WEST VIRGINIA CODE CHAPTER 56 ARTICLE 6

§56-6-1. Law docket.

Before every term of a circuit court, or any other court of record exercising jurisdiction in the trial or hearing of actions at law, the clerk shall make out a docket of the following cases pending, to wit: First, cases of the state; secondly, motions and actions, in the order in which the notices of the motions were filed, or in which the proceedings at rules in the actions were terminated, docketing together as new cases those not on the docket at the previous term. He shall, under control of the court, set the cases to certain days; and the docket shall be called and the cases on it tried or disposed of for the term in that order, except that the court may for good cause take up any case out of turn.

§56-6-2. Chancery docket.

Before every term of a circuit court, or any other court exercising jurisdiction in the hearing of suits in chancery, the clerk shall make out a separate docket of chancery cases in which there are motions, and of other chancery cases which have been set for hearing as to any party, or which the court is to hear upon a plea or demurrer; and during such term every cause on such docket shall be called and disposed of.

§56-6-3. Application for hearing.

Any party asking the court to hear a case may, if the court refuses to hear it, have his application spread upon the record, with a statement of the facts in relation thereto.

§56-6-4. Direction and trial of issues out of chancery.

Any court, wherein is pending a chancery case in which there is such a conflict in the evidence as, in the opinion of such court, to render it proper, may direct an issue thereon to be tried in such court. And the court shall have the discretion to direct such an issue to be tried before any proof has been taken by either the plaintiff or the defendant, if it shall be shown by affidavit or affidavits, after reasonable notice, that the case will be rendered doubtful by the conflicting evidence of the respective parties. Although the verdict on such issue may be set aside, there shall be no new trial thereof, but the court may proceed to decree as if no issue had been directed. No issue out of chancery shall be directed in any other case unless specially authorized by statute. Nothing in this section shall be construed to conflict with any of the provisions of chapter forty- one of this code.

§56-6-5. Trial of action at law; separate verdicts on different issues; interrogatories to jury.

Any court of record having jurisdiction of the trial of common-law actions may, in any case before it other than a chancery case, have an issue tried, or an inquiry of damages made, by a jury, and determine all questions concerning the legality of evidence and other matters of law which may arise. Upon the trial of any issue or issues by a jury, whether under this section or not, the court may, on motion of any party, direct the jury, in addition to rendering a general verdict, to render separate verdicts upon any one or more of the issues, or to find in writing upon particular questions of fact to be stated in writing. The action of the court upon such motions shall be subject to review as in other cases. Where any such separate verdict or special findings shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

§56-6-6. Time for trial, execution of order and rendering of final judgment.

At the next term after an order at the rules for an inquiry of damages, such order may be executed and a final judgment rendered thereupon, unless good cause be shown for a continuance.

§56-6-7. Continuance upon affidavit because of absence of witness.

If in any case a continuance be asked because of the absence of a witness, an affidavit must be filed, if required by any party opposing, setting forth, in addition to other matters required in order to obtain a continuance, the name of the witness and the testimony he is expected to give, and the affiant must, if required by any opposing party, submit to cross-examination in open court upon the matters set forth in such affidavit.

§56-6-8. Continuance of causes at end of term.

All causes on the docket of any court, and all other matters ready for its decision which shall not have been determined before the end of a term, whether regular, adjourned or special, shall, without any order of continuance, stand continued until the next term.

§56-6-9. Case not to be discontinued by failure to sign judgment.

When a defendant has demurred to, filed a plea to, or otherwise put in issue, a part of the plaintiff's claim and has left the residue of such claim unanswered, the case shall in no event be discontinued merely because the plaintiff has failed to sign judgment as to the unanswered residue; but the plaintiff may, at any term of court at or after which such demurrer or plea is filed or such part of the plaintiff's claim is otherwise put in issue, before or after trial of the issue as to the part answered, provided the case shall not have been discontinued under some other provision of law, take judgment by nil dicit as to such unanswered residue.

§56-6-10. Stay of proceedings until other action, suit or proceeding decided.

