

GENERAL LAWS,

MEMORIALS AND RESOLUTIONS,

OF THE

TERRITORY OF DAKOTA,

PASSED AT THE NINTH SESSION OF THE

LEGISLATIVE ASSEMBLY,

**COMMENCED AT THE CITY OF YANKTON, DECEMBER 5TH. A. D.
1870, AND CONCLUDED JANUARY 13TH, 1871.**

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THE LAWS
OF
DAKOTA TERRITORY.

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AUTHENTICATION.

DAKOTA TERRITORY,
Secretary's Office, Yankton.)

I HEREBY certify, that I have this day delivered to Stone & Kingsbury, Public Printers for Dakota Territory, true and correct copies of all the public and private laws, memorials and resolutions, passed and approved, during the ninth session of the Legislative Assembly of said Territory.

WITNESS my hand and seal, this twentieth day of
January, A. D. 1871.

GEO. A. BATCHELDER,
Secretary.

YANKTON PRESS OFFICE,)
Yankton, D. T., May 1, 1871.)

WE HEREBY certify that the following Laws, Memorials and Resolutions, are true and correct copies, as given us for publication by the Secretary of the Territory, as set forth in the preceding authentication.

STONE & KINGSBURY,
Public Printers, Dakota Territory.

GENERAL LAWS.

AMENDMENTS.

CHAPTER 1.

AN ACT TO AMEND CHAPTER FOUR OF THE SESSION LAWS OF
1865-6 RELATING TO ACKNOWLEDGMENTS.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota:*

SECTION 1. That section five hundred and sixteen of chapter four of the session laws of 1865-6, be amended so as to read as follows: The proof or acknowledgment of an instrument may be made at any place in this Territory, before—

- A Judge of the district court;
- A Judge of the supreme court;
- A Notary Public.

Acknowledgments, by whom made.

SEC. 2. All acts or parts of acts inconsistent with this act are hereby repealed. Repealed.

SEC. 3. This act shall take effect and be in force from and after its passage and approval. To take effect, when.

Approved, Jan. 13, 1871.

CHAPTER 2.

AN ACT TO AMEND SECTION SIXTEEN OF CHAPTER FOUR OF THE SESSION LAWS OF 1868-69.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

Section 16,
chapter 4, laws
of 1868-9,
amended.

SECTION 1. That section sixteen of chapter four of the session laws of 1868-69 be and the same is hereby amended, by striking out the word "lessons" in the eleventh line of said section and inserting the word "sessions."

Approved, Jan. 13, 1871.

CHAPTER 3.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO SIMPLIFY AND ABRIDGE THE PRACTICE, PLEADINGS, AND PROCEEDINGS OF THE COURTS OF THIS TERRITORY."

Be it enacted by the Legislative Assembly of the Territory of Dakota:

Sec. 85, title
5 of the Civil
Code amended.

SECTION 1. That section eighty-five, title five, of the Code of Civil Procedure be so amended at the end of said section as to read as follows: *And be it further provided*, That in an action affecting the title to real property, the plaintiff at the time of filing the complaint, or at some subsequent time within four days thereafter, shall enter into bonds with good and sufficient security, in double the amount claimed in such complaint, and file the same with the clerk of the court of the district or county in which such action is to be tried, as indemnity for all damages that may accrue to the defendant in such action, and in default of the filing of said bond, then the action shall be dismissed with such damages for defendant as the court in its discretion shall deem proper: *Provided*

further, That this shall apply to any action or proceeding now pending in any of the courts of this Territory.

SEC. 2. This act shall take effect and be in force from and after its passage and approval. To take effect, when.

Approved, Jan. 13, 1871.

CHAPTER 4.

AN ACT TO AMEND AN ACT ENTITLED AN ACT TO DIVIDE THE TERRITORY OF DAKOTA INTO COUNCIL AND REPRESENTATIVE DISTRICTS AND APPORTION THE COUNCILMEN AND REPRESENTATIVES THEREIN.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That an act entitled an act to divide the Territory of Dakota into council and representative districts, and apportion the councilmen and representatives therein, approved, January 10th, A. D. 1871, be and is hereby amended as follows, to-wit: Apportionment bill amended.

SEC. 2. Strike out all of section (4) four, and substitute as follows: *Be it further enacted*, That the county of Yankton shall constitute the third (3d) council and representative district, and shall be entitled to a representation of three (3) members of the Council, and five members of the House of Representatives. Third Council and Representative District.

SEC. 3. Strike out all of section seven and substitute as follows: *Be it further enacted*, That the counties [of] Lincoln, Minnaha, Brookings, Turner and Deuel shall constitute the six (6th) council and representative district, and shall be entitled to one (1) member of the Council and six (6) members of the House of Representatives. Sixth Council and Representative District.

SEC. 4. This act shall take effect and be in force from and after its passage and approval. To take effect, when.

Approved, Jan. 13, 1871.

CHAPTER 5.

AN ACT TO AMEND CHAPTER FIFTEEN (15) OF THE SESSION LAWS OF 1867-8, RELATING TO INCORPORATIONS.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

Section 59,
chapter 15, laws
of 1867-8,
amended.

SECTION 1. Section 59 of chapter 15 of the session laws of 1867-8, be so amended as to read in the first line of said section, "one-third of the officers of any such incorporated companies."

To take effect,
when.

SEC. 2. This act shall take effect and be in force from and after its passage and approval.

Approved, January 13, 1871.

CHAPTER 6.

AN ACT TO AMEND AN ACT TO PROTECT PERSONS HOLDING PUBLIC LANDS, APPROVED, APRIL 30TH, 1862.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

An act to pro-
tect persons
holding claims
on public lands,
amended.

SECTION 1. That in section 3, line 11, the words "unless he or she be a citizen of this Territory," be stricken out.

To take effect,
when.

SEC. 2. This act shall take effect and be in force from and after its passage and approval.

Approved, December 31, 1870.

APPORTIONMENT.

CHAPTER 7.

AN ACT TO DIVIDE THE TERRITORY OF DAKOTA INTO COUNCIL AND REPRESENTATIVE DISTRICTS, AND APPORTIONING THE COUNCILMEN AND REPRESENTATIVES THEREIN.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That the Legislative Assembly of the Territory of Dakota, shall, until otherwise directed by law, consist of thirteen (13) Councilmen, and twenty-six (26) members of the House of Representatives. Legislative Assembly to consist of.

SEC. 2. The county of Union shall constitute the first council and representative district, and shall be entitled to a representation of three (3) members of the Council, and five (5) members of the House of Representatives. First Council and Representative District.

SEC. 3. The county of Clay shall constitute the second council and representative district, and shall be entitled to a representation of three (3) members of the Council and five members of the House of Representatives. Second Council and Representative Dist.

SEC. 4. The county of Yankton shall constitute the third council and representative district, and shall be entitled to a representation of four (4) members of the Council and four (4) members of the House of Representatives. Third Council and Representative District.

SEC. 5. The counties of Bon Homme and Hutchinson shall constitute the fourth council and representative district, and shall be entitled to a representation of one (1) member of the Council and two (2) members of the House of Representatives. Fourth Council and Representative Dist.

Fifth Council
and Represent-
ative District.

SEC. 6. The counties of Charles Mix and Buffalo shall constitute the fifth council and representative district, and shall be entitled to a representation of one (1) member of the Council and two (2) members of the House of Representatives.

