bankrupt, shall be verified by oath; state as near as may be the amount due to the petitioner or petitioners; and the act or acts of bankruptcy relied on. The person or persons making such petition shall give a bond, in the penalty of at least two thousand dollars, or in a larger sum, if the justice shall think it just, conditioned for the payment of all the costs of the proceedings, and damages to the party petitioned against, in case he or they fail to prove him a bankrupt.

Rule of Court
No. 33.

§964. Upon receiving such petition and bond, or when any insolvent shall come before any justice of the Supreme Court, and declare himself a bankrupt, as provided in Section 962, the justice

shall issue an order to the marshal, or to the sheriff of the island, to take possession of the debtor's property, and to put his store-houses, counting houses, effects, books and papers, under lock and seal, and such order shall be full authority for so doing.

§965. After issuing such order, the justice shall fix a time when he will hear the parties at chambers, and decide the question of bankruptcy, where the same is disputed. He shall cause such previous notice of the time for hearing as he may deem reasonable, to be published in the Government Gazette. A party petitioned against shall, in all cases, be served with a summons to attend, and a copy of the petition, if he be within the Kingdom.

§966. At the time appointed for the hearing of the parties, the justice shall proceed to take testimony that the petitioners are creditors, and that the debtor has committed an act of bankruptcy. After hearing all the testimony, both on the part of the petitioners and the debtor, he shall give his decision; and if it be in favor of the debtor, his property shall be immediately released from custody.

§967. Whenever any person shall declare himself a bankrupt, or shall be adjudged a bankrupt by the justice, notice of such bankruptcy shall be given in the Government Gazette, and notice shall also be given for three consecutive weeks, in said Gazette, calling upon all creditors of the debtor to appear before the justice, at such time or times as he may appoint, to prove their debts.

§968. Debts may be proved before the justice by the oath of the creditors, but when the debtor or any creditor shall dispute the amount claimed, the justice shall compel the claimant to prove his debt by testimony independent of his own oath.

§969. Debts not due may be proved before the justice, allowing a discount for interest; and all persons who are endorsers or sureties for the debtor, or who have demands against him as drawer or endorser of any note, and all who have demands upon

any bottomry or respondentia bond, or for a debt that may become due upon any other contingency whatever, may be considered as creditors within the provisions of this article: provided, that the bill, note, bond or other contract, be made by the debtor before the bankruptcy committed; and that the debt demanded thereupon shall become absolute before the final dividend of the bankrupt's estate.

TO SECURE THE PAYMENT OF WORKMEN IN CASES OF
BANKRUPTCY.

All claims for personal labor shall be preferred in cases of bankruptcy, and paid in full out of any assets remaining in the hands of the assignees after payment of such debts as are now preferred by law. But no claims shall be so preferred, which shall have accrued more than forty days before an act of bankruptcy; and if the amount due to any person shall exceed the sum of fifty dollars; then no more shall be paid in full, but a dividend shall be declared on the remainder rateably with the claims of other creditors.

Act
1874,
Chapter XI.

§970. When it shall appear to the justice that there are absent creditors, whose interest will suffer from having no person to represent them, he may appoint some fit and proper person as an attorney for that purpose, and such attorney shall receive, in the discretion of the justice, a reasonable compensation out of the dividend coming to such absent creditors.

§971. Any creditor who, after having been served with twenty days previous notice, (either written or printed) to attend before the justice and prove his debt, shall fail to attend without showing good cause for such non-attendance, shall be considered as having waived his debt, and shall not be allowed to come in and prove such debt afterwards.

§972. After all the creditors in this Kingdom shall have proved their debts, or failed to do so after due notice as aforesaid, the clerk of the Supreme Court shall appoint a meeting of the creditors who shall have proved their debts; and give two consecutive weeks notice of the same in the Government Gazette. At the time appointed, the creditors shall meet, in the presence of the said clerk, and choose two persons as assignees of the bankrupt's property, real and personal, and the clerk shall enter such choice of record. The assignees shall be chosen by ballot, and the two persons having the greatest number of votes on the first ballot, shall be considered as duly chosen.

§973. In the choice of assignees, no creditor to an amount less than one hundred dollars shall be entitled to vote. All creditors to the amount of one hundred, and less than five hundred dollars, shall be entitled to one vote each; all creditors to the amount of five hundred dollars, and less than twenty-five hundred dollars, shall be entitled to two votes each; and all creditors to an amount exceeding twenty-five hundred dollars, shall be entitled to three votes each. All disputes that may arise as to the manner of voting, or as to who shall be entitled to vote, shall be referred to, and decided by the justice.

§974. The justice shall make an order to the marshal, or the sheriff, as the case may be, requiring him to assign to the assignees thus chosen, all the property of the bankrupt of whatever name, kind or nature, and such assignees shall dispose of the same by public or private sale, as to them may seem best for the interest of all concerned. The assignees shall give such security for the faithful performance of their trust as the justice shall deem sufficient.

§975. If any assignee die, or become incapacitated from any cause, to perform the duties of an assignee, the justice shall, upon the petition of any party interested, appoint some other person to fill his place.

§976. The assignees shall, within one month after receiving possession of the bankrupt's estate, file a report with the clerk of the Supreme Court, showing the liabilities and assets of the estate, and shall render a cash account of the estate to said clerk, at the end of every succeeding month, and shall invest and dispose of such moneys in the payment of dividends, in such manner as the justice may direct. There shall be one or more dividends or payments, not exceeding three, to creditors in proportion to their debts, without any priority or preference whatsoever, at such times as the justice may name: provided, however, that all debts due or owing by any bankrupt to the Hawaiian Government shall, before any dividend is made to the other creditors, be first paid in full, and that the third or final dividend shall be made within eighteen months from the date of the assignment, unless in the opinion of the justice, a just settlement of the bankrupt's estate shall require the time for making the final dividend to be extended, in which case he shall have the power to extend the same.

§977. The assignees shall have full power to sue for and collect debts due to the bankrupt, in their own name. They may also bring any other suit in their own name, which has for its object the recovery of any portion of the bankrupt's estate.

§978. The bankrupt shall be divested of all his title and interest in his property from the day of his failure (except the necessary clothing of himself and family, and such other necessities, not to exceed the value of three hundred dollars as the justice may designate), and every assignment, conveyance or transfer of his property, by him, after he shall have become insolvent or committed an act of bankruptcy, except upon a good consideration to a *bona fide* purchaser having no reasonable cause to believe him to be insolvent or bankrupt, shall be void, and the property so transferred may be recovered and disposed of by the assignees for the benefit of the creditors.

As amended
1882,
Chapter VII.

§979. All executions, or attachments, laid upon any person's property after he shall have committed an act of bankruptcy, shall be void.

§980. From the time any person entitled to the benefit of this law has declared himself a bankrupt, or from the filing of any petition by any creditor, or creditors, to have him declared a bankrupt, all civil suits depending against him shall be suspended: provided, nevertheless, that such bankrupt may be arrested and imprisoned as a fraudulent debtor, by order of any justice of the Supreme Court, upon the sworn petition of any of his creditors, setting forth sufficient cause for such arrest and imprisonment.

§981. If the property of a person declaring himself a bankrupt, or proceeded against as a bankrupt, be of a perishable nature, the justice may, upon the application of any party interested, setting forth such fact under oath, order the same, at any time before the appointment of assignees, to be sold at auction, and the money to be deposited in the public treasury to await the order of the court.

§982. During the pendency of any proceedings against a person charged with bankruptcy, and until the justice has decided whether he has committed bankruptcy or not, the justice shall make allowance to him for his own support and that of his family, if he has one: provided, that such allowance shall not exceed the rate of three hundred dollars per annum, if a single man, or the rate of five hundred dollars per annum, if a man of family.

§983. Every person who, upon finding himself insolvent, shall declare himself a bankrupt, or may have been adjudged a bankrupt on petition, as provided in this article, and who shall surrender, discover, and deliver over to the assignees chosen by his creditors, all his property, personal and real, shall, with the consent of a majority of his creditors in value and number within this Kingdom, be entitled to a certificate of discharge from all his debts, to be given him by the Chief Justice of the Supreme Court: provided, however, that no such discharge shall release any person who may be liable for the same debt, as a partner, joint contractor, indorser, acceptor or surety for or with the debtor.

§984. Every debtor, prior to obtaining his certificate of discharge, shall take the following oath, viz.:

I, ———, do solemnly swear that I have, according to the best of my knowledge and belief, delivered over and made a full, just, true and perfect discovery of all the property to me in any way belonging, and all such debts as are to me owing or to any person in trust for me; and that I have no money, lands or other estate, real or personal, beside that which I have surrendered to the assignees; and that I have not directly or indirectly, sold, disposed of, or concealed any part of my property, to secure the same to myself, or to receive any profit or advantage therefrom, or to defraud or deceive any creditor to whom I am indebted in anywise whatever: So help me God.

§985. The debtor, if afterwards sued for any of his debts, shall have no benefit of the said discharge, but judgment shall be rendered against him for the amount that shall then appear to be due, if the plaintiff shall prove any of the following facts, to wit:

First. That the debtor has made any gift to, or contract with, or given any security to any of his creditors, to obtain his or their consent to his certificate of discharge.

Secondly. That he has fraudulently concealed, reserved or disposed of any of his property.

Thirdly. That he did knowingly and willfully make any false statement, in any disclosure made to or for his creditors, concerning the amount or disposition of his property; or,

Fourthly. That he did at any time, in contemplation of bankruptcy, as in this article provided for, voluntarily make any payment or any transfer or conveyance of his property, with a view to give to any creditor or to any endorser or surety for the debtor, a preference or advantage over his other creditors.

§986. The justice shall have the power, after bankruptcy declared, to examine any bankrupt under oath touching his estate, his acts and doings, his property and rights of property, which in the judgment of the court are necessary and proper for the purposes of justice, and in case he refuse to answer him, to commit him to prison until he consents to make such answer.

§987. If any bankrupt shall refuse to deliver or surrender up to the assignees chosen by his creditors, as aforesaid, any of his effects, books or papers, the justice may, upon the petition of the

assignees, commit him to prison until he make such delivery or surrender.

§988. After receiving his certificate of discharge, any bankrupt, who may be required, shall attend and render assistance to the assignees in settling accounts; for which services he shall be paid the sum of three dollars per day. In case he refuse to attend and assist them, he may, upon complaint to the justice, be committed to prison until he consents to render such assistance.

§989. In case of the removal, illness or absence of the justice before whom proceedings under this article are instituted, such proceedings may be continued before some other justice of the Supreme Court.

§990. Any party interested may except to any decision of the justice, in proceedings under this article, and appeal therefrom to the Supreme Court in *banco*: provided, such party give notice of his appeal within five days after the rendition of such decision, and within ten days thereafter file with the clerk of the court, a good and sufficient bond, in the penal sum of one hundred dollars, conditioned for the payment of all costs arising from said appeal, in case it shall not be sustained.

§991. Two or more persons doing business as partners, may declare themselves bankrupt as a firm, and may be declared bankrupt, and obtain a certificate of discharge, in the same manner and on the same terms as an individual.

§992. When two or more persons who are partners in trade, become insolvent and bankrupt as provided in this article, all the joint stock and property of the company, and also all the separate estate of each of the partners, shall be taken, excepting such parts thereof as are herein excepted; and all the creditors of the company, and the separate creditors of each partner, shall be allowed to prove their respective debts; and the assignees shall also keep separate accounts of the joint stock or property of the com-

pany, and of the separate estate of each member thereof; and after deducting out of the whole amount received by such assignees, the whole of the expenses and disbursements paid by them, the net proceeds of the joint stock shall be appropriated to the payment of the creditors of the company, and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors; and if there shall be any balance of the separate estate of any partner, after the payment of his separate debts, such balance shall be added to the joint stock for the payment of the joint creditors; and if there shall be any balance of the joint stock, after the payment of the joint debts, such balance shall be divided and appropriated to and among the separate estates of the several partners, according to their respective rights and interests therein, and as it would have been if the partnership had been dissolved without any bankruptcy; and the sum so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts, and in all other respects the proceedings against partners shall be conducted in the like manner as if they had been commenced and prosecuted against one person alone.

§993. Any bankrupt who shall have been imprisoned as a fraudulent debtor, may be discharged from such imprisonment by order of any justice of the Supreme Court, either at or before the final settlement of the estate, if it shall appear to the satisfaction of such justice that the bankrupt has surrendered, discovered and delivered over to the assignees chosen by his creditors, all his property, personal and real, and in other respects conformed to the main provisions of the law relating to bankruptcy.

§994. The costs of the proceedings under this article, except in cases where the petitioners fail to prove the person petitioned against a bankrupt, shall be borne by the bankrupt's estate. The assignees shall be paid two and one half per cent. on all property received by them, and two and one half per cent. on all property disbursed by them.

§995. The books and papers of the estate shall, after the final dividend and settlement, be deposited with the clerk of the Supreme Court.

ARTICLE XLIV.—OF THE SETTLEMENT OF CONTROVERSIES RESPECTING RIGHTS OF WAY AND RIGHTS OF WATER.

§996. There shall be appointed by the Minister of the Interior, in each election district throughout the Kingdom, three suitable persons to act as commissioners of private ways and water privileges.

As amended
1860

§997. It shall be the duty of such commissioners within their respective districts, to hear and determine all controversies respecting rights of way and rights of water, between private individuals or between private individuals and the Government.

As amended
1860.

SECTION 2. Nothing in this Act contained shall be deemed to interfere or conflict with the provisions of an Act entitled "An Act to authorize the Minister of the Interior to take possession of whatever land and water may be required for the use of the Honolulu Water Works."

Act
1860.

RESPECTING THE DUTIES OF COMMISSIONERS OF RIGHTS OF WAY.

SECTION 1. No person shall act as commissioner or rights of way, in the determination of any controversy, in the result of which he shall have any interest, or in which any person may have an interest who shall have business connections with such commissioner.

Act
1868.

SECTION 2. Whenever any vacancy shall occur in the board of commissioners of the rights of way, as provided for in this Act, the remaining members of the board shall immediately inform the Minister of the Interior of the same, who shall thereupon appoint some other person to act in the place of such disqualified commissioner in the adjudication of the controversy.

As amended
1878,
Chapter XIX.

§998. In settling such controversies, the commissioners shall give such decision as may in each particular case appear to them

to be just and equitable between the parties interested. Any decision made by a majority of the commissioners shall be conclusive upon all parties, subject to the right of appeal."

§999. Any party deeming himself aggrieved by the decision of the commissioners for the settlement of controversies respecting rights of way and rights of water, may appeal therefrom to the circuit court of the respective circuits, or to the Supreme Court, which circuit court or Supreme Court shall hear and determine the case in banco and allow the introduction of new evidence, provided, however, that any party desirous of so appealing, shall give notice of the same to the commissioners within five days after the rendition of their decision, and pay to the commissioners the costs accrued to the date of such appeal, and deposit with the commissioners a bond in the sum of one hundred dollars, with sufficient surety to be approved by a majority of said commissioners conditioned for the payment of the costs further to accrue, in case the appellant is defeated in the court above, whereupon a certificate of appeal shall be granted.

As amended
1878,
Chapter XIX.

§1000. Whenever any party shall appeal from the decision of the commissioners, as provided in the last preceding section, it shall be the duty of the commissioners to send up a statement of the case, together with a copy of their decision, to the court to which the appeal has been taken.

§1001. The commissioners shall receive the sum of two dollars each per diem as a compensation for their services in settling any such controversies; which compensation shall be paid by either of the parties alone, or by all the parties interested, in such proportions as the commissioners may adjudge. In case of appeal, the compensation of the commissioners, as well as the additional costs, shall abide the decision of the appellate court.

As amended by
Act of 1860.

§1002. The commissioners provided for by this article shall be removable from office, at the pleasure of the Minister of the Interior, who shall also have power to fill all vacancies which may occur in their number.

As amended
1876,
Chapter XIX.

§1003. The said commissioners shall have the like power to administer oaths, to punish contempts, to grant adjournments, to subpoena and compel the attendance of witnesses, to enforce judgment, and issue execution for costs, as conferred by law upon police courts.

CHAPTER XVII.

OF APPEALS.

§1005. Any party deeming himself aggrieved by the decision of any police or district justice, in any case, whether civil or criminal, may appeal therefrom to any circuit judge* at chambers, by giving notice of his appeal within five days after the rendering of such decision, and paying the costs accrued within ten days after the date of said decision : provided, always, that no hearing shall be had until the costs of the trial before the police or district justice are first paid.

§1006. Any party deeming himself aggrieved by the decision of any police or district justice in any case whether civil or criminal may appeal therefrom to the circuit court or to the Supreme Court, by giving notice of his appeal within five days after the rendering of such decision, and within ten days after the date of such decision paying the costs accrued, and, if it is a civil

* For appeals from police and district justices, Oahu, to intermediary judge, see et which follows §855.

case, depositing a good and sufficient bond in the penal sum of one hundred dollars, conditioned for the payment of the costs further to accrue in case he is defeated in the court above: provided, always, that where such appeal is taken solely upon exceptions to the decision of the justice on points of law, the appeal shall be heard and determined by the appellate court in banco.

As amended
1872,
Chapter III.

§1007. Any party deeming himself aggrieved by the decision of any circuit judge at chambers, in any case whether civil or criminal may appeal therefrom to the circuit court or the Supreme Court, by giving notice of such appeal within five days after the rendering of such decision, and within ten days after the date of such decision, paying the costs accrued before the circuit judge, and, if it is a civil case, depositing a good and sufficient bond in the penal sum of fifty dollars, conditioned for the payment of the costs further to accrue, in case he is defeated in the court above: provided, always, that where such appeal is taken solely upon exceptions to the decision of the circuit judge on points of law, the appeal shall be heard and determined by the appellate court in banco.

As amended
1872,
Chapter III.

§1008. Upon an appeal being taken and perfected, according to the provisions of either of the last two preceding sections, the circuit judge or justice, shall give immediate notice thereof to the other party, and if execution shall have been issued, to the officer charged therewith, and shall also, without delay, transmit to the clerk of the appellate court a perfect transcript of the record and proceedings had before him.

§1009. Every defendant appealing from the decision of any circuit judge, police justice, or district justice, in any criminal or penal prosecution, shall remain in the custody of the marshal or sheriff of the island, until the term of the Supreme or Circuit Court to which said defendant has appealed, unless he deposit with the marshal or sheriff, a good and sufficient bond in a penal sum equal to the fine or penalty imposed upon such defendant in the court below, conditioned for his appearance for trial at the Su-

As amended
1880,
Chap. XXX.

preme or circuit court as aforesaid. And in all cases where the punishment adjudged by the circuit judge, or police or district justice, is both fine and imprisonment, or imprisonment only, the marshal or sheriff shall exact from the defendant a bond, conditioned as aforesaid, in the penal sum of not less than one hundred, nor more than one thousand dollars.

§1010. An appeal duly taken and perfected, in any case provided for in this chapter, shall immediately thereafter operate as an arrest of judgment and stay of execution.

§1011. Unless appeal be taken in accordance with the provisions of this chapter, in any case herein provided for, the decision rendered in the case shall be final, and no court in the Kingdom shall have power to remove the same for any cause whatsoever.

§1012. In any case of an appeal from the decision of one of the justices of the Supreme Court, at chambers, in which a jury shall have been empaneled by such justice, the appeal to the full court shall be taken upon the record, the verdict of such jury being deemed conclusive as to the facts, and a new jury shall not be empaneled to try any question of fact involved.

§1013. Costs shall be allowed to the prevailing party in judgments rendered on appeal, in all cases, with the following exceptions and limitations :

1. If the defendant against whom judgment is rendered, appeal, and judgment be rendered in his favor in the appellate court, and the amount recovered in the court below be reduced one-fifth or more, costs shall be awarded to the appellant :

2. If the defendant in whose favor a judgment is rendered shall appeal, and he shall not recover in the appellate court at least one-fifth more than the amount recovered below, costs shall be awarded to the appellee :

3. If the plaintiff in whose favor judgment is rendered, appeal, and he shall not recover in the appellate court at least one-fifth

more than the amount recovered below, costs shall be awarded to the appellee :

4. In all other cases, the party recovering any sum shall be entitled to costs.

§1014. Whenever costs are awarded to the appellant, he shall be allowed to tax as part thereof, the costs and fees paid in the lower court on taking the appeal, in addition to the costs of the court appealed to. And if, upon an appeal, a recovery for any debt or damages be had by one party, and costs be awarded to the other party, the court shall set off such costs against such debt or damages, and render judgment for the balance.

§1015. The Supreme Court may, from time to time, establish by standing rules, such regulations for the taking of appeals, and for the removing of causes by *certiorari* and *habeas corpus*, as said court may deem necessary for the better administration of justice.

CHAPTER XVIII.

OF THE ISSUING OF EXECUTIONS, AND PROCEEDINGS THEREUPON.

§1016. Every circuit judge at chambers, police justice and district justice, shall, at the request of the party recovering any civil judgment in his court, unless such judgment be duly appealed from, issue his execution against the property of the party recovered against, which execution may be in the following form :

To any constable of the district of ———, Island of ———, H. I.:

You are commanded to levy upon the personal property of ———, if any within your district, and if sufficient cannot be found, then upon his real property within said district, and giving thirty days previous notice as required by law, to sell the same, or so much thereof as may be found necessary, at public sale to the highest bidder, in order to satisfy a judgment rendered by me against him in favor of ———, on the ——— day of ———, 18—, for ——— dollars, the costs of court inclusive, collecting also the legal interest thereon, from the date thereof, and your costs and the expenses of levy, advertisement and sale. Make due return to me of this writ, with your proceedings thereon, and the money by you so collected, on or before the expiration of ——— days; and hereof fail not at your peril.

Given under my hand this ——— day of ———, 18—.

Police Justice (or as the case may be).

§1017. The provisions of the last preceding section shall not apply to the issuing of execution upon a judgment entered up by the order of a circuit judge, in any cause or proceeding in the circuit court, but in such case the execution shall be issued in the manner and form prescribed for courts of record.

§1018. All executions issued by a circuit judge at chambers, police justice or district justice, shall be made returnable within sixty days from the date thereof.

§1019. The forms of executions to be issued from courts of record shall be the same as have been heretofore established by the

usage and practice of such courts; but alterations therein may, from time to time, be made, or allowed by the Supreme Court, when necessary to adapt them to changes in the law, or for other sufficient reasons.

§1020. All writs of execution, whether civil or criminal, issuing from any court of record, shall be addressed to the marshal, or his deputy, and shall be signed by the clerk of such court, and impressed with the seal thereof.

§1021. Every officer receiving a writ of execution issued in due form by any court or justice, shall note thereon the day and hour of its receipt, and he shall give priority in levying upon property of the defendant in execution, to the writs received by him according to the order of time in which they are received.

§1022. Every levy by an officer, in pursuance of a writ of execution issued by any court or justice, shall be made by taking the property levied upon into his possession, care and guardianship, and in his option, by removal of the same to some place of security. The officer shall make an inventory of the property levied upon.

§1023. The officer shall, after levy, advertise for sale the property levied upon, whether real or personal, for thirty days, or for such time as the court shall order, by posting a written or printed notice, in three conspicuous places within the district where such property is situated, and if on the island of Oahu, by advertisement thereof in the Government Gazette.

§1024. The officer shall, on the day and at the place set for such public sale, unless paid the amount of the judgment, interest and costs, and his fees and disbursements accrued upon the writ, sell the property advertised to the highest bidder. He shall deduct from the proceeds of the sale sufficient for the full satisfaction, if possible, of the execution and his costs, expenses and commissions, and return the said writ, satisfied wholly or in part, paying the amount collected thereon to the plaintiff in execution or his attorney.

§1025. If, at the time appointed for the sale, the officer shall deem it expedient, and for the interest of all persons concerned therein, to postpone the sale, for want of purchasers or for other sufficient cause, he may postpone it for any time not exceeding seven days, and so from time to time, for like good cause, until the sale shall be completed; giving notice of every such adjournment, by a public declaration thereof, at the time and place previously appointed for the sale.

§1026. The officer shall execute and deliver, to any purchaser at any such sale, such certificate of purchase, or conveyance, as may be necessary.

§273. §1027. No sale by execution shall operate to convey a greater estate or interest in the property sold, than the defendant in execution had at the time of such sale; and all such sales of property not belonging to the defendant, shall subject the officer to the private action of the purchaser, being afterwards deprived thereof by the real owner.

§274. §1028. The officer serving any execution shall act upon his own private accountability, for all excesses of his official powers, and for any departure from the legal import of the writ or mandate in his hands.

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§1029. If, upon an execution being issued by a circuit judge at chambers, or by a police or district justice, no property, or not a sufficient amount of property, belonging to the defendant in execution, can be found within the jurisdiction of the judge or justice issuing the execution, and the same is returned unsatisfied, either wholly or in part, the plaintiff in execution may, upon procuring a certified copy of the judgment and execution in the court below, to be docketed in the office of the clerk of the Supreme Court, sue out a writ of execution from said Supreme Court, which shall be available against the property of the defendant, whenever situated within the Kingdom.

