Chapter 98.

Burnt and Lost Records.

§ 98-1. Copy of destroyed record as evidence; may be recorded.

When the office of any registry is destroyed by fire or other accident, and the records and other papers thereof are burnt or destroyed, the copies of all such proceedings, instruments and papers as are of record or registry, certified by the proper officer, though without the seal of office, shall be received in evidence whenever the original or duly certified exemplifications would be. Such copies, when the court is satisfied of their genuineness, may be ordered to be recorded or registered. (1865-6, c. 41, ss. 1, 2; Code, s. 55; Rev., s. 327; C.S., s. 365.)

§ 98-2. Originals may be again recorded.

All original papers, once admitted to record or registry, whereof the record or registry is destroyed, may, on motion, be again recorded or registered, on such proof as the court shall require. (1865-6, c. 41, s. 3; Code, s. 56; Rev., s. 328; C.S., s. 366.)

§ 98-3. Establishing boundaries and interest, where conveyance and copy lost.

When any conveyance of real estate, or of any right or interest therein, is lost, the registry thereof being also destroyed, any person claiming under the same may cause the boundaries thereof to be established in the manner provided in the Chapter entitled Boundaries, or he may proceed in the following manner to establish both the boundaries and the nature of his estate:

He shall file his petition before the clerk of the superior court, setting forth the whole substance of the conveyance as truly and specifically as he can, the location and boundaries of his land, whose land it adjoins, the estate claimed therein, and a prayer to have his own boundaries established and the nature of his estate declared.

All persons claiming any estate in the premises, and those whose lands adjoin, shall be notified of the proceedings. Unless they or some of them, by answer on oath, deny the truth of all or some of the matters alleged, the clerk shall order a surveyor to run and designate the boundaries of the petitioner's land, and return his survey, with a plot thereof, to the court. This, when confirmed, shall, with the declaration of the court as to the nature of the estate of the petitioner, be registered and have, as to the persons notified, the effect of a deed for the same, executed by the person possessed of the same next before the petitioner. But in all cases, however, wherein the process of surveying is disputed, and the surveyor is forbidden to proceed by any person interested, the same proceedings shall be had as under the Chapter entitled Boundaries.

If any of the persons notified deny by answer the truth of the conveyance, the clerk shall transfer the issues of fact to the superior court, to be tried as other issues of fact are required by law to be tried; and on the verdict and the pleadings the judge shall adjudge the rights of the parties, and declare the contents of the deed, if any deed is found by the jury, and allow the registration of such judgment and declaration, which shall have the force and effect of a deed. (1865-6, c. 41, s. 3; Code, s. 56; Rev., s. 328; C.S., s. 367; 1973, c. 108, s. 44.)

§ 98-4. Copy of lost will may be probated.

In counties where the original wills on file in the office of the clerk of superior court, and will books containing copies, are lost or destroyed, if the executor or any other person has preserved a copy of a will (the original being so lost or destroyed) with a certificate appended, signed by a clerk of the court in whose office the will was, or is required to be filed, stating that said copy is a correct one, this copy may be admitted to probate, under the same rules and in the same manner as now

prescribed by law for proving wills. The proceedings in such cases shall be the same as though such copy was the original offered for the first time for probate, except that the clerk who signed such certificate shall, on oath, acknowledge his signature, or in case it appears that he has died or left the State, then his signature shall be proved by a competent witness; and the witness or witnesses to the original, who may be examined, shall be required to swear that he or they signed in the presence of the testator and by his direction a paper-writing purporting to be his last will and testament. (1868-69, c. 160, s. 1; Code, s. 57; Rev., s. 329; C.S., s. 368.)

§ 98-5. Copy of lost will as evidence; letters to issue.

In any action or proceeding at law, where it becomes necessary to introduce such will to establish title, or for any other purpose, a copy of the will and of the record of the probate, with a certificate signed by the clerk of the superior court for the county where the will may be recorded, stating that said record and copy are full and correct, shall be admitted as competent evidence; and when a copy of a will is admitted to probate, the clerk shall thereupon issue letters testamentary. (1868-69, c. 160, s. 2; Code, s. 58; Rev., s. 330; C.S., s. 369.)

§ 98-6. Establishing contents of will, where original and copy destroyed.

