

*sewer, sewer system, or drain, then the construction authorized by such resolution shall not be undertaken or proceeded with.*

*(f) Acquisition of Sewer Systems.*

*Section 1159. Any township of the second class in which any person, firm, or corporation is maintaining sewers and culverts with the necessary inlet and appliances for surface and under-surface and sewage drainage, may become the owner of such sewers, culverts, inlet, and appliances, by paying therefor the actual value of the same at the time of the taking by the township.*

*In case the supervisors of the township cannot agree with the owners of such sewers as to the price to be paid therefor, the supervisors may enter upon and take possession of such sewers, culverts, inlets, and appliances. For all damage done or suffered or which accrues to the owner or owners of such sewer by reason of the taking of the same, the funds of the township raised by taxation shall be pledged and deemed as security; such damages to be determined by viewers in the same manner as damages for the construction of sewers are determined in townships of the first class under the provisions of sections one hundred and seventy-four to one hundred and seventy-seven inclusive of the act to which this is an amendment. If any sewer or sewer system is acquired by purchase under the provisions of this section, the cost of such acquisition may be distributed or assessed in the same manner as if such sewer or sewer system had been constructed by such township under the provisions of this act.*

APPROVED—The 30th day of April, A. D. 1925.

GIFFORD PINCHOT.

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No. 236.

AN ACT

Providing for the admission of testimony given in ejectment suits upon a retrial and in subsequent real issues when the parties claim under a common source.

Evidence.

Testimony in ejectment to be admissible in later suits involving same titles.

Section 1. Be it enacted, &c., That whenever a suit in ejectment involving title to or right of possession of any real estate or any interest therein has been tried heretofore or shall be tried hereafter in any court within this Commonwealth having jurisdiction of the subject-matter, wherein the parties plaintiff and defendant claim title to or right of possession of real estate or any interest therein or any portion there-

of from or through a common source other than the Commonwealth, and the issue joined involves the title to or the right of possession of either the whole or only a portion of any real estate as to which the parties to the issue or any of them at the impetration of the writ claimed title to or right of possession from or through a common source or could have so claimed had the writ described or the issue involved the whole of such real estate or the right of possession of the whole of it or of an undivided portion of or interest in the whole thereof, the testimony of any person given at such trial either in person in open court or by deposition regularly taken in writing under the authority or by the direction of the court, and any writing, map, book-entry, or any documentary testimony or proof, whether the original writing, map, book-entry, or a duplicate or copy or transcript thereof deemed by the trial court competent, relevant, and material to the issue, which was received by the court as evidence or proof, shall be competent evidence or proof and, when offered as such, if material and relevant, shall be received, subject to the provisions of section three of this act, as evidence or proof upon any retrial of such suit and in any subsequent suit in ejectment and in any subsequent issue that may be directed by the court to quiet title to real estate or to determine the right or title to or the right to the possession of real estate, when the issue joined involves inquiry concerning the title to or the right of possession of any real estate or any interest therein or any portion thereof which the plaintiff in the former suit at the impetration of the writ therein claimed title to or right of possession of or might have so claimed had such writ included both parcels of land from or through the same common source of title or right as that from or through which the plaintiff and defendant or either or any of them claimed in such former suit, if the parties to the two suits or issues be the same or if one or more of the persons, co-partnership, or corporation interested as plaintiff or defendant in the subsequent suit or issue was interested as a party on the record in the former suit or issue and is in privity of estate with any person, co-partnership, or corporation who was so interested.

Section 2. The provisions of the first section of this act shall be applicable also when the parties on the record of such subsequent suit or issue or any of them or any person in privity of estate with them or any of them, are or were interested in the result of such former suit or issue because of representation upon the record thereof by a trustee of the legal title to the realty or any right to or interest therein, or by any other legal representative, if the parties to the

Provisions applicable when parties or privies were interested in result of former suit by representation upon the record.

record claim title to or right or interest in the subject-matter or thing involved through the same source, except the Commonwealth, as the parties on the record of the former suit or issue claimed.