§1030. Any circuit court, out of which an execution has been issued, if such execution has been returned unsatisfied wholly or in part, may issue an alias execution to the same circuit, or an execution leviable in some other circuit, for the satisfaction of the unpaid remainder of the judgment and additional costs, expenses and commissions, which alias or *testatum* writ of execution shall be served by the marshal, or his deputy, in like manner as the original.

§1031. No original execution shall be issued, unless within one year after the party shall be entitled to sue out the same, and no alias, or other successive execution, shall be issued afterwards, unless each one be sued out within one year after the return day of that which preceded it.

§1032. If a judgment remains unsatisfied, after the expiration of the time for taking out execution thereon, the plaintiff may have *scire facias* to obtain a new execution, or he may, at any time after the judgment, have an action of debt thereon.

§1033. Any judge of a court of record may, by order at chambers, in any cause in which an execution shall have been issued, grant a stay thereof in the officer's hands, for equitable reasons, when no appeal or writ of error is granted, upon the defendant giving bond and security for its payment with costs up to the said stay. The property levied upon shall not be released from the levy by the stay of execution, and in case at the end of the time accorded the condition of such bond be not complied with, the plaintiff in execution may elect whether to proceed to the sale of the levied property, or to enforce the bond: provided, that if the levied property be not sufficient to pay the judgment, with all costs, expenses and commissions, the stay inclusive, the sureties in the bond shall be answerable for the deficiency. And when justice may require the renewal of any execution, or an extension of the time for making return to any execution, any judge of a court of record shall have power so to order.

§1034. Bonds of indemnity given to an officer, as provided in section 274, shall be collectable by the officer receiving the same, upon citation to show cause and proof of the signatures thereto, without the intervention of a jury, and the damages to be assessed thereon shall be the amount recovered against the said officer, with interest and costs of suit, and the expenses of such citation and judgment of indemnity, for which execution may be issued against the co-obligors, both jointly and severally, leviable as in other cases of indebtedness.

As amended
1876,
Chapter I.

§1035. The following property when owned by any person being a housekeeper, and having a family, shall be exempt from levy and sale on execution :

The family bible, family pictures, and school books, two swine or six goats, and all necessary fish, meat, flour and vegetables, and one piece of land where kalo is growing, or any other vegetable, provided the same does not exceed one-half an acre, actually cultivated for family use, likewise a house lot not to exceed one quarter of an acre, and the dwelling house and other buildings thereon situated, providing the value thereof shall not exceed two hundred and fifty dollars. But this exemption shall not apply to mechanics and material men for labor performed and material furnished in the erection of such buildings. All necessary wearing apparel, mats, beds, bedsteads and bedding, for such person and his family. One poi board, two calabashes, one o-o, one table, six chairs, six knives and forks, six plates, six tea cups and saucers, one sugar dish, one milk pot, one tea pot, one coffee pot and six spoons. The tools and implements of any mechanic necessary for carrying on his trade or business, not exceeding fifty dollars in value.

The uniform of any officer or private, belonging to any of the military forces of the Kingdom, his arms and accoutrements.

CHAPTER XIX.

OF THE TIME OF COMMENCING PERSONAL ACTIONS.

§1036. The following actions shall be commenced within six years next after the cause of such action accrued, and not after :

1. Actions for the recovery of any debt founded upon any contract, obligation or liability, excepting such as are brought upon the judgment or decree of some court of record :

Rule XI.

2. Actions upon judgments rendered in any court not being a court of record :

3. Action of debt for arrearages of rent :

4. Actions for trespass upon lands :

5. Actions for taking, detaining or injuring any goods or chattels, including actions of replevin :

6. Special actions on the case for criminal conversation, for libels, or for any other injury to the persons or rights of any, except such as are specified in the next two sections.

§1037. The following actions shall be commenced within two years after the cause of action accrued, and not after :

1. Actions for assault and battery :

2. Actions for false imprisonment :

3. Actions for words spoken slandering the character or title of any person :

4. Actions for words spoken whereby special damages are sustained :

5. Actions against the marshal, sheriffs, or other officers, for the escape of prisoners, or upon any liability incurred by them by the doing any act in their official capacity, or by the omission of any official duty.

§1038. In all actions of debt, account, or ^cassumpsit, brought to recover any balance due upon a mutual, open and current

account, the cause of action shall be deemed to have accrued, from the time of the last item proved in such account.

§1039. If any person entitled to bring any action in this chapter specified (excepting actions against the marshal, sheriffs, or other officers) shall, at the time the cause of action accrued be, either,

1. Within the age of twenty years: or,
2. Insane: or,
3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than his natural life: or,
4. A married woman:

Such persons shall be at liberty to bring such actions within the respective times in this chapter limited, after such disability removed.

§1040. If any person entitled to bring any action in this chapter specified, shall die before the expiration of the time herein limited for the commencement of such suit, if such cause of action shall survive to his representative, his executors or his administrators may, after the expiration of such time and within one year after such date, commence such action; but not after that period.

§1041. If at any time when any cause of action specified in this chapter shall accrue against any person, he shall be out of the Kingdom, such action may be commenced within the terms herein respectively limited, after the return of such person into this Kingdom; and if, after such cause of action shall have accrued, such person shall depart from and reside out of this Kingdom, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action.

§1042. Repealed 1876, Ch. XXXIV., Sec. 8.

§1043. Whenever the commencement of any suit shall be stayed by an injunction of any court of equity, the time during

which such injunction shall be in force, shall not be deemed any portion of the time in this chapter limited for the commencement of such suit.

§1044. When a suit shall be alleged by a plaintiff to have been commenced within the time required by law, and such allegation shall be put in issue by the defendant, it shall be competent for the defendant to prove, on the trial, that the process issued by the plaintiff was not issued with the intent or in the manner required by law; or that any means whatever were used by the plaintiff, or his attorney, to prevent the service of the writ, or to keep the defendant in ignorance of the issuing thereof.

§1045. Upon any such matter being established, or upon its appearance in any other way that any process was issued without any intent that it should be served, such process shall not be deemed the commencement of a suit within the meaning of the provisions of this chapter.

§1046. No person shall avail himself of any disability enumerated in this chapter, unless such disability existed at the time his right of his action accrued.

§1047. Where there shall be two or more such disabilities existing at the time the right of action accrued, the limitations herein prescribed shall not attach until all such disabilities be removed.

§1048. The provisions of this chapter shall not extend to any action which is, or shall be, limited by any statute to be brought within a shorter time than is herein prescribed; but such action shall be brought within the time limited by such statute.

§1049. If any person who is liable to any of the actions mentioned in this article, shall fraudulently conceal the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within six years after the person who is entitled to bring the same shall discover that he has such cause of action, and not afterwards.

§1050. All the provisions of this chapter shall apply to the case of any debt on contract, alleged by way of set off on the part of a defendant, and the time of limitation of such debt shall be computed in like manner as if an action had been commenced therefor, at the time when the plaintiff's action commenced.

§1051. Every judgment and decree, in any court of record of this Kingdom, shall be presumed to be paid and satisfied, at the expiration of twenty years after the judgment or decree was rendered.

§1052. In all cases where the right of action shall have accrued previous to the first day of August, A. D. 1853, no action shall be maintainable, unless the same shall be commenced before the first day of August A. D. 1859; subject however to the provisions of Section 1039.

CHAPTER XX.

OF THE PREVENTION OF FRAUDS AND PERJURIES IN CONTRACTS,
AND IN ACTIONS FOUNDED THEREON.

§1053. No action shall be brought and maintained in any of the following cases:

First: To charge an executor or administrator, upon any special promise to answer damages out of his own estate;

Second: To charge any person upon any special promise to answer for the debt, default or misdoings of another;

Third: To charge any person, upon an agreement made in consideration of marriage;

Fourth: Upon any contract for the sale of lands, tenements or hereditaments, or of any interest in or concerning them;

Fifth: Upon any agreement that is not to be performed within one year from the making thereof;

Unless the promise, contract or agreement, upon which such actions shall be brought, or some memorandum or note thereof, shall be in writing, and be signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized.

§1054. The consideration of any such promise, contract or agreement, need not be set forth, or expressed, in the writing signed by the party to be charged therewith, but may be proved by any other legal evidence.

§1055. No action shall be brought and maintained, to charge any person upon, or by reason of, any representation or assurance, made concerning the character, conduct, credit, ability, trade or dealings of any other person, unless such representation or assurance shall be made in writing, and signed by the party to be charged thereby, or by some person, thereunto by him lawfully authorized.

§1056. No contract for the sale of any goods, wares or merchandise, for the price of one hundred dollars or more, shall be allowed to be good, unless the purchaser shall accept part of the goods, so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or some note or memorandum, in writing, of the said bargain be made and signed by the party to be charged by such contract, or by his agent, thereunto by him lawfully authorized.

§1057. When any person, who is bound by a contract in writing to convey any real estate, shall die before making the conveyance, the other party may have a bill in equity in the Supreme Court, to enforce a specific performance of the contract by the heirs, devisees, or by the executor or administrator of the deceased party, such bill to be filed within one year after the grant of administration.

§1058. The court shall hear and decide every such case, according to the proceedings in chancery, and shall make such decree therein, as justice and equity may require.

§1059. If it shall appear that the plaintiff is entitled to have a deed of conveyance, the court may authorize and require the executor or administrator of the deceased party, to convey the estate in like manner as the deceased person might and ought to have done, if living; and if his heirs or devisees, or any of them, are within the Kingdom, and competent to act, the court may direct them or any of them, instead of the executor or administrator, to convey the estate in the manner before mentioned, or to join with the executor or administrator in such conveyance.

§1060. Every conveyance made in pursuance of such decree, shall be effectual to pass the estate contracted for, as fully as if made by the contractor himself.

§1061. If the defendant in such suit shall neglect or refuse to make a conveyance according to the decree, the court may enter

judgment, that the plaintiff shall recover judgment for possession of the land contracted for, to hold according to the terms of the intended conveyance, and may issue a writ of seizin thereupon; and the plaintiff, by force of said writ, having obtained possession of the premises, shall hold the same in like manner, as if conveyed in pursuance of the decree.

§1062. The preceding section shall not prevent the court from enforcing their decree, by any other process, according to chancery proceeding.

§1063. If the person, to whom the conveyance was to be made, shall die before such suit is brought, or before the conveyance is completed, any person, who would be entitled to the estate under him as heir, devisee or otherwise, in case the conveyance had been made according to the contract, may commence such suit, or prosecute it, if commenced; and the conveyance shall thereupon be so made, as to vest the estate in the same persons, who would have been so entitled to it.

§1064. If the party, to whom any such conveyance was to be made, or those claiming under him, shall not commence a suit, as before provided, and if the heirs of the deceased party are under age, or otherwise incompetent to convey the lands contracted for, the executor or administrator of the deceased may file a bill in equity in the Supreme Court, setting forth the contract and the circumstances of the case, whereupon the court may, by its decree, authorize and require such executor or administrator to convey the estate, in the manner the deceased should have done; and such a conveyance shall be deemed a performance of the contract on the part of the deceased, and sufficient to entitle his heirs, executors or administrators, to demand a performance thereof on his part.

CHAPTER XXI.

OF ATTORNEYS AND COUNSELLORS AT LAW.

§1065. The Supreme Court shall have power to examine and admit as practitioners in the courts of record, such persons, being Hawaiian subjects, of good moral character, and having taken the prescribed oath of office, as said court may find qualified for that purpose.

Rule 28 Re C.
W. Ashford, 4
H. R.

§1066. Said practitioners shall be summarily amenable to the courts of record, and may be fined, imprisoned or dismissed from the roll of practitioners, for satisfactory cause, upon the complaint of any party aggrieved by their mal-practice, or for non-payment of moneys collected by them for private parties, or for any deceit, or other gross misconduct.

§1067. They shall have the right to practice in all the courts of the Kingdom, and to appear therein as attorneys, counsellors, solicitors or proctors, in behalf of third persons who may choose to retain them, for the prosecution or defense of actions, civil, criminal or mixed; and shall be entitled to charge for their services the fees prescribed by law, which being taxed by any judge of the court, shall be added to the judgment and collected for their benefit.

§1068. No person shall be allowed to practice in any court of record in this Kingdom, or before a circuit judge at chambers, unless he shall have been duly licensed so to do by the Supreme Court: provided, that nothing in this chapter contained shall be construed to prevent any person, plaintiff, defendant or accused, from appearing in person before any court, or justice, and there prosecuting or defending his own cause, without the aid of legal counsel.

§1069. The practitioners so licensed shall have control to judgment and execution, of all suits and defenses confided to them: provided, however, that no such petitioner shall have power to compromise, arbitrate and settle such matters confided to him, unless upon special authority in writing from his client.

Paakuku
v.
Komoikehu-
ehu,
3 H. R. 642.

§1070. The oath of office to be taken and subscribed by such practitioners shall be as follows :

SUPREME COURT, H. I.

....., being duly sworn, deposes that he will support the Constitution and Laws of the Hawaiian Islands, and faithfully discharge the duties of attorney, counsellor, solicitor and proctor, in the courts of this Kingdom, to the best of his ability.

Such oath shall be taken and subscribed before some judge of a court of record.

§1071. The license to be given to a practitioner shall be in the following form :

SUPREME COURT, H. I.

....., Esquire, having been examined and found duly qualified, and of good moral character, I do hereby license him to practice in all the courts of this Kingdom as an attorney, counsellor, solicitor and proctor thereof, during good behavior.

Given under my hand and the seal of the Supreme Court, this day of, 18....

.....,
Chief Justice.

§1072. The Supreme Court may prescribe terms and periods of study preparatory to the admission of practitioners, and rules for their government in the pursuit of their practice not inconsistent with any law of the Kingdom.

§1073. Repealed.

§1074. The clerk of the Supreme Court shall exact from every practitioner, upon his receiving a license, an admission fee of ten dollars, for the benefit of the public treasury.

That Chapter 21 of the Civil Code concerning attorneys and counsellors at law be amended by adding thereto the following sections :

Act
1878,
Chapter XXXI.

§1074a. The Supreme Court and the several Circuit Courts shall have power to examine and admit as practitioners in the police and district courts in the Kingdom such persons, being Hawaiian subjects of good moral character and having taken the oath of office, as said courts may find qualified for that purpose.

As amended
1880,
Chapter XIII.

§1074b. The said license shall be for the term of two years, and shall be valid in all the judicial circuits of the Kingdom. The fee for a license shall be five dollars for the first issue, and two dollars for each renewal thereof. Such license may be in the following form :

..... Court.
..... Esquire, having been examined and found duly qualified and of good moral character, is hereby licensed to practice in the police and district courts of all the judicial circuits of the Kingdom as an attorney at law for the term of two years from date.

By order of the court.

..... Clerk.
Dated.....

§1074c. No person shall be allowed to practice law in the police and district courts of the Kingdom without a license, provided that any person may appear to prosecute or defend his own cause. And section 1073 of the Civil Code and all other Acts and parts of Acts inconsistent herewith are hereby repealed.

CHAPTER XXII.

OF MASTERS IN CHANCERY.

§1075. The Supreme Court may appoint a suitable number of persons, besides the clerk of said court, to be masters in chancery, who shall hold office during the pleasure of said court.

§1076. The several masters in chancery shall take and subscribe an oath for the faithful discharge of the duties of their office, which oath may be administered by any justice of the Supreme Court.

§1077. They shall perform, under the direction of the Supreme Court, or of any justice thereof, all the duties which, according to the practice in chancery, appertain to the office, and as shall be assigned to them, and they shall be allowed therefor such fees as the court shall order.

§1078. Their fees shall be taxed with the other costs in the cause, and shall be eventually paid by such party, or in such manner, as the court shall order.

§1079. Every master in chancery shall, upon his appointment, pay to the clerk of the Supreme Court, a fee of ten dollars for the benefit of the public treasury.

DEFINING THE DUTIES OF THE ATTORNEY-GENERAL.

SECTION 1. The Attorney-General, appointed by virtue of the 42d Article of the Constitution, shall appear for the Crown or Government personally or by deputy, in all the courts of record of

Act
1866,
Repealing
Chap. XXIII,
of Civil Code.

this Kingdom, in all cases criminal or civil in which the Crown or Government may be a party, or be interested, and he shall in like manner appear in the police and district courts when requested so to do by the marshal of the Kingdom or the sheriff of any one of the Islands.

SECTION 2. He shall also be vigilant and active in detecting offenders against the laws of the Kingdom, and shall prosecute the same with diligence. It shall also be his duty to enforce all bonds and other obligations in favor of Government that may be placed in his hands for that purpose, by any person having the lawful custody of such papers; and he shall likewise be diligent in prosecuting all persons who may obstruct any street, channel, harbor, wharf or other highway, or any stream or public water-course, or commit any trespass, or waste on any portion of the public domain, or other public property.

SECTION 3. The said Attorney-General shall, without charge, at all times when called upon, give advice and counsel to the Ministers, Governors, the marshal, sheriffs, collectors, justices and other public officers, in all matters connected with their public duties, and otherwise aid and assist them in every way requisite to enable them to perform their duties faithfully.

SECTION 4. It shall also be the duty of the said Attorney-General to give counsel and aid to poor and oppressed subjects of the King, and to assist them in obtaining their just rights without charge; provided, however, that he shall not be obliged to render such aid, counsel and assistance, unless requested so to do by the King, or by some one of the King's Ministers or Governors.

SECTION 5. Said Attorney-General shall not receive any fee or reward from or in behalf of any person or prosecutor, for services rendered in any prosecution or business to which it shall be his official duty to attend; nor be concerned as counsel or attorney for either party in any civil action depending upon the same state of facts.

SECTION 6. He shall account with the Minister of Finance every three months for all fees, bills of costs, fines, penalties, and other moneys received by him by virtue of his office.

SECTION 7. Said Attorney-General shall, when required, give his opinions upon questions of law submitted to him by the King, the Legislative Assembly, or the head of any department.

SECTION 8. The said Attorney-General shall receive such salary as may be voted from time to time by the Legislature, which shall be paid to him out of the public treasury in equal monthly payments in full for all services rendered by him.

SECTION 9. The Attorney General may from time to time appoint a deputy for any judicial district, whensoever the exigencies of the public service may require it, and shall be responsible for all the acts of such deputy or deputies.

SECTION 10. All the duties imposed by existing laws on district attorneys formerly are hereby required to be performed by the Attorney General, and Chapter 23d of the Civil Code from section 1080 to 1095, and the Act entitled "An Act for the appointment of an Attorney General," passed on the 30th day of June, A. D. 1862, are hereby repealed.

Approved this 27th day of July, A. D. 1866.

CHAPTER XXIV.

OF CONTEMPTS.

P. C.
Chap. XXIX,
Sec. 18

§1096. Every judicial tribunal, acting as such, and every magistrate acting by authority of law in a judicial capacity, may summarily punish persons guilty of contempt, as follows, viz.:

1. The Supreme Court, by imprisonment (at hard labor)^a) not more than three months, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment in the discretion of the court.

2. Any circuit court, or any court of probate, by imprisonment (at hard labor)^a) not more than two months, or by fine not exceeding one hundred dollars.

3. Any circuit judge, or police justice, by imprisonment (at hard labor)^a) not more than thirty days, or by fine not exceeding fifty dollars.

4. Any district justice, coroner, or other person acting in a judicial capacity by authority from any court of record, by imprisonment (at hard labor)^a) not more than ten days, or by fine not exceeding ten dollars.

^a TO AMEND SECTION 18 AND SUBDIVISIONS 1, 2, 3 AND 4 OF SAME SECTION, CHAPTER 29 OF PENAL CODE.

Act
1872.
Chap. XIII.

WHEREAS it is inexpedient that persons adjudged guilty of Contempt of Court should be liable to be punished with imprisonment at hard labor, therefore:

Be it Enacted by the King and the Legislative Assembly of the Hawaiian Islands, in the Legislature of the Kingdom assembled:

Hereafter it shall not be lawful for any court, judge, police justice, district justice, coroner or any other person having power to

inflict punishment upon any person who may be adjudged guilty of contempt, to add the punishment of hard labor to any sentence which may be passed upon any such person adjudged guilty as aforesaid.

§1097. Persons punished according to the provisions of this chapter, shall also be liable to indictment for the same misconduct, if it be an indictable offense; but the court before which a conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted.

§1098. When the contempt consists in the omission or refusal to perform an act which is yet in the power of the party to perform, he may be imprisoned until he have performed it, and in that case the act shall be specified in the warrant of commitment.

CHAPTER XXV.

OF THE PRACTICE OF COURTS OF RECORD.

ARTICLE XLVI—OF CIVIL SUITS.

§1099. Every civil action hereafter to be tried in any of the courts of record in this Kingdom, shall be commenced by petition, which petition shall be verified by the oath of the plaintiff, or some one on his behalf, deposing to the best of his knowledge and belief.

§1100. In all suits for the recovery of money upon evidences of indebtedness, or vouchers certain or computable by the court, that is to say: upon promissory notes, bills of exchange, drafts, orders; bonds and other instrument, parol or specialty, the plaintiff in person, or by his attorney, shall file a petition for process, addressed to the Chief Judge or Justice of the court, in substance as follows:

The undersigned claims of....., residing at....., Island of.....,dollars, upon (a note or other evidence of debt, as the case may be) dated....., payable on....., with.....interest from..... Said defendant has neglected and refused to pay the same until this date, (and in case of fraud or concealment, or other collusive or deceptive circumstances attendant upon the contracting or the non-payment of the debt, here insert the same according to the circumstances).

Wherefore, the undersigned asks the process of this court to cite the said defendant to appear and answer this demand.

Dated.....day of....., 18....

.....
Plaintiff, or Plaintiff's Attorney.

§1101. Upon the filing of such petition, in case no fraudulent circumstances be alleged by the plaintiff, the clerk shall issue,

under the seal of the court, a summons addressed to the Marshal or his deputy, which may be in the following form:

You are commanded to summon , defendant, in case he shall file written answer within twenty days after service thereof, to be and appear before the Supreme Court, (or Circuit Court for the judicial circuit, as the case may be) at the term thereof, to be holden at , in the Island of , on the day of next, at o'clock A. M., to show cause why the claim of , plaintiff, should not be awarded to him pursuant to the tenor of his annexed petition. And have you then there this writ with full return of your proceedings thereon.

Witness, , Esquire,
Chief Justice of the Supreme Court, at Honolulu,
this day of , A. D. 18....
..... , Clerk.

(Seal.)

§1102. Every summons issued under the seal of a court of record, shall be served by the marshal or his deputy, upon the defendant, by the delivery to him of a certified copy thereof, and of the plaintiff's petition, to which petition shall always be annexed a literal copy of the voucher upon which it is predicated, (if any there be,) or in case the defendant cannot be found, by leaving such certified copy with some agent or person transacting the business of the defendant, or at the defendant's last place of residence.

E. Hoffslaeger
& Co. v. Han
Sam, 4 H. R.

§1103. If the defendant was never an inhabitant of the Kingdom (but has property situated within the same), or has removed therefrom, and the fact shall appear by affidavit to the satisfaction of the court, or a judge thereof at chambers, and it shall in like manner appear that a cause of action exists against such defendant, or that he is a necessary or proper party to the action, such court or judge may grant an order, that the service be made by publication of the summons.

§1104. Such order shall direct the publication to be made in the Government Gazette, for such length of time as may be deemed reasonable, not less than three months. In case the residence of the defendant is known, the court or judge shall, in addition to the publication, direct a copy of the summons and peti-

tion to be forthwith deposited in the post-office, addressed to the defendant, at his place of residence. When publication is ordered, personal service of a copy of the summons and petition, out of the Kingdom, shall be equivalent to publication and deposit in the post-office. In either case, the service of the summons shall be deemed complete at the expiration of the time prescribed by the order for publication.

§1105. It shall be necessary to join as defendants in a civil action, all the joint and several, or joint makers of promissory notes, or drawers of drafts, bills of exchange, or orders, or joint and several obligors, lessees, or parties of the first or second part to covenants, agreements and contracts, in suing for non-payment, non-acceptance, or non-fulfillment thereof, but it shall in no case be necessary to serve all the joint parties sued with process. Service of process upon one of several defendants at law, shall be legal service upon all for the purposes of appearance in court, and judgment may be entered against all such co-defendants thereon : provided, however, that no execution shall issue against the sole property of any joint defendant on whom process was not duly served as aforesaid.

§1106. It shall be incumbent upon every defendant served with process of summons as hereinbefore provided, within the time specified in the summons or order of publication, to file with the clerk of the court, an answer to the plaintiff's demand, either admitting all the facts stated in the petition to be true, and denying that they are sufficient in law to support the plaintiff's demand, which shall form an issue of law to be determined by the court, or denying the truth of the facts stated in the petition, which shall form an issue of fact to be determined by the jury. After either of these answers, there shall be no further pleading.

Section 1106 of the Civil Code shall be, and the same is hereby amended, by adding thereto the following words :

Provided that in all cases where the defendant is sued as the maker, drawer, acceptor or endorser of any banker's cheque,

promissory note, bill of exchange, or other negotiable security, he shall not be allowed to file an answer unless he shall file therewith an affidavit made by himself or by some person cognizant of the facts, on his behalf, that the defendant has a good defense to the action on the merits, and stating some substantial ground of defense to the action, if such action be commenced within six months after the dishonor of the instrument on which the action is brought.