Whenever it shall be made to appear to any court, or to the judge thereof in vacation, that a stay of proceedings in a case therein pending should be had until the decision of some other action, suit or proceeding in the same or another court, such court or judge shall make an order staying proceedings therein, upon such terms as may be prescribed in the order. But no application for such stay shall be entertained in vacation until reasonable notice thereof has been served upon the opposite party.

§56-6-11. Execution of order of inquiry and trial of case by court; six-member jury in civil trials; twelve-member jury in eminent domain and criminal trials.

(a) The court, in an action at law, if neither party requires a jury, or if the defendant has failed to appear and the plaintiff does not require a jury, shall ascertain the amount the plaintiff is entitled to recover in the action, if any, and render judgment accordingly. In any case, in which a trial by jury would be otherwise proper, the parties or their counsel, by consent entered of record, may waive the right to have a jury, and thereupon the whole matter of law and fact shall be heard and determined, and judgment given by the court. Absent such waiver, in any civil trial a jury shall consist of six members and in any criminal trial a jury shall consist of twelve members.

(b) The provisions of this section do not apply to any proceeding had pursuant to article two, chapter fifty-four of this code, the provisions of which apply to all cases involving the taking of property for a public use.

§56-6-12. Qualifications of jurors; examination on voir dire; peremptory challenges.

Either party in any action or suit may, and the court shall on motion of such party, examine on oath any person who is called as a juror therein, to know whether he is a qualified juror, or is related to either party, or has any interest in the cause, or is sensible of any bias or prejudice therein; and the party objecting to the juror may introduce any other competent evidence in support of the objection; and if it shall appear to the court that such person is not a qualified juror or does not stand indifferent in the cause, another shall be called and placed in his stead for the trial of that cause. And in every case, unless it be otherwise specially provided by law, the plaintiff and defendant may each challenge four jurors peremptorily.

§56-6-12a. Alternate jurors for protracted civil cases; qualifications and challenges.

In any civil case, whenever in the opinion of the court the trial is likely to be a protracted one, the court may direct that not more than four jurors, in addition to the regular jury, be called and impaneled to sit as alternate jurors. Said alternate jurors shall be chosen from a separate panel of six after the regular jury of six or twelve, as the case may be, has been selected. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impaneled, and two peremptory challenges if three or four alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by this section may not be used against an alternate juror.

§56-6-13. Special jury in civil cases.

(a) Except as provided in subsection (b) of this section, any court may allow a special jury in any civil case, to be formed in the following manner: The court shall direct a panel of ten jurors to be drawn by the clerk, in the presence of the court, from the box mentioned in section seven, article one, chapter fifty-two of this code, who shall be summoned by the sheriff to attend on the day named in the order, from which number eight shall be chosen by lot; and the parties thereupon, the plaintiff's attorney beginning, shall alternately strike off one until the number be reduced to six, which number shall complete the jury for the trial of the case. The court may also allow a special jury in any civil case when the panel of drawn jurors is exhausted, upon the motion of either of the parties, to be summoned by the sheriff so far as may be required from the body of the county; but no such special jury shall be allowed in any case unless the court certifies of record that the interest of the parties so asking such jury will be promoted by the allowance of such special jury.

(b) In any case held pursuant to article two, chapter fifty-four of this code, for the taking of property for a public use, any court may allow a special jury to be formed in the following manner: The court shall direct a panel of twenty jurors, who are qualified freeholders of the county wherein the property to be taken is situate, to be drawn by the clerk, in the presence of the court, from the box mentioned in section seven, article one, chapter fifty-two of this code, who shall be summoned by the sheriff to attend on the day named in the order, from which number sixteen shall be chosen by lot; and the parties thereupon, the plaintiff's attorney beginning, shall alternately strike off one until the number be reduced to twelve, which number shall complete the jury for the trial of the case, but no such special jury shall be allowed in any case unless the court certifies of record that the interest of the parties so asking such jury will be promoted by the allowance of such special jury.

§56-6-14. Juror having matter of fact to be tried disqualified.

No person shall serve as a juror at any term of a court during which he has any matter of fact to be tried by a jury, which shall have been, or is expected to be, tried during the same term.