Sixth Council
and Represent-
ative District.

SEC. 7. The counties of Lincoln, Minnehaha, Brookings, Duel and Armstrong shall constitute the sixth council and representative district, and shall have a representation of seven (7) members of the House of Representatives.

Seventh Council
and Represent-
ative Dis-
trict.

SEC. 8. The counties of Pembina and Dakota shall constitute the seventh council and representative district, and shall be entitled to a representation of one member of the Council and one member of the House of Representatives.

To take effect,
when.

SEC. 9. This act shall take effect and be in force from and after its passage and approval by the Governor.

Approved, January 10, 1871.

CIVIL CODE.

CHAPTER 8.

AN ACT TO ESTABLISH A CIVIL CODE.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota:*

GENERAL DEFINITIONS AND DIVISIONS.

- SECTION**
1. Title of Code.
 2. Definition of Law.
 3. Action of sovereign power.
 4. Two kinds of law.
 - 5, 6. Common law.
 7. Two kinds of civil rights.
 8. Rights, how modified.
 9. Divisions of the Civil Code.

SECTION 1. This act shall be known as the Civil Code of the Territory of Dakota. Title of Code.

SEC. 2. Law is a rule of property and of conduct prescribed by the sovereign power of the Territory. Definition of law.

SEC. 3. The will of the sovereign power is expressed: Action of sovereign power.

1. By statutes, which are the acts of the Legislature, or by the ordinances of other and subordinate legislative bodies:

2. By the judgments of the tribunals enforcing those rules which, though not enacted, form what is known as customary or common law.

SEC. 4. The common law is divided into: Two kinds of law.

1. Public law, or the law of nations;

2. Domestic, or municipal law.

SEC. 5. The evidence of the common law is found in the decisions of the tribunals. Common law.

SEC. 6. In this Territory there is no common law in any case where the law is declared by the Codes. Common law.

SEC. 7. All original civil rights are either: Two kinds of civil rights.

1. Rights of person; or

2. Rights of property.

SEC. 8. Rights of property and of person may be waived, surrendered, or lost by neglect, in the cases provided by law. Rights, how modified.

SEC. 9. This Code has four general divisions: Divisions of the Civil Code.

1. The first relates to Persons;

2. The second to Property;

3. The third to Obligations;

4. The fourth contains General Provisions relating to Persons, Property and Obligations.

DIVISION FIRST.

PERSONS.

PART I. Persons.

II. Personal Rights.

III. Personal Relations.

PART I.

PERSONS.

- SECTION 10.** Minor, what.
11. Adult, what.
12. Unborn child.
13. Persons of unsound mind.
14. Custody of minors, etc.
15. Power of minors.
16. Contracts of minors.
17. When minor may disaffirm.
18. Cannot disaffirm contract for necessities.
19. Nor certain obligations.
20. Contracts of persons without understanding.
21. Contracts of other insane persons.
22. Powers of persons whose incapacity has been adjudged.
- 23, 24. Wrongs.
25. Minors may enforce their rights.
26. Indians.

**Definition of a
minor.**

SEC. 10. A minor is a person under the age of twenty-one years.

**Definition of
an adult.**

SEC. 11. All other persons are adults.

Unborn child.

SEC. 12. A child conceived but not born, is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

SEC. 13. Persons of unsound mind, within the meaning of this Code, are idiots, lunatics and imbeciles. Persons of unsound mind.

SEC. 14. The custody of minors and persons of unsound mind is regulated by Part III of this Division. Custody of minors, etc.

SEC. 15. A minor cannot give a delegation of power. Powers of minors.

SEC. 16. A minor may make a conveyance or other contract in the same manner as any other person, subject only to his power of disaffirmance under the provisions of this Title, and to the provisions of the Title on Marriage. Contracts of minors.

SEC. 17. In all cases other than those specified by sections 18 and 19, the contract of a minor may, upon restoring the consideration to the party from whom it was received, be disaffirmed by the minor himself, either before his majority, or within a reasonable time afterwards, or, in case of his death within that period, by his heirs or personal representatives. When minor may disaffirm.

SEC. 18. A minor, or a person of unsound mind of whatever degree, cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or for that of his family, entered into by him when not under the care of a parent or guardian able to provide for him. Cannot disaffirm contract for necessaries.

SEC. 19. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute. Nor certain obligations.

SEC. 20. A person entirely without understanding has no power to contract, except in the case mentioned in section 18, unless expressly authorized by statute. Contracts of persons without understanding.

SEC. 21. A person of unsound mind, but not entirely without understanding, may make a conveyance or other contract, before his incapacity has been judicially determined, subject to rescission, as provided in the chapter on Rescission. Contracts of other insane persons.

SEC. 22. After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor delegate any power, nor waive any right, until his restoration to capacity is judicially determined. But if actually restored to capacity, he may make a will, though his restoration is not thus determined. Powers of persons whose incapacity has been adjudged.

SEC. 23. A minor, or a person of unsound mind, of whatever degree, is liable for a wrong done by him, in like manner with any other person. Wrong.

SEC. 24. A minor, or person of unsound mind, cannot be subjected to exemplary damages, unless at the time of the act he was capable of knowing that it was wrongful.

Minors may enforce their rights.

SEC. 25. A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must be appointed to conduct the same.

Indians.

SEC. 26. Indians resident within this Territory have the same rights and duties as other persons; except that:

1. They cannot vote or hold office; and that,
2. They cannot grant, lease or incumber Indian lands, except in the cases provided by special laws.

PART II.

PERSONAL RIGHTS.

SECTION 27. General personal rights.

28. Defamation, what.

29. Libel, what.

30. Slander, what.

31. What communications are privileged.

32. Protection to personal relations.

33. Right to use force.

General personal rights.

SEC. 27. Besides the personal rights mentioned or recognized in the Political Code, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations.

Defamation, what.

SEC. 28. Defamation is effected by:

1. Libel; or,
2. Slander.

Libel, what.

SEC. 29. Libel is a false and unprivileged publication by writing, printing, picture, effigy or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

Slander, what.

SEC. 30. Slander is a false and unprivileged publication, other than libel, which:

1. Charges any person with crime, or with having been indicted, convicted or punished for crime;

2. Imputes in him the present existence of an infectious, contagious or loathsome disease;

3. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade or business that has a natural tendency to lessen its profit;

4. Imputes to him impotence or want of chastity; or,

5. Which, by natural consequence, causes actual damage.

SEC. 31. A privileged publication is one made:

What communications are privileged.

1. In the proper discharge of an official duty;

2. In testifying as a witness, in any proceeding authorized by law, to a matter pertinent and material, or in reply to a question allowed by the tribunal;

3. In a communication, without malice, to a person interested therein, by one who was also interested, or who stood in such a relation to the former as to afford a reasonable ground for supposing his motive innocent, or who was requested by him to give the information; or,

4. By a fair and true report in a newspaper, without malice, of a judicial, legislative or other public official proceeding, or of anything said in the course thereof.

SEC. 32. The rights of personal relation forbid:

Protection to personal relations.