Any person desirous of establishing the contents of a will destroyed as aforesaid, there being no copy thereof, may file a petition in the office of the clerk of the superior court, setting forth the entire contents thereof, according to the best of the person's knowledge, information and belief. All persons having an interest under the same shall be made parties, and if the truth of such petition is denied, the issues of fact shall be transferred to the superior court for trial by a jury, whether the will was recorded, and if so recorded, the contents thereof, and the declarations of the judge shall be recorded as the will of the testator. Any devisee is a competent witness as to the contents of every part of said will, except such as may concern his own interest in the same. (1865-6, c. 41, s. 4; Code, s. 59; Rev., s. 331; C.S., s. 370; 1973, c. 108, s. 45; 2011-284, s. 68.)

§ 98-7. Perpetuating destroyed judgments and proceedings.

Every person desirous of perpetuating the contents of destroyed judgments, orders or proceedings of court, or any paper admitted to record or registration, or directed to be filed for safekeeping, other than wills or conveyances of real estate, or some right or interest therein, or any deed or other instrument of writing, required to be recorded or registered, but not having been recorded or registered, it being competent to register or record said deed or other instrument at the time of its loss or destruction, may file his petition in the court having jurisdiction of like matters with the original proceeding, setting forth the substance of the whole record, deed, proceeding, or paper, which he desires to perpetuate. If, on the hearing, the court shall declare the existence of such record, deed, or proceeding, or paper at the time of the burning of the office wherein the same was lodged or kept, or other destruction thereof, and that the same was there destroyed, and shall declare the contents thereof, such declaration shall be recorded or registered, or filed, according to the nature of the paper destroyed. (1865-6, c. 41, s. 5; Code, s. 60; Rev., s. 332; C.S., s. 371.)

§ 98-8. Color of title under destroyed instrument.

Every person who has been in the continual, peaceable and quiet possession of land, tenements, or hereditaments, situated in the county, claiming, using and occupying them as his own, for the space of seven years, under known boundaries, the title thereto being out of the State, is deemed to have been lawfully possessed, under color of title, of such estate therein as has been claimed by him during his possession, although he may exhibit no conveyance therefor: Provided, that such

possession commenced before the destruction of the registry office, or other destruction as aforesaid, and also that any such person, or any person claiming by, through or under him, makes affidavit and produces such proof as is satisfactory to the court that the possession was rightfully taken; and if taken under a written conveyance, that the registry thereof was destroyed by fire or other means, or was destroyed before registry as aforesaid, and that neither the original nor any copy thereof is in existence: Provided further, that such presumption shall not arise against infants, persons of nonsane memory, and persons residing out of the State, who were such at the time of possession taken, and were not therefore barred, nor were so barred at the time of the burning of the office or other destruction. (1865-6, c. 41, s. 6; Code, s. 61; Rev., s. 333; C.S., s. 372.)

§ 98-9. Action on destroyed bond.

Actions on official or other bonds lodged in any office which are destroyed with the registry thereof may be prosecuted by petition against the principal and sureties thereto, and the proceedings shall be as in the former courts of equity. (1865-6, c. 41, s. 7; Code, s. 62; Rev., s. 334; C.S., s. 373.)

§ 98-10. Destroyed witness tickets; duplicates may be filed.

The court having jurisdiction of the action may allow other witness tickets to be filed in place of such as may be destroyed, upon the oath of the witness or other satisfactory proof. (1865-6, c. 41, s. 8; Code, s. 63; Rev., s. 335; C.S., s. 374.)

§ 98-11. Replacing lost official conveyances.

Where any conveyance executed by any person, sheriff, clerk and master, or commissioner of court has been lost, and registry thereof destroyed as aforesaid, and there is no copy thereof, such persons, whether in or out of office, may execute another of like tenor and date, reciting therein that the same is a duplicate, and such deed shall be evidence of the facts therein recited, in all cases wherein the parties thereto are dead, or are incompetent witnesses to prove the same, to the extent as if it was the original conveyance. (1865-6, c. 41, s. 9; Code, s. 64; Rev., s. 336; C.S., s. 375.)

§ 98-12. Court records as proof of destroyed instruments set out therein.

The records of any court in or out of the State, and all transcripts of such records, and the exhibits filed therewith in any case, are admissible to prove the existence and contents of all deeds, wills, conveyances, depositions and other papers, copies whereof are therein set forth or exhibited, in all cases where the records and registry of such as were or ought to have been recorded and registered, or the originals of such as were not proper to be recorded or registered, have been destroyed as aforesaid, although such transcripts or exhibits have been informally certified; and when offered in evidence have the like effect as though the transcript or record was the record of the court whose records are destroyed, and the deeds, wills and conveyances, depositions and other papers therein copied or therewith exhibited were original. (1865-6, c. 41, s. 10; Code, s. 65; Rev., s. 337; C.S., s. 376.)