§56-6-15. Exceptions against jurors after being sworn.

No exception shall be allowed against a juror, after he is sworn upon the jury, on account of his age or other legal disability, unless by leave of court.

§56-6-16. Irregularities affecting the jury; time for objection.

No irregularity in any writ of venire facias, or in the drawing, summoning, or impaneling of jurors, shall be sufficient to set aside a verdict, unless objection specifically pointing out such irregularity was made before the swearing of the jury, or unless the party making the objection was injured by the irregularity.

§56-6-17. View by jury.

The jury may, in any case, at the request of either party, be taken to view the premises or place in question, or any property, matter or thing relating to the controversy between the parties, when it shall appear to the court that such view is necessary to a just decision, and in such case the judge presiding at the trial may go with the jury and control the proceedings; and in a felony case the judge and the clerk shall go with the jury and the judge shall control the proceedings, and the accused shall likewise be taken with the jury or, if under recognizance, shall attend the view and his recognizance shall be construed to require such attendance. The party making the motion, in a civil case, shall advance a sum sufficient to defray the expenses of the jury and the officers who attend them in taking the view, which expenses shall be afterwards taxed like other legal costs.

§56-6-18. Disclosure by juror of knowledge of facts in issue.

A juror knowing anything relative to a fact in issue shall disclose the same in open court, but not to the jury out of court; and the court shall inform the jury of this provision.

§56-6-19. Instructions to jury generally; form and manner of giving.

Upon the trial of any case, civil or criminal, before a jury, either party may pray the court to give to the jury any instruction which has been reduced to writing and submitted to the other party. Such other party may object to the giving of such instruction. Every such instruction which shall propound correctly law applicable to the case not covered by other instructions shall be given by the court to the jury as a part of a written charge by the court to the jury, as hereinafter provided, in case such charge be given, and otherwise shall be given as an independent instruction. The court may, on its own motion, whether requested or not, in writing define to the jury the issues involved and instruct them on the law governing the case, but all such instructions shall first be submitted to counsel on each side with opportunity to object thereto. In lieu of the giving of separate instructions as herein provided, the court may in writing instruct upon the law governing the case, putting such instructions in the form of an orderly and connected charge, incorporating therein the substance and, as far as may be, the language of the instructions prayed upon either side or prepared by the court on its own motion, with correctly propounded law applicable to the case, which written charge shall first be submitted to counsel on each side with opportunity to specify and object to any part thereof. No objections shall lie to the action of the court upon any instruction of the law to which it relates shall have been correctly stated by the court in such charge. The action of the court upon every instruction prayed, whether such instruction be given as asked or as modified, independently or as part of the court's charge, or be refused, shall be noted upon the margin thereof by the judge over his signature. Either party may except to any and every ruling by the court adverse to the prayer or objection by him with respect to any such instruction.

§56-6-20. Reading instructions to jury; instructions part of record.

All instructions given shall be read by the court to the jury as the action and ruling of the court, without reference to or disclosing the party by whom they may have been prayed. Every instruction or charge in writing read to the jury and every instruction or charge in writing prayed by any party and refused by the court, provided, in either case, that such instruction or charge have a notation thereon showing the action of the court with reference thereto over the signature of the judge, as provided in the preceding section, shall, together with the objections and exceptions thereto, indorsed thereon, be a part of the record in the case and shall be included and copied in any transcript of the record without the formality of a bill of exceptions or any formal certification provided for in subsequent sections of this article.

§56-6-21. Time for examining instructions, objecting thereto and settlement thereof.

The court shall, in the absence of any rule for such purpose prescribed by the Supreme Court of Appeals, under the provisions of section four, article one, chapter fifty-one of this code by suitable general rules, prescribe the stages of the trial, at which instructions must be presented to the opposing counsel and to the court, at which objections may be made to charges and instructions prepared by the court, and at which the instructions and charge shall be settled by the court and read by it to the jury; all of which being subject to the power of the court in a particular case to make exceptions to such rules when good cause therefor shall appear and justice may so require.