1. The abduction of a husband from his wife, or of a parent from his child;

2. The abduction or enticement of a wife from her husband, of a child from a parent, or from a guardian entitled to its custody, or of a servant from his master;

3. The seduction of a wife, daughter, orphan sister, or servant: and,

4. Any injury to a servant, which affects his ability to serve his master.

SEC. 33. Any necessary force may be used to protect from wrongful injury the person or property of oneself, or of a wife, husband, child, parent or other relative to the third degree, a ward, servant or master.

Right to use force.

PART III.**PERSONAL RELATIONS.****TITLE I. Marriage.**

- II. Parent and Child.
- III. Guardian and Ward.
- IV. Master and Servant.

TITLE I.**MARRIAGE.****CHAPTER I. The Contract of Marriage.**

- II. Divorce.
- III. Husband and Wife.

CHAPTER I.**THE CONTRACT OF MARRIAGE.****ARTICLE I. Validity.**

- II. Authentication.

ARTICLE I.**VALIDITY.**

- SECTION 34.** Definition of Marriage.
- 35. Consent, how proved.
- 36. Persons capable of marriage.
- 37. Consent must be given to a present marriage.
- 38. Certain marriages incestuous.
- 39. Certain marriages, when to be deemed void.
- 40. Polygamy forbidden.
- 41. Conjugal rights, &c., not restored by pardon.
- 42. Marriages of Indians.
- 43. Certain parts of Code not applicable.
- 44. Promise of Marriage.

Definition of marriage.

SEC. 34. Marriage is a personal relation, arising out of a civil contract, to which the consent of parties capable of making it is alone necessary.

SEC. 35. Consent to a marriage may be manifested in any form, and may be proved by any other fact. Consent, how proved.

SEC. 36. Any unmarried male of the age of fourteen years or upwards, and any unmarried female of the age of thirteen years or upwards, and not otherwise disqualified, is capable of consenting to marriage; subject however, to the provisions of section 54 of this Code. Persons capable of marriage.

SEC. 37. The consent to a marriage must be to one commencing instantly, and not to an agreement to marry afterwards. Consent must be given to a present marriage.

SEC. 38. Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as of the whole blood, are incestuous, and void from the beginning; whether the relationship is legitimate or illegitimate. Certain marriages incestuous.

SEC. 39. If either party to a marriage is incapable of consent for want of age or understanding, or is incapable from physical causes, of entering into the marriage state, or if the consent of either is obtained by fraud or force, the marriage is void from the time its nullity is adjudged by a competent tribunal. Certain marriages when to be deemed void.

SEC. 40. A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless: Polygamy forbidden.

1. The former had been annulled or dissolved for some cause other than the adultery of such person; or,

2. Unless such former husband or wife had been finally sentenced to imprisonment for life; or,

3. Unless such former husband or wife was absent, and not known to such person to be living, for the space of five successive years immediately preceding such subsequent marriage; in which case the subsequent marriage is void only from the time its nullity is adjudged by a competent tribunal.

SEC. 41. No pardon granted after the approval of this act, to any person sentenced to imprisonment for life in this Territory, restores such person to the rights of any previous marriage, or to the guardianship of any issue of such marriage. Conjugal rights etc. not restored by pardon.

SEC. 42. Indians contracting marriage according to the Indian custom, and cohabiting as husband and wife, are lawfully married. Marriages of Indians.

Certain parts
of Code not ap-
plicable.

SEC. 43. The provisions of other portions of this Code in relation to contracts and the capacity of persons to enter into them, have no application to the contract of marriage.

Promise of
marriage.

SEC. 44. A promise of marriage is subject to the same rules as contracts in general, except that neither party is bound by a promise made in ignorance of the other's want of personal chastity, and that either is released therefrom by unchaste conduct on the part of the other.

ARTICLE II.

AUTHENTICATION.

SECTION 45. Mode of authenticating marriage.

46. Form of Marriage.

47, 48. Duties of the officer before whom a marriage is solemnized.

49. Certificate to be given to either contracting party, if desired.

50. The certificate.

51. The entry thereof.

52. Authentication of the certificate.

53. Certificate, entry, &c., evidence.

Mode of an-
thenticating
marriages.

SEC. 45. For the purpose of authentication, according to the provisions of this article, a marriage must be solemnized in this Territory, in the manner herein prescribed, by one or more of the following persons, namely: Ministers of the Gospel or priests of any denomination; mayors, recorders or aldermen of cities; judges of the county courts or justices of the peace; and, in case of Indians, also the peacemakers acting within their respective jurisdictions.

Form of
marriage.

SEC. 46. No particular form is required upon a marriage, but the parties must solemnly declare, in the presence of the person solemnizing the marriage, and of at least one witness, that they take each other as husband and wife.

Duties of the
officers before
whom a mar-
riage is solemn-
ized.

SEC. 47. The person solemnizing a marriage must ascertain, to his satisfaction:

1. The identity of the parties;
2. Their real and full names, and places of residence;
3. That they are of sufficient age to be capable of contracting marriage; and,
4. The name and place of residence of the witness, or of two witnesses, if more than one is present.

Same.

SEC. 48. The person solemnizing a marriage must enter the

facts ascertained by him pursuant to the last section, and the date of the solemnization, in a book to be kept by him for that purpose.

SEC. 49. The person solemnizing a marriage must furnish to either party, on request, a certificate thereof, signed by him, specifying:

Certificate be given to either contracting party, if desired.

1. The names and places of residence of the parties married.
2. That they were known to him, or were satisfactorily proved, by the oath of a person known to him, to be the persons described in such certificate;
3. That he had ascertained that they were of sufficient age to contract marriage;
4. The name and place of residence of the attesting witness or of two witnesses;
5. The time and place of such marriage; and,
6. That, after due inquiry made, there appeared to be no lawful impediment to such marriage.

SEC. 50. The certificate mentioned in the last section may, within six months after the marriage, be filed with the clerk of the city or town where the marriage was solemnized, or where either of the parties reside, or the register of deeds of such county, and when thus filed, must be entered in a book to be provided by such officer, in the alphabetical order of the name of each party, and in the order of time in which it is filed.

The certificate.

SEC. 51. The entry required by the last section must specify:

The entry thereof.

1. The name and place of residence of each party;
2. The time and place of marriage;
3. The name and official station of the person signing the certificate: and,
4. The time when the certificate was filed.

SEC. 52. If a certificate of marriage is signed by a minister or priest, there must be indorsed or annexed, before filing, a certificate of a magistrate residing in the same county with the clerk, that the person by whom it is signed is personally known to such magistrate, and has acknowledged the execution of the certificate, in his presence, or that the execution of the certificate by a minister or priest of some religious denomination has been proved to the magistrate, by the

Authentication of the certificate.

oath of a person known to him, and who saw the certificate executed.

Certificate,
entry, &c., evi-
dence.

SEC. 52. A certificate of marriage, or the entry thereof made as above directed, or a copy of the certificate or entry, duly certified, is presumptive evidence of the fact of the marriage.

CHAPTER II.

DIVORCE.

ARTICLE I. Nullity.

II. Dissolution.

III. Separation.

IV. General Provisions.

ARTICLE I.

NULLITY.

SECTION 54. Cases where marriages may be annulled.

55. Application for a decision of nullity.

56. Children of annulled marriage.

57. Custody of children.

58. Effect of judgment of nullity.

Cases where
marriages may
be annulled.