§1107. Under the second answer mentioned in the last preceding section, the defendant may give in evidence, as a defense to any civil action, any matter of law or fact whatever.

§1108. The respective courts of record shall have power to make such general and special rules, and orders, respecting notice to the opposing party, of matters intended to be given in evidence by either party to a suit, as shall be necessary to prevent surprise, and to afford an opportunity for preparation for trial.

§1109. In case the defendant does not put in an answer to the petition as hereinbefore required, the plaintiff may prove service of the summons by personal delivery or otherwise, and default in answering, by the clerk's certificate, and shall thereupon be entitled to demand and receive of the court, or judge at chambers, an order declaring the defendant in default, and authorizing the clerk, if the demand be upon a promissory note or any other voucher contemplated by section 1100, to assess the amount of the plaintiff's claim, principal, damages and interest, and to enter up judgment therefor and for the costs.

§1110. In actions where the service of the summons was by publication, the plaintiff, upon the expiration of the time designated in the order of publication, may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the court or judge at chambers shall thereupon require proof to be made of the demand mentioned in the complaint, and shall require the plaintiff or his agent to be examined on oath, respect-

ing any payments that may have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover.

§1111. In case the defendant shall put in an answer denying the truth of the facts set forth in the plaintiff's petition, which answer shall be called the general issue, the clerk shall enroll the cause upon the calendar of civil causes triable in the court in which the action was commenced.

§1112. In case the defendant shall put in an answer admitting the facts stated in the petition to be true, and denying that they are sufficient in law to support the plaintiff's demand, which answer shall be called a demurrer, the plaintiff shall join therein within twenty days on pain of being defaulted, and may apply to a judge at chambers for a hearing and decision of the issue.

§1113. The judge so applied to shall have power to cite the defendant, appoint a day for argument, cite witnesses to prove collateral facts involved, and to decide the issue, subject to exceptions by either party.

§1114. If either party take exception to the decision of the judge at chambers, the cause may be placed upon the calendar of motions, with the decision of the judge at chambers, to be reconsidered by the court in term time, at the cost of the party losing.

§1115. If no exceptions be taken at chambers to the judge's decision of a question of law, and no question of fact remains to be decided at the term, the judge shall make an order to the clerk to enter up the judgment awarded by him upon the issue, which shall be valid, subject to an appeal to the court in *banco*.

ACTIONS UPON UNLIQUIDATED DEMANDS, &c.

§1116. In all civil cases involving unliquidated demands constructive, implied, suppositious or hypothetical right on the part of the government, or of any private person, corporation or other

party, being plaintiff, to recover money or damages pursuant to the words, or the spirit or intent of any law heretofore, now, or hereafter to be passed, or of any instrument in writing signed by any party, or of any verbal understanding, contract or agreement, or in consequence of any injury direct or consequential to the party plaintiff, or to his property, real or personal, or to his character, or his feelings, the plaintiff in person, or by attorney, shall file with the clerk of the court, a petition for process, in substance as follows:

The undersigned claims of defendant, residing at, Island of, the sum of dollars, for damages resulting to him (or as the case may be) for injury done by said defendant to (the person, the property, the character or the feelings of the plaintiff, as the case may be) in that the defendant did (here set forth the cause and the manner in which the injury was done, circumstantially with the view to proof) which the plaintiff alleges was done in contravention of his private rights under the laws.

Wherefore the undersigned asks the process of this court, to cite the said defendant to appear and answer this his complaint before a jury of the country, at the term of this court, unless otherwise sooner disposed of by judicial authority.

§1117. In all cases contemplated by the last preceding section, the plaintiff may, according to circumstances, include in his petition, an allegation that the defendant is secreting his property, or disposing of the same, or colluding so to do, or is about to depart the Kingdom, or is damaging or wasting the said property, and thereupon ask for process of attachment, or injunction, or personal arrest, against the defendant, as such plaintiff may judge proper to ask in the premises.

§1118 In actions to recover at law any specific property, real or personal, or any specific share or interest, or right to property, real or personal in kind, as in cases of replevin, or of ejectment, the plaintiff in person, or by attorney, shall file with the clerk of the court, a petition for process, which may be in the following form :

The undersigned complains of, defendant, residing at Island of, that he has unjustly, and contrary to law and the rights of the plaintiff, taken in to his possession and converted to his use, (or occupation, as the case may be) the following property, viz.:

Nanie v. Namea
3 H. R. p. 628,

(here set forth the property wrongfully in the defendant's possession, whether real or personal, and if personal, the articles by name or description, (and if real, the metes, bounds, quantity and locality thereof, with the kind of title claimed by the plaintiff) valued at dollars, or if in ejectment, state in lieu of the value, to the damage of said plaintiff dollars.

Wherefore, the plaintiff asks the process of this court, to cite the said defendant to appear and answer this complaint before a jury of the country, at the term of this court, unless sooner disposed of by judicial authority, and that the plaintiff may have restitution of said property, with damages for its detention (or as the case may be).

§1119. In cases of ejectment, under the last preceding section, the plaintiff may, according to circumstances, allege in his petition, that there is danger the defendant or some one for him, will commit destruction of tenements or other property, on the premises in controversy, *pendente lite*, and thereupon ask for process of injunction, or other restraining process of the court, as such plaintiff may judge proper to ask.

§1120. In every such case, in which process of constraint to the person or property of a defendant is prayed for, no such process shall issue until the plaintiff or some one on his behalf, shall have filed a bond conditioned for the reimbursement to the defendant of all costs, charges and damages sustained by him in consequence of the suit, in case the plaintiff fail to sustain his action. Upon the filing of the petition and bond, any judge of the court at chambers, may sanction a constraining writ, by endorsing thereon his written allowance, without which no executive judicial officer shall be justified in the seizure, constraint, restraint or commitment of a defendant, or in the seizure, attachment, removal, detention or injunction of his property, real or personal.

§1121. If the judge deem it proper that the defendant, or any of several defendants, should be heard before granting an injunction, he may grant an order requiring cause to be shown, at a specified time and place, why the injunction should not be granted; and the defendant may in the meantime be restrained.

§1122. In case the petition contains no prayer for constraining process, the clerk shall issue a summons, addressed to the marshal or his deputy, which may be in the following form :

You are commanded to summon, defendant, in case he shall file written answer within twenty days after service thereof, to be and appear before the Supreme Court, (or circuit court for the judicial circuit) at the term thereof, to be holden at....., on the day of next, at o'clock a. m., to show cause why the claim of, plaintiff, should not be awarded to him pursuant to the tenor of his annexed petition. And have you then there this writ with full return of your proceedings thereon.

Witness,, Esquire,
Chief Justice of the Snpreme Court, at Honolulu,
this day of, 18...
....., Clerk.

§1123. In case the petition contains a prayer for process of constraint against the defendant, or his property, and the plaintiff has filed with the clerk a bond as prescribed in section 1120, approved by a judge at chambers, and the judge has allowed the constraining process, the clerk may issue a summons in the form prescribed in the last preceding section, with an additional clause after the words "annexed petition," as follows :

And you are further commanded to arrest the said defendant and commit him to prison, unless he shall give bond to answer as aforesaid, (or to attach and keep safely the said personal property until judgment of restitution be awarded or refused, or to enjoin the said defendant under penalty of dollars, not to sell, mortgage, lease or rent the said real property, lands and tenements, until the dissolution of such injunction by competent judicial authority).

§1124. In all cases of attachment, sequestration or injunction of real property, the officer serving the writ shall, in addition to personal delivery of a copy thereof to the defendant, post upon the premises a copy of the process, and a notice of the day and hour when attached, sequestrated or enjoined, and shall also give notice thereof in the Government Gazette. All after-leases, mortgages, sales, bequests, assignments, trust or other conveyances of said property, until the dissolution of the process, shall be void in law as against the plaintiff in such cases.

§1125. All persons residing or being in this Kingdom shall be personally responsible in damages, for trespass or injury, whether direct or consequential, to the person or property of others, or to their wives, children under majority, or wards, by such offending party, or by his wife, or his child under majority, or by his command, or by his animals, *domitæ* or *feræ naturæ*; and the party aggrieved may prosecute therefor in the proper courts.

§1126. Upon failure of any party defendant, after having been served with the process prescribed in sections 1101 and 1122, to answer the complaint within twenty days after service, the plaintiff in the action, upon proof to a judge at chambers, shall be entitled to an order for judgment by default, debarring the defendant from the right to answer. The judge or the court shall have power, however, to open the default, in their discretion, for good and sufficient reasons.

§1127. The clerk shall, after such default, enter the cause upon the calendar of assessments to be made *ex parte* at the term, upon sole adduction of plaintiff's evidence, without admitting the defendant to rebut the same: provided, however, that the defendant may in person, or by counsel, cross-examine the plaintiff's witnesses, and address the jury in mitigation of damages.

§1128. The measure of damages in all cases contemplated by section 1116, shall be according to the true legal interpretation of the court upon the law, instrument, contract or agreement; and in all cases of injury, direct or consequential, to the plaintiff in person, or his wife, child or servant, or to his, her, or their character or feelings, or to his property, real or personal, the measure of damages shall be determined by the jury.

§1129. In actions of ejectment to enforce the right of possession of lands, it shall be sufficient to serve the party in actual possession thereof, though he be not the adverse claimant, or if no one be in actual possession at the time, to post a copy of the

process, and notice to the party claiming adversely, in some conspicuous place upon the premises, at least thirty days before the first day of the term of the court at which the case is to be tried.

§1130. Issues of fact arising in any suit, contemplated by sections 1100 and 1116, shall be tried by a jury, unless a jury trial be waived by the parties with the consent of the court.

TRIAL BY REFEREES.

§1131. In all cases of complication, and in cases involving long accounts, the court may, upon the written application of either party showing satisfactory cause, or of its own motion, appoint competent referees, as provided in section 841, to hear and decide upon the facts and merits of the case, reporting their decision to the court: provided, however, that this provision shall not extend to any case contemplated by sections 1116 and 1118.

§1132. Referees so appointed shall be sworn to the faithful and speedy investigation of, and to an honest award upon, the matters submitted to them. All persons residing for the time being within the jurisdiction of the court, and liable to serve as jurors, shall be liable to serve as referees upon appointment.

§1133. Either party may take exception to the decision of the referees, upon a question of law, and it shall be the duty of the referees to note such exception.

§1134. The report of referees in any cause shall be signed by them, or a majority of them. They shall file it with the clerk of the court by whom they were appointed, and such clerk shall notify the parties.

§1135. The party in whose favor the report shall have been made, shall, within ten days after being notified by the clerk,

move the court, or a judge at chambers, giving at least forty-eight hours notice of such motion to the opposite party, for judgment of confirmation, which the court or judge shall grant or refuse upon hearing the parties, or upon default of the opposite party to appear, after proper notice of such motion.

§1136. Either party may except to the decision of a judge at chambers upon the report of referees, file the grounds of his exception with the clerk of the court in arrest of judgment, and require such decision to be reported to the court upon the calendar of motions, for reconsideration. If confirmation be awarded or refused by a circuit court, either party may except and take an appeal to the Supreme Court, upon filing his exceptions with the clerk of the circuit court in arrest of judgment, within five days after the rendition of its decision.

TRIAL BY THE COURT.

§1137. The parties to a civil suit may, with the consent of the court, waive the right to a trial by jury, either by written consent, or by oral consent in open court entered on the minutes.

§1138. In such case the court shall hear and decide the cause, both as to the facts and the law, and its decision shall be rendered in writing. If the taking of an account be necessary to enable the court to complete its judgment, a reference may be ordered for that purpose.

§1139. Any party deeming himself aggrieved by the decision of a circuit court, on a question of law, in any such case, may appeal therefrom to the Supreme Court, upon filing written notice of such appeal with the clerk of the circuit court, within five days after the rendition of its decision.

SUBMITTING A CASE WITHOUT ACTION.

§1140. Parties to a question in difference, which might be the subject of a civil action in the Supreme Court, may, without

action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to the Justice of the Supreme Court, either in term time or in vacation. But it must appear by affidavit, that the controversy is real, and the proceedings in good faith, to determine the rights of the parties.

§1141. The justices, or a majority of them, shall thereupon hear and determine the case, and render judgment thereon, in writing, as if an action were depending.

§1142. Judgment shall be entered in such case, as in ordinary civil actions. The case, the submission, and the written decision, shall constitute the record.

§1143. The judgment shall be final, and may be enforced in the same manner as if it had been rendered in an action.

UNITING SEVERAL CAUSES OF ACTION.

§1144. The plaintiff in a civil suit may unite several causes of action in the same complaint, when they all arise out of:

1. Contracts, express or implied; or,
2. Claims to recover specific real property, with or without damages, for the withholding thereof, or for waste committed thereon, and the rents and profits of the same; or,
3. Claims to recover specific personal property, with or without damages for withholding thereof; or,
4. Claims against a trustee, by virtue of a contract, or by operation of law; or,
5. Injuries to character; or,
6. Injuries to the person; or,
7. Injuries to property. But the causes of action so united shall all belong to one only of these classes, and shall affect all the parties to the action, and shall be separately stated.

Act
1876,
Chapter L.

8. Every holder of a banker's cheque, promissory note, bill of exchange, or other negotiable security, may join as defendants in any action for the recovery of the amount secured by any such instrument all or any of the antecedent parties to the same, whether maker, drawer, acceptor, or endorser.

AMENDMENTS.

§1145. Whenever a plaintiff in any action shall have mistaken the form of action suited to his claim, the court, on motion, shall permit amendments to be made on such terms as it shall adjudge reasonable; and the court may, in furtherance of justice and on the like terms, allow any petition or other pleading to be amended in any matter of mere form, or by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect.

SET-OFF AND TENDER.

Lazarus O.
Trousseau,
4 H. R.

§1146. It shall be competent to the defendant in any civil action to plead an offset of like kind and denomination, existing in the same right, between him and the plaintiff, or having made a legal tender of money in full payment of the plaintiff's demand, to plead such tender, and bring the amount thereof into court in bar of further interest and costs, after such tender.

§1147. If the demand set off is founded on a bond or other contract having a penalty, no more shall be set off than the sum equitably due.

§1148. If there are several plaintiffs, the demand set off shall be due from them all jointly; if there are several defendants, the demand set off shall be due to them all jointly, except as is provided in the following section.

§1149. When the person with whom a contract is made, has a dormant partner, and a suit is brought on such contract, by or against such partners jointly, any debt, due to or from the person with whom such contract was made, may be set off in like manner, as if such dormant partner had not been joined in the suit.

§1150. When an action has been brought by one person in trust, or for the use of another, the defendant may set off any demand against the person for whose use or benefit the action is brought, in like manner as if that person were the plaintiff in the suit.

§1151. The plaintiff shall be entitled to every ground of defense against such set off, of which he might have availed himself, in an action brought against him on the same ground.

§1152. The statute limiting personal actions, if applicable to the set off, shall be applied in the same manner, as if an action thereon had been commenced at the time when the plaintiff's action was commenced.

DEPOSIT IN COURT, &C.

§1153. When it is admitted, by the pleading or examination of a party, that he has in his possession, or under his control, any money, or other thing, capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs, or is due, to another party, the court may order the same, upon motion, to be deposited in court, or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

§1154. Whenever in exercise of its authority a court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience, may make an order requiring the marshal, or any of his

deputies to take the money or thing, and deposit or deliver it in conformity with the direction of the court.

TO PROVIDE FOR THE DEPOSIT OF CERTAIN MONEYS IN THE
PUBLIC TREASURY.

Act
1862,
June 30.

SECTION 1. Whenever any money shall be paid into, or deposited in, any court of this Kingdom, to abide the ascertainment of the right to such money, or the determination or suit, the court shall have power, upon the application of any party interested, or without such application, to order such money to be deposited in the public treasury, subject to the further order of the court.

SECTION 2. Every administrator, guardian, receiver, or other fiduciary appointed by judicial authority, may be required by order of any court of justice having jurisdiction of the subject matter, about which such fiduciary is employed, upon the application of any party interested, or without such application, to deposit any money accruing in his hands in virtue of his trust, in the public treasury subject to the further order of some competent court or justice.

Act
1872,
Chapter XV.

SECTION 3. The provisions of this Act shall not be held to affect the power vested by will in any executor or guardian.

JUDGMENT AND EXECUTION.

Kamalu v.
Lovell, 4 H. R.

§1155. Judgment shall be entered by the clerk, without motion, immediately upon the rendition of a verdict, or of a judgment of the court in banco, or of a judge at chambers, and execution may issue thereon at any time thereafter, when called for, unless notice is given at the time of rendering the verdict, or judgment, of a motion for a new trial and the filing of a bill of exceptions and bond, as provided by statute, within ten days after the rendition of such verdict or judgment: provided, that execution may issue within ten days, even though such notice be given, when good and sufficient cause can be shown therefor. The provisions of this section shall not affect the right of appeal.

NEW TRIAL.

§1156. Any party against whom a verdict or judgment is rendered, as set forth in the last preceding section, may, upon filing a sufficient bond of security, conditioned for the payment of all costs of motion in case he fail to sustain the same, and that he will not to the detriment of the plaintiff in the action, remove or otherwise dispose of any property he may have liable to execution on such judgment, and upon giving notice of said motion and the grounds thereof to the opposite party, move the court at any time within ten days after rendition of verdict or judgment, for a new trial, for any cause for which by law a new trial may and ought to be granted. The filing of the bill of exceptions and bond shall operate as a stay of execution, until the motion is determined.

Lukau. Poohina
3 H. R. 683.

WRIT OF ERROR.

§1157. Any party deeming himself aggrieved by the decision of a police justice, or of a circuit judge at chambers, or of any justice of the Supreme Court, or by the verdict of a jury in any civil suit, may at any time before the execution thereon is fully satisfied, within six months after the rendition of judgment, file with the clerk of the Supreme Court his reasons for deeming himself aggrieved, assigning the causes of error in such decision or verdict.

Kalakaua v.
Harris, 3 H. R.
p. 27.

§1158. Such party may, upon service of copy of such assignment of errors, and tender of error bond of security, conditioned for the payment of costs in case he fail to sustain his application, and that he will not to the detriment of the adverse party, remove or otherwise dispose of any property he may have liable to execution on the judgment, and upon at least ten days notice to the adverse party or his counsel, apply to any justice of the Supreme Court, for a writ of error to be issued to the court below, or to the clerk of the Supreme Court, as the case may be, commanding such court or clerk to certify up the record and proceedings had in the cause, that the errors may be corrected.

§1159. Upon the return of the writ with the record sent up, the Supreme Court may grant an order to the adverse party to join in error on pain of reversal of the former judgment; and, after hearing the parties, or such of them as may attend for that purpose, shall thereupon give judgment, either affirming or reversing, or modifying the former judgment, or remanding the cause for a new trial.

§1160. Every writ of error shall operate as a stay of execution, before the actual sale of property and satisfaction of judgment, and no executive judicial officer shall, after notice, proceed to satisfy any execution the judgment in regard to which has been removed by writ of error: provided, that such stay shall not release property under actual levy at the time, if the former judgment be affirmed by the Supreme Court.

MISCELLANEOUS PROVISIONS.

§1161. The several courts of record may, from time to time, make such rules as they may deem necessary, for the guidance of their respective clerks in making up calendars of the causes, civil and criminal, coming on for trial in said courts.

§1162. Causes placed upon the calendar shall be taken up and disposed of in the order in which they stand, unless postponed by the court at the request of the plaintiff or the defendant.

§1163. When a cause is reached upon the calendar, the plaintiff shall be called by the clerk, and if the plaintiff be not present, nor represented by counsel who is present, or if he or his counsel being present, decline to answer when so called, he may be declared non-suit with costs. If, upon calling the plaintiff, he does appear, and the defendant having joined issue does not appear, or answer when called, the court may order judgment by default to be entered against such defendant, and allow the plain-

tiff to proceed *ex parte* before the court or jury, and the verdict of the jury or decision of the court, shall be rendered on such *ex parte* showing, unless good cause appear to the court for postponing the case.

§1164. At the trial of every civil suit, the plaintiff shall have the right to open the case, and first to introduce his witnesses and vouchers, and he shall also have the right to sum up the entire evidence, and close the debate after the defendant has fully ceased. The defendant may cross-examine the plaintiff's witnesses, and he shall have the right to introduce his witnesses of defense, when the plaintiff has rested his cause. The plaintiff may, in turn, cross-examine the defendant's witnesses. When all the evidence has closed, the defendant shall sum up his defense to the court or jury: provided, that the Justices of the Supreme Court may, by standing rule, modify the application of the foregoing provisions, should it appear expedient to do so.

§1165. Whenever two or more actions are pending at one time between the same parties, and in the same court, upon causes of action which might have been joined, the court may order the actions to be consolidated into one.

§1166. The time within which an act is to be done, as provided in any part of this chapter, shall be computed by excluding the first day, and including the last. If the last day be Sunday, it shall be excluded.

§1167. When a cause of action has arisen in any foreign country, and by the laws thereof an action thereon cannot there be maintained against a person, by reason of the lapse of time, an action thereon shall not be maintained against him in this Kingdom, except in favor of a domiciled resident thereof, who has held the cause of action from the time it accrued.

TO REGULATE THE PRACTICE AND PPOCEDURE IN CRIMINAL
CASES.

I.—OF THE TIME FOR PRESENTING INDICTMENTS.

Act
1876,
Chapter XL.

SECTION 1. In all cases of offenses against the laws of this Kingdom, triable only by a court of record, the accused shall be arraigned and prosecuted by an indictment by a legal prosecutor of the Crown, as soon after the commitment of the offense of which he is accused as may be expedient; provided always that the presentation of an indictment against an accused shall not be deferred beyond the term of the court having jurisdiction of the alleged offense next succeeding the commitment of the accused for trial by a magistrate having competent jurisdiction therefor. And the trial shall then and there be proceeded with, unless the same shall be postponed by the court as hereinafter provided.

SECTION 2. The necessary bills of indictment shall be duly prepared by a legal prosecuting officer, and be duly presented to the presiding judge of the court before the arraignment of the accused, and such judge shall, after examination, certify upon each bill of indictment whether he finds the same a true bill or not.

SECTION 3. The failure to prosecute upon the indictment if found at the ensuing term of the court, unless the venue be changed, or unless the cause be postponed by the court, or a failure to sustain the indictment upon the law involved, or a verdict of not guilty by the jury, or the successive disagreement of two juries impanneled to try the cause, shall operate as an acquittal of the accused, and the court shall order his discharge from custody.

SECTION 4. The Attorney-General or the sheriffs on the several circuits shall furnish to the clerk of the court, three days before the first day of the term, a list of all criminal cases triable by jury at such term, that the calender may be made up.

II.—DISCHARGE WITHOUT PROSECUTION.

SECTION 5. It shall be lawful for the Attorney-General, in respect of any person or persons now or hereafter imprisoned

under committal for trial for any offense, to grant at any time a certificate under his hand in the form following :

To the Judges of the Supreme Court of the Hawaiian Kingdom or any one of them.

This is to certify that I decline to present an indictment against A. B. detained in the custody of the marshal in the gaol at under the warrant of C. D., Esq., police or district judge of upon a charge of.....

Given under my hand this day of 18..

E. F., Attorney-General.

Addressed to the judges of the Supreme Court or any one of them, who shall thereupon by warrant under their or his hand in the form following :

To..... Esq.

Marshal of the Hawaiian Kingdom.

Whereas, A. B. is detained in your custody under the warrant of C. D., Esq., police or district judge of upon a charge of and whereas it has been certified to us (or me) by His Excellency E. F., the Attorney-General of the Kingdom, that he declines to present any indictment against the said A. B., for the said offense; you are therefore hereby authorized and required forthwith to discharge the said A. B., from your custody upon the said warrant.

Given under our (or my) hand this day of 18..

G. H. } Judges (or Judge) of the
I. K. } Supreme Court.

Order and direct the marshal or gaoler in whose custody any such prisoner shall be, immediately to discharge the prisoner therein mentioned from imprisonment, in respect of the offense mentioned in the said warrant.

III.—VENUE, &C.

SECTION 6. The offense of any person who shall be an accessory either before or after the fact to any felony may be dealt with, enquired of, tried, determined and punished by any court which shall have jurisdiction to try the principal felony or any felonies committed in any place, in which the act by reason whereof such person shall have become such accessory shall have been committed.

SECTION 7. The offense of polygamy may be dealt with, enquired of, tried, determined and punished in any jurisdiction within which the offender shall be apprehended or be in custody,

in the same manner in all respects as if the offense had been actually committed within that jurisdiction.

SECTION 8. Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained, converted, or disposed of, may (whether charged as an accessory after the fact of the felony, or with a substantive felony, or with a misdemeanor only) be dealt with, indicted, tried and punished in any jurisdiction in which he shall have or shall have had any such property in his possession, or in any jurisdiction in which the party guilty of the principal offense may by law be tried, in the same manner as such receiver may be dealt with, indicted against, tried and punished in the jurisdiction where he actually received such property.

SECTION 9. Whosoever shall steal any part of any ship which shall be in distress, or shall commit any other of the offenses enumerated in the Section 6 of Chapter XXIII. of the Penal Code, may be indicted and tried before any court of record.