§56-6-22. Oral instructions by court; written instructions during trial.

Nothing in the three next preceding sections contained shall affect the power of the court during the trial of the case to instruct the jury orally concerning matters not proper for their consideration or concerning the conduct of any person in connection with the trial; or, otherwise, on its own motion to instruct the jury in writing on the law of the case at any stage during the trial, subject to the right of exception by either party.

§56-6-23. Papers taken by jury.

Depositions or other papers read in evidence may, by leave of the court, be carried from the bar by the jury.

§56-6-24. Argument of counsel.

Not more than two counsel shall argue in a civil case on the same side, unless by leave of court, and the argument of each counsel shall not occupy more than two hours, unless by like leave. The court may, in its reasonable discretion, still further limit the time of argument on each side.

§56-6-25. Time limitation as to nonsuit.

A party shall not be allowed to suffer a nonsuit, unless he do so before the jury retire from the bar.

§56-6-26. How verdict may be affected by faulty count.

When there are several counts in a declaration, one or more of which are faulty, the defendant may demur to the faulty count or counts, or move the court to instruct the jury to disregard them. If he does neither, and entire damages be found, judgment shall be entered against the defendant for the damages found, if any count be good, although others be faulty, unless the court can plainly see that the verdict could not have been found on the good count. If he demurs to the faulty count, or moves the court to instruct the jury to disregard it, and his demurrer or motion is overruled, and entire damages be found, and it cannot be seen on which count the verdict was founded, if the jury has been discharged the verdict shall be set aside, but if it is manifest that the verdict could not have been found on the bad count, the verdict shall be allowed to stand. If the jury has not been discharged, the court shall send it back with instructions to designate on which count of the declaration its verdict is found.

§56-6-27. Interest on claim and verdict.

The jury, in any action founded on contract, may allow interest on the principal due, or any part thereof, and in all cases they shall find the aggregate of principal and interest due at the time of the trial, after allowing all proper credits, payments and sets-off; and judgment shall be entered for such aggregate with interest from the date of the verdict.

§56-6-28. New trial.

In any civil case or proceeding, the court before which a trial by jury is had may grant a new trial, unless it be otherwise specially provided. A new trial may be granted as well where the damages are too small as where they are excessive. Not more than two new trials shall be granted to the same party in the same cause on the ground that the verdict is contrary to the evidence, either by the trial court or the appellate court, or both.

§56-6-29. Judgment or decree to be for aggregate of principal and interest to date of verdict.

When there is a recovery on a bond conditioned for the payment of money, as well as in all cases where a judgment or decree is rendered or made for the payment of money, it shall be for the aggregate of principal and interest due at the date of the verdict, if there be one, otherwise at the date of the judgment or decree, with interest thereon from the date of such verdict, if there be one, otherwise from the date of such judgment or decree, except in cases where it is otherwise provided. In any action founded on a tort, if the verdict be for the plaintiff, the judgment shall be for the amount of the verdict with interest thereon from the date of the verdict.

§56-6-30. Action on contract for payments in installments or on bond with collateral condition.

In an action on an annuity bond, or a bond for money payable by installments, where there are further payments of the annuity, or further installments to become due after the commencement of the action, or in any other action for a penalty for the nonperformance of any condition, covenant or agreement, the plaintiff may assign as many breaches as he thinks fit. If there be judgment for the plaintiff on a demurrer, or by confession, or by default, or nil dicit, he may so assign after such judgment. The jury impaneled in any such action shall ascertain the damages sustained, or the sum due by reason of the breaches assigned, including interest thereon to the date of the verdict, and judgment shall be entered for what is so ascertained: Provided, That if the action be on such annuity bond, or a bond for money payable by installments, such judgment shall also be for such further sums as may afterward be assessed or be found due upon a scire facias assigning a further breach. Such scire facias may be sued out from time to time by any person injured, against the defendant or his personal representative, and, for what may be assessed or found due upon the new breach or breaches assigned, execution may be awarded.

§56-6-31. Interest on judgment or decree.