SEC. 54. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party seeking to have the marriage annulled was under the age of legal consent; unless after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife;

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force;

3. That the wife was under the age of fourteen years, and that the marriage was without the consent of the person having the legal charge of her person, and was a punishable offense on the part of the husband, and has not been followed by cohabitation, nor ratified by any mutual assent of the parties since the wife attained the age of fourteen years;

4. That either party was of unsound mind; unless such party, after coming to reason, freely cohabited with the other as husband or wife;

5. That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife;

6. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife; or.

7. That either party was, at the time of marriage, physically incapable of entering into the married state; and such incapacity continues, and appears to be incurable.

SEC. 55. Within the time limited by law for the commencement of actions, application to annul a marriage may be made: Application for a declaration of nullity.

1. If for the cause that a former husband or wife was living; by either party during the life of the other, or by such former husband or wife;

2. If for the cause of idiocy; by any relative of the idiot, interested to avoid the marriage, during the life of either party;

3. If for the cause of insanity other than idiocy; by any relative of the insane party interested to avoid the marriage, and at any time during such insanity, or after the death of the insane party in that condition, and during the life of the other party; or by the insane party after the restoration of reason;

4. If for the cause of fraud or force; by the injured party, or the parent or guardian of such party, or a relative of such party interested to avoid the marriage, during the life of either party;

5. If no application has been made by the party or a relative, application may be made in any of the foregoing cases, at any time during the life of both parties, by a guardian of the insane or injured party, appointed by the court for the purpose;

6. If for the cause of physical incapacity; application can only be made by the injured party against the incapacitated party, and in all cases must be made within two years from the time of contracting the marriage;

7. If for the cause specified in subdivision 3 of section 54. by the wife only.

Children of annulled marriage.

SEC. 56. Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith, and with the full belief of the parties that the former husband or wife was dead, or where a marriage is annulled on the ground of insanity, children begotten before the judgment must be specified in the judgment, and are entitled to succeed in the same manner as legitimate children to the estate of the parent, who, at the time of the marriage, was competent to contract.

Custody of children.

SEC. 57. The court must award the custody of the children of a marriage annulled on the ground of fraud or force, to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

Effect of judgment of nullity.

SEC. 58. A judgment of nullity of marriage rendered during the life of the parties, is conclusive evidence of nullity; but if rendered after the death of either party to the marriage, it is conclusive only as against the parties to the action, and those claiming under them.

ARTICLE II.

DISSOLUTION.

SECTION 59. Marriage, how dissolved.

60. Divorce for adultery.

61. Cases in which divorce for adultery is denied.

62, 63. Legitimacy of issue.

64. When re-marriage is forbidden.

Marriage, how dissolved.

SEC. 59. Marriage is dissolved:

1. By the death or sentence to imprisonment for life of either of the parties; or

2. By the judgment of a competent tribunal.

Divorce for adultery.

SEC. 60. The dissolution of a marriage may be adjudged whenever adultery has been committed by husband or wife, in any of the following cases:

1. Where both husband and wife were actual inhabitants of this Territory at the time of the commission of the adultery;

2. Where the marriage took place within the Territory;

3. Where the injured party, at the time of the commission of adultery, and at the commencement of the action, was an actual inhabitant of this Territory;

4. Where the adultery was committed in this Territory, and the injured party, at the commencement of the action, was an actual inhabitant of this Territory.

SEC. 61. Although the fact of adultery is established, a judgment of divorce may be denied:

Case in which divorce for adultery is denied.

1. Where the application for divorce was not made within five years after the discovery by the applicant of the adultery charged;

2. Where the adultery appears to have been committed by the procurement, or with the connivance, of the party asking the divorce;

3. Where the injured party has expressly forgiven the adultery charged, or has voluntarily cohabited with the guilty party as husband or wife, with full knowledge of the fact; and has ever since been treated by the latter party with conjugal kindness; or,

4. Where it appears that the applicant has also been guilty of adultery, without the procurement or connivance of the other party.

SEC. 62. When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage, begotten of the wife before the commencement of the action, is not affected.

Legitimacy of issue.

SEC. 63. When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court, upon the evidence in the case. In every such case all children begotten before the commencement of the action, are to be presumed legitimate until the contrary is shown.

Same.

SEC. 64. When a divorce is granted for adultery, the innocent party may marry again during the life of the other; but the guilty party cannot marry any person except the innocent party, until the death of the other.

When re-marriage is forbidden.

ARTICLE III.

SEPARATION.

SECTION 65. When separation may be adjudged.

66. Causes for separation.

67. When denied.

68. Relief may be adjudged in some cases where separation is denied.

69. Judgment of separation, when revoked.

When separation may be adjudged.

SEC. 65. A separation of husband and wife from bed and board, for life or for a limited time, may be adjudged for the causes mentioned in the next section:

1. When the husband and wife are both actual inhabitants of this Territory;

2. When the marriage took place within this Territory, and the applicant is an actual inhabitant at the time of the application; or,

3. When the marriage did not take place within this Territory, but the parties have since been actual inhabitants of this Territory for at least one year, and the applicant is an actual inhabitant at the time of the application.

Causes for separation.

SEC. 66. A separation of husband and wife may be adjudged for any of the following causes:

1. Cruel treatment of one party by the other;

2. Conduct on the part of one towards the other, rendering cohabitation unsafe or improper; or,

3. Abandonment, accompanied by refusal to fulfill the obligations of husband or wife, as they are prescribed by the chapter on Husband and Wife.

When denied.

SEC. 67. Notwithstanding the existence of a cause for separation as declared in section 66, a judgment of separation may be denied, when it appears that the applicant has been guilty of a cause of divorce.

Relief may be adjudged in some cases where separation is denied.

SEC. 68. Though judgment of separation be denied, the court may, in an action for divorce, provide for the maintenance of the wife and her children, or any of them by the husband, or out of his property.

Judgment of separation when revoked.

SEC. 69. A judgment for separation, whether for life, or for a limited period, may be at any time revoked, under such

regulations as the court may impose, upon the joint application of the parties, with satisfactory evidence of their reconciliation.

ARTICLE IV.

GENERAL PROVISIONS.

- SECTION 70. Residence of wife.
- 71. Expense of action.
- 72. Orders respecting custody of children.
- 73. Support of wife and children on divorce or separation granted to wife.
- 74. Security for maintenance and alimony.

SEC. 70. A wife who resides in this Territory at the time of applying for a divorce, under article II or III, is to be deemed an actual inhabitant, though her husband resides elsewhere. Residence of wife.

SEC. 71. While an action for divorce is pending, the court may, in its discretion, require the husband to pay any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action. Expense of action.

SEC. 72. In an action for divorce, the court may, before or after judgment, give such direction for the custody, care and education of the children of the marriage, as may seem necessary or proper, and may at any time vacate or modify the same. Orders respecting custody of children.

SEC. 73. Where a divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife, for her support, during her life, or for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court may from time to time modify its orders in these respects. Support of wife and children on divorce or separation granted to wife.

SEC. 74. The court may require the husband to give reasonable security for providing maintenance, or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case. Security for maintenance and alimony.

CHAPTER III.

HUSBAND AND WIFE.