SECTION 10. Whosoever shall commit any offense of forging or altering any matter whatsoever, or of offering, passing, negotiating, assigning or transferring any matter whatsoever, knowing the same to be forged or altered, may be dealt with, indicted, tried and punished in any jurisdiction in which he shall be apprehended, or be in custody in the same manner in all respects as if his offense had been actually committed in that jurisdiction. And every accessory before or after the fact to any such offense, may be dealt with, indicted, tried and punished in any jurisdiction in which he shall be apprehended, or be in custody, in the same manner in all respects as if his offense, and the offense of his principal, had been actually committed in such jurisdiction.

SECTION 11. Where any person shall tender, utter, or put off any false or counterfeit coin in one jurisdiction, and shall also tender, utter or put off any other false or counterfeit coin in any other jurisdiction, either on the day of such first mentioned tendering, uttering or putting off or within the space of ten days next ensuing, or where two or more persons acting in concert in different

jurisdictions shall commit any offense against Chapter XXXI. of the Penal Code, every such offender may be dealt with, indicted, tried and punished, and the offense laid and charged to have been committed in any one of the said jurisdictions in the same manner in all respects as if the offense had been actually and wholly committed within one such jurisdiction.

SECTION 12. It shall not be necessary to state any venue in the body of any indictment, but the jurisdiction named in the margin thereof shall be taken to be the venue for all the facts stated in the body of such indictment; provided that in cases where local description is or hereafter shall be required, such local description shall be given in the body of the indictment.

SECTION 13. It shall be lawful for any court of record or judge thereof, at any stage of any criminal proceedings depending therein, whether the venue be by law local or not, to order that the venue be changed, and to direct that the trial be had in Honolulu or in some particular judicial circuit; in such cases and for such reasons as the justice of the case may require, and subject to such conditions as the court or judge may, in its or his discretion, impose.

IV—JOINDER OF DEFENDANTS IN CERTAIN CASES.

SECTION 14. Any number of accessories, at different times to any felony, and any number of receivers, at different times, of the whole or any part or parts of any property which shall at one time have been stolen, taken, extorted, obtained, embezzled, or otherwise disposed of in such a manner as to amount to a felony, may be charged with substantive felonies in the same indictment and may be tried together, notwithstanding the principal felon shall not be included in the same indictment, or shall not be in custody, or amenable to justice.

V.—WHAT INDICTMENTS SHALL SUFFICE AND AVAIL.

SECTION 15. No indictment for any offense shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears upon the record," or "as appears by the record," or of the words "with force

and arms," or of the words "against the peace," or for the insertion of the words "against the form of the statute," instead of the words "against the form of the statute," or vice versa, or for that any person mentioned in the indictment is designated by a name of office or other descriptive appellation, instead of his proper name, or for omitting to state the time at which the offense was committed in any case where time is not of the essence of the offense, or for stating the time imperfectly, or for stating the offense to have been committed on a day subsequent to the finding of the indictment or on an impossible day, or on a day that never happened, for want of a proper or perfect venue, or for want of a proper or formal conclusion, or for want of or imperfection in the addition of any defendant, or for want of the statement of the value or price of any matter or thing, or the amount of damage, or injury in any case where the value or price, or the amount of damage, or injury, is not of the essence of the offense.

SECTION 16. In any indictment for any felony or misdemeanor, wherein it shall be requisite to state the ownership of any property whatsoever, whether real or personal, which shall belong to or be in the possession of more than one person, whether such persons be partners in trade, joint tenants, partners or tenants in common, it shall be sufficient to name one of such persons and to state such property to belong to the person so named, and another or others, as the case may be; and whenever in any indictment for any felony or misdemeanor it shall be necessary to mention for any purpose whatsoever any partners, joint tenants, partners or tenants in common, it shall be sufficient to describe them in the manner aforesaid; and this provision shall be construed to extend to all joint stock companies and trustees.

SECTION 17. All property, real and personal, whereof any body corporate shall by law have the management, control or custody, shall, for the purpose of any indictment or proceeding against any other person for any offense committed on or in respect thereof, be deemed to be the property of such body corporate.

SECTION 18. In any indictment for murder or manslaughter or for being an accessory to any murder or manslaughter, it shall not

be necessary to set forth the manner in which or the means by which the death of the deceased was caused, but it shall be sufficient in any indictment for murder to charge that the defendant did feloniously, willfully, and of his malice aforethought, kill and murder the deceased; and it shall be sufficient in any indictment for manslaughter to charge that the defendant did feloniously kill and slay the deceased; and it shall be sufficient in any indictment against any accessory to any murder or manslaughter, to charge the principal with the murder or manslaughter (as the case may be) in the manner hereinbefore specified, and then to charge the defendant as an accessory in the manner heretofore used and accustomed.

SECTION 19. In any indictment for forging, altering, uttering or offering any instrument whatsoever, or for passing, negotiating, assigning or transferring, obtaining or attempting to obtain any property by false pretences, or for any offense against Chapter XXIII of the Penal Code, it shall be sufficient where it shall be necessary to allege an intent to defraud or injure to allege that the defendant did the act with intent to defraud or injure (as the case may be) without alleging an intent to defraud or injure any particular person, and in the case of obtaining or attempting to obtain property by false pretences without alleging any ownership of the money or other thing of value. And on the trial of any of the offenses in this section mentioned, it shall not be necessary to prove an intent on the part of the defendant to defraud or injure any particular person, but it shall be sufficient to prove that the defendant did the act charged with an intent to defraud or injure (as the case may be.)

SECTION 20. In any indictment for any offense committed after a previous conviction or convictions for any felony or misdemeanor, it shall be sufficient after charging the subsequent offense to state that the offender was at a certain time and place, or at certain times and places, convicted of felony or misdemeanor, and to state the substance and effect only, omitting the formal part of the indictment and conviction for the previous offense without otherwise describing the previous offense or offenses.

SECTION 21. In every indictment whatsoever in which it shall be necessary to make any averment as to any money or valuable security, and in every indictment for embezzlement, fraudulent application or fraudulent disposition where the offense shall relate to any valuable security, it shall be sufficient to describe such money or valuable security simply as money, without specifying any particular coin or valuable security. And such allegation so far as regards the description of the property, shall in all cases be sustained by proof of any amount of coin, and in the cases of the offenses hereinbefore in this section specially named of any valuable security, although the particular species of coin of which said amount was composed or the particular nature of the valuable security shall not be proved, and in the cases of the offenses so specially named and also in the case of obtaining money or other property by false pretenses, by proof that the offender embezzled, fraudently applied or disposed of any amount or obtained any piece of coin or any valuable security or any portion of the value thereof respectively, although such piece of coin or valuable security (as the case may be) may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person, and such part shall have been returned accordingly.

SECTION 22. It shall be lawful to insert several counts in the same indictment against the same person for any number of distinct acts of stealing, not exceeding three, which may have been committed by him against the same person within the space of six months from the first to the last of such acts, and to prosecute thereon for all or any of them.

SECTION 23. If any indictment for stealing or for any fraudulent purpose, destroying, cancelling, obliterating or concealing the whole or any part of any document of title to lands, it shall be sufficient to allege such document to be or to contain evidence of the title or of part of the title of the person or of some one of the persons having an interest whether vested or contingent, legal or equitable, in the real estate to which the same relates, and to mention such real estate or some part thereof.

SECTION 24. In any indictment for any of the following offenses it shall not be necessary to allege that the instrument, document, article or thing in respect of which the offense is committed is the property of any person (that is to say), the offense of stealing any testamentary instrument; the offense of stealing any original document of any court; the offense of stealing or of ripping, cutting, severing or breaking with intent to steal anything made of metal fixed in any square or street, or in any place dedicated to public use or ornament.

SECTION 25. For preventing difficulties in the prosecution of offenders in any case of embezzlement or fraudulent application or disposition by any person, it shall be lawful to charge in the indictment and proceed against the offender for any number of distinct acts of embezzlement, or of fraudulent application or disposition, not exceeding three, which may have been committed by him against the same person within the space of six months from the first to the last of such acts.

SECTION 26. In every case of larceny committed against His Majesty, or embezzlement, fraudulent application or disposition committed against His Majesty, of any chattel, money, or valuable security, it shall be lawful in the order of committal by the justice before whom the offender shall be charged, and in the indictment to be preferred against the offender, to lay the property of such chattel, money, or valuable security as aforesaid in His Majesty.

SECTION 27. In every case of stealing any chattel let to be used in or with any house or lodging, it shall be lawful to prefer an indictment in the common form as for larceny, and in every case of stealing any fixture so let as aforesaid to prefer an indictment in the same form as if the offender were not a tenant or lodger, and in either case to lay the property in the owner or person letting to hire.

SECTION 28. In any indictment containing a charge of feloniously stealing any property it shall be lawful to add a count or several counts for feloniously receiving the same or any part or parts thereof, knowing the same to have been stolen, and in any indictment for feloniously receiving any property knowing it to

have been stolen, it shall be lawful to add a count for feloniously stealing the same.

SECTION 29. In any indictment for forging, altering, offering, uttering, disposing of, or for stealing, embezzling, extorting, converting, disposing of, destroying or concealing, or for obtaining by false pretences any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known or by the purport thereof, without setting out any copy or fac-simile thereof or otherwise describing the same or the value thereof.

SECTION 30. In all other cases whenever it shall be necessary to make any averment in any indictment as to any instrument, whether the same consists wholly or in part of writing, print or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or fac-simile of the whole or any part thereof.

SECTION 31. In any indictment for perjury or unlawfully, willfully, falsely, fraudulently, deceitfully, maliciously or corruptly, taking, making, signing or subscribing any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate or other writing, it shall be sufficient to set forth the substance of the offense charged upon the defendant, and by what court or before whom the oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate or other writing was taken, made, signed or subscribed, without setting forth the bill, answer, affirmation, information, declaration, or any part of any proceeding, either in law or in equity or other jurisdiction, and without setting forth the commission or authority of the court or the person before whom such offense was committed.

SECTION 32. In every indictment for subornation of perjury or of corrupt bargaining or contracting with any person to commit willful and corrupt perjury, or for inciting, causing or procuring any person unlawfully, willfully, falsely, fraudulently, deceitfully, maliciously, corruptly, to take, make, sign or subscribe any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice,

certificate or other writing, it shall be sufficient wherever such perjury or other offense aforesaid shall have been actually committed, to allege the offense of the person who actually committed such perjury or other offense in the manner hereinbefore mentioned, and then to allege that the defendant unlawfully, willfully, and corruptly did cause and procure the said person, the said offense, in manner and form aforesaid to do and commit; and wherever such perjury or other offense aforesaid shall not have been actually committed, it shall be sufficient to set forth the substance of the offense charged upon the defendant without setting forth or averring any of the matters or things hereinbefore rendered unnecessary to be set forth or averred in the case of willful and corrupt perjury.

VI.—OBJECTIONS TO INDICTMENTS, HOW TAKEN, POWER OF AMENDMENT.

SECTION 33. Every objection to any indictment for any defect apparent on the face thereof, shall be taken by demurrer or motion to quash such indictment before the accused has pleaded and not afterwards; and every court before which any such objection shall be taken for any such defect may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by some officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared; and no motion in arrest of judgment shall be allowed for any defect in any indictment which might have been taken advantage of by demurrer or motion to quash as aforesaid.

VII.—POSTPONEMENT OF TRIAL, &C.

SECTION 34. No person prosecuted shall be entitled as of right to traverse or postpone the trial of any indictment preferred against him, or to have time to plead or demur to any such indictment allowed him. Provided always, that if the court before which any person is indicted shall, upon the application of such person or otherwise be of opinion that he ought to be allowed a further time to plead, or demur, or to prepare for his defense, or otherwise, such court may grant such further time to plead, or demur, or may adjourn the receiving or taking of the plea, or

demurrer, and the trial (or as the case may be) the trial of such person to the next or any subsequent term of the court, and upon such terms as to bail or otherwise as to the the court shall seem meet.

VIII.—COURT FEES NOT PAYABLE BY DEFENDANTS.

SECTION 35. It shall not be lawful to take, demand, or receive any court fees for the issuing of any process for or on behalf of any person charged with, or indicted for, any felony or as accessory thereto, or with or for any misdemeanor in any court of criminal jurisdiction; nor shall it be lawful to take, demand or receive any fees from any such person for taking any recognizance of bail, or issuing any writ of habeas corpus, or recording any appearance, or plea to any information, or for discharging any recognizance taken from any such person, or surety or sureties for them, but all costs may be ordered to be paid by the person charged and convicted as part of the judgment.

IX.—ARRAIGNMENT, PLEA, &C.

SECTION 36. If any person being arraigned upon any indictment for any offense shall plead thereto a plea of "not guilty," he shall by such plea without any further form, be deemed to have put himself upon the country for trial, and the court shall in the usual manner order a jury for the trial of such person accordingly.

SECTION 37. If any person being arraigned upon or charged with any offense, shall stand mute of malice, or will not answer directly to the indictment in every such case, it shall be lawful for the court (if it shall so think fit) to order the proper officer to enter a plea of "not guilty" on behalf of such person, and the plea so entered shall have the same force and effect as if such person actually pleaded the same.

SECTION 38. If any person indicted for any offense shall be insane, and shall upon arraignment be found so to be by a jury lawfully impannelled for that purpose, so that such person cannot be tried upon such indictment, or if upon the trial of any person so indicted such person shall appear to the jury charged with such

indictment to be insane, it shall be lawful for the court before whom any such person shall be brought to be arraigned or tried as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody until His Majesty's pleasure shall be known; and if any person charged with any offense shall be brought before any court to be discharged for want of prosecution, and such person shall appear to be insane, it shall be lawful for such court to order a jury to be impaneled to try the sanity of such person; and if the jury so impaneled shall find such person to be insane, it shall be lawful for the court to order such person to be kept in strict custody in such place and in such manner as to such court shall seem fit, until His Majesty's pleasure shall be known; and in all cases of insanity so found, it shall be lawful for His Majesty by and with the advice of his Cabinet to give such order for the safe custody of such person so found to be insane during His Majesty's pleasure, in such place and in such manner as to him by and with such advice as aforesaid shall seem fit.

SECTION 39. No indictment shall be abated by reason of any dilatory plea of misnomer or of want of addition, or of wrong addition of the party offering such plea, if the court shall be satisfied by affidavit or otherwise of the truth of such plea, but in such case the court shall forthwith cause the indictment to be amended according to the truth, and shall call upon such party to plead thereto and shall proceed as if no such dilatory plea had been pleaded.

SECTION 40. In any plea of *autrefois convict* or *autrefois acquit*, it shall be sufficient for the defendant to state that he has been lawfully convicted or acquitted (as the case may be) of the said offense charged in the indictment.

SECTION 41. The proceedings upon any indictment for committing any offense after a previous conviction or convictions, shall be as follows (that is to say): the offender shall in the first instance be arraigned upon so much only of the indictment as charges the subsequent offense; and if he plead not guilty, or if the court order a plea of not guilty to be entered on his behalf,

the jury shall be charged in the first instance to enquire concerning such subsequent offense only ; and if they find him guilty or if on arraignment he plead guilty, he shall then and not before be asked whether he had been previously convicted as alleged in the indictment, and if he answer that he had been so previously convicted, the court may proceed to sentence him accordingly ; but if he deny that he had been so previously convicted or stand mute of malice, or will not answer directly to such question, the jury so in the first instance charged as aforesaid, or (if by reason of a plea of guilty in the first instance no such jury has been so charged) then a jury in like manner as in other cases shall be charged to enquire concerning such previous conviction or convictions ; and in the case of a jury so charged in the first instance, it shall not be necessary to swear the jury again, but the oath already taken by them shall for all purposes be deemed to extend to such last mentioned enquiry. Provided, that if upon the trial of any person for any such subsequent offense such person shall give evidence of his good character, it shall be lawful for the prosecutor in answer thereto to give evidence of the conviction of such person for the previous offense or offenses before such verdict of guilty shall be returned ; and the jury shall enquire concerning such previous conviction or convictions at the same time that they enquire concerning such subsequent offense.

SECTION 42. Any person indicted for a crime punishable with death shall, on demand upon the clerk by himself or his counsel, have a list of the jurors returned delivered to him, and shall also have process to summon such witnesses as are necessary for his defense.

SECTION 43. In all cases of felony in which the party accused is unable to employ counsel for his defense, the court may assign him counsel from among the licensed practitioners, who shall use every lawful exertion in his behalf without fee or reward, upon pain of contempt to the court.

SECTION 44. Every native Hawaiian arraigned upon indictment for any offense shall, on demand upon the Attorney General, be furnished with a copy of the indictment in the Hawaiian language.

SECTION 45. The prosecuting attorney shall open the case, and first introduce his witnesses and proofs, and after the evidence for the defense has been presented, and the accused or his counsel has summed up and closed his case, the prosecuting attorney shall have the right to sum up the entire evidence and close the debate.

X.—DEFENSE.

SECTION 46. All persons tried for any offense shall be admitted after the close of the case for the prosecution to make full answer and defense thereto by counsel or attorney.

XI.—VARIANCES AND AMENDMENT.

SECTION 47. If on the trial of any indictment there shall appear to be any variance between the statement in such indictment and the evidence offered in proof thereof, it shall and may be lawful for the court before which the trial shall be had, if such court shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defense on such merits, to order such indictment to be amended according to the proof in such part of the indictment and in such manner as such court shall think fit, on such terms as to postponing the trial to be had before the same or another jury as such court shall think reasonable; and after any such amendment the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects and with the same consequences, both with respect to the liability of witnesses to be informed against for perjury and otherwise, as if no variance had occurred; and in all such cases where the trial shall be so postponed, it shall be lawful for the court to discharge the jury sworn from giving any verdict, and to cause to be endorsed on the indictment the words "jury discharged from giving a verdict." Provided, that in all such cases where the trial shall be so postponed as aforesaid, it shall be lawful for such court to enlarge the bail of the defendant and the surety or sureties (if any) accordingly; in such cases the witnesses who may have been summoned to give evidence, shall be bound to attend to give evidence respectively, and the defendant shall be found to attend to be tried at the time and place to which said trial shall be postponed without entering into any fresh bail bond, or being

served with fresh process for that purpose, in such and the same manner as if the defendant originally bound and the witnesses summoned to appear and give evidence at the time and place to which such trial shall have been postponed. Provided also, that where any such trial shall be to be had before another jury, the Crown and the defendant shall respectively be entitled to the same challenges as they were respectively entitled to before the first jury was impaneled.

XII.—VERDICT.

SECTION 48. In cases where it shall be given in evidence upon the trial of any person charged with any offense, that such person was insane at the time of the commission of such offense, and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offense, and to declare whether such person was acquitted by them on account of such insanity, and if they shall find that said person was insane at the time of the committing of such offense, the court before whom such trial shall be had shall order such person to be kept in strict custody in such place and in such manner as to the court shall seem fit, until His Majesty's pleasure shall be known; and it shall thereupon be lawful for His Majesty, by and with the advice of his Cabinet Council, to give such order for the safe custody of such person so found to be insane during his pleasure, in such place and in such manner as to him shall seem fit.

SECTION 49. If on the trial of any person charged with felony or misdemeanor, it shall appear to the jury upon the evidence that the defendant did not complete the offense charged, but that he was only guilty of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, but the jury may return as their verdict that the defendant is not guilty of the felony or misdemeanor charged, but is guilty of an attempt to commit the same, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanor charged in the indictment, and no person so tried as

herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the felony or misdemeanor for which he was so tried.

SECTION 50. If upon the trial of any person for any misdemeanor it shall appear that the facts given in evidence amount in law to a felony, such person shall not by reason thereof be entitled to be acquitted of such misdemeanor, and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for felony on the same facts, unless the court before which said trial may be had shall think fit in its discretion to discharge the jury from giving any verdict upon such trial, and to direct such person to be proceeded against for felony, in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanor.

SECTION 51. Under an indictment for robbery, larceny, or any offense of more than one degree, the jury may, when the evidence will not warrant a verdict of guilty in the degree for which the prisoner is indicted, return a verdict for any lesser degree of the same offense.

SECTION 52. If on the trial of any person charged with the offense of rape or sodomy, or with the offense of ravishing, carnally abusing any girl under the age of ten years, or with having sexual or carnal intercourse with any female of this Kingdom under the age of fourteen years, the jury shall not be satisfied that he is not guilty thereof, but shall be satisfied that he is guilty of an assault with intent to commit the same, then the jury may return as their verdict that he is not guilty of the offense so charged, and may find him guilty of an assault with intent to commit the same.

SECTION 53. If upon the trial of any person upon any indictment for robbery it shall appear to the jury that the defendant did not commit the crime of robbery, but that he did commit an assault with intent to rob, the defendant shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is guilty of an assault with intent to rob; and thereupon the defendant shall be liable to

be punished in the same manner as if he had been convicted upon an indictment for feloniously assaulting with intent to rob; and no person so tried as before lastly mentioned shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried.

SECTION 54. If upon the trial of any person indicted for embezzlement, it shall be proved that he took the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement, but is guilty of larceny, and in either degree, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such larceny in the degree found. And if upon the trial of any person informed against for larceny it shall be proved that he took the property in question in any such manner as to amount in law to embezzlement, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of larceny, but is guilty of embezzlement and the charge thereof, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such embezzlement in the degree found, or larceny as aforesaid, shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts.

SECTION 55. If upon the trial of any person indicted for obtaining property by false pretences, it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts.

SECTION 56. If upon the trial of any indictment for larceny it shall appear that the property alleged in such indictment to have been stolen at one time was taken at different times, the prosecutor shall not by reason thereof be required to elect upon which taking he will proceed, unless it shall appear that there were more than three takings, or that more than the space of six months

elapsed between the first and the last of such takings, and in either of the last of such mentioned cases, the prosecutor shall be required to elect to proceed for such number of takings not exceeding three as appear to have taken place within the period of six months from the first to the last of such takings.

SECTION 57. If upon the trial of two or more persons indicted for jointly receiving any property, it shall be proved that one or more of such persons separately received any part or parts of such property, it shall be lawful for the jury to convict upon such indictment such of the said persons as shall be proved to have received any part or parts of such property.

SECTION 58. Where any indictment containing two of more counts, both for feloniously stealing and of receiving, shall have been preferred against any person, the prosecutor shall not be put to his election, but it shall be lawful for the jury who shall try the same to find a verdict of guilty either of stealing the property or of receiving the same or any part or parts thereof knowing the same to have been stolen; and if such indictment shall have been preferred against two or more persons, it shall be lawful for the jury who shall try the same to find all or any of the said persons guilty either of stealing the property or of receiving the same or any part or parts thereof knowing the same to have been stolen, or to find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving the same or any part or parts thereof knowing the same to have been stolen.

SECTION 59. If upon the trial of any person for being concerned in a riot or unlawful assembly as described in section 10 of chapter 38 of the Penal Code, the jury shall not be satisfied that such person is guilty thereof, but shall be satisfied that he is guilty of any misdemeanor mentioned in the section next preceding section 10, then the jury may return as their verdict that he is not guilty of the offense charged, but is guilty of such misdemeanor, and he may be punished accordingly.

SECTION 60. Under an indictment for murder or manslaughter, the jury may return a verdict of manslaughter in either degree or for assault and battery, as the facts proved will warrant.

SECTION 61. Where upon the trial of any person charged with the offense of adultery, sufficient proof of marriage shall not be adduced, such person shall not therefore be acquitted, but the court or jury before whom such party is charged may, if the facts proved will so warrant, find the accused guilty of fornication, and such accused person shall thereupon be punished accordingly.

XII.—EVIDENCE IN CERTAIN CASES.

SECTION 62. Where any person shall be proceeded against before any court of criminal jurisdiction for a subsequent offense in either case committed after any previous summary conviction or convictions, a copy of any such conviction certified by the proper officer of the court to which such summary conviction shall have been returned or proved to be a true copy, shall be sufficient evidence to prove a conviction of the former offense and the conviction shall be presumed to have been unappealed against until the contrary be shown.

SECTION 63. All persons under trial shall be entitled at the time of their trial to inspect without fee or reward all depositions which have been taken against them, and delivered in manner by law required to the proper officer of the court before which such trial shall be had, or copies of such depositions.

SECTION 64. Depositions taken in the preliminary or other investigation of any charge against any person, may be read as evidence in the prosecution of the same or any other offense whatever, upon the like proof and in the same manner in all respects as they may according to the law now in force be read in the prosecution of the offense with which said person was charged when such depositions were taken.

SECTION 65. Where upon the trial of any person charged with any offense against Chapter XXXI. of the Penal Code, it shall be necessary to prove that any coin produced in evidence against such person is false or counterfeit, by the evidence of any credible witness.

XIII.—AMENDMENTS NOT TO PREJUDICE AFTER VERDICT.

SECTION 66. Every verdict and judgment which shall be given after the making of any amendment under this Act, shall be of

the same force and effect in all respects as if the indictment had originally been in the same form in which it was after such amendment was made.

SECTION 67. If it shall become necessary at any time for any purpose whatsoever to draw up a formal record in any case where any amendment shall have been made under this Act, such record shall be drawn up in the form in which the indictment was, after such amendment was made, without taking any notice of the fact of such amendment having been made.

XIV.—OF JUDGMENT AND EXECUTION.