(a) Except where it is otherwise provided by law, every judgment or decree for the payment of money, whether in an action sounding in tort, contract, or otherwise, entered by any court of this state shall bear simple, not compounding, interest, whether it is stated in the judgment decree or not.

(b) Prejudgment – In any judgment or decree that contains special damages, as defined below, or for liquidated damages, the court may award prejudgment interest on all or some of the amount of the special or liquidated damages, as calculated after the amount of any settlements. Any such amounts of special or liquidated damages shall bear simple, not compounding, interest. Special damages include lost wages and income, medical expenses, damages to tangible personal property and similar out-of-pocket expenditures, as determined by the court. If an obligation is based upon a written agreement, the obligation bears prejudgment interest at the rate and terms set forth in the written agreement until the date the judgment or decree is entered and, after that, the judgment interest is the same rate as provided for below in subsection (c) of this section.

(1) Notwithstanding the provisions of section five, article six, chapter forty-seven of this code, the rate of prejudgment interest is two percentage points above the Fifth Federal Reserve District secondary discount rate in effect on January 2, of the year in which the right to bring the action has accrued, as determined by the court and that established rate shall remain constant from that date until the date of the judgment or decree, notwithstanding changes in the federal reserve district discount rate in effect in subsequent years prior to the date of the judgment or decree: Provided, That the rate of the prejudgment interest may not exceed nine percent per annum or be less than four percent per annum. The administrative office of the Supreme Court of Appeals shall annually determine the prejudgment interest rate to be paid upon judgment or decrees for the payment of money and shall take appropriate measures to notify the courts and members of the West Virginia State Bar of the rate of interest in effect for the calendar year in question. Once the rate of prejudgment interest is established as provided in this section, that established rate shall remain constant for the prejudgment interest for that particular judgment or decree, notwithstanding changes in the Federal Reserve District discount rate in effect in subsequent years.

(2) Notwithstanding subsection (b)(1) of this section and section five, article six, chapter forty-seven of this code, for all cases in which the right to bring the action accrued prior to 2009, the court may award prejudgment interest on all or some of the amount of the special or liquidated damages, as calculated after the amount of any settlement, at the interest rate that was in effect as of January 2, of the year in which the right to bring the action accrued.

(c) Post-judgment - Notwithstanding the provisions of section five, article six, chapter forty-seven of this code, the rate of post-judgment interest on judgments and decrees for the payment of money is two percentage points above the Fifth Federal Reserve District secondary discount rate in effect on January 2, of the year in which the judgment or decree is entered: Provided, That the rate of post-judgment interest may not exceed nine percent

per annum or be less than four percent per annum. The administrative office of the Supreme Court of Appeals shall annually determine the post-judgment interest rate to be paid upon judgments or decrees for the payment of money and shall take appropriate measures to promptly notify the courts and members of the West Virginia State Bar of the rate of interest in effect for the calendar year in question. Once the rate of interest is established by a judgment or decree as provided in this section that established rate shall after that remain constant for that particular judgment or decree, notwithstanding changes in the Federal Reserve District discount rate in effect in subsequent years.

(d) Amendments to this section enacted by the Legislature during the 2017 regular session become effective January 1, 2018.

§56-6-32. Recovery against one or more contract defendants.

In an action or motion, founded on contract, against two or more defendants, the fact that one or more of the defendants, at any stage of the cause or for any reason, is found not liable on the contract shall not prevent the plaintiff from having, as if the motion or action were an action founded on tort, verdict and judgment, or judgment alone, as the case may be, against any other defendant or defendants who are liable; nor shall the fact that a verdict is set aside as to one or more of the defendants in such action or motion as contrary to the evidence prevent the plaintiff from having judgment on such verdict as to any other defendant or defendants found liable thereby.

§56-6-33. Judgment or decree against personal representative or committee; costs.

A judgment or decree against any person as the personal representative of a decedent or committee of a convict or insane person, for a debt due from such decedent, convict or insane person, may, without taking an account of the transactions of such representative or committee, be ordered to be paid out of the personal estate of such decedent, convict or insane person, in, or which shall come to, the hands of the representative or committee to be administered. When the court enters of record that, if he had prudently discharged his duty, the suit or motion would not have been brought or made, the judgment or decree, so far as it is for costs, shall be ordered to be paid out of his own estate.