- SECTION 75. Mutual obligations of husband and wife.
 76. Rights of husband as head of the family.
 77. Duties of husband to wife as to support.
 78. In other respects their interests separate.
 79. Husband and wife may make contracts.
 80. How far may impair their legal relation.
 81. Consideration.
 82. May be joint tenants, etc.
 83. Neither answerable for the acts of the other.
 84. Support of wife.
 85. Abandonment of husband by the wife.

Mutual obligations of husband and wife.

SEC. 75. Husband and wife contract towards each other obligations of mutual respect, fidelity and support.

Rights of husband as head of the family.

SEC. 76. The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto.

Duties of husband to wife as to support.

SEC. 77. The husband must support himself and his wife out of his property or by his labor. If he is unable to do so, she must assist him so far as she is able.

In other respects their interests separate.

SEC. 78. Except as mentioned in section 77, neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling.

Husband and wife may make contracts.

SEC. 79. Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the Title on Trusts.

How far may impair their legal relations.

SEC. 80. A husband and wife cannot by any contract with each other alter their legal relations, except that they may agree to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

Consideration.

SEC. 81. The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

SEC. 82. A husband and wife may hold real or personal property together, jointly or in common. May be joint tenants etc.

SEC. 83. Neither husband or wife, as such, is answerable for the acts of the other. Neither answerable for the acts of the other.

SEC. 84. If the husband neglects to make adequate provisions for the support of his wife, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband. Support of wife.

SEC. 85. If the wife abandons the husband he is not liable for her support until she offers to return, unless she was justified, by his misconduct, in abandoning him. Abandonment of husband by the wife.

TITLE II.

PARENT AND CHILD.

- CHAPTER I. By birth.
II. By adoption.

CHAPTER I.

CHILDREN BY BIRTH.

- SECTION 86. Legitimacy of children born in wedlock.
87. Legitimacy of children born out of wedlock.
88. Who may dispute the legitimacy of a child.
89. Obligation of parents for the support and education of their children.
90. Custody of legitimate child.
91. Custody of illegitimate child.
92. Allowance to parent.
93. Parent cannot control the property of child.
94. Remedy for parental abuse.
95. When parental authority ceases.
96. Remedy when a parent dies without providing for the support of his child.
97. Reciprocal duties of parents and children in maintaining each other.
98. When a parent is liable for necessaries supplied to a child.
99. When a parent is not liable for support furnished his child.
100. Husband not bound for the support of his wife's children by a former marriage.
101. Compensation and support of a adult child.

102. Parent may relinquish services and custody of child.

103. Wages of minors.

104. Right of parent to determine the residence of child.

105. Parent not liable for act of child.

106. Wife in certain cases may obtain custody of minor children.

Legitimacy of children born in wedlock.

SEC. 86. All children born in wedlock are presumed to be legitimate.

Legitimacy of children born out of wedlock.

SEC. 87. All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate. But if during such period she marries again, and afterwards has a child, it is presumed to be her legitimate offspring by the second husband.

Who may dispute the legitimacy of a child.

SEC. 88. The presumption of legitimacy can be disputed only by the husband or wife, or the descendant of one or both of them. Illegitimacy, in such case, may be proved like any other fact.

Obligation of parents for the support and education of their children.

SEC. 89. The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability.

Custody of legitimate child.

SEC. 90. The father of a legitimate unmarried minor is entitled to its custody, services and earnings; but he cannot transfer such custody or services to any other person, except the mother, without her written consent, if she is living and capable of consent. If the father is dead, or is unable, or refuses to take the same, or has abandoned his family, the mother is entitled thereto.

Custody of an illegitimate child.

SEC. 91. The mother of an illegitimate unmarried minor is entitled to its custody, services and earnings.

Allowance to parent.

SEC. 92. The district court may direct an allowance to be made to a parent of a child, out of its property, for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit.

Parent cannot control the property of child.

SEC. 93. The parent, as such, has no control over the property of the child.

Remedy for parental abuse.

SEC. 94. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, or by its relative within the third degree, or by the supervisor of the town where the child resides; and when the abuse is established, the child may be free from the dominion of the parent.

the parent punished, and the duty of support and education enforced.

SEC. 95. The authority of a parent ceases:

1. Upon the appointment by a court of a guardian of the person of the child; When parental authority ceases.
2. Upon the marriage of the child; or,
3. Upon its attaining majority.

SEC. 96. If a parent chargeable with the support of a child dies, leaving it chargeable to the town, and leaving an estate sufficient for its support, the supervisor of the town may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditor against that estate, and against the heirs, devisees and next of kin of the parent. Remedy when a parent dies without providing for the support of his child.

SEC. 97. It is the duty of the father, the mother, and the children, of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent is binding. Reciprocal duties of parents and children in maintaining each other.

SEC. 98. If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessaries, and recover the reasonable value thereof from the parent. When a parent is liable for necessaries supplied to a child.

SEC. 99. A parent is not bound to compensate the other parent or a relative for the voluntary support of his child without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause. When a parent is not liable for support furnished his child.

SEC. 100. A husband is not bound to maintain his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and where such is the case, they are not liable to him for their support, nor he to them for their services. Husband not bound for the support of his wife's children by a former marriage.

SEC. 101. Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor. Compensation and support of adult child.

SEC. 102. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving. Parent may relinquish services and custody of child.

ing his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

Wages of minors.

SEC. 103. The wages of a minor employed in service may be paid to him, unless, within thirty days after the commencement of the service, the parent or guardian entitled thereto gives the employer notice that he claims such wages.

Right of parent to determine residence of child.

SEC. 104. A parent entitled to the custody of a child has a right to change his residence, subject to the power of the district court to restrain a removal which would prejudice the rights or welfare of the child.

Parent not liable for acts of child.

SEC. 105. Neither parent nor child is answerable, as such, for the act of the other.

Wife in certain cases may obtain custody of minor children.

SEC. 106. When a husband and wife live in a state of separation, without being divorced, any court or officer of competent jurisdiction, upon application of the wife, if she is an inhabitant of this Territory, may grant the proper writ to inquire into the custody of any minor unmarried child of the marriage, and may award the custody of the child to either party for such time, and under such regulations, as the case may require. The decision of the tribunal is to be guided by the rules prescribed in section 127.

CHAPTER II.

ADOPTION.

SECTION 107. Child may be adopted.

108. Who may adopt.

109. Consent of wife necessary.

110. Consent of child's parents.

111. Consent of child.

112. Proceedings on adoption.

113. Judge's order.

114. Effect of adoption.

115. Effect on former relations of child.

116. Adoption of illegitimate child.

Child may be adopted.

SEC. 107. Any minor child may be adopted by any adult person, in the cases, and subject to the rules, prescribed in this chapter.

Age of person adopting.

SEC. 108. The person adopting a child must be at least twenty years older than the person adopted.

SEC. 109. A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife. Consent of wife necessary.

SEC. 110. A legitimate child cannot be adopted without the consent of its parents, if living, nor an illegitimate child without the consent of its mother, if living, except that consent is not necessary from a father or mother, deprived of civil rights, or adjudged guilty of adultery, or of cruelty, and for either cause divorced, or adjudged to be an habitual drunkard, or who has been judicially deprived of the custody of the child, on account of cruelty or neglect. Consent of child's parents.

SEC. 111. The consent of a child, if over the age of twelve years, is necessary to its adoption. Consent of child.