SECTION 68. The verdict of the jury or the decision of the court, as the case may be, shall, subject to arrest of judgment, found the sentence to be passed in open court, by either of the justices, pursuant to the penalties of the law charged and found to have been violated, subject to the executive clemency, or a motion in arrest of execution for cause.

SECTION 69. Any judge of a court of record may, for cause shown to his satisfaction, respite any convicted criminal for any length of time, sufficient for the purposes of mercy, or not to work injury to innocent third parties.

SECTION 70. No person at the time insane, and no woman at the time quick with child, shall suffer capital punishment; neither shall any child suffer such punishment who has not evinced a knowledge of the distinction between right and wrong.

SECTION 71. In all cases where the law of this Kingdom awards the punishment of death, there shall always intervene at least forty-eight hours between the conviction and the sentence; and at least fourteen days between the sentence and the execution.

SECTION 72. The marshal, or some one deputed by him, shall inflict the punishment of death, by hanging the criminal by the neck until dead, when the body shall be disposed of pursuant to the direction of the court. No capital punishment shall be so inflicted until the warrant for that purpose shall be signed by the King; nor shall such punishment be inflicted after His Majesty's pardon.

SECTION 73. In all criminal cases where the punishment is less than capital, the court before whom the conviction is had shall proceed as soon thereafter as may be to pass sentence according to law, which sentence shall be recorded by the clerk, and certified to the marshal or his deputy in the order for imprisonment or other punishment, as the case may be.

XV.—REPEAL OF FORMER LAWS.

SECTION 74. The following laws and parts of laws shall be and the same are hereby repealed, Sections 1168 to 1184 of the Civil Code, both inclusive: An Act entitled "An Act to amend Sections 1168 and 1169 of the Civil Code," approved on the 24th day of May, A. D. 1866; an Act entitled "An Act to amend Section 1183 of the Civil Code," approved on the 13th day of May, A. D. 1868, and all other laws inconsistent with the provisions of this Act.

Approved this 19th day of September, A. D. 1876.

ARTICLE XLVIII.—OF JURIES AND TRIAL BY JURY.

IN RELATION TO THE PREPARATION OF JURY LISTS AND THE
DRAWING OF JURIES.

Act
1870,
Chap. XVII.

SECTION 1. Each Governor, in concert with some Judge of a court of record, shall prepare semi-annually, in the months of March and September, a list of the names of fifty persons, being native Hawaiians, and fifty other persons, being foreigners by birth, or of foreign parentage, residing within their respective gubernatorial divisions who, in the opinion of such Governor or judge, are fit to serve as jurors;* provided, that no lists of foreign jurors shall be prepared in Hawaii or Kauai. Each list shall be signed by the governor and judge, and sent to the clerk of the circuit court; but in the Island of Oahu, the list shall be sent to the clerk of the Supreme Court, and in the Island of Hawaii it

*Postmasters and their clerks exempt. Section 414.

shall be sent to the first clerk. Said clerks shall write each name on a separate piece of paper, and deposit the same in appropriate boxes; the Hawaiian names being kept in separate boxes from the foreign names.

SECTION 2. The respective clerks, at least twenty days before the sitting of any court, shall draw from the appropriate box the names of twenty-four native and twenty-four foreign jurors, provided, that no foreign jurors shall be drawn in Hawaii and Kauai. Such drawing shall be had in the presence of a Justice of the Supreme Court, or a circuit judge, or the Governor of the Island, who shall certify to the regularity of the proceedings.

SECTION 3. Whenever it may be necessary or proper, for the trial of any cause in the circuit court for the third and fourth judicial circuits, to have a jury composed wholly or in part of foreigners, the presiding judge of such circuit court, for the time being, shall summon from among the foreigners residing within such circuit, a sufficient number of persons to act as jurors in such case.

SECTION 4. The clerks shall, within twenty-four hours of the drawing of any jurors as aforesaid, transmit to the marshal of the Kingdom, or the sheriff of the Island, the names of all jurors drawn in the manner aforesaid, in order that such jurors may be duly summoned.

As amended
Act
1872,
Chapter XX.

SECTION 5. Sections 1185, 1186, 1187, 1188, 1189, 1190, 1191 and 1210 of the Civil Code, and all parts of Acts inconsistent herewith, are repealed.

§1196. In all civil cases in which one party is a native Hawaiian, and the other a foreigner (alien or naturalized), the jury shall be composed of an equal number of natives and foreigners, who shall be drawn alternately from the boxes containing the names of such natives and foreigners, as have been summoned to attend the court as jurors in such cases: provided, always, that either party, with the consent of the other, may waive his right to a mixed jury.

§1197. All native Hawaiians, accused of any crime, shall be tried by a jury composed entirely of natives; and all foreigners,

As amended
Act
1862.

by a jury composed entirely of foreigners, who shall be drawn from the array of native and foreign jurors, respectively, returned to serve at the term.

§1198. At the trial of any case requiring a jury, in the Supreme Court, or in any circuit court, the clerk of the court shall draw such jury, to the number of twelve, from the box or boxes containing the names of such persons as have been duly summoned to attend as jurors; and if any of the said twelve be challenged and set aside, he shall continue to draw from said box or boxes until twelve impartial jurors are obtained, when they shall be sworn as the jurors for the trial of such cause.

§1199. Whenever a sufficient number of jurors duly summoned, do not appear, or cannot be obtained to form a jury, the court may order the marshal, or his deputy, to summon from among the bystanders, or from the circuit at large, so many persons qualified to serve as jurors as shall be sufficient.

*The King v.
Cornwell, 3 H
R. 155.*

*Minister of In-
terior v. Loo
Ngawk, 4 H. R.*

§1200. The marshal, or his deputy, shall summon the number so ordered, and return their names into court. Every person so summoned shall attend forthwith and serve as a juror, unless excused by the court; and for every neglect or refusal so to attend, shall be answerable to the court in the same manner as jurors regularly summoned as hereinbefore provided. The persons as summoned shall be subject to challenge as other jurors.

§1201. Every person arraigned and put on his trial for any offense punishable with death, shall be entitled peremptorily to challenge ten of the persons drawn as jurors for such trial and no more.

§1202. In all cases, civil or criminal, either party may challenge any juror drawn for such trial, for cause to be assigned to the presiding judge, who may determine the validity of the objection urged against the competency of such juror, or submit the question to the determination of three triors to be appointed by him.

§1203. No jury, for the trial of any case, civil or criminal, shall be less than twelve in number; but when nine of such jury shall agree upon a verdict, they may render the same, and such verdict shall be as valid and binding upon the parties as if rendered by all twelve.

§1204. Whenever any jury shall return into court, and state that they cannot agree upon a verdict, the court may, in its discretion, discharge such jury, or remand them to the jury-room for further deliberation.

§1205. The Chief Justice of the Supreme Court shall have power, in any intricate case, or case involving artistical or professional knowledge, or skill, pending in such court, upon the application of either party, to summon the adverse party to appear and show cause, if any he has, why a special jury should not be struck for the trial of such case.

§1206. If the adverse party do not appear in obedience to the summons, or, appearing, fail to assign any satisfactory cause to the contrary, and the Chief Justice shall be of the opinion that the ends of justice will be best reached by such a jury, he may order a special jury to be struck.

§1207. Special juries shall be struck in the following manner: The Chief Justice shall appoint a time and place for striking the jury, at which the party applying for such jury shall notify the adverse party to attend. The clerk of the Supreme Court shall, at the time and place appointed, draw off a full list of the names of the jurors last furnished him for the trial of civil cases, (native, foreign or mixed, as the case may be,) when the parties in person, or by attorney, beginning with the plaintiff, shall alternately strike off from said list, one name, until only twelve names remain on the list; and those twelve shall constitute the jury to try the particular cause for which they were struck. If either party shall fail to attend at the time and place of striking such jury, or shall neglect to strike out any names according to the foregoing provisions, the clerk shall strike for him.

§1208. The twelve jurors chosen as provided in the last preceding section, shall be summoned in like manner as other jurors, and shall be in like manner answerable to the court for non-attendance. They shall not be liable to challenge for any cause whatever.

§1209. The expense of striking a special jury shall be paid by the party applying for the same, and shall not be taxed in the costs of the suit.

§1210. Repealed by Act of 1870, above.

§1211. Every such juror, if duly summoned at least forty-eight hours previous to the holding of the court, shall be punishable for non-attendance, by fine not exceeding one hundred dollars, in the discretion of the court, for each day that he fails to attend without reasonable cause; and he may be brought up by summary attachment for that purpose.

TO LIMIT THE TRIAL BY JURY IN ACCORDANCE WITH ARTICLE
7TH OF THE CONSTITUTION.

Act
1865.

SECTION 1. That from and after the date of the passage of this Act, all actions of debt or assumpsit which shall have been begun, or may hereafter be begun, before a police or district court, in which the amount claimed before such police or district court shall be less than fifty dollars, and which shall be appealed to the circuit court of any island, or the Supreme Court of the Kingdom, shall be tried by the court without the intervention of a jury.

SECTION 2. Be it further enacted that, whensoever any case may have been appealed from any such police or district court, if the appellant shall be the plaintiff in the action, and it shall be apparent to the court to which such appeal is taken, that the claim has been made in the lower court for fifty dollars or more, without any reasonable expectation of recovering as much as fifty dollars, but merely for the purpose of bringing the same before a jury, the appellate court may, in its discretion, adjudge the costs of the jury to be paid by such appellant.

Approved this 3d day of January, A.D. 1865.

TO CONSOLIDATE AND AMEND THE LAW OF EVIDENCE.

PART 1.—*Of the Means of Obtaining Evidence.*Act
1876.

SECTION 1. The clerks of the several courts of record shall issue to the Attorney-General or to the marshal or to any sheriff or deputy sheriff, and to any party plaintiff or defendant, in any cause, civil or criminal depending before such courts respectively, or to the counsel of such party, writs of subpoena for witnesses, in blank, that the names of the witnesses to be summoned may be inserted after the issuing of such writ. Chap. XXXII.

SECTION 2. Such writs of subpoena shall be signed by the clerk or his deputy, and impressed with the seal of the court, and shall be obligatory upon the marshal and his deputies, and upon the parties actually served therewith.

SECTION 3. Upon non-attendance of witnesses duly summoned, the service of the writ being proved by the oath of the officer who served the same, the court shall have summary power to cause their attendance and to punish them for contempt.

SECTION 4. The Attorney-General or the sheriff on the several circuits may require of any judge of a court of record, at chambers, that witnesses material to the prosecution of any criminal indictment preferred, or about to be preferred, be bound by recognizance to appear and testify at the trial of such indictment, or that such witnesses be committed to jail for that purpose, and it shall be lawful for the judge, so applied to, to make any such order.

SECTION 5. No person shall be bound to attend as a witness upon the trial of any civil cause, in any court of record, unless his traveling fees be paid, or tendered to him at the time of the service of the subpoena.

SECTION 6. Witnesses in criminal cases, whether for the prosecution or defense, shall not be entitled to any fees.

SECTION 7. It shall be lawful for any court of record, or any judge thereof in any action or suit depending in any such court, upon the application of any of the parties to such action or suit, to order a commission to issue for the examination of witnesses

residing in a foreign country, or in some other circuit than that in which the cause is pending, upon oath by interrogatories, or otherwise, and by the same or any subsequent order or orders to give all such directions touching the time, place, and manner of such examination all other matters and circumstances connected with such examinations as may appear reasonable and just, and it shall be lawful for every person authorized to take the examination of witnesses by any rule, order, writ, or commission made or issued in pursuance of this Act, and he is hereby authorized and required to take all such examinations.

SECTION 8. It shall and may be lawful for the person or persons to be named in any such rule or order as aforesaid, for taking any examination in pursuance thereof, and he and they are hereby required to make (if need be) a special report to the court wherein the action shall be depending touching such examination, and the conduct or absence of any witness or other person thereon, or relating thereto, and the court out of which the commission issued, is hereby authorized to institute such proceedings and make such order and orders upon such report, as justice may require, and as may be instituted and made in any case of contempt of that court.

SECTION 9. The costs of every application for any rule or order to be made for the examination of witnesses under any commission by virtue of this Act, and of the rule or order and proceedings thereupon, shall be costs in the cause unless otherwise directed either by the judge making such rule or order, or by the judge before whom the trial or enquiry of the cause may be had, or by the court wherein the action shall be depending.

SECTION 10. Whenever by virtue of this Act an examination of any witness has been taken before a judge of a court of record, or before the clerk or deputy clerk thereof, or any other person or persons as aforesaid, the depositions taken down by such examiner shall be returned to and filed, and kept in the office of the clerk of the court from which the commission issued, and the office copies of such depositions may be given out to either party.

SECTION 11. No examination or deposition to be taken by virtue of this Act, shall be read in evidence without the consent of

the party against whom the same may be offered, unless it shall appear to the satisfaction of the court or person having by law or consent of parties, authority to hear, receive and examine evidence that the examinant or deponent is such party, or is beyond the jurisdiction of the court, or is resident in another circuit or dead, or unable from permanent sickness or other permanent infirmity to attend, in all or any of which cases, the examinations and depositions certified under the hand of the commissioners or other person taking the same, shall and may without proof of the signature to such certificate be received and read in evidence, saving all just exceptions.

SECTION 12. On the trial of any issue joined or of any matter or question or on an enquiry arising in any suit, action or proceeding in any court or before any person having by law or by consent of parties authority to hear, receive and examine evidence, any person who may happen to be present, and who by virtue of this Act is competent to give evidence may be called, and required to give evidence and to produce any document, and if any such person when called and required as aforesaid, shall not appear and give evidence and (if then able so to do) produce the document, he shall be subject to the same proceedings and liabilities as if he had been duly served with a writ of subpoena *ad testificandum* or *duces tecum*, or a summons, or other process, and had received his conduct money and payment for expenses and loss of time.

SECTION 13. Either party to any suit or action depending in any court of record, may call on the other party by notice, to admit any fact or document, saving all just exceptions; and every such notice and admission respectively may be in the form contained in the first and second schedules to this act, or to the like effect; and in case of refusal or neglect to admit, the costs of proving the fact or document shall be paid by the party so neglecting or refusing, whatever the result of the case may be, unless at the hearing, trial or enquiry the judge shall certify that the refusal to admit was reasonable, and no costs of proving any document shall be allowed unless such notice be given, except in cases where the omission to give the notice is in the opinion of the

court or presiding judge at the trial of the cause, a saving of expense.

SECTION 14. An affidavit of the attorney, solicitor or agent in the cause, or his clerk, of the due signature of any admissions made in pursuance of such notice and annexed to the affidavit, shall be in all cases sufficient evidence of such admissions; and an affidavit of the attorney, solicitor or agent in the cause, or his clerk, of the service of any notice to produce in respect of which notice to admit shall have been given and of the time when it was served, with a copy of such notice to produce, annexed to such affidavit, shall be sufficient evidence of the service of the original of such notice, and of the time when it was served.

SECTION 15. When a witness whose testimony is wanted in any civil cause pending in this Kingdom, shall live on another island from that on which the trial is to be held, or shall be about to go out of the Kingdom, and not to return in time for the trial, or is so sick, infirm or aged as to make it probable that he will not be able to attend at the trial, his depositions may be taken in the manner hereinafter prescribed, at the option of the party instead of by commission as hereinbefore provided.

SECTION 16. At any time after the cause is commenced by the service of process, or after it is submitted to arbitrators or referees, either party may apply to any district justice or any circuit judge, or any clerk of a court of record, who shall issue a notice to the adverse party to appear before the said district justice, circuit judge or clerk of a court of record at the time and place appointed for taking the depositions, and to put such interrogatories as he may think fit.

SECTION 17. The said notice shall be served on the agent or attorney of the adverse party, and shall have the same effect as if served on the party himself.

SECTION 18. If there are several parties on either side of the cause, plaintiffs or defendants, a notice served on either of them shall be sufficient.

SECTION 19. The notice shall be served by leaving a copy thereof at the place of abode of the person to be notified, allowing

in all cases not less than twenty-four hours after such notice, before the time appointed for taking the depositions, and not less than one day additional, exclusive of Sundays, for every twenty-five miles of travel of the opposite party, if he shall live more than twenty-five miles from the place of taking the deposition.

SECTION 20. The deponent shall be sworn or affirmed to testify the truth, the whole truth, and nothing but the truth, relating to the cause for which the deposition is taken, and shall then be examined by the district justice, circuit judge or clerk as aforesaid, or by the parties, and his testimony shall be taken in writing. The examination shall be either verbal, or by written interrogatories.

SECTION 21. The deposition shall be written by the officer before whom the deposition is taken, or by some impartial person by him appointed, in the presence and under the direction of the said officer, and shall be carefully read to or by the deponent, and shall then be subscribed by him.

SECTION 22. The officer taking the deposition shall annex to the deposition a certificate of the time and manner of taking it, the person at whose request, and the cause or suit for which it was taken, and stating also whether the adverse party attended, and if not, stating the notice if any that was given to him.

SECTION 23. The deposition shall be delivered by the officer taking the same to the court, arbitrators or referees before whom the cause is pending, or shall be enclosed and sealed and directed to them, and shall remain sealed until opened by the direction of any justice of the said court, arbitrators or referees.

SECTION 24. Every objection to the competency or credibility of the deponent and to the propriety of any questions put to him, or any answers made by him, may be made when the deposition is produced in the same manner as if the witnesses were personally present and examined at the trial; and the court shall have the authority to order any testimony which is deemed inadmissible to be expunged, provided that if any deposition is taken upon written interrogatories, all objections to an interrogatory shall be made before it is answered, and if the interrogatory

is not withdrawn the objection shall be noted thereon, and otherwise the objection shall not be considered.

SECTION 25. When the plaintiff in any suit shall discontinue it, or become non-suited, and another suit shall afterward be commenced for the same cause between the same parties or their representatives, all depositions and testimony lawfully taken and filed in court in any preceding suit may be used in the succeeding suit, in like manner as if taken in the said suit.

SECTION 26. Any witness may be summoned and compelled to give his depositions at any place on the island on which he has his abode, in like manner and under the same penalties as he may be summoned and compelled to attend as witness in any court.

PART 2.—*Of Perpetuating Testimony.*

SECTION 27. Whenever any person shall be desirous of perpetuating the testimony of any witness, he shall file a petition with the clerk of any court of record, setting forth his claims, interest or title in, or to the subject on which he wishes to perpetuate evidence, and the names and places of residence of all other persons known to him as being interested therein, and the name or names of the witness or witnesses whom he proposes to examine; and praying from any judge of the court in which said petition is filed, an order requiring the adverse party or parties to attend at a time and place in the order specified, that the testimony of such witness or witnesses may be taken for the purpose of being perpetuated.

SECTION 28. If the petitioner expects to be a plaintiff in any future action, he shall likewise set forth in his petition the obstacles preventing the immediate commencement of an action.

SECTION 29. If the order is granted, the deposition or depositions shall be taken before some judge of the court in which the petition is filed, the same latitude of examination and cross-examination being allowed as if a suit were actually pending, and the judge having caused the deposition to be signed on each sheet by the witness, shall certify that the depositions have been properly taken, and shall order them to be filed with the clerk of the court.

SECTION 30. If a trial shall afterwards be had between the parties named in the petition or their privies or successors in interest touching the matter of controversy set forth in the petition, the deposition filed in accordance with the provisions of the preceding sections shall be given in evidence by either party, where the witness or witnesses are insane or dead, or their attendance for oral examination cannot be required or obtained; provided, however, that such depositions shall be subject to the same objections for irrelevancy or incompetency as might be made to depositions pending an action.

SECTION 31. The applicant shall pay all costs of all proceedings under this part of this Act.

PART 3.—*The Means of Affording Discovery to Litigants.*

SECTION 32. Either party to any action or suit depending in any court of record, shall be at liberty to apply to the court or any judge of the Supreme Court for a rule or order for the inspection by himself or by his witnesses of any real or personal property, the inspection of which may be material to the proper determination of the question in dispute; and it shall be lawful for the court or any such judge, if they or he think fit, to make such rule or order upon such terms as to costs and otherwise as such court or judge may direct.

SECTION 33. Whenever any cause or other civil proceeding shall be pending in any court of record, such court or any judge of the Supreme Court may, on application made for such purpose by either of the litigants, compel the opposite party to allow the party making the application to inspect all documents in the custody or under the control of such opposite party relating to such cause or other proceeding, and if necessary to take examined copies of the same, in all cases in which previous to the passing of this Act, a discovery might have been obtained in a court of equity, at the instance of the party so making the application as aforesaid.

SECTION 34. Upon the application of either party to any cause or other proceeding in any court of record, upon an affidavit by such party of his belief that any document to the production of

which he is entitled, for the purpose of discovery or otherwise is in the possession or power of the opposite party, it shall be lawful for the court or any judge of the Supreme Court, to order that the party against whom such application is made or (if such party is a body corporate) that some officer to be named of such body corporate shall answer on affidavit, stating what documents he or they has or have in his or their possession or power, relating to the matters in dispute ; or what he knows as to the custody they or any of them are in, and whether he or they objects or object, (and if so on what grounds) to the production of such as are in his or their possession or power ; and upon such affidavit being made, the court or judge may make such further order thereon as shall be just.

PART 4.—*Documentary Evidence.*

SECTION 35. All proclamations, treaties, and other acts of state of this Kingdom or of any foreign state, and all judgments, decrees, orders and other judicial proceedings of any court of justice in any part of this Kingdom, or in any foreign state, and all affidavits, pleadings, and other legal documents, wills, and codicils filed or deposited in any such court, may be proved in any court of justice or before any person having by law or by consent of parties to hear, receive and examine evidence, either by examined copies or by copies authenticated as hereinafter mentioned, (that is to say) if the document sought to be proved be a proclamation, treaty, or other act of state, the authenticated copy to be admissible in evidence must purport to be sealed with the great seal of this Kingdom, or of the foreign state to which the original document belongs ; and if the document sought to be proved be a judgment, decree, order or other judicial proceeding of any court in this Kingdom, or in any foreign state, or an affidavit, pleading, or other legal document, will, or codicil filed or deposited in any such court, the authenticated copy to be admissible in evidence must purport either to be sealed with the seal of such court or (in the event of such court having no seal) to be signed by the judge or (if there be more than one judge) by any one of the judges of the said court, and such judge shall attach to his signature a statement in writing on the said

copy that the court whereof he is judge has no seal. But if any of the aforesaid authenticated copies shall purport to be signed or sealed as hereinbefore respectively directed, the same shall respectively be admitted in evidence in every case in which the original document could have been received in evidence without any proof of the seal, where a seal is necessary, or of the signature, or of the truth of the statement attached thereto, where such signature and statement are necessary, or of the judicial character of the person appearing to have made such signature and statement; and every such copy shall be *prima facie* evidence of the original thereof, in like manner as if such original were produced and proved in due course of law.

SECTION 36. Wherever in any legal proceedings whatsoever it shall be necessary to prove any grant of land, lease or other conveyance of any Government land or real estate, it shall not be necessary to produce the original patent, grant, lease, or conveyance, but a certified copy thereof under the hand and official seal of the minister shall be received as evidence in any court, the same as the original instrument itself.

SECTION 37. Every register of a vessel kept under any of the laws, now or hereafter to be in force relating to the registry of Hawaiian vessels, may be proved in any court or before any person having by law, or by consent of parties, authority to hear, receive and examine, either by the production of the original, or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the person having charge of the original. And every such register or such copy of a register, and also every certificate of registry granted under any of such Acts and purporting to be signed as required by law, shall be received in evidence in any such court, or before any such person as aforesaid, as *prima facie* proof of all matters contained or recited in such register, when the register or any such copy thereof as aforesaid is produced, and of all the matters contained or recited in, or endorsed in such certificate of registry, when the said certificate is produced.

SECTION 38. Whenever in any legal proceeding whatsoever it may be necessary to prove the trial and conviction or acquittal of

any person charged with any offense, it shall not be necessary to produce the record of the conviction or acquittal of such person or a copy thereof, but a certificate containing the substance and effect only (omitting the formal part) of the indictment, information or presentment and conviction, or acquittal for such offense, purporting to be signed by the officer having the custody of the records of the court where the offender was convicted or acquitted, or by the deputy of such officer, shall upon proof of the identity of the person be sufficient evidence of the said conviction or acquittal, without proof of the signature or official character of the person appearing to have signed the same.

SECTION 39. Whenever by any law now or hereafter to be in force, any certificate, official or public document or documents, or proceeding of any corporation, or joint stock, or other company, or any certified copy of any document or by-laws, entry in any register or other book, or of any other proceeding shall be receivable in evidence of any particulars, the same shall respectively be admitted in evidence in any court, and by any person having by law or by consent of parties authority to hear, receive and examine evidence, provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone as required, or impressed with a stamp, and signed as directed by the respective Acts made or to be hereafter made, without any proof of the seal or stamp where a seal or stamp is necessary, or of the signature or of the official character of the person appearing to have signed the same, and without any further proof thereof in every case in which the original record or document could have been received in evidence.

SECTION 40. Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no law exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in any court, or before any person having by law or by consent of parties authority to hear, receive and examine evidence, provided it be proved to be an examined copy or extract, or provided it purport to be signed and

certified as a true copy or extract by the officer to whose custody the original is intrusted.