§56-6-34. Issuance of executions during term.

Any circuit court or other court of record, after the fifteenth day of its term, may make a general order allowing executions to issue on judgments or decrees after ten days from their date, although the term at which they are rendered be not ended. For special cause it may, in any particular case, except the same from such order, or allow an execution thereon at an earlier period.

§56-6-35. Bills of exceptions generally.

In the trial of a case at law in which a writ of error or supersedeas lies to the court of appeals, a party may except to any action or opinion of the court and tender a bill of exceptions; and if the action or opinion of the court be upon any question involving the evidence or any part thereof, either upon a motion for a new trial or otherwise, the court shall certify all the evidence touching such question, and the judge shall sign any such bill of exceptions (if the truth of the case be fairly stated therein), and it shall be made a part of the record in the case, and the whole of the evidence so certified shall be considered by the court of appeals, both upon application for and hearing of the writ of error or supersedeas. If any judge refuse to sign such bill of exceptions, he may be compelled to do so by the court of appeals by mandamus; in which case the bill of exceptions shall be a part of the record to the same extent as if it had been signed by the judge at the proper time. Any party may avail himself of any error appearing on the record, by which he is prejudiced, without obtaining a formal bill of exceptions, provided he objects or excepts on the record to the action of the court complained of, and provided it is such a matter as can be considered without a formal bill of exceptions. In all cases an objection noted on the record shall have the same effect as if followed by a formal exception to the ruling of the court thereon, and no exception shall be necessary in order to permit the party so objecting to avail himself thereof. Any bill of exceptions may be tendered to the judge and signed by him in term or in vacation, at any time before final judgment is entered, or within sixty days after the adjournment of the term at which such judgment is entered; or if such judgment shall be entered in vacation, then within sixty days, from the time when such judgment is entered; and the court or judge may, by order entered of record, extend the time within which such bill may be tendered, signed and certified beyond such period of sixty days. If such bill of exceptions be signed by the judge in vacation, he shall certify the same to the clerk of the court, who shall enter the certification upon the order book of such court, and any such bill of exceptions so made in vacation shall be a part of the record and have the same effect as if made in term.

§56-6-36. Certificate in lieu of bill of exceptions.

In lieu of the bill of exceptions provided by the preceding section, it shall be sufficient that any matter intended to become a part of the record in any case shall be certified as provided in the following provisions of this section:

(a) Certificate of all the evidence and proceedings reported. -- Whenever, for any purposes of a review by any appellate court of any action, ruling, order, judgment, or matter arising in the course of the trial or hearing of a cause, a consideration of the evidence or any part thereof, or of any other matter properly appearing in the transcript of the stenographic notes prepared by the stenographic reporter who took notes of the evidence and proceedings, may be necessary for a decision upon an appeal or writ of error of any question involved in such review, and any party seeking to bring matters into the record shall desire that all the evidence and proceedings so noted by such reporter shall become a part of the record, the trial judge shall, if in his opinion such transcript be a true report of the evidence and proceedings, certify, over his signature, such transcript or a copy thereof. Such certificate shall be inserted or appended at the end of such transcript and may be substantially as follows:

The foregoing transcript contains all the evidence and testimony introduced or reported, and all the proceedings reported, on the trial of this cause. Teste: This ..... day of ....., 19 ....., ..., Judge;

(b) Certificate of part of the evidence or proceedings reported. -- If the party seeking to bring matters into the record shall desire, in lieu of making the entire transcript a part of the record as provided in the preceding subdivision, to make some specific part or parts of the evidence or proceedings properly recorded in the stenographic notes a part of the record, the reporter shall transcribe such part or parts, and the trial judge shall, if in his opinion such transcript state the truth, certify over his signature, such transcript thereof. If the part or parts of the evidence or proceedings so transcribed shall day of ....., 19 ....., ..., Judge;