SEC. 112. The person adopting a child, and the child adopted, and the other persons whose consent is necessary, must appear before the probate judge of the county where the person adopting resides, and the necessary consent must thereupon be signed, and an agreement be executed by the person adopting, to the effect that the child shall be adopted, and treated in all respects as his own lawful child should be treated. Proceedings on adoption.

SEC. 113. The probate judge must examine all persons appearing before him pursuant to the last section, each separately, and if satisfied that the interests of the child will be promoted by the adoption, he must make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting. Judge's order.

SEC. 114. A child, when adopted, takes the name of the person adopting, and the two thenceforth sustain towards each other the legal relation of parent and child, and have all the rights, and are subject to all the duties, of that relation. Effect of adoption.

SEC. 115. The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and of all responsibility for, the child so adopted, and have no right over it. Effect on former relations of child.

SEC. 116. The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such: and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption. Adoption of illegitimate child.

TITLE III.

GUARDIAN AND WARD.

- SECTION** 117. Guardian, what.
 118. Ward, what.
 119. Kinds of guardians.
 120. General guardian, what.
 121. Special guardian, what.
 122. Appointment by parent.
 123. No person guardian of estate without appointment.
 124, 125. Appointment by court.
 126. Jurisdiction.
 127. Rules for awarding custody of minor.
 128. Powers of guardian appointed by court.
 129. Duties of guardian of the person.
 130. Duties of guardian of estate.
 131. Relation confidential.
 132. Guardian under direction of court.
 133. Death of a joint guardian.
 134. Removal of guardian.
 135. Guardian appointed by parent, how superseded.
 136. Guardian appointed by court, how superseded.
 137. Release by ward.
 138. Guardian's discharge.
 139. Insane persons.

- Guardian, what.** **SEC. 117.** A guardian is a person appointed to take care of the person or property of another.
- Ward, what.** **SEC. 118.** The person over whom, or over whose property, a guardian is appointed, is called his ward.
- Kinds of guardian.** **SEC. 119.** Guardians are either:
 1. General; or,
 2. Special.
- General guardian, what.** **SEC. 120.** A general guardian is a guardian of the person, or of all the property of the ward within this Territory, or of both.
- Special guardian, what.** **SEC. 121.** Every other is a special guardian.
- Appointment by parent.** **SEC. 122.** A guardian of the person of a child born, or likely to be born, may be appointed, by will, or by deed, to take effect upon the death of the parent appointing:
 1. If the child is legitimate, by the father, with the written consent of the mother; or by either parent, if the other is dead, or incapable of consent;

2. If the child is illegitimate, by the mother.

SEC. 123. No person, whether a parent or otherwise, has any power as guardian of property, except by appointment as hereinafter provided. No person guardian of estate without appointment.

SEC. 124. A guardian of the person or property, or both, of a person residing in this Territory, who is a minor, or of unsound mind, may be appointed in all cases by the district court, when there is no such guardian, and by a judge of probate in the cases provided by law. Appointment by court.

SEC. 125. A guardian of the property within this Territory of a person not residing therein who is a minor, or of unsound mind, may be appointed by the district court. Same.

SEC. 126. In all cases, the court first making the appointment of a guardian has exclusive jurisdiction to appoint and control him, except in case of a removal pursuant to section 134. Jurisdiction.

SEC. 127. In awarding the custody of a minor, or in appointing a general guardian, the court or officer is to be guided by the following considerations: Rules for awarding custody of minor.

1. By what appears to be for the best interest of the child, in respect to its temporal and its mental and moral welfare; and if the child is of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question.

2. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right, but, other things being equal, if the child is of tender years, it should be given to the mother; if it is of an age to require education and preparation for labor or business, then to the father;

3. Of two persons equally eligible in other respects, preference is to be given as follows:

(1.) To a relative;

(2.) To one who was indicated by the wishes of a deceased parent;

(3.) To one who already stands in the position of a trustee of a fund to be applied to the child's support.

SEC. 128. A guardian appointed by a court has power over the person and property of the ward, unless otherwise ordered. Powers of guardian appointed by court.

SEC. 129. A guardian of the person is charged with the custody of the ward, and must look to his support, health and Duties of guardian of the person.

education. He may fix the residence of the ward at any place within the Territory, but not elsewhere, without permission of the court.

Duties of guardian of estate.

SEC. 130. A guardian of the property must keep safely the property of his ward. He must not suffer any sale, waste or destruction of the real property, but must maintain the inheritance, its buildings and appurtenances, out of the moneys of the estate, and deliver the same to the ward at the close of his guardianship, in as good condition as he received them, inevitable decay and injury only excepted.

Relation confidential.

SEC. 131. The relation of guardian and ward is confidential, and is subject to the provisions of the Title on Trusts.

Guardian under direction of court.

SEC. 132. In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

Death of a joint guardian.

SEC. 133. On the death of one of two or more joint guardians, the power continues to the survivor, until a further appointment is made by the court.

Removal of guardian.

SEC. 134. A guardian may be removed by the district or probate court for any of the following causes:

1. For abuse of his trust;
 2. For continued failure to perform its duties;
 3. For incapacity to perform its duties;
 4. For gross immorality;
 5. For having an interest adverse to the faithful performance of his duties;
 6. For removal from the Territory;
 7. In the case of a guardian of the property, for insolvency;
- or,

8. When it is no longer proper that the ward should be under guardianship.

Guardian appointed by parent; how superseded.

SEC. 135. The power of a guardian appointed by a parent is superseded:

1. By his removal, as provided by section 134;
2. In the case of a female ward, by her marriage; or,
3. By the ward's attaining majority.

Guardian appointed by court, how superseded.

SEC. 136. The power of a guardian appointed by a court is superseded only;

1. By the order of the court; or,

2. If the appointment was made solely because of the ward's minority, by his attaining majority.

SEC. 137. After a ward has come to his majority, he may settle accounts with his guardian, and give him a release, which is valid if obtained fairly and without undue influence. Release by ward.

SEC. 138. A guardian appointed by a court is not entitled to his discharge until one year after the ward's majority. Guardian's discharge.

SEC. 139. A person of unsound mind may be placed in an asylum for such persons, upon the order of the probate judge of the county in which he resides, as follows: Insane person.

1. The judge must be satisfied, by the oath of two reputable physicians, that such person is of unsound mind, and unfit to be at large;

2. Before granting the order, the judge must examine the person himself, or if that is impracticable, cause him to be examined by an impartial person;

3. After the order is granted, the person alleged to be of unsound mind, his or her husband or wife, or relative to the third degree, may demand an investigation before a jury, which must be conducted in all respects as under an inquisition of lunacy.

TITLE IV.

MASTER AND SERVANT.

SECTION 140. Who may bind themselves as apprentices.

141. Who to consent to such binding.

142. Parent or guardian, when liable for breach of indenture.

143. Pauper children may be bound to service.

144. Special provision as to Indian children.

145. Age of infants to be inserted in indentures.

146. Pecuniary consideration to be inserted.

147. Special agreement to be inserted in certain cases.

148. Certain indentures, where to be filed.

149, 150. Indentures, by foreigners, being minors.

151. How assigned.

152. Indentures, when invalid.

153. County overseers to be guardians of servants.

154. Penalty on apprentices absenting themselves from service.

155. No servant or apprentice bound by any restriction as to time and place where he shall work when free.

156, 157. When the executor or administrator of a deceased master may assign a contract of service.