§ 98-13. Copies contained in court records may be recorded.

The copies aforesaid of all such deeds, wills, conveyances and other instruments proper to be recorded or registered, as are mentioned in G.S. 98-12, may be recorded or registered on application to the clerk of the superior court and due proof that the original thereof was genuine. (1865-6, c. 41, s. 11; Code, s. 66; Rev., s. 338; C.S., s. 377.)

§ 98-14. Rules for petitions and motions.

The following rules shall be observed in petitions and motions under this Chapter:

(1) The facts stated in every petition or motion shall be verified by affidavit of the petitioner that they are true according to the best of his knowledge, information, and belief.

(2) The instrument or paper sought to be established by any petition shall be fully set forth in its substance, and its precise language shall be stated when the same is remembered.

(3) All persons interested in the prayers of the petition or decree shall be made parties.

(4) Petitions to establish a record of any court shall be filed in the superior court of the county where the record is sought to be established. Other petitions may be filed in the office of the clerk.

(5) The costs shall be paid as the court may decree.

(6) Appeals shall be allowed as in all other cases, and where the error alleged shall be a finding by the superior court of a matter of fact, the same may be removed on appeal to the appellate division, and the proper judgments directed to be entered below.

(7) It shall be presumed that any order or record of the court of pleas and quarter sessions, which was made and has been lost or destroyed, was made by a legally constituted court, and the requisite number of justices, without naming said justices. (1865-6, c. 41, s. 12; 1874-5, c. 51; c. 254, s. 3; Code, s. 67; 1893, c. 295; Rev., s. 339; C.S., s. 378; 1969, c. 44, s. 64; 1973, c. 108, s. 46.)

§ 98-15. Records allowed under this Chapter to have effect of original records.

The records and registries allowed by the court in pursuance of this Chapter shall have the same force and effect as original records and registries. (1865-6, c. 41, s. 14; Code, s. 68; Rev., s. 340; C.S., s. 379.)

§ 98-16. Destroyed court records proved prima facie by recitals in conveyances executed before their destruction.

The recitals, reference to, or mention of any decree, order, judgment or other record of any court of record of any county in which the courthouse, or records of said courts, or both, have been destroyed by fire or otherwise, contained, recited or set forth in any deed of conveyance, paper-writing, or other bona fide written evidence of title, executed prior to the destruction of the courthouse and records of said county, by any executor or administrator with a will annexed, or by any clerk and master, superior court clerk, clerk of the court of pleas and quarter sessions, sheriff, or other officer, or commissioners appointed by either of said courts, and authorized by law to execute said deed or other paper-writing, are deemed, taken and recognized as true in fact, and are prima facie evidence of the existence, validity and binding force of said decree, order, judgment or other record so referred to or recited in said deed or paper-writing, and are to all intents and purposes binding and valid against all persons mentioned or described in said instrument of writing, deed, etc., as purporting to be parties thereto, and against all persons who were parties to said decree, judgment, order or other record so referred to or recited, and against all persons

claiming by, through or under them or either of them. (1870-1, c. 86, s. 1; 1871-2, c. 64, s. 1; Code, s. 69; Rev., s. 341; C.S., s. 380.)

§ 98-17. Conveyances reciting court records prima facie evidence thereof.

Such deed of conveyance, or other paper-writing, executed as aforesaid, and registered according to law, may be read in any suit now pending or which may hereafter be instituted in any court of this State, as prima facie evidence of the existence and validity of the decree, judgment, order, or other record upon which the same purports to be founded, without any other or further restoration or reinstatement of said decree, order, judgment, or record than is contained in this Chapter. (1870-1, c. 86, s. 2; Code, s. 70; Rev., s. 342; C.S., s. 381.)

§ 98-18. Court records and conveyances to which Chapter extends.

This Chapter shall extend to records of any court which have been or may be destroyed by fire or otherwise, and to any deed of conveyance, paper-writing, or other bona fide evidence of title executed before the destruction of said records. (1871-2, c. 64, s. 2; 1874-5, c. 254, s. 2; Code, s. 71; Rev., s. 343; C.S., s. 382.)

§§ 98-19 through 98-20. Repealed by Session Laws 1971, c. 780, s. 37.