SECTION 41. The mere production of a newspaper purporting to contain public notices published by authority shall be prima facie evidence of the publication thereof, on the day on which the same bears date. And where by any law now or hereafter to be in force, His Majesty with the advice of his Cabinet or Privy Council, or any governor or Cabinet Minister shall be authorized or empowered to do any act whatsoever, or where by any such law anything is required to be certified by a Cabinet Minister or governor, and published in any newspaper, proof of the said newspaper purporting to contain a copy or notification of any such act or certificate shall be prima facie evidence of such act or certificate having been duly done or given, and if such newspaper purports to contain any rule, or by law, regulation matter or thing allowed, confirmed, cancelled or approved of, assented to or certified, it shall also be prima facie evidence of the purport and due making of such rule, regulation, by law, matter or thing.

SECTION 42. All copies of the votes and proceedings of the Legislature and of Royal proclamations, if purporting to be printed by authority, shall be admitted as evidence thereof by all courts and persons having by law or by consent of parties authority to hear, receive and examine evidence, without any proof being given that such copies were so printed.

SECTION 43. The probate of a will or codicil, or letters of administration with the will or codicil annexed, shall be prima facie evidence of the original will or codicil, in like manner as if such original were produced and proved in due course of law.

SECTION 44. Where any writing whatsoever shall have been copied by means of any machine or press, which produces a facsimile impression or copy of such writing, such impression or copy shall, upon proof to the satisfaction of the court or person having by law or by consent of parties authority to hear, receive and examine evidence, that the same was taken or made from the original writing by means of such machine or press as aforesaid, be sufficient prima facie evidence of such writing without any

proof that such impression or copy was compared with the said original thereof, and without any notice to produce such original.

SECTION 45. Every examination and deposition taken by virtue of any law heretofore in force shall and may be read in evidence, in the same manner as if this law had not been passed.

SECTION 46. A transcript of any of the records and judicial proceedings of any court of record or of any judge of a court of record at chambers, shall be admitted in evidence upon being authenticated by the attestation of the clerk of such court with the seal of such court annexed, or of the judge at chambers before whom the proceedings were had, with the seal aforesaid.

SECTION 47. A transcript from the docket of any circuit judge at chambers, or of any police or district justice, of any judgment had before him, of the execution issued thereon, if any, and of the return to such execution, if any, when subscribed by said judge or justice shall be evidence to prove the facts stated in such transcript in any other court.

PART 5.—*Of the Substitutes for an Oath.*

SECTION 48. Every court and person now or hereafter having by law or by consent of parties authority to hear, receive and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively. But if any person called as a witness, or required or desiring to make an affidavit or deposition, shall refuse or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the court or person having by law or by consent of parties authority to hear, receive and examine evidence, or for any judge or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person instead of being sworn, to make his solemn affirmation or declaration in the words following, that is to say: I.....do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is according to my religious belief, unlawful, and I do now also solemnly, sincerely, and truly affirm and declare that the evidence, &c. Which solemn affirmation and declaration shall be

of the same force and effect as if such person had taken an oath in the usual form.

PART 6.—*Persons whose Evidence may be Received.*

SECTION 49. No person offered as a witness shall hereafter be excluded by reason of incapacity from crime (perjury or subornation of perjury only excepted) or interest, from giving evidence either in person or by deposition according to the practice of the court, on the trial of any issue joined or of any matter or question, or on any enquiry arising in and a suit, action or proceeding in any court, or before any person having by law or by consent of parties authority to hear, receive and examine evidence. But every person so offered may and shall be admitted to give evidence, notwithstanding that such person may or shall have an interest in the matter in question, or in the event of the trial of any issue, matter, question or enquiry, or of the suit, action or proceeding in which he is offered as a witness, and notwithstanding that such person offered as a witness may have been previously convicted of any crime or offence except as aforesaid.

SECTION 50. On the trial of any issue joined, or of any matter or question, or on any enquiry arising in any suit, action or proceeding in any court, or before any person having by law or by consent of parties, authority to hear, receive and examine evidence, it shall be lawful for such court or person to receive the evidence of any minor, notwithstanding he may be destitute of the knowledge of God and of any belief in religion or in a future state of rewards and punishments. Provided always, that the evidence of such minor shall be given upon his affirmation or declaration to tell the truth, the whole truth, and nothing but the truth, or in such other form as may be approved of and allowed by such court or person that he will incur and be liable to punishment if he do not tell the truth. ^{10 Haw. 516} Provided also, that no such evidence shall in any case be received unless it shall be proved to the satisfaction of such court or such person, that such minor perfectly understands the nature and object of such declaration or affirmation as aforesaid, and the purpose for which his testimony is required.

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SECTION 51. On the trial of any issue joined, or of any matter or question, or on any enquiry arising in any suit, action or proceeding in any court or before any person having by law, or consent of parties authority to hear, receive and examine evidence, the parties thereto, and the party on whose behalf any such action, suit or proceeding may be brought or defended, and the husbands and wives of such parties and persons respectively shall (except as hereinafter excepted) be competent and compellable to give evidence, either in person or by deposition, according to the practice of the court, on behalf of either or any of the said suit, action or proceeding.

SECTION 52. The defendant in any criminal proceeding may give evidence on his own behalf, and thereupon be subject to cross-examination in like manner as any other witness, but in case any such person shall neglect or decline to offer himself as a witness, no inference shall be drawn prejudicial to such accused by reason of such neglect or refusal, or shall any argument be permitted tending to injure the defense of such accused person on account of such failure to offer himself as a witness.

PART 7.—*Privileges, Disabilities, and Obligations of Witnesses.*

SECTION 53. Nothing herein contained shall render any person who in any criminal proceeding is charged with the commission of any indictable offense, or any offense punishable on summary conviction, compellable to give evidence for or against himself; or (except as hereinafter mentioned) shall render any person compellable to answer any question tending to criminate himself, or shall in any criminal proceeding render any husband competent or compellable to give evidence against his wife, or any wife competent or compellable to give evidence against her husband, except in such cases where such evidence may now be given; provided also that in all criminal proceedings the husband or wife of the party accused shall be a competent witness for the defense.

SECTION 54. No husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage.

SECTION 55. No clergyman of any church or religious denomination shall, without the consent of the person making the confession, divulge in any action, suit, or proceeding, whether civil or criminal, any confession made to him in his professional character according to the uses of the church or religious denomination to which he belongs, and no physician or surgeon shall, without the consent of his patient, divulge in any civil suit, action, or proceeding (unless the sanity of the patient be the matter in dispute) any information which he may have acquired in attending the patient, and which was necessary to enable him to prescribe or act for the patient.

SECTION 56. No witness shall on the trial of any issue joined, or of any matter or question, or on any enquiry arising in any suit, action, or proceeding, whether civil or criminal, be permitted to refuse to answer any question which is relevant and material to the matter in issue on the ground that the answer may expose him to any penalty or forfeiture, or may disgrace or criminate himself, unless the court or person having by law or by consent of parties authority to hear, receive and examine evidence, shall be of the opinion that the answer will tend to subject such witness to punishment for treason, felony, or misdemeanor.

PART 8.—*The Means of Discrediting Evidence.*

SECTION 57. A witness may be questioned as to whether he has been convicted of any indictable or other offense; and upon being so questioned if he either denies the fact or refuses to answer, it shall be lawful for the party so questioning to prove such conviction.

SECTION 58. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character; but may contradict him by other evidence, or (in case the witness shall in the opinion of the court or person having by law or consent of parties authority to hear, receive and examine evidence prove adverse) may by leave of such court or person prove that he has made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given, the circumstances of the supposed statement sufficient to designate

the particular occasion must be mentioned to the witness, and he must be asked whether or not he has made such statement.

SECTION 59. If a witness upon cross-examination as to a former statement made by him relative to the subject matter of the cause or prosecution and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

SECTION 60. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing relative to the subject matter of the cause or prosecution, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him; provided always that it shall be competent for the court or person having such authority as aforesaid, at any time during the trial or enquiry, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial or enquiry as he shall think fit.

PART 9.—*Miscellaneous Provisions.*

SECTION 61. All courts and all persons having by law or by consent of parties authority to hear, receive and examine evidence, shall henceforth take judicial notice of the signature of every person who is, or shall be, or shall have been Premier, Cabinet or Crown Minister, Judge of the Supreme Court or of any circuit court, or clerk or deputy clerk of the Supreme Court or any circuit court, the commissioners of the board to quiet land titles, or masters in chancery, provided such signature shall be attached or appended to any decree, order, certificate, affidavit or other judicial or official document.

SECTION 62. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not

requisite; and such instrument may be proved by admission or otherwise as if there had been no attesting witness thereto.

SECTION 63. Comparison of a disputed writing with any writing proved to the satisfaction of the court or person having such authority as aforesaid to be genuine, shall be permitted to be made by witnesses; and such writings and the evidence of witnesses respecting the same may be submitted to such court or person and the jury or assessors (if any) as evidence of the genuineness or otherwise of the writing in dispute.

SECTION 64. No confession which is tendered in evidence on any trial, shall be rejected on the ground that a promise or threat has been held out to the person confessing, unless the judge or other presiding officer shall be of opinion that the inducement was really calculated to cause an untrue admission of guilt to be made; nor shall any confession which is tendered in evidence on any trial be rejected on the ground that it purports to have been made on oath, if proof can be given to the judge or other presiding officer, that in fact it was not so made.

SECTION 65. From and after the coming into operation of this Act, it shall not be lawful for any justice or other person to administer, or cause, or allow to be received any oath or affidavit, touching any matter or thing, whereof such justice or other person hath not jurisdiction or cognizance by some law in force at the time being; but nothing in this section shall be construed to extend to any oath, solemn affirmation or affidavit before any justice in any matter or thing touching the preservation of the peace, or the prosecution, trial or punishment of offenses, or touching any enquiry held before any justices in the nature of coroners' inquests respecting sudden deaths, or touching any proceedings before the Legislature or any committee thereof, nor to any oath or affidavit which may be required by the laws of any foreign country to give validity to instruments in writing designed to be used in such foreign countries.

SECTION 66. From and after the coming into operation of this law, the following laws and parts of laws shall be and the same are hereby repealed, Sections 1212 to 1227 of the Civil Code, both in-

clusive. An Act approved on the 25th day of July, A. D. 1862, entitled "An Act to provide for the perpetuating of testimony." An Act approved on the 30th day of December, A. D. 1864, entitled "An Act to further facilitate the taking of testimony."

SCHEDULES.

First Schedule.

In the.....

Between A. B.....plaintiff,

and C. D.....defendant.

Take notice that the.....proposes to prove the several facts and documents hereunder specified, and that such documents may be inspected by the plaintiff (or defendant) his attorney or agents at.....on.....next between the hours of.....and.....o'clock, and that the plaintiff (or defendant) is hereby required within forty-eight hours from the last mentioned hour to admit the said several facts, and that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been, that such as are specified to be copies, are respectively true copies, and such copies as are stated to have been served, sent, or delivered were so served, sent or delivered respectively, saving all just exceptions to the admissibility of all such facts and documents as evidence in this cause.

Dated this.....day of.....18...

G. H. attorney or agent for, &c.

To Mr.....the attorney or agent.

ORIGINALS.

DESCRIPTION OF DOCUMENTS.	DATE.
1. An agreement signed by the Plaintiff John Doe.	1st January, 1860.
2. A letter from the Defendant to the Plaintiff.	1st February, 1860.

COPIES.

DESCRIPTION OF DOCUMENTS.	DATE.	ORIGINAL OR DUPLICATE SERVED, SENT, OR DELIVERED, WHEN HOW OR BY WHOM.
1. Letter from Plaintiff to Defendant.	1st January. 1860.	Sent by Post on the same day.

FACTS.

1. That the above named John Doe was authorized by the defendant to sign the above mentioned agreement on his behalf.
2. That John Jones died on the 1st day of March, 18....., intestate.
3. That John Smith was at the commencement of this suit, heir-at-law of the said John Jones.

Second Schedule.

I hereby admit the Originals numbered 1, the Copies numbered 1, and the Facts numbered 2.

A. B., Defendant's Attorney.

Approved this 19th day of September, A.D. 1876.

CHAPTER XXXIII.

AN ACT TO AMEND THE LAW RELATING TO INTERPLEADER.

Be it Enacted by the King and the Legislative Assembly of the Hawaiian Islands, in the Legislature of the Kingdom assembled:

SECTION 1. Upon application made by or on behalf of any defendant sued in any court of record in any personal action, such application being made after declaration and before plea by affidavit or otherwise, showing that such defendant does not claim any interest in the subject matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into court or to pay or dispose of the subject matter of the action in such manner as the court (or any judge thereof) may order or direct; it shall be lawful for the said court or any judge thereof to make rules and orders calling upon such third party to appear and to state the nature and particulars of his claim, and maintain or relinquish his claim, and upon such rule or order to hear the allegations as well of such third party as of

Act
1876,
Chap. XXXIII.

the plaintiff, and in the meantime to stay the proceedings in such action, and finally to order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more feigned issue or issues; and also to direct which of the parties shall be plaintiff or defendant on such trial, or with the consent of the plaintiff and such third party, their counsel or attorneys, to dispose of the merits of their claims and determine the same in a summary manner, and to make such other rules and orders therein as to costs, and all other matters as may appear to be just and reasonable.

SECTION 2. The judgment in any such action or issue as may be directed by the court or judge, and the decision of the court or judge, in a summary manner, shall be final and conclusive against the parties and all persons claiming by, from, or under them.

SECTION 3. If such third party shall not appear upon such rule or order to maintain or relinquish his claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the court or judge to declare such third party and all persons claiming by, from, or under him to be forever barred from prosecuting his claim against the original defendant, his executors or administrators; saving, nevertheless, the right or claim of such third party against the plaintiff, and thereupon to make such order between such defendant and the plaintiff as to costs and other matters as may appear just and reasonable.

SECTION 4. If upon application to a judge in the first instance or in any later stage of the proceedings, he shall think the matter more fit for the decision of the court, it shall be lawful for him to refer the matter to the court, and thereupon the court shall and may hear and dispose of the same in the same manner as if the proceeding had originally commenced by rule of court instead of the order of a judge.

SECTION 5. And whereas, difficulties sometimes arise in the execution of process against goods and chattels issued by or under the authority of the courts in this Kingdom, by reason of claims made to such goods and chattels by assignees of bankrupts and

other persons not being the parties against whom such process had issued, whereby the marshal, sheriffs and other officers are exposed to the hazard and expense of actions, and protection in such cases to such marshal, sheriffs and other officers. Be it therefore further enacted, that when any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any such process, or to the proceeds or value thereof, it shall and may be lawful to and for the Court, out of which the execution shall have issued, or any judge thereof, upon application of such marshal, sheriff or other officer made before or after the return of such process, and as well before as after any action brought against such marshal, sheriff or other officer, to call before them or him by rule, order or summons, as well the party issuing such process as the party making such claim; and thereupon to exercise for the adjustment of such claims as the relief and protection of the marshal, sheriff or other officer, all or any of the powers and authorities hereinbefore contained, and make such rules, orders and decisions as shall appear to be just according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the court or judge.

SECTION 6. Where an action has been commenced in respect of a common law claim for the recovery of money or goods, or where goods or chattels have been taken or are intended to be taken in execution under process issued from any court, and the defendant in such action or the marshal, sheriff or other officer has applied for relief under this Act, it shall be lawful for the court or judge to whom such application is made to exercise all the powers and authorities given to them by this Act, though the titles of the claimants to the money, goods, or chattels in question or to the proceeds or value thereof have not a common origin, but are adverse to and independent of one another.

SECTION 7. When goods or chattels have been seized in execution by the marshal, sheriff, or other officer under process of any court, and some third person claims to be entitled under a bill of sale, chattel mortgage or otherwise, to such goods and chattels by way of security for a debt, the court or a judge may order a sale

of the whole or part thereof, upon such terms as the payment of the whole or part of the secured debt or otherwise as they or he shall think fit; and may direct the application of the proceeds of sale in such manner and upon such terms as to such court or judge may seem just.

SECTION 8. Upon the hearing of any rule or order from a court of record calling upon persons to appear and state the nature and particulars of their claims, it shall be lawful for the court or judge wherever from the smallness of the amount in dispute or of the value of the goods seized, it shall appear to them or him desirable and right so to do, at the request of either party to dispose of the merits of the respective claims of such parties, and to determine the same in a summary manner upon such terms as they or he shall think fit to impose, and to make such other rules and orders therein as to costs and all other matters as may be just.

SECTION 9. In all cases of interpleader proceedings where the question is one of law and the facts are not in dispute, the judge shall be at liberty at his discretion to decide the question without directing an action or issue, and (if he shall think it desirable) to order that a special case be stated for the opinion of the Supreme Court, and the proceedings upon such case shall (as nearly as may be) be the same as upon a submission to the court under the laws now in force.

SECTION 10. The judgment in any such action or issue as may be directed by the court or judge in any interpleader proceedings and the decision of the court or any judge in a summary manner, shall be final and conclusive against the parties and all persons claiming by, from, or under them.

SECTION 11. All rules, orders, matters and decisions to be made and done in interpleader proceedings under this Act (excepting only affidavits) may, together with the declaration or summons in the cause (if any), be entered of record in the Supreme Court, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times if required, and to secure and enforce the payment of costs directed by any such rule or order, and every such rule or order so entered

shall have the force and effect of a judgment in the Supreme Court.

SECTION 12. From and after the coming into operation of this Act, Section 275 of the Civil Code shall be, and the same is hereby repealed.

Approved this 19th day of September, A.D. 1876.

CHAPTER XXXIV.

AN ACT TO AMEND THE LAW IN RELATION TO ABATEMENT OF
ACTIONS AND SUITS ON THE DEATH, MARRIAGE OR BANK-
RUPTCY OF PARTIES THERETO.

Act
1876,
Chap. XXXIV.

Be it Enacted by the King and the Legislative Assembly of the Hawaiian Islands, in the Legislature of the Kingdom assembled:

SECTION 1. The death of a plaintiff or defendant shall not cause an action to abate, but it may be continued as hereinafter mentioned; and where an action would but for the provisions of this Act, by reason of the death of either party, and in which the proceedings may be revived and continued under this Act, the defendant or person against whom the action may be so continued may apply by summons to compel the plaintiff, or person entitled to proceed with the action in the room of the plaintiff, to proceed according to the provisions of this Act, within such time as the judge shall order; and in default of such proceeding, the defendant, or other person against whom the action may be so continued as aforesaid, shall be entitled to enter a suggestion of such default, and of the representative character of the person by or against whom the action may be proceeded with, as the case may be, and to have judgment for the costs of the action and suggestion against the plaintiff, or against the person entitled to proceed in his room, as the case may be, and in the latter case to be levied of the goods of the testator or intestate.

SECTION 2. If there be two or more plaintiffs or defendants, and one or more of them should die, if the cause of such action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the action shall not be thereby abated; but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs, against the surviving defendant or defendants.

SECTION 3. In case of the death of a sole plaintiff or sole surviving plaintiff, the legal representative of such plaintiff may, by leave of the court or a judge, enter a suggestion of the death and that he is such legal representative, and the action shall thereupon proceed; and if such suggestion be made before the trial, the truth of the suggestion shall be tried thereat, together with the title of the deceased plaintiff; and such judgment shall follow upon the verdict in favor of or against the person making such suggestion as if such person were originally the plaintiff.

SECTION 4. In case of the death of a sole defendant or sole surviving defendant, where the action survives, the plaintiff may make a suggestion either in any of the pleadings, if the cause has not arrived at issue, or on the record, if it has so arrived, of the death, and that a person named therein is the executor or administrator of the deceased, and may thereupon serve such executor or administrator with the copy of the suggestion and with a notice signed by the plaintiff or his attorney requiring such executor or administrator to appear within twenty days after service of the notice, and that in default of his so doing, the plaintiff may apply for judgment against him as such executor or administrator; and the same proceedings may be had and taken in case of non-appearance, after such notice as upon a summons against such executor or administrator in respect of the cause for which the action was brought; and in case the defendant shall not have pleaded or answered before the death, the new defendant shall plead or answer at the same time to the petition and suggestion; and in case the defendant shall have pleaded before the death, the new defendant shall be at liberty to plead to the suggestion only by way of denial, or such plea as may be appropriate to and

rendered necessary by his character of executor or administrator, unless by leave of the court or a judge he shall be permitted to plead fresh matter in answer to the petition, and the pleadings upon the petition and the pleadings upon the suggestion shall be tried together, and in case the plaintiff shall recover he shall be entitled to the like judgment in respect of the debt or sum sought to be recovered, and in respect of the costs prior to the suggestion and respect of the costs of the suggestion and subsequent thereto, he shall be entitled to the like judgment as in an action originally commenced against the executor or administrator.

SECTION 5. The death of either party between the verdict and the judgment shall not hereafter be alleged for error, if judgment be entered during the term in which such verdict was rendered, and if the plaintiff in any action happen to die after an interlocutory judgment and before a final judgment obtained therein, the said action shall not abate by reason thereof, if such action might be originally prosecuted or maintained by the executor or administrator of such plaintiff; and if the defendant die after such interlocutory judgment and before final judgment therein obtained, the said action shall not abate if such action might be originally prosecuted or maintained against the executor or administrator of such defendant and the plaintiff, or if he be dead after such interlocutory judgment, his executors or administrators shall and may have a writ of revivor in the form contained in the schedule to this Act, or to the like effect against the defendant if living after such interlocutory judgment, or if he be dead, then against his executors or administrators, to show cause why damages in such action should not be assessed and recovered by him or them, and if such defendant, his executors or administrators shall appear at the return of such writ and not show or allege any matter sufficient to arrest the final judgment, or shall make default, and inquiry of damages shall be thereupon held, or the amount for which final judgment is to be signed shall be referred to the clerk of the court; and upon return of the writ or delivery of the order with the amount endorsed thereon to the plaintiff, his executors or administrators, judgment final shall be given for the said plaintiff, his executors or administrators, prosecuting such writ of

revivor against such defendant, his executors or administrators respectively.

SECTION 6. The marriage of a woman plaintiff or defendant shall not cause the action to abate, but the action may notwithstanding be proceeded with to judgment; and such judgment may be executed against the wife alone, or by suggestion or writ of revivor pursuant to this act judgment may be obtained against the husband and wife, and execution issued thereon; and in case of a judgment for the wife, execution may be issued thereupon by the authority of the husband, without any writ of revivor or suggestion; and if in any such action the wife shall sue or defend by attorney, appointed by her when sole, such attorney shall have authority to continue the action or defense, unless such authority be countermanded by the husband, and the attorney changed according to the practice of the Court.

SECTION 7. The bankruptcy of or assignment by the plaintiff in any action which the assignees or trustees might maintain for the benefit of the creditors shall not be pleaded in bar to such action, unless the assignees or trustees shall decline to continue, and give security for the costs thereof upon a judge's order to be obtained for that purpose within such reasonable time as the judge may order; but the proceedings may be stayed until such election is made, and in case the assignees neglect or refuse to continue the action and give such security within the time limited by the order the defendant may within eight days after such neglect or refusal, by way of after-plea, plead the bankruptcy or assignment.

SECTION 8. Section 1042 of the Civil Code shall be and the same is hereby repealed.

SCHEDULE.

Kalakaua, by the Grace of God, etc.

To....., Esquire,

Marshal of the Kingdom, or his Deputy,

Greeting: You are hereby commanded to summon.....
of.....to be and appear before our Supreme Court (or Circuit Court as the case may be), at the.....term thereof, to be holden at the Court Room of the Court House, at.....in the Island of.....on.....the.....day of.....next, to show cause why damages should not be assessed and recovered

by A. B. (or C. D. as executor of the last will and testament of A. B. deceased, or as the case may be), against you (if against a representative, here insert as executor of the last will and testament of..... deceased, or as the case may be), on an interlocutory judgment rendered in favor of the said A. B. (or as the case may be) on theday of..... in the said Court against you (or as the case may be). And notify the said.....that in default of his so doing the said A. B. (or as the case may be) may have the said damages assessed and proceed to execution.

Witness, etc.

Approved this 19th day of September, A. D. 1876.

CONCERNING THE EQUITY JURISDICTION OF THE SUPREME AND CIRCUIT COURTS.

SECTION 1. In addition to the jurisdiction in equity otherwise conferred, the Supreme Court and the several Justices thereof and also the several Circuit Courts shall have original and exclusive jurisdiction of every original process whether by bill, writ, petition or otherwise, in which relief in equity is prayed for, except when a different provision is made, and may issue all general and special writs and processes, required in proceedings in equity to Courts of inferior jurisdiction, corporations and individuals when necessary to secure justice and equity.

SECTION 2. The Supreme Court and the several Justices thereof and also the several Circuit Courts, may hear and determine in equity, all cases hereinafter mentioned, when the parties have not a plain, adequate and complete remedy at the common law, that is to say:

Suits for the redemption of mortgages or to foreclose the same.

Suits and proceedings for enforcing and regulating the execution of trusts, whether the trusts relate to real or personal estate.

Suits for the specific performance of contracts by and against either party to the contract and his heirs, devisees, executors, administrators and assigns.