158. Assignment by court.

Who may bind themselves as apprentices.

SEC. 140. Male minors, and unmarried females under the age of eighteen years, with the consent of the persons or officers hereinafter mentioned, may bind themselves, by a writing called an indenture, as fully as if they were of age, to serve as clerks, apprentices or servants, in a particular calling, until majority (except in the case of females, who cannot bind themselves further than until the age of eighteen,) or for any shorter time.

Who to consent to such binding.

SEC. 141. Consent to an indenture of apprenticeship must be given by certificate at the end thereof, or indorsed thereon, signed:

1. By the father and mother of the apprentice:

2. If the father lacks capacity to consent, or has abandoned or neglected to provide for the family, or is dead, and no testamentary guardian or executor has been appointed by him, with power under the will to bring up the child to a calling, and a certificate of such fact is indorsed on the indenture by a justice of the peace of the county, then by the mother;

3. If the father is dead, and such guardian or executor has been appointed by him, then by such guardian or executor:

4. If the mother is dead, or lacks capacity to consent, then by the father;

5. If there is no parent of capacity to consent, and no such executor, then by the guardian; or,

6. If there is no such parent, executor or guardian, then by the officers of the poor of the town or county, or by any two justices of the peace of the county, or by the probate judge.

Parent or guardian, when liable for breach of indenture.

SEC. 142. A parent, executor or guardian, consenting to an indenture, is not liable for a breach thereof by the apprentice, unless the indenture or consent expresses an intention to bind him therefor.

Pauper children may be bound to service.

SEC. 143. Any child who is chargeable, or whose parents are chargeable, to a county, town, or city poor house, or who is in such poor house, may be bound to service until attaining twenty-one years, or if a female, until attaining eighteen years, by the officers of the poor of the county, town or city, as effec-

tually as by the child himself with the parents' consent; but such binding, by the officers of a county or city, must be with the consent in writing, of two justices of the peace of the county, or of the mayor, recorder and alderman of the city, or any two of them.

SEC. 144. No child of an Indian woman can be bound, under this Title, except in the presence, and with the consent of a justice of the peace; and his certificate of consent must be filed with the probate judge of the county, where the indenture is executed. Special provisions as to Indian children

SEC. 145. In every indenture of apprenticeship the age of the apprentice must be stated, and such statement is presumptive evidence thereof; and before an officer executes an indenture, or consents thereto, he must inform himself of the age of the apprentice. Age of infants to be inserted in indentures.

SEC. 146. If there is any pecuniary consideration for an indenture of apprenticeship on either part, it must be stated therein. Pecuniary consideration to be inserted.

SEC. 147. The indenture of an apprentice, executed by officers of the poor, must bind the master to cause him to be taught reading, writing and the general rules of arithmetic, and to give him a new bible at the expiration of his term of service. Special agreement to be inserted in certain cases.

SEC. 148. Every officer executing an indenture of apprenticeship must file a counterpart thereof with the probate judge of the county in which he is an officer. Certain indentures, where to be deposited.

SEC. 149. An immigrant minor may bind himself to service, until he attains majority, or for a shorter term, in such manner as may be prescribed by the law of the country in which the contract is made. If the indenture is made for the purpose of enabling him to pay his passage to this country, it may be for the term of one year, although such term extends beyond his majority; but in no case for a longer term. Indentures by foreigners, being minors.

SEC. 150. Every indenture under section 149 must be acknowledged by the minor on a private examination before a mayor, recorder, or alderman of a city, or a justice of the peace, and a certificate of the acknowledgment must be indorsed upon the indenture. Same.

SEC. 151. The master, under an indenture specified in section 149, may assign it, by writing indorsed thereon, and with the How assigned

approval, also indorsed, of a magistrate mentioned in section 150.

Indentures when invalid.

SEC. 152. No indenture or contract for the service of an apprentice is binding upon him, unless made as hereinbefore prescribed.

County superintendents and overseers to be guardians of servants.

SEC. 153. The county overseer of the poor, and the overseers of the poor of cities and towns, must see that every apprentice or other servant in their respective counties, cities or towns, is properly treated, and that the terms of the contract are fulfilled in his favor; and it is their duty to redress any grievance of such persons in the manner prescribed by law.

Penalty on apprentices absents themselves from service.

SEC. 154. If an apprentice, for whose instruction the master receives no pecuniary compensation, willfully absents himself from service without leave, he may be compelled to serve double the time of such absence, unless he makes satisfaction for the injury; but such additional term of service cannot extend more than three years beyond the original term.

No servant or apprentice bound by any restriction as to time and place where he shall work when free.

SEC. 155. No person may accept from an apprentice or servant, an agreement, oath or promise not to exercise his vocation in any particular place; nor may any person exact from an apprentice or servant, any consideration for exercising his vocation in any place after his term of service has expired.

Penalty.

SEC. 156. Any consideration exacted contrary to the last section, may be recovered back with interest, and every person accepting such agreement or exacting such consideration, is liable to the apprentice or servant in a penalty of one hundred dollars.

When the executor or administrator of a deceased master may assign a contract of service.

SEC. 157. The executors or administrators of the master of any apprentice bound by officers of the poor, may assign the indenture, with the written consent of the apprentice, acknowledged before a justice of the peace.

Assignment by court.

SEC. 158. If an apprentice refuses consent to an assignment under the last section, the probate or district court may authorize such assignment without his consent, upon application after fourteen days' notice to the apprentice, or to his parents or guardian, if he has any in the county.

DIVISION SECOND.

PROPERTY.

PART I. Property in General.

II. Real, or Immovable Property.

III. Personal, or Movable Property.

IV. Acquisition of Property.

PART I.

PROPERTY IN GENERAL:

TITLE I. Nature of Property.

II. Ownership.

III. General Definitions.

TITLE I.

NATURE OF PROPERTY.

SECTION 159. Property, what.

160. In what property may exist.

161. Wild animals.

162. Real and personal.

163. Real property.

164. Land.

165. Fixtures.

166. Appurtenances.

167. Personal property.

SEC. 159. The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this Code, the thing, of which there may be ownership, is called property.

In what property may exist.

SEC. 160. There may be ownership of all inanimate things which are capable of appropriation, or of manual delivery: of all domestic animals; of all obligations; of such products of labor or skill, as the composition of an author, the good will of a business, trade-marks and signs, and of rights created or granted by statute.

Wild animals

SEC. 161. Animals, wild by nature, are the subjects of ownership while living, only when on the land of the person claiming them, or when tamed, or taken and held in possession, or disabled and immediately pursued.

Real and personal.

SEC. 162. Property is either:

1. Real or immovable: or,
2. Personal or movable.

Real property

SEC. 163. Real or immovable property consists of:

1. Land;
2. That which is affixed to land; and,
3. That which is incidental or appurtenant to land.

Land.

SEC. 164. Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance.

Fixtures.

SEC. 165. A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of nails, bolts or screws.

Appurtenances.

SEC. 166. A thing is deemed to be incidental or appurtenant to land, when it is by right used with the land for its benefit: as in the case of a way, or watercourse, or of a passage for light, air, or heat, from or across the land of another.

Personal property.

SEC. 167. Every kind of property that is not real is personal.

TITLE II.

OWNERSHIP.