Section 3. The provisions of the first and second sections of this act shall be applicable only under the following circumstances:

When foregoing provisions applicable.

When witness has died or become disqualified.

Notes of testimony to be verified by evidence of court stenographer.

Notes may be verified by affidavit in certain cases.

Documentary testimony.

When subscribing witness is dead without the jurisdiction or incompetent.

Verification.

(a) When the person whose previous testimony is offered has died, or has become disqualified or incapable of testifying by reason of interest in the subject-matter of the suit or issue, or by the policy of law, or from insanity, conviction of crime rendering him incompetent to testify in legal proceedings, physical or mental weakness, or absence from the jurisdiction of the court, in which case the testimony given in the former trial shall be received by the court by the production thereof in the manner or form now practiced and allowed in the courts of this Commonwealth, except that, if the testimony of a person at the previous trial was written stenographically and thereafter was written out in long hand and in that form is offered as evidence at a retrial or at a subsequent trial, it shall be received as evidence if the person who as the official court stenographer or other person who wrote the official stenographic notes of the testimony and subsequently wrote it in long hand from the notes, so states under oath in open court, and that the notes of the testimony were correctly written as the testimony was given by the witness, that the testimony so written is the testimony offered in evidence, and that it is a full and correct report of the examination and statements of the witness at such trial; but if such stenographer has died or is without the jurisdiction of the court or for any other cause his presence in court is impracticable the testimony shall be received if it is accompanied by an affidavit made and subscribed by him before any person qualified to administer oaths, setting forth the matters aforesaid.

(b) When the original writing, map, book-entry, or other documentary testimony which was received in evidence at the former trial is offered as testimony or proof at a retrial or at the trial of a subsequent issue and the subscribing witness if any or the person who made the map or book-entry has died or is without the jurisdiction of the court or has become incompetent to testify or incapable of testifying for or on account of any of the reasons mentioned in clause (a), it shall be received in evidence if accompanied by the testimony of any person that he or she was present at the former trial and saw and heard the court admit such writing, map, book-entry, or other document in evidence at such trial and that the writ-

ing, map, book-entry, or other document offered as evidence is the identical one which was then admitted in evidence.

(c) If the writing, map, book-entry, or other document (whether the original or a copy or transcript of the original) that was admitted in evidence at the former trial has been lost or destroyed or is in the custody of a person who is without the jurisdiction of the court or if for any cause it cannot be produced, a copy or transcript thereof shall be received in evidence when accompanied by the testimony of any person that he has compared the writing, map, book-entry, or other document offered in evidence with the one that was received in evidence at the former trial, the admission of which at such trial he has personal knowledge of, and that the former is a full and exact copy or transcript of the latter.

When document lost or destroyed or cannot be produced.

Copy may be received when verified.

Section 4. The provisions of this act shall apply only when the testimony or documentary proof, the admission of which is provided for, shall be offered in evidence in a retrial of an action or in the trial of a subsequent suit or issue within twenty-one years from the entry of final judgment in the former suit or issue.

Limitation of applicability.

Section 5. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Repeal.

APPROVED—The 30th day of April, A. D. 1925.

GIFFORD PINCHOT.

No. 237.

### AN ACT

To amend section one hundred and ten of the act, approved the fourteenth day of July, one thousand nine hundred and seventeen (Pamphlet Laws, eight hundred and forty), entitled "An act concerning townships; and revising, amending, and consolidating the law relating thereto," as amended, providing for the election of township commissioners in first class townships not divided into wards.

Section 1. Be it enacted, &c., That section one hundred and ten of the act, approved the fourteenth day of July, one thousand nine hundred and seventeen (Pamphlet Laws, eight hundred and forty), entitled "An act concerning townships; and revising, amending, and consolidating the law relating thereto," which was amended by the act, approved the twentieth day of April, one thousand nine hundred and twenty-one (Pamphlet Laws, one hundred and eighty-six), entitled "An act to amend an act, approved the fourteenth day of July, one thousand nine hundred

Townships.

Section 110 of act of July 14, 1917 (P. L. 840), as amended by act of April 20, 1921 (P. L. 186), further amended.