Suits to compel the delivery of goods or chattels taken or detained from the owner and secreted or withheld so that the same cannot be replevied.

Act
1876.
Chapter XV.

Suits for contributions by or between devisees, legatees or heirs, who are liable for the debts of a deceased testator or intestate and by or between any other persons respectively liable for the same debt or demand, when there is more than one person liable at the same time for such contribution.

Other cases in which there are more than two parties having distinct rights or interests which cannot be justly and definitely decided and adjusted in one action at the common law.

Suits between co-partners, joint tenants and tenants in common, and their legal representatives, with authority to appoint receivers of rents and profits, and apportion and distribute the same to the discharge of encumbrances and liens on the estates or among the co-tenants.

Suits between joint trustees, co-executors and co-administrators, and their legal representatives.

Suits concerning waste and nuisance, whether relating to real or personal estate.

Suits upon accounts when the nature of the account is such that it cannot be conveniently and properly adjusted and settled in an action at law.

Bills by creditors to reach and apply in payment of a debt, any property, right, title, or interest, legal or equitable of a debtor, within this Kingdom, which cannot be come at to be attached or taken on execution in a suit at law, against such debtor.

Cases of fraud, and conveyances or transfers of real estate in the nature of mortgages.

Cases of accident or mistake.

Suits or bills of recovery, when a discovery may be lawfully required according to the course of proceedings in equity.

And shall have full equity jurisdiction, according to the usage and practice of Courts of Equity in all other cases where there is not a plain, adequate and complete remedy at law.

SECTION 3. Cases in equity may be commenced by bill or petition with a writ of subpœna according to the usual course of proceedings in equity, or inserted in an original writ of summons, or of summons and attachment, or by a declaration in an action of contract, or tort as the case may be, with or without an order for

the attachment of the property or arrest of the defendant, and shall be returnable at the terms of the Court or on the rule days established by the Court.

The material facts and circumstances relied on shall be stated with brevity, omitting immaterial and irrelevant matters.

SECTION 4. If a discovery is sought, it may be by such bill or petition, or by being made part of such declaration or by interrogatories.

Answers thereto shall be made without unnecessary delay and questions arising thereon be determined by the rules applicable to bills of discovery.

SECTION 5. A defence in equity shall be made by demurrer, plea or answer.

A demurrer shall be accompanied with a certificate that it is not intended for delay and an answer shall be supported by oath, unless waived by the adverse party.

Approved this 30th day of July, A. D. 1878.

ARTICLE L.—OF EQUITY, ADMIRALTY, AND PROBATE MATTERS.

See Act 1873,
Chap. XXXIX.

§1228. All applications for the foreclosure of any mortgage of real or personal property ; for the abatement of nuisance, public or private ; for the annulment of charters and other corporate rights, or for restraint or prohibition in the exercise thereof ; for proclamation by *scire facias* ; for sequestration of property upon legal or equitable grounds ; for divorces and separations ; for the affiliation of bastards ; for the partition and division of real property ; for the admeasurement of dower ; for enquiries of lunacy or insanity ; or for enquiries *de ventre inspiciendo* to determine the right of property, shall be by sworn petition addressed to some court, or justice, having jurisdiction thereof.

§1229. Upon the filing of such petition, the court or judge shall determine, *ex parte*, upon the propriety of granting the pro-

cess prayed for. In cases not demanding secrecy, or occasioning doubt, the court or judge may, before issuing process, grant an order to show cause, and make any interlocutory order in the matter which may appear necessary to the ends of justice.

§1230. When process is issued in any such case, it shall be served by delivery of a copy of the petition and of the summons to the defendants, or in case they cannot be found, by leaving such copy with some one upon the premises involved in the controversy, or in such other manner as the court or judge may direct. The officer charged with service of the process shall also, if so directed by the court or judge, publish in the Government Gazette a notice of such suit or proceeding, calling upon all persons interested to appear and show cause against it, at the time and place appointed for the hearing.

§1231. The court or judge may assess the amount due upon mortgages, whether of real or personal property, without the intervention of a jury, after hearing of the parties, and adduction of the proofs, and shall order judgment or decree to be entered for the amount awarded, and execution to be issued thereon, subject to appeal in all cases except where the judgment or decree is rendered by the Supreme Court.

§1232. All prior and subsequent mortgage creditors, whose names are or can be discovered by the party foreclosing a mortgage, shall be made parties to his application, and if discovered before the day appointed for hearing, they shall be served with a copy of the petition.

§1233. Mortgage creditors shall be entitled to payment according to the priority of their liens, and not *pro rata*; and decrees of foreclosure shall operate to extinguish the liens of subsequent mortgages of the same property, without enforcing prior mortgages to their right of recovery. The surplus after payment of the mortgage foreclosed, shall be applied *pro tanto* to the next junior mortgage, and so on to the payment, wholly or in part, of mortgages junior to the one assessed.

§1234. The mortgagor, or any subsequent mortgagee, may appear and answer matter of fact or of law, pleadable in defense to the application or petition for foreclosure, and shall be allowed to show any matter in legal or equitable avoidance of the mortgage.

§1235. All applications for the foreclosure of any hypothecation or other maritime lien, upon any vessel, domestic or foreign, or for the enforcement of the rights of salvors, or of material men, or for damages in cases of collision, or for the forfeiture of any vessel or other property for a breach of the revenue laws, or in causes of damage where the right of action arose without the jurisdiction of this Kingdom, shall be by sworn petition, in the nature of a libel, addressed to the Chief Justice, or first associate justice of the Supreme Court.

§1236. Upon the filing of any such petition, the justice shall determine, *ex parte*, upon the propriety of granting the process prayed for. He may, before issuing process, grant an order to show cause, if in his opinion advisable to the ends of justice.

§1237. When process is issued in any such case, it shall be served by delivery of copy of the petition, and of the judge's citation to the defendants, or in case they cannot be found, by leaving such copy with some one upon the vessel libelled for foreclosure, or attached for payment of a maritime lien or liability, or for a breach of the revenue laws; or if service cannot be made as aforesaid, it may be made in such other way as the justice shall specially direct. As soon after service as may be, the marshal or his deputy shall, in the discretion of the justice, publish in the Government Gazette, for such period as he may deem equitable, a notice of such action or proceedings, attachment, intended foreclosure, or sale upon hypothecation, or maritime lien, or forfeiture, and inviting all persons interested to show cause against it on or before the day assigned for the hearing.

§1238. In all such cases, the justice may hear and determine the controversy, without the intervention of a jury; or he may

cause a jury to be impannelled, for the purpose of trying the facts involved in the cause, in accordance with the provision of Section 854. After hearing of the parties, and adduction of the proofs, and the verdict upon the facts being rendered, or the decision being pronounced by the justice, he shall order the clerk to enter up judgment thereon, subject to appeal, or to a motion for a new trial, and to issue execution thereon as in cases not maritime.

§1239. When an appeal is taken in any such cause, from a decision rendered by the justice without the intervention of a jury, the case on appeal shall be heard and determined by the Supreme Court in *banco*.

§1240. Hypothecations and maritime liens shall follow the course of the law of nations, the law of the place of the contract, the law maritime and the law merchant in like cases, which the judge or court shall apply thereto, and to the apportionment and distribution of the proceeds arising therefrom.

§1241. Matters of probate and of administration shall be heard and determined by the judge or court having jurisdiction thereof, without the intervention of a jury (a).

(a)

TO AUTHORIZE THE TRYING OF ISSUES OF FACT IN MATTERS OF
PROBATE AND ADMINISTRATION BY A JURY.

Act
1864.

WHEREAS, the 1241st Section of the Civil Code has been held not to permit an appeal to a jury, on the validity of any will, or testamentary devise, or any facts touching the descent of property, when such will or testamentary devise is a matter of investigation in probate; therefore, Be it enacted, &c.

SECTION 1. That from and after the date of the passage of this Act, whenever the value of the estate of any deceased person shall exceed five hundred dollars, any person claiming, before any judge, sitting as a court of probate, such estate, or any part thereof, or any interest therein, by virtue of any will or testamentary

devise, or by virtue of the statutes of descent of property in this Kingdom, who may deem himself aggrieved by the decision of such probate judge at chambers, may, upon taking his appeal to the circuit court or Supreme Court, if any matter of fact is in issue, move the appellate court that the issue of fact may be tried by a jury, and his motion shall not be denied. ✕

SECTION 2. Whensoever an appeal may have been taken by the party against whom judgment has been rendered by the judge of probate at chambers, the appellee may likewise move the court that any issue of fact may be tried by a jury, and his motion shall not be denied.

SECTION 3. On all appeals from a decision of a probate judge at chambers, whether the same be tried before a jury or before the court, without the intervention of a jury, the record of the court below may be read as testimony, and either party shall be at liberty to introduce such further testimony as he may be enabled, and also to re-examine orally before such court or jury on such appeal, any witness or witnesses whom he may have produced and examined on the original hearing at chambers.

§1242. In all cases in which any person, whether a subject of this Kingdom or otherwise, shall decease in any part of this Kingdom leaving a will in this Kingdom of his or her property within its jurisdiction or abroad, or having died abroad, and there left a will bequeathing or disposing of his or her property in this Kingdom, it shall be incumbent upon the person named as executor of such will, or on the person to be benefitted thereby, or on the person in whose charge the same was deposited, or some person in behalf of those interested, to apply to some judge of a court of record, at chambers, for probate of such will, and for citation of the witnesses thereto, and of the next of kin of the deceased.

See Sec. 1454.

§1243. It shall in like manner be incumbent on the person entitled and desirous to administer, according to the priority of

right hereinafter prescribed, upon the estate of any person dying intestate in this Kingdom, and leaving property therein, or dying abroad and leaving property in this Kingdom, to apply by petition to some judge of a court of record, at chambers, for power to administer thereon.

§1244. All applications for probate of wills, or for letters of administration, shall be by sworn petition, in which the party shall set forth circumstantially all the facts upon which his application rests.

§1245. In the appointment of administrators upon the property of deceased persons, the following order of priority shall be observed:

1. The husband of a deceased wife;
2. The wife of a deceased husband;
3. The children being major;
4. The brothers and sisters of the deceased;
5. The cousins germain of the deceased;
6. Any *bona fide* creditor applying for administration;

Provided, however, that the judge may, for satisfactory cause, disregard the order of priority herein prescribed.

§1246. The judge shall make the necessary orders for, and prescribe the length of time during which, executors and administrators shall give notice to creditors and debtors of the estate, and for the filing of inventories of the assets.

§1247. Executors and administrators shall in no case be liable to suit, until the expiration of six calendar months after probate, or letters of administration granted. (a)

TO LIMIT THE TIME WITHIN WHICH CLAIMS OF CREDITORS,
AGAINST THE ESTATES OF DECEASED PERSONS SHALL BE PRE-
SENTED, AND SUITS BE COMMENCED TO ENFORCE REJECTED
CLAIMS; AND AMEND SECTION 1247 OF THE CIVIL CODE.

SECTION 1. Immediately after the appointment of any executor or administrator of any estate, he shall advertise in the newspapers,

published in the city of Honolulu, for as long a time as the court shall direct, at least once a week for four weeks, a notice to all creditors of the deceased to present their claims, duly authenticated, and with the proper vouchers, if any exist, even if the claim is secured by mortgage upon real estate, to him, either at his residence or place of business, within six months from the day of such publication. And if such claims be not presented within six months from the first publication of the notice, or within six months from the day they fall due, they shall be forever barred, and the executor or administrator shall not be authorized to pay them.

SECTION 2. Repealed 1876, Chapter X.

SECTION 3. If the claim be rejected by the executor or administrator, a suit must be brought upon it against the executor or administrator, within two months after such rejection, or within two months after the same becomes due, or it will be forever barred.

As amended
Act
1876,
Chapter X.

SECTION 4. It shall not be lawful to allow any claim that is barred by the Statute of Limitations of this Kingdom.

SECTION 5. That Section 1247 of the Civil Code be, and the same is hereby amended, by inserting therein after the word "granted," in the third line of said section, the words, "except in cases of claims rejected by the executor or administrator," as provided in Section 3 of this Act.

§1248. In all cases contemplated by the provisions of this article, the court or judge shall have power to issue all such letters rogatory, or commissions to take testimony, as may be necessary and proper in any particular case.

RELATING TO THE JURISDICTION OF THE PROBATE COURTS OF
THIS KINGDOM RESPECTING THE SALE OF REAL ESTATE OF
DECEASED PERSONS, FOR THE PURPOSE OF PAYING THEIR
DEBTS.

Act
1876,
Chapter LVII.

WHEREAS, doubts have arisen as to the jurisdiction of the Probate Courts of this Kingdom to order the sale of real estate of

deceased persons for the purpose of paying their debts; and it is expedient to remove such doubts, therefore,

Be it Enacted by the King and the Legislative Assembly of the Hawaiian Islands in the Legislature of the Kingdom assembled:

SECTION 1. That the Probate Courts of this Kingdom have had from the time of their establishment, and now have, and hereafter shall continue to have jurisdiction to order and decree the sale of any real estate of deceased persons for the purpose of paying their debts, whensoever the personal estate of such deceased persons shall prove to be insufficient for the purpose.

RELATING TO THE WRIT OF HABEAS CORPUS.

Act
1870,
Chap. XXXII.

SECTION 1. Every person restrained of his liberty, except in the cases mentioned in the following section, may prosecute as of right, a writ of *Habeas Corpus*, according to the provisions of this Act, to obtain relief from such restraint, if unlawful.

SECTION 2. The following persons shall not be entitled, as of right, to demand and prosecute the said writ:

First.—Persons committed for treason or felony, or for suspicion thereof, or as accessories before the fact, to a felony, when the cause is plainly and specially expressed in the warrant of commitment, unless when excessive and unreasonable bail is required.

Second.—Persons convicted, or in execution upon legal process, civil or criminal.

Third.—Persons committed on mesne process, in any civil action, on which they were liable to be arrested and imprisoned, unless when excessive and unreasonable bail is required.

SECTION 3. Application for such writ shall be made to the court of justice authorized to issue the same, by complaint in writing, signed by the party for whose relief it is intended, or by some person in his behalf, setting forth :

First.—The person by whom, and the place where, the party is imprisoned or restrained, naming the prisoner and the person de-

taining him, if their names are known, and describing them if they are not known.

Second.—The cause or pretence of imprisonment or restraint, according to the knowledge and belief of the applicant.

Third.—If the imprisonment or restraint is by virtue of any warrant or other process, a copy thereof shall be annexed, unless it shall be made to appear that a sufficient reason exists for not annexing the same.

Fourth.—The facts alleged shall be verified by the oath of some credible person, to be administered by any person authorized to administer oaths.

SECTION 4. The court or justice to whom such complaint shall be made, shall, without delay, award and issue a writ of *Habeas Corpus*, which may be in the following form:

[STAMP.]

KAMEHAMEHA V., by the grace of God, of the Hawaiian Islands King.

To.....greeting.

We command you that immediately upon the receipt of this writ, you have and produce before our justice of..... atthe body of.....who is unjustly imprisoned and restrained of his liberty, as it is said, to do and receive what shall then and there be considered concerning him in this behalf.

And have you there this writ, with your doings thereon.

Witness the Honorable..... Chief Justice of our Supreme Court and Chancellor of our Kingdom, at..... this.....day of.....in the year one thousand eight hundred and.....

[SEAL.]

Justice of.....

SECTION 5. When the writ is issued out of court, it shall be signed by the presiding justice, otherwise, it shall be signed by the justice issuing the same.

SECTION 6. The court of justice issuing such writ, shall have power to issue subpoenas, to compel the attendance of witnesses, or the production of any documents.

SECTION 7. Whenever the writ shall be issued by any circuit judge, the same may be made returnable before himself, or before the circuit court, or the supreme court, or any justice thereof.

SECTION 8. Whenever the writ is returnable before the court, and the court shall be adjourned before it is returned, the return may be made before any justice of said court; and if the writ is in any case returnable before one judge, when the court of which he is a member, is in session, he may adjourn the case into court, to be there heard and determined in the same manner as if the writ had been returned into the same court.

SECTION 9. If the name of the person by whom the prisoner is alleged to be restrained of his liberty, is unknown or uncertain, he may be described by an assumed appellation, and whoever shall be served with the writ, shall be deemed to be the person intended thereby.

SECTION 10. The person to be produced shall be designated by his name, if known, and if that is not known or is uncertain, he may be designated in any other manner, so that it can be known who is the person intended.

SECTION 11. If the party is confined in any prison, or is in the custody of any civil officer, the court or judge granting the writ shall certify thereon, the sum to be paid for the expense of bringing him from the place of imprisonment, and the officer to whom the same is directed shall not be bound to obey it, unless that sum be paid or tendered to him. But this section shall not be construed to require the payment in all cases, of the full statute fees, but the court in its discretion may require the payment of any sum less than the statute fees, and the residue shall be paid as in cases of the service of criminal process.

SECTION 12. Any person to whom a writ of *Habeas Corpus* shall be directed, shall, upon payment or tender of reasonable charges and expenses for its execution, make return thereof with as much promptness as the nature of the case will permit.

SECTION 13. The party making the return shall state therein, in writing, plainly and unequivocally :

First.—Whether he has or has not that party in his custody or power, or in any manner under his restraint or control :

Second.—If he has the party in his custody or power, or under his restraint or control, he shall set forth at large the authority, and

the time and whole cause of such imprisonment or restraint, with a copy of any process or warrant under which the party is detained :

Third.—If he has had the party in his custody or power, or under his restraint or control, and has transferred such custody, restraint or control to another, or if he has any knowledge or suspicion that any other person exercises or claims to exercise such custody, power, restraint or control, he shall state all that he knows or suspects.

And no return shall be adjudged sufficient when the respondent has once held the party in his custody or power, or under his restraint or control, unless it states fully all that the respondent knows or suspects, or alleges unequivocally that he neither knows nor suspects, nor has any cause to suspect anything as to the custody or restraint of the party alleged to be detained, up to the time of making such return.

SECTION 14. The return shall be signed by the person making it, and sworn to by him, unless he is a sworn public officer making the return in his official capacity. Such return shall be evidence in the case, but not conclusive.

SECTION 15. The person making the return shall bring the body of the party, if in his custody or power, or under his restraint or control, according to the command in the writ, unless prevented by the sickness or infirmity of the party. But this shall not prevent the party making the return, if a private person, from demanding in advance actual necessary expenses of travel and transportation.

SECTION 16. When from sickness or infirmity of the party he cannot properly be brought to the place appointed for the return, that fact shall be set forth, and if verified by affidavit and established to the satisfaction of the court or judge, the hearing may be adjourned to such other time or place, or such order may be made as justice may require.

SECTION 17. Upon the return of the writ, the court or justice, shall proceed without delay to examine the causes of imprisonment or restraint ; but the examination may be adjourned from time to time as circumstances may reasonably require.

SECTION 18. If the party is detained on any process under which any other person, who can be notified without unreasonable delay, provided such person or his attorney be within the Kingdom, has any interest in his detention, the party shall not be discharged until such party or his attorney shall have had an opportunity to be heard.

SECTION 19. If the party is imprisoned on any criminal accusation, reasonable notice shall be given to the Attorney-General, or his deputy, lawfully appointed, to appear and object if he thinks fit.

SECTION 20. The party imprisoned or restrained may deny any of the facts sets forth in the return and may allege other material facts, and the court shall proceed in a summary way to examine the causes of imprisonment or restraint and to hear evidence which may be offered by any person interested or authorized to appear, both in support of such imprisonment or restraint or against it, and thereupon to dispose of the party as law and justice may require.

SECTION 21. If no legal cause for the imprisonment or restraint shall be shown, the party shall be immediately discharged therefrom.

SECTION 22. If the party is detained for any cause or offense, for which he is liable, he shall be admitted to bail if sufficient bail be offered, and if not, he shall be remanded, with an order of the court or justice, expressing the sum in which he shall be held to bail and the court at which he shall be required to appear.

SECTION 23. If the party is committed on mesne process in any civil action for want of bail, and the bail which is required shall appear to be excessive or unreasonable, the court or justice shall decide what bail is reasonable, and shall order that upon giving such bail the party shall be discharged.

SECTION 24. If the party is lawfully imprisoned or restrained, and is not entitled to be enlarged on bail, he shall be remanded to the person or officer having lawful authority to detain him.

SECTION 25. Until judgment be given, the court or justice may remand the party, or accept bail for his appearance from day to

day, or may place him under special care and custody, as circumstances may require.

SECTION 26. Any person who shall neglect or refuse promptly to perform any duty imposed upon him by virtue of any writ of *habeas corpus*, conformably to the provisions of this Act, shall be responsible in a civil action to any person aggrieved for damages occasioned thereby, and may be punished in any court of competent jurisdiction, by fine not exceeding five thousand dollars, or by imprisonment at hard labor not exceeding ten years, or both, in the discretion of the court.

SECTION 27. The liabilities and penalties of the preceding section shall also be imposed upon any person who, having in his custody or under his power, any person entitled to a writ of *Habeas Corpus*, and who shall, with intent to elude the service of such writ, or to avoid the effect thereof, transfer such person to the custody or place him under the control or power of any other person, or conceal him, or change his place of confinement.

SECTION 28. Whenever it shall appear by satisfactory proof, by affidavit or otherwise, to any court or justice authorized by law to issue writs of *habeas corpus*, that any one is illegally held in custody, confinement or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of such court or justice, or will suffer some irreparable injury before compliance with a writ of *habeas corpus* can be enforced, such court or justice may cause a warrant to be issued, reciting the facts, and directed to the marshal or his deputy, or to any constable, commanding such officer to take such person thus held in custody, confinement or restraint, and forthwith bring him before such court or justice, and held there until a writ of *habeas corpus* can be duly issued and served, after which the party alleged to be illegally restrained, shall be deemed to be before the court in obedience to such writ.

SECTION 29. Any writ or process authorized by this Act may be issued or served on Sunday.

SECTION 30. No person who has been discharged upon a writ of *Habeas Corpus*, shall be again imprisoned or restrained for the

same cause, unless he shall be indicted therefor, or convicted thereof, or committed for want of bail, by some court of record, having jurisdiction of the cause, or unless after a discharge for default of proof, or for some material default in the commitment in a criminal case, he shall be again arrested on sufficient proof, and committed by legal process, for the same offense.

SECTION 31. Nothing in this Act shall be construed to restrain the power of any court of record to issue a writ of *habeas corpus, ad respondendum*, when necessary, to bring before them any prisoner for trial in any criminal cause, lawfully pending in such court, or a writ of *habeas corpus, ad testificandum*, to bring in any prisoner to be examined as a witness in any suit or proceeding, civil or criminal, pending in such court, when they shall think the personal attendance and examination of the witness necessary for the attainment of justice. Such may be issued by any court of record in the exercise of a sound discretion, and with due regard to conflicting interests and liabilities, anything in this Act to the contrary notwithstanding.

SECTION 32. Nothing in this Act shall be construed to restrain the power of the Supreme Court, or any justice thereof, at their discretion to issue a writ of *habeas corpus, ad subjiciendum*, in case where it is not demandable of right, and thereupon to bail any person for whatever cause he may be committed or restrained, or to discharge him as law and justice may require, except only, persons committed by command of His Majesty, the King, or the Legislative Assembly, in the manner and for the causes provided by the Constitution.

But such discretionary power shall only be exercised by the Justices of the Supreme Court.

SECTION 33. All the provisions of this Act shall be subject to the right of His Majesty, the King, to suspend the privilege of the writ of *habeas corpus*, in cases of rebellion or invasion, conformably to the Constitution.

Approved this 19th day of July, A. D. 1870.

CHAPTER XXVI.

OF THE EXECUTIVE EXTRA-JUDICIAL OFFICERS.

ARTICLE LI.—OF THE REGISTRAR OF CONVEYANCES—HIS DUTIES,&c.

§1249. There shall be a bureau in the department of the Interior to be called the Bureau of Conveyances; and His Majesty shall appoint, upon the nomination of the Minister of the Interior, some suitable person to superintend said Bureau, under the direction of said minister, who shall be styled the “Registrar of Conveyances,” and hold his office at the pleasure of the King.

§1250. Said Registrar shall take an oath faithfully to discharge the duties of his office, and he shall give to the Minister of the Interior, for the benefit of the public, a bond in the penalty of at least one thousand dollars, conditioned to answer to any party aggrieved, upon assignment thereof, for any damages, losses, or injuries sustained by reason of his negligence, carelessness or misconduct in office, or by reason of false certificates of search or encumbrance by him at any time made or given, to the detriment of the party prosecuting.

§1251. The said Registrar shall be entitled to demand and receive the following fees, viz.:

1. For the registry of any deed, lease, mortgage, or other instrument required by law to be recorded, or presented for record, fifty cents for one hundred words;
2. For taking any acknowledgement preparatory to registry, one dollar for each party signing;
3. For every copy of any instrument recorded in this office, authenticated by his seal of office, fifty cents for one hundred words;

4. For searching the records, and giving the certificate required by law, twenty-five cents for each year searched;

Which fees shall belong, and are hereby appropriated to the said Registrar, as his exclusive perquisites of office.

§1252. The said Registrar shall, under the direction of the Minister of the Interior, appoint a deputy, for whose official acts he shall be responsible, and whose appointment he shall cause to be announced in the Government Gazette. It shall be the duty of such deputy to act as Registrar of Conveyances, during the absence of the Registrar, or in case of a vacancy in that office.

