

CHAPTER 122.

CHANGE OF NAME; ADOPTION OF CHILDREN.

§ 1. **Change of name.**—Any person desiring a change of his own name, or that of his child or ward, may apply therefor to the circuit court of the county in which he resides; and thereupon such court in its discretion may order a change of the name, and thenceforth the new name shall be in place of the former. (Code Va. 1860, c. 168, § 1; Const. 1863, art. 11, § 3; Acts 1875, c. 33; 1882, c. 132.)

§ 2. **Adoption of child; right.**—It shall be lawful for any person not married, or any husband, with his wife's consent, or any wife, with her husband's consent or any husband and wife jointly, to petition the circuit court of the county wherein he, she or they may reside, for permission to adopt any minor child, and also to petition for a change of name of such child: Provided, That if such child be of the age of fourteen years, or over, the written consent of such child to such adoption, duly acknowledged, must be obtained and presented with the petition, and also the written consent of the parent or parents, if living, and not insane; if both parents should be dead or unknown, or insane, or shall have abandoned the child sought to be adopted, then, and in such case the written consent acknowledged as aforesaid, must be obtained from the legal guardian of such child. And if there be no legal guardian then such consent must be obtained from some discreet and suitable person appointed by the court to be the next friend of such child sought to be adopted. (Acts 1882, c. 132.)

§ 3. **Petition therefor.**—Such petition shall specify the name, age and place of residence of the petitioner or petitioners, and of the child, and the name by which the child shall be known; whether such child be possessed of any property, and the full description of the same, if any; whether such child has either father or mother, or both living; in case he, she or they are alive, then the name or names, and place of residence of such father or mother must be given, unless proven to be unknown to the petitioner or petitioners; the persons petitioning as aforesaid, shall be at least fifteen years older than the child sought to be adopted, and the petition shall be duly verified according to law. (Acts 1882, c. 132.)

§ 4. **Proceedings on petition; inheritance.**—Upon the presentation of such petition to the court, the same shall be ordered filed with the clerk of said court, and the court shall appoint a day for the hearing of said petition and the examination under oath of the parties in interest, not less than ten or more than twenty days from the filing of the petition. And the court may adjourn the hearing of said petition or the examination of the parties in interest from time to time, as the nature of the case may require; and if it shall be necessary under the provisions of this act, that a discreet and suitable person shall be appointed as the next friend to the child sought to be adopted, then and in that case the court shall order a notice of the petition and of the time and the place when and where the appointment of next friend will be made, to be published in some newspaper of general circulation in the county where said court is located, once a week for four successive weeks; and at the time and place so named, and upon due proof of the publication of such notice, the court shall make such appointment, and shall thereupon assign a day for the hearing of said peti-

tion and the examination of the parties interested, not more than twenty days from the time of appointing the next friend, and upon the day so appointed the court shall proceed to a full hearing of the petition and examination of the parties in interest, under oath; and if the court, from the testimony, shall be of the opinion that the facts stated in the petition are true, and if upon examination the court is satisfied that the petitioner or petitioners, is, or are of good moral character and of respectable standing in the community, and of ability to properly maintain and educate the child sought to be adopted, and that the best interests of the child would be promoted by such adoption, then and in such a case, the court shall make a decree reciting the facts at length and the name by which the child shall thereafter be known; declaring and adjudging that from the date of such decree, the rights, duties, privileges and relations theretofore existing between the child and his or her parent or parents, shall be in all respects at an end, excepting the right of inheritance; and that the rights, duties, privileges and relations between the child and his or her parent or parents by adoption, shall thenceforth in all respects be the same, including the right of inheritance, as if the child has been born to such adopted parent or parents in lawful wedlock, except only as otherwise provided in this chapter. Petitions, decrees, testimony and proceedings, shall be recorded in a book kept for that purpose, and the clerk shall receive the same fees as for the recording of a deed and upon the entry of such decree of adoption, the parents of the child, if living, shall be divested of all legal rights and obligations due from them to the child, or from the child to them, and the child shall be free from all legal obligations of obedience or otherwise to the parents, and the adopting parent or parents of the child shall be invested with every legal right in respect to obedience and maintenance on the part of the child, as if said child had been born to them in lawful wedlock; and the child shall be invested with every legal right, privilege, obligation and relation in respect to education, maintenance, and the rights of inheritance in the estate of such adopting parent or parents, as if born to them in lawful wedlock; except that said child shall not be capable of taking property expressly limited to the heirs of the body of the adopting parent or parents, nor property coming from the collateral kindred of such adopted parent or parents by right of inheritance: Provided, That on the death of the adopting parent or parents and the subsequent death of the child so adopted, without issue, the property of such adopting deceased parent or parents, shall descend to and be distributed among the next of kindred of said parent or parents, and not to the next of kin of the adopted child. Provided, also, That if such adopting parent or parents shall have other child or children, theirs by birth, then, and in that case, the adopted child shall share the inheritance with the child or children born to the adopting parent or parents, in which case he, she, or they, shall respectively inherit from and through each other as if all had been children of the same parents born in lawful wedlock. (Acts 1882, c. 132.)