(b) Certificate of part of the evidence or proceedings reported. -- If the party seeking to bring matters into the record shall desire, in lieu of making the entire transcript a part of the record as provided in the preceding subdivision, to make some specific part or parts of the evidence or proceedings properly recorded in the stenographic notes a part of the record, the reporter shall transcribe such part or parts, and the trial judge shall, if in his opinion such transcript state the truth, certify over his signature, such transcript thereof. If the part or parts of the evidence or proceedings so transcribed shall not, as so detached from the residue of the evidence or

(c) Certificate of exceptions as to miscellaneous matters. -- In the case of an exception by any party to any action, ruling, order or judgment of any trial court, or of any other matter arising in the course of the trial or hearing of a cause, and not reported in the official transcript of the evidence and proceedings, or otherwise made a part of the record, it shall

be sufficient, instead of a bill of exceptions, that the trial judge shall certify that any party excepted to such action, ruling, order, judgment or matter. In any such case, the body of such certificate shall set out the subject matter of such action, ruling, order, judgment or matter, in such manner as to make intelligible any question of error arising upon such exception, and shall note the fact that the party excepted, but no particular formality in the statement thereof shall be necessary. Such certificate may conclude substantially as follows:

Approved this .... day of ....., 19.., ..., Judge;

(d) Effect of certification in accordance with this section. -- In all cases, in order to preserve of record to all intents and purposes any exception to any action, ruling, order or judgment of the trial court, or any matter arising in the course of the trial or hearing of a cause, it shall be sufficient that the trial judge, on the application of any party, shall certify the same simply and substantially in accordance with the provisions of this section;

(e) When certificate may be signed. -- Any certificate to the intents and purposes of this section may be signed by the trial judge, in term or in vacation, at any time before final judgment is entered, or within sixty days after the adjournment of the term at which such judgment is entered; or if such judgment be entered in vacation, then within sixty days from the time when such judgment is entered; and the court or judge may, by order entered of record, extend the time within which such certificate may be signed beyond such period of sixty days.

§56-6-36a. Settling, signing and certifying bill of exceptions or certificate in lieu thereof by judge other than judge before whom case was tried.

In the event of the death or resignation of, or the expiration of the term of office or a vacancy in the office for any other cause of, the judge before whom a case was tried, or in the event the trial judge becomes physically or mentally incapable of discharging the duties of his office, a bill of exceptions as provided for by section thirty-five of this article or a certificate in lieu of a bill of exceptions as provided for by section thirty-six of this article may be settled, signed and certified by the successor in the office of such judge or by any other judge authorized in such case to perform the duties of the judge of such court, and any bill of exceptions or certificate in lieu of a bill of exceptions signed and certified as aforesaid shall have the same effect as if signed and certified by the judge before whom such was tried.

§56-6-37. How certificate of trial judge or bills of exceptions to be considered; instructions in transcript all presumed to be given by court.

The appellate court in reviewing, upon a writ of error or supersedeas to a final judgment, or upon an appeal from a final decree, of an inferior court in a cause, any question arising upon the record in such cause, shall in every instance, wherever necessary to a decision of such question, consider any exception, the evidence or any part thereof introduced on the trial or hearing of the cause, or any other matter preserved of record in such cause by the certificate of the trial judge or by bill of exceptions as provided by the two preceding sections, or by the signature of the trial judge as provided by section twenty of this article; nor in the determination of any such question shall it be necessary to enable the appellate court to consider any other exception, or the evidence or any part thereof introduced at the trial or hearing of the cause, or any other matter preserved of record in the cause by the certificate of the trial judge or by bill of exceptions as provided by the two preceding sections or by the signature of the trial judge as provided in section twenty of this article, that there shall be any express reference in the certificate or bill of exceptions or noted on any instruction under which such question may arise to the certificate or bill of any other exception, or of the evidence or any part thereof introduced at the trial or hearing, or of any other matter preserved of record in the cause as provided in the two preceding sections of this article, or to any instruction or notation thereon made a part of the record pursuant to section twenty of this article; but all such separate matters, however made a part of the record, shall be read and considered together as component parts of one entire record. Any instruction or instructions appearing in the transcript of the record certified by the clerk of the trial court as given shall be presumed to be the only instruction or instructions given; or if it shall not appear from such transcript that any instruction was given, it shall be presumed that none was given, unless, in either case, it shall affirmatively appear otherwise from such transcript, or upon a suggestion by any party, either to the trial court or to the appellate court, that an instruction or instructions given have been omitted from such transcript. But nothing in this or the previous section shall be construed as compelling the appellate court to notice or review any matter arising upon a specific exception noted in the transcript of the evidence and proceedings reported unless such exception be specifically pointed out in assignments of error, brief of counsel, or otherwise specifically brought to the attention of the court.