§1253. The said Registrar may, under the direction of the Minister of the Interior, appoint suitable persons, throughout the Kingdom, as agents for taking and certifying the acknowledgment of instruments, to be recorded in his office.

§1254. It shall not be lawful to record any conveyance, or other instrument required by law to be stamped, unless the same shall have been previously impressed with the Royal stamp, as provided in Section 422 (a).

(a) See Sec. 9 Chap. LV, 1876.

§1255. To entitle any conveyance, or other instrument to be recorded, it shall be acknowledged by the party or parties executing the same, before the Registrar of Conveyances, or his agent, or some judge of a court of record, or notary public of this Kingdom, or before some minister, commissioner or consul of the Hawaiian Islands, or some notary public or judge of a court of record in any foreign country. But if any party to an instrument executed within this Kingdom shall die, or depart from the Kingdom without having acknowledged his deed, or shall refuse to acknowledge it, the deed may be entered of record on proof of its execution by a subscribing witness thereto, before any judge of a court of record of this Kingdom. If all the subscribing witnesses to such conveyance or other instrument shall be dead, or out of the Kingdom, the same may be proved before any court of record in this Kingdom, by proving the handwriting of the grantor and any subscribing witness.

REQUIRING THE IDENTIFICATION OF PERSONS OFFERING ACKNOWLEDGMENTS TO INSTRUMENTS.

Act
1872,

Chap. XXVIII.

SECTION 1. No acknowledgment of any conveyance or other instrument, whereby any real estate is conveyed or may be affected shall be taken, unless the person offering to make such acknowledgment shall be personally known to the officer taking the same to be the person whose name is subscribed to such conveyance or instrument as a party thereto, or shall be proved to be such by the oath or affirmation of a credible witness known to the officer.

SECTION 2. The certificate of such acknowledgment shall state the fact of acknowledgment and that the person making the same was personally known to the officer granting the certificate to be the person whose name is subscribed to the instrument as a party thereto, or was proved to be such by the oath or affirmation of a credible witness known to the officer whose name shall be inserted in the certificate.

SECTION 3. Such certificate shall be substantially in the following form, to wit:

HAWAIIAN ISLANDS, } ss.
ISLAND OF.....

On this day of..... A.D., personally appeared before me A. B., known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein set forth.

SECTION 4. When the person offering the acknowledgment is unknown to the officer taking the acknowledgement, the certificate shall be substantially in the following form, to wit:

HAWAIIAN ISLANDS, } ss.
ISLAND OF.....

On this day of..... A.D., personally appeared before me A. B., satisfactorily proved to me to be the person described in and who executed the within instrument, by the oath of C. D., a credible witness for that purpose, to me known and by me duly sworn, and he, the said A. B., acknowledged that he executed the same freely and voluntarily for the uses and purposes therein set forth.

SECTION 5. No certificate of acknowledgment contrary to the provisions of this Act shall be held valid in any court of this King-

dom, nor shall it be entitled to be recorded in the Registry of Public Conveyances.

Amendment of
1882, Chap. XLI

Any officer authorized to take acknowledgments to instruments who shall knowingly incorporate in the certificate of acknowledgment any false or misleading statement as to the facts therein contained, shall, on due proof thereof before any police or district magistrate, be punished by fine not to exceed one hundred dollars, or by imprisonment at hard labor not to exceed two months, or both. Nothing herein contained shall be construed to do away with the liability for civil damages for such act.

SECTION 6. This Act shall take effect and become a law from and after the date of its passage, but no certificate of acknowledgment executed before this Act shall take effect, shall in consequence of anything herein contained be deemed invalid.

Approved this 29th day of July, A.D. 1872.

§1256. It shall not be lawful to enter of record any release of dower in lands or other property, signed by an undivorced wife, without her previous acknowledgment to the Registrar of Conveyances, or one of his agents, or some officer authorized to receive such acknowledgment, apart from her husband, that she had signed such release without compulsion, fear or restraint from her husband.

§1257. Every officer who shall take the acknowledgment or proof of any instrument, shall endorse a certificate thereof, signed by himself, on the instrument, and in cases of proof give the names of the witnesses examined before him, their places of residence, and the substance of the evidence by them given.

§1258. Every conveyance or other instrument, stamped and acknowledged or proved, and certified in the manner hereinbefore prescribed, by any of the officers before named, may be read in evidence without further proof thereof, and shall be entitled to be recorded.

§1259. The record of an instrument duly recorded, or a transcript thereof, duly certified, may also be read in evidence, with the like force and effect as the original instrument. Neither the certificate of acknowledgment, nor the proof of any instrument, shall be conclusive, but may be rebutted, and the force and effect thereof may be contested by any party affected thereby. If the party contesting the proof of an instrument shall make it appear that such proof was taken upon the oath of an interested or incompetent witness, neither such instrument nor the record thereof shall be received in evidence until established by other competent proof.

§1260. Every instrument entitled by law to be recorded, shall be recorded in the order, and as of the time when the same shall be delivered to the Registrar for that purpose, and shall be considered as recorded from the time of such delivery.

§1261. It shall be the duty of the Registrar of Conveyances to make an entire literal copy of all instruments required to be recorded in his office, in books suitable for that purpose, which shall be provided by the Minister of the Interior, and at the foot of said copy certify its correspondence with the original, after which he shall certify upon the exterior, or endorse upon said recorded instrument, the date of its registry, the book in his office in which, and the page of said book at which it was registered.

§1262. All deeds, leases for a term of more than one year, or other conveyances of real estate within this Kingdom, shall be recorded in the office of the Registrar of Conveyances, and every such conveyance not so recorded shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, not having actual notice of such conveyance, of the same real estate, or any portion thereof, whose conveyance shall be first duly recorded.

Aimes v. Ma-
kulu, 2 H.R. 166

Ellis v. White,
3 H. R. 205.

§1263. All mortgages of chattel property, indentures of apprenticeship, articles of marriage settlement, powers of attorney

Davis v. Spencer, 3 H. R. 274.

for the transfer of real estate within this Kingdom, and agreements of adoption, shall, in order to their validity, be recorded in the office of the Registrar of Conveyances, in default of which no such instrument shall be binding to the detriment of third parties, or conclusive upon their rights and interests.

§1264. The Registrar of Conveyances shall, when applied to therefor, furnish an attested copy of any instrument or document recorded in his office, and he shall also give certificates of search or incumbrance, or of any fact appearing upon his records, upon being paid the fees hereinbefore specified.

§1265. All records of instruments made in the office of the Registrar of Conveyances, anterior to the tenth day of July, A.D. 1850, whether in the book required by law or otherwise, shall be deemed to have been duly recorded.

April 27, 1846.
Not expressly
repealed in
Civil Code.

SECTION 13TH, ARTICLE 1ST, OF CHAPTER 2D, PART 5, OF THE
ACT TO ORGANIZE THE EXECUTIVE DEPARTMENT.

SECTION 13. All conveyances of real and personal property made and executed anterior to the passage of this Act, and all pledges of property, real or personal, executed anterior to the passage of this Act, the conditions of which have not been fulfilled when this Act is promulgated, shall be recorded in the office of the Registrar of Conveyances at the instance and expense of the grantee or mortgagee, within ninety days after the promulgation thereof; and all such conveyances and pledges not so registered, shall be void in law as against subsequent grantees and mortgagees of the same property, not having notice of the existence of such previous conveyances or pledges.

ARTICLE LII.—OF NOTARIES PUBLIC.

§1266. There shall be appointed by the King in Privy Council, upon the recommendation of the Minister of the Interior, one or more suitable persons in each of the gubernatorial divisions of

the Kingdom to be notaries public, and to hold office as such during His Majesty's pleasure.

§1267. No person who is not a subject of this Kingdom shall be eligible to the office of notary public; and every person appointed to that office shall, before entering thereon, take and subscribe an oath for the faithful discharge of his duties, which oath shall be filed in the Department of the Interior.

§1268. Every notary public shall constantly keep a seal of office, whereon shall be engraven his name, and the words "notary public," and "Hawaiian Islands."

§1269. It shall be his duty, when requested, to enter on record all losses or damages sustained or apprehended, by sea or land, and also all averages, and such other matters as, by mercantile usage, appertain to his office, and cause protest thereof to be made, duly and formally.

§1270. All facts, extracts from documents, and circumstances, so noted, shall be signed and sworn to by all the persons appearing to protest; and he shall note, extend and record the protest so made; and shall grant authenticated copies thereof, under his signature and notarial seal, to those who request and pay for the same. He shall also, in behalf of any person interested, present any bill of exchange, or other negotiable paper, for acceptance or payment to any party on whom the same is drawn, or who may be liable therefor; and notify all endorsers or other parties to such bill or paper; and he may, in general, do all the acts to be done by notaries public by the usages of merchants, or which are authorized by the laws of this Kingdom.

§1271. The protest of any foreign or inland bill of exchange, or promissory note or order, duly certified by any notary public, under his hand and official seal, shall be legal evidence of the facts stated in such protest, as to the same, and also as to the notice given to the drawer or endorser in any court of law.

§1272. Whenever any promissory note, bill of exchange, draft or order for the payment of money, payable at a future day, or at sight. and not on demand, shall become payable in this Kingdom, the maker of any such note, and the acceptor of any such bill of exchange, respectively, shall be entitled to a grace of three days, unless the third day happen to be Sunday, or a day of public fast or thanksgiving appointed by the King; in which excepted cases a grace of two days only shall be allowed.

§1273. Every notary public shall record at length in a book of records all acts, protests, depositions, and other things, by him noted or done in his official capacity; and all copies or certificates, by him granted, shall be under his hand and notarial seal, and shall be received as evidence of such transaction.

P. C.
Chap. LXXVI. §1274. On the resignation, removal from office, or death of any notary public, his records shall be deposited with the clerk of the nearest court of record to the place where his office was situated; and by a neglect for three months to comply with the above requisition, such notary, his executor or administrator, shall forfeit not less than fifty nor more than five hundred dollars, in the discretion of the court.

P. C.
Chap. LXXVI. §1275. All forfeitures under the last preceding section shall be one half to the Government, and the other half to him who shall sue for the same.

§1276. Every notary public shall be entitled to demand and receive the following fees, viz.:

1. For noting the protest of mercantile paper, two dollars;
2. For each notice and certified copy of protest, two dollars;
3. For noting any other protest, three dollars;
4. For every notice thereof, and certified copy of protest, three dollars;
5. For every deposition, or official certificate, two dollars.

CHAPTER XXVII.

OF COSTS IN THE JUDICIARY DEPARTMENT.

§1277. *In the District Courts:*

For every summons, warrant, attachment, execution or other process, issued by any district justice, one dollar.

For every subpoena, fifty cents.

For rendering and entering up judgment, one dollar.

For administering any oath, twelve and a half cents.*

For noting appeal, and making return upon the same to appellate court, one dollar.

Witnesses' Fees:—For every witness attending and sworn upon the trial of any civil case, twenty-five cents.

Constables' Fees:—For serving any warrant or summons, one dollar.

For serving any attachment, one dollar; and for a copy thereof, and an inventory of the property attached, to be left with the defendant, or at his last place of residence, one dollar.

For all necessary travel in serving summons, warrant, attachment, execution or other process, five cents per mile for every mile more than one.

For serving subpoena, twelve and a half cents for each witness.*

For serving any execution, ten cents for every dollar collected up to the amount of fifty dollars, and five cents for every dollar collected over fifty dollars.

§1278. *In the Police Courts:*

For every summons, warrant, attachment or other process, issued by any police justice, one dollar.

For every adjournment upon the motion of either party, twenty-five cents.

For every subpoena, fifty cents.

For administering any oath, twelve and a half cents.*

For filing any paper at the request of either party, twelve and a half cents.*

*By order of justices of the Supreme Court. Rule XVI. Whenever the statute cost is twelve and a half cents, only ten cents shall be taxed.

For rendering and entering up judgment, one dollar.

For every transcript of a judgment, fifty cents.

For every bond, or other security, drawn by the justice, one dollar.

For noting an appeal, twelve and a half cents*; and for making a return thereof, one dollar.

Witnesses Fees.—Every witness attending and sworn upon the trial of any civil case, twenty five cents; and when coming from any place out of the district, fifty cents for each day's actual attendance.

Constables' Fees.—For serving any summons, warrant, attachment or other process, one dollar.

For every copy of an attachment and inventory of the property attached, served upon the defendant, one dollar and fifty cents.

For serving any execution, ten cents for every dollar collected up to fifty dollars, and five cents for every dollar over fifty dollars.

For serving any subpoena, twelve and a half cents for each witness.*

For every mile of necessary travel, more than one, in serving any process, five cents.

For taking care of any property seized under an attachment, his reasonable and necessary expenses.

§1279. *In trials at Chambers before the Circuit Judges:*

For every summons, warrant, attachment or execution, one dollar.

For every subpoena, fifty cents.

For every adjournment on motion of either party, twenty-five cents.

For administering any oath, twelve and a half cents.*

For filing any paper on motion of either party, twenty-five cents.

For rendering and entering up judgment of record, one dollar.

For every transcript of a judgment, fifty cents.

For every bond or other written security drawn by the judge, one dollar.

For noting an appeal, fifty cents; and making a return thereof, one dollar.

*By order of Justices of the Supreme Court. Rule XVI. Whenever the statute cost is twelve and a half cents, only ten cents shall be taxed.

Witnesses' Fees.—Every witness attending and sworn upon the trial of any civil case, twenty-five cents; and when coming from any place out of the district where the court is holden, fifty cents for each day's actual attendance.

Constables' Fees.—The fees of constables shall be the same as those prescribed in the last preceding section, for police courts.

TO REDUCE CERTAIN COSTS IN THE SUPREME, CIRCUIT AND PROBATE COURTS, AND TO ESTABLISH ATTORNEYS' FEES.

Be it Enacted by the King and the Legislative Assembly of the Hawaiian Islands, in the Legislature of the Kingdom assembled:

SECTION 1. That in the Supreme and Circuit Courts, the costs for every summons, attachment, execution or other process, shall be two dollars, for every subpoena one dollar; and there shall be no charge for drawing jury, issuing summons, and the service thereof on the panel of jurors.

SECTION 2. That the marshal's or sheriff's fees for serving a summons or any other process (except a subpoena) shall be one dollar for each party served therewith; for serving any execution or other process for the collection of money, five cents for every dollar collected up to five hundred dollars, and two and one half cents for every dollar over five hundred dollars; for every writ of possession or restitution, putting any person entitled into the possession of premises and removing a tenant pursuant to order of court one dollar, and that no fee be charged for attendance upon the Court.

SECTION 3. That the judge's fee for every attendance at chambers upon the hearing of any motion shall be one dollar.

SECTION 4. That in the probate courts the costs for every citation or summons shall be one dollar; for every subpoena one dollar; for hearing proof and determining upon the validity of any will, two dollars; for taking, stating and determining upon an account rendered, or deciding upon the distribution of personal estate, one dollar; for hearing and determining any objection to

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1872,
Chap. XXIX.

the appointment of an administrator or any application for his removal, or for the removal of any guardian, or any application to annul the probate of a will, one dollar : provided that in all cases where the value of the estate shall not exceed the sum of five hundred dollars, not more than ten dollars in addition to costs of advertising, shall be charged for costs of court, to comprehend all hearings and proceedings required by statute or ordered by the court, including final hearing and discharge of the executor, administrator, guardian or trustees.

SECTION 5. In all the courts of this Kingdom, in all actions of assumpsit there shall be taxed as attorneys' fees, in addition to the attorneys' fees now taxable by law, to be paid by the losing party and to be included in the sum for which execution may issue, ten per cent. on all sums to one hundred dollars, and two and one-half per cent. in addition on all sums over one hundred dollars, to be computed on the excess over one hundred dollars. The above fee shall be assessed on the amount of the judgment obtained by the plaintiff and upon the amount sued for, if the defendant obtain judgment.

SECTION 6. This Act shall take effect and become a law from the day of its passage, and all laws and parts of laws inconsistent with the provisions of this Act are hereby repealed.

Approved this 29th day of July, 'A.D. 1872.

§1280. *In the Circuit and Supreme Courts :*

For filing any petition, plea or other paper, at the request of either party, twenty-five cents.

Amendment. For every summons, attachment, execution or other process, two dollars.

For entering any petition, process, plea or other proceeding, of record, twenty-five cents per folio.

Amendment. For every subpoena, one dollar.

Amendment. For drawing jury and issuing summons for same, no charge.

For calling and swearing any jury, one dollar.

For swearing each witness on trial, twelve and a half cents.*

*By order of Justices of the Supreme Court. Rule XVI. Whenever the statute cost is twelve and a half cents, only ten cents shall be taxed.

For swearing sheriff or other officer, to take charge of a jury, twelve and a half cents.*

For entering any cause on the calendar for the court, and making a copy thereof for the use of the bar, one dollar.

For receiving and entering a verdict or award, one dollar,

For docketing a judgment, one dollar.

For every transcript of a judgment, one dollar.

For entering satisfaction of a judgment, one dollar.

For every search of record, and certificate made at the request of any party, fifty cents.

For every assessment of damages upon a promissory note or other instrument, one dollar.

For entering any rule, order or decree of court, and for every copy of the same, twenty-five cents per folio.

For entering any discontinuance, nonsuit or default, one dollar.

For drawing any bond or other written security, one dollar.

For serving any notice upon either party, one dollar.

†*Attorneys' Fees*.—For drawing any petition or plea, three dollars; and for every copy thereof, one dollar and fifty cents.

For every notice of trial, copy and service, one dollar.

For every other notice in any cause, copy and service, one dollar.

For attending upon the trial of any cause, or the argument of any motion, three dollars.

For drawing a bill of costs, copy and service, one dollar.

For every attendance before a judge on taxation of costs, one dollar.

For every motion for judgment, and other like motions, fifty cents.

All actual disbursements sworn to by an attorney, and deemed reasonable by the taxing officer, may be allowed in taxation of costs.

Marshal's or Sheriff's Fees.—For serving a summons, or any other process, (except a subpœna) one dollar for each party served therewith. Amendment.

For serving subpœna, fifty cents for each witness.

†For attorneys' fees in actions of assumpsit, see Sec. 5 of Act 1872, XXIX.

*By order of Justices of the Supreme Court. Rule XVI. Whenever the statute cost is twelve and a half cents, only ten cents shall be taxed.

For all necessary travel in making such service, ten cents per mile for every mile more than one.

For a copy of any summons, petition, or other process, one dollar and fifty cents.

Amendment. For serving any execution, or other process for the collection of money, five cents for every dollar collected up to five hundred

Amendment. dollars, and two and one-half cents for every dollar over five hundred dollars. All fees paid to any printer for publishing an advertisement of the sale of any property.

For every bill of sale, one dollar.

For drawing, executing and acknowledging a deed pursuant to a sale of real estate, five dollars, to be paid by the grantee in such deed.

For drawing any bond required by law, one dollar.

For summoning any panel of jurors to attend at any term of court, five dollars.

For summoning any special jury, three dollars.

Amendment. For serving writ of possession, or of restitution, putting any person entitled into the possession of premises, and removing a tenant pursuant to the order of a court, one dollar.

For bringing up a prisoner for trial, or upon *habeas corpus* to testify or answer in court, one dollar.

For selling any property on an order from the court other than an execution, the same allowance as for service and sales by execution.

Amendment. For attending on the court, no charge.

The fees for service of executions and collection of judgments, together with all other costs incurred after judgment rendered, not included in the judgment, shall, in all the courts of the Kingdom, be collected in addition to the sum directed to be levied and collected in the execution.

Witnesses' and Jurors' Fees.—One dollar for each day's attendance upon the court; and when they do not reside in the town where such court is held, five cents per mile for their necessary travel in going to and returning from the court. Jurors shall also be allowed fifty cents for every case in which they return a verdict.

TO FIX THE PAY OF JURORS.

SECTION 1. From and after the date of the passage of this Act, the pay of Jurors shall be as follows: Two dollars for each day's attendance in Court; five cents for each mile of travel in coming to and returning from Court, and one dollar for every verdict returned. Act
1882,
Chap. XXIV.

SECTION 2. This Act shall become a law from and after the date of its approval, and the words "and Jurors' fees" in the seventieth line, and the words "Jurors shall also be allowed fifty cents for every case in which they return a verdict" in the seventy-third and seventy-fourth lines, and the words "Jurors and" in the seventy-fifth line of Section 1280 of the Civil Code shall be and the same are hereby repealed.

The fees of jurors and witnesses shall be taxable items in the bill of costs to be paid by the losing party.

Judge's Fees:—For every attendance at chambers upon the hearing of any motion, one dollar. Amendment.

For every order for a commission to examine witnesses, or for letters rogatory, three dollars.

For attending, settling and certifying interrogatories to be annexed to a commission, or letters rogatory, three dollars.

For every order for the examination of a witness conditionally, or upon any proceeding to perpetuate his testimony, one dollar.

For every day's attendance upon the examination of such witness, five dollars.

For every necessary order in the progress of a cause, one dollar.

For taxing bill of costs, one dollar.

For attendance in settling case, or bill of exceptions, one dollar.

For taking the acknowledgment of satisfaction of a judgment, one dollar.

For endorsing allowance on any process of constraint to the person or property of a party, one dollar.

For taking a bond in any case when a bond is required by law, one dollar.

For taking the oath or affidavit of any person, twenty-five cents.

For attending to the selection of referees and certifying their appointment, three dollars.

For every order, warrant, attachment, or other process made or issued in any special proceeding, five dollars.

For every notice to any party, officer or person, required to be given by any judge, one dollar.

For every report, and all other papers which he may be required by law to prepare in order to be signed by himself, twenty-five cents per folio.

§1281. *In the Probate Courts:*

Amendment. For every citation or summons, one dollar.

Amendment. For every subpoena, one dollar.

For every copy of a citation or subpoena, one dollar.

For every certificate of the proof of a will, endorsed thereon; and for ever other necessary certificate, fifty cents.

Amendment. Hearing proof and determining upon the validity of any will, two dollars.

For recording every will, with the proof thereof, letters testamentary, letters of administration, appointment of a guardian, and every other proceeding or order necessary to be recorded, twenty-five cents per folio.

For copies and exemplifications of the probate of a will, letters testamentary or of administration, or of any other proceeding or order had before a judge or court having probate powers, twenty-five cents per folio.

For the appointment of any administrator, guardian, or appraiser, two dollars.

For administering any oath to administrator, appraiser, or guardian, twenty-five cents.

For every bond taken from any administrator or guardian, or in any other case where a bond is required, one dollar.

For taking, entering and filing renunciation of any person entitled to be appointed an administrator, or guardian, one dollar.

For filing an inventory, or final account, and entering the same of record, twenty-five cents per folio.

For making any order for the sale of real estate, and for every other necessary order, one dollar.

For taking, stating and determining upon an account rendered, or deciding the distribution of personal estate, one dollar for the case. Amendment.

For hearing and determining any objection to the appointment of an administrator, or any application for his removal, or for the removal of any guardian, or any application to annul the probate of a will, one dollar. Amendment.

For hearing and deciding any application to lease, mortgage or sell real estate, three dollars.

Searching records of office and giving certificate, one dollar.

For every appointment of commissioners to admeasure dower, or to make partition of real estate, two dollars.

For hearing and determining upon the report of such commissioners, two dollars.

All actual disbursements for printing.

For receiving and distributing any money on the sale of real estate, a commission of five per cent. on all sums up to the amount of five hundred dollars, and two and a half per cent. on all sums over five hundred dollars.

Fees of Executors, Administrators and Guardians:—For receiving and paying out moneys, ten cents for every dollar up to and not exceeding one thousand dollars; seven cents for every dollar over one thousand, up to and not exceeding five thousand dollars; five cents for every dollar over five thousand dollars; and such additional allowance for their actual expenses as the judge or court shall deem just and reasonable. Where provision shall be made by any will for specific compensation to an executor, the same shall be deemed a full satisfaction for his services, in lieu of the fees hereinbefore prescribed, unless such executor shall by a written instrument, to be filed with the court or judge, renounce all claim to such specific compensation. Est. of F. Mol-
teno, 3 H.R. 288

Fees of Commissioners and Appraisers:—For every day's actual and necessary attendance in admeasuring dower, partitioning real estate, or appraising property, five dollars; and all actual disbursements for surveying, plans, &c.

Witnesses', Marshal's or Sheriff's Fees:—Shall be such as the court or judge shall deem just and reasonable.

In all probate matters, where the value of the estate to be administered upon shall not exceed one hundred dollars, no costs shall be charged except those of actual disbursements. And where the value of the estate shall be more than one hundred dollars, and not exceed the value of five hundred dollars, the judge shall have power to diminish the costs in his discretion, whenever the circumstances of the parties interested shall seem to demand it.

All judges', justices' and clerks' fees, provided for in this chapter, shall be accounted for, quarterly, to the Minister of Finance, for the benefit of the public treasury.

§1282. The Justices of the Supreme Court shall have power, from time to time, to revise the costs and fees provided in this chapter, but not to increase the same; and also to prescribe such costs and fees as they shall deem reasonable, in all cases not therein provided for.