§ 5. **Setting aside adoption; appeal; dissent by child.**—A parent or guardian of a minor, when a minor is adopted under the provisions of this chapter, who had no notice of the proceedings, may, at any time within a year, after receiving notice, apply by petition to the circuit court in which the petition mentioned in the second section was filed, praying that

the adoption may be vacated. The court applied to shall give notice of a hearing, and shall hear the petitioner and all parties interested, and may vacate or affirm the adoption in its discretion. Any party interested may appeal from the decision of the said court in the matter, as in other cases of appeals in matters of probate. If the person thus adopted, is adopted while a minor, he may within one year after becoming of age, sign, seal, and acknowledge before proper authority, in the county in which the instrument of adoption was filed, a dissent from such adoption. Such instrument of dissent shall be recorded in such county court clerk's office, and upon the filing of the same the adoption shall be void. (Acts 1882, c. 132.)

CHAPTER 123.

COUNTY IN WHICH PROCEEDINGS COMMENCED.

§ 1. **Venue in general.**—Any action at law or suit in equity, except where it is otherwise specially provided, may hereafter be brought in the circuit court of any county: (1) Wherein any of the defendants may reside, except that an action of ejectment or unlawful detainer must be brought in the county wherein the land sought to be recovered or some part thereof is; or (2) if a corporation be a defendant wherein its principal office is, or wherein its mayor, president, or other chief officer resides; or if its principal office be not in this state, and its mayor, president, or other chief officer do not reside therein, wherein it does business; or (3) if it be to recover land or subject it to a debt wherein such land or any part thereof may be; or (4) if it be against a non-resident of the state wherein he may be found, or may have estate or debts due him; or (5) if the suit be brought to recover a loss under any policy of insurance upon property insured, in the county wherein the property insured was situated, and if it be to recover a loss under any policy of insurance upon the life of a person, in the county wherein such person had a legal residence at the time when the right of action accrued; or (6) if it be on behalf of the state in the name of the attorney-general or otherwise, wherein the seat of government is; or (7) if a judge of a circuit be interested in a case which, but for such interest, would be proper for the jurisdiction of his court, the action or suit may be brought in any county in an adjoining circuit, the county-seat of which county is nearest the county-seat of the county wherein such judge resides. (Code Va. 1860, c. 169; Acts 1872-3, cc. 109, 197; 1882, c. 73; 1891, c. 54; 1897, c. 46.)

Scope of section.—When the first paragraph of this section read, "Any action at law or suit in equity, except where it is otherwise specially provided, may be brought in the circuit court of any county, where any of the defendants reside," it was held not to restrict, but to enlarge the cases in which a circuit court could take jurisdiction. *Vinal v. Core & Compton*, 18 W. Va. 1.

Where the circuit court is without jurisdiction under any of the clauses of this section, it cannot obtain jurisdiction by reason of service of process in any other county, except as against a railroad, canal, turnpike, telegraph or insurance company.

Rorer v. People's B., L. & S. Ass'n, 47 W. Va. 2, 34 S. E. 758.

A judgment by default rendered without jurisdiction, under this chapter, is void, and may be vacated on motion. *Id.*

County of any of defendants' residence.—A suit by a grantor in a deed, absolute on its face, to have it declared and held to be a mortgage, may be brought in the county where the grantee resides, though the land lie in another county. *Lawrence v. Du-Bois*, 16 W. Va. 443.

In a suit to subject land to the payment of a debt, suit may be brought either in the county where the defendant or any of