§56-6-38. Hearing of chancery causes in open court; oral testimony; rules of evidence; transcript for appeal.

Chancery causes may, by leave of the court, and by agreement of counsel for the parties, be heard and determined in open court; but in cases so heard the witnesses shall personally appear before the judge to testify orally, unless their depositions shall be taken out of court, under rules obtaining, by agreement of counsel, or by order of the judge made for good cause. And the rules of evidence, procedure and practice now in force, and as hereafter changed, shall apply in taking such evidence, except that bills of exception shall not be necessary in any cases wherein the same are not now required. The evidence so taken in such chancery causes shall be taken down in shorthand by the official reporter or other reporter agreed to by the parties in interest as part of his duties, and transcribed by him as provided for in respect to other matters; and like reporting charges for chancery causes and law causes shall be made, collected and accounted for. In case either party desire to appeal such chancery cause he shall, within ninety days after final or appealable decree, file the transcript of evidence which shall have the force and effect now accorded to depositions in chancery causes.

§56-6-39. Hearing of motion; action or chancery cause in vacation; certification, entry and effect of order or decree.

Any motion, civil action at law, or chancery cause, pending in a circuit court, or any other court, or before the judge thereof, having jurisdiction of the subject matter, or any matter of law, or fact, arising in such motion, action at law, or chancery cause, may, by consent of parties, either in person or by counsel, next friend or guardian ad litem, in term time entered of record, or by like consent in vacation, be submitted to the judge of such court for such decision and decree, judgment, or order, therein in vacation as might be made in term; but such court may, either in term or vacation, without such consent, when it desires time to consider its judgment as to any motion, action at law, chancery cause, or matter of law, or fact arising therein, which has been fully argued and submitted, direct such motion, action at law, chancery cause, or matter of law or fact, to be submitted for decision, and decree, judgment or order in vacation: Provided, however, That no such consent shall be necessary as to any defendant against whom the cause, action or motion has been matured by order of publication, and who has not appeared by motion, demurrer, plea, or answer. When such consent is in vacation, the judge shall certify the fact to the clerk of the court in which the motion, action at law, or chancery cause is pending, to be entered in the law or chancery order book, as the case may be. The judge acting in vacation under this section, in addition to the other powers herein given to him shall have authority to do any and all things, and to enter all judgments, decrees or orders in behalf of or at the request of a party desiring to take an appeal or to apply for a writ of error, that the court might do or enter in term time. The judge shall certify the judgments, orders and decrees made by him in vacation to the clerk aforesaid, to be entered in like manner as the vacation consent. All judgments, orders and decrees, so made and entered, shall have the same force and effect as if made and entered in term, except that in case of a judgment, order or decree for money the same shall be effective only from the time of day at which it is received in the clerk's office to be entered of record.

§56-6-40. Contempt proceedings in vacation.

The judge of every circuit court or other court of record having jurisdiction to try or hear actions at law or suits in equity shall have the same power in vacation that he has in term to punish disobedience of and enforce obedience to any decree or order made in his court and for such purpose may issue all necessary process. The orders and proceedings in such case shall be certified and entered of record as provided in the preceding section and shall be as valid as if made or had and entered in term.

§56-6-41. Certification and entry of vacation orders.

All orders and decrees made by a judge out of court in a cause pending in court shall be certified by him to the clerk of the court in which the same is pending, and be entered by such clerk in the proper order book.