CHAPTER I. Owners.

- II. Modifications of ownership.
- III. Rights of owners.
- IV. Termination of ownership.

CHAPTER I.

OWNERS.

SECTION 168. Owner.

169. Property of the state.

170. Who may own property.

SEC. 168. All property has an owner, whether that owner is the state, and the property public, or the owner an individual, and the property private. Owners.

SEC. 169. The state is the owner of all land, below high water mark, bordering upon tide water; of all land below the water of a lake or stream which constitutes an exterior boundary of the state; of all property lawfully appropriated by it to its own use; of all property dedicated to the state, and of all property of which there is no other owner. Property of the state.

SEC. 170. Any person, whether citizen or alien, may take and hold property, real or personal. Who may own property.

CHAPTER II.

MODIFICATIONS OF OWNERSHIP.

ARTICLE I. Interests in property.

II. Conditions of ownership.

III. Restraints upon alienation.

IV. Accumulations.

ARTICLE I.

INTERESTS IN PROPERTY.

SECTION 171. Ownership, absolute or qualified.

172. When absolute.

173. When qualified.

174. Several ownership, what.

175. Ownership of several persons.

176. Joint interest, what.

177. Partnership interest, what.

- SECTION 178. Interest in common, what.
 179. What interests are in common.
 180. Interests as to time.
 181. Present interest, what.
 182. Future interest, what.
 183. Perpetual interest, what.
 184. Limited interest, what.
 185. Kinds of future interests.
 186. Vested interests.
 187. Contingent interests.
 188. Two or more future interests.
 189. Certain future interests not to be void.
 190. Posthumous children.
 191, 192. Qualities of expectant estates.
 193, 194. Interests in real property.
 195. What future interests are recognized.

Ownership
absolute or
qualified.

SEC. 171. The ownership of property is either:

1. Absolute; or,
2. Qualified.

When abso-
lute.

SEC. 172. The ownership of property is absolute, when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.

When qual-
ified.

SEC. 173. The ownership of property is qualified:

1. When it is shared with one or more persons;
2. When the time of enjoyment is deferred or limited; or,
3. When the use is restricted.

Several own-
ership, what.

SEC. 174. The ownership of property by a single person is designated as a sole or several ownership.

Ownership of
several persons

SEC. 175. The ownership of property by several persons is either:

1. Of joint interests;
2. Of partnership interests; or,
3. Of interests in common.

Joint interest
what.

SEC. 176. A joint interest is one owned by several persons in equal shares, by a title created by a single will or transfer which confers a right of survivorship.

Partnership
interest, what.

SEC. 177. A partnership interest is one owned by several persons, in partnership, for partnership purposes.

Interest in
common, what.

SEC. 178. An interest in common is one owned by several persons, not in joint ownership or partnership.

What interests
are in common.

SEC. 179. Every interest created in favor of several persons in their own right, including husband and wife, is an interest in common, unless acquired by them in partnership, for part-

nership purposes, or unless declared in its creation, expressly or by necessary implication, to be a joint interest, with a right of survivorship.

SEC. 180. In respect to the time of enjoyment, an interest in property is either: Interests as to time.

1. Present or future; and,
2. Perpetual or limited.

SEC. 181. A present interest entitles the owner to the immediate possession of the property. Present interest, what.

SEC. 182. A future interest entitles the owner to the possession of the property only at a future period. Future interest, what.

SEC. 183. A perpetual interest has a duration equal to that of the property. Perpetual interest, what.

SEC. 184. A limited interest has a duration less than that of the property. Limited interest, what.

- SEC. 185. A future interest is either: Kinds of future interest.
1. Vested; or,
 2. Contingent.

SEC. 186. A future interest is vested, when there is a person in being, who would have a right, defeasible or indefeasible, to the immediate possession of the property, upon the ceasing of the intermediate or precedent interest. Vested interest, what.

SEC. 187. A future interest is contingent, whilst the person in whom, or the event upon which, it is limited to take effect, remains uncertain. Contingent interest, what.

SEC. 188. Two or more future interests may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly. Two or more future interests.

SEC. 189. A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect. Certain future interests not to be void.

SEC. 190. When a future interest is limited to successors, heirs, issue or children, posthumous children are entitled to take in the same manner as if living at the death of their parent. Posthumous children.

SEC. 191. Future interests pass by succession, will and transfer, in the same manner as present interests. Quality of future interests.

SEC. 192. A mere possibility, such as the expectancy of an heir-apparent, is not to be deemed an interest of any kind. Mere possibility.

Interests in real property. SEC. 193. In respect to real or immovable property, the interests mentioned in this chapter are denominated estates, and are specially named and classified in Part II of this Division.

Same. SEC. 194. The names and classification of interests in real property have only such application to interests in personal property as is in this Division of the Code expressly provided.

What future interests are recognized. SEC. 195. No future interest in property is recognized by the law, except such as is defined in this Division of the Code.

ARTICLE II.

CONDITION OF OWNERSHIP.

SECTION 196. Fixing the time of enjoyment.

197. Conditions.

198. Certain conditions precedent, void.

199. Conditions restraining marriage, void.

200. Conditions restraining alienation, void.

Fixing the time of enjoyment. SEC. 196. The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on events. In the latter case, the enjoyment is said to be upon condition.

Conditions. SEC. 197. Conditions are precedent or subsequent. The former fix the beginning, the latter the ending of the right.

Certain conditions precedent void. SEC. 198. If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void, and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the instrument takes effect and the condition is void.

Conditions restraining marriage, void. SEC. 199. Conditions imposing restraints upon marriage, except upon the marriage of a minor, or of the widow of the person by whom the condition is imposed, are void; but this does not affect limitations where the intent was, not to forbid marriage, but only to give the use until marriage.

Conditions restraining alienation, void. SEC. 200. Conditions restraining alienation, when repugnant to the interest created, are void.

ARTICLE III.

RESTRAINTS UPON ALIENATION.

SECTION 201. How long it may be suspended.

202. Future interests void, which suspended power of alienation.

203. Restriction on qualification of enjoyment.

SEC. 201. The absolute power of alienation cannot be suspended by any limitation or condition whatever, for a longer period than during the continuance of not more than two lives in being at the creation of the limitation or condition, except in the single case mentioned in section 229.

How long it may be suspended.

SEC. 202. Every future interest is void in its creation which, by any possibility, may suspend the absolute power of alienation for a longer period than is prescribed in this chapter. Such power of alienation is suspended when there are no persons in being by whom an absolute interest in possession can be conveyed.

Future interests void, which suspended power of alienation

SEC. 203. The restrictions upon the power to affix qualifications to the enjoyment shall be such only as are provided by the laws of this Territory.

Restriction on qualification of enjoyment.

ARTICLE IV.

ACCUMULATIONS.

SECTION 204. Dispositions of income.

205. Accumulations, when void.

206. Accumulation of income.

207. Other directions, when void in part.

208. Application of income to support, &c., of minor.

SEC. 204. Dispositions of the income of property to accrue and to be received at any time subsequent to the execution of the instrument creating such disposition, are governed by the rules prescribed in this Title in relation to future interests.

Dispositions of income.

Accumulations, when void.

SEC. 205. All directions for the accumulation of the income of property, except such as are allowed by this Title, are void.

Accumulation of income.

SEC. 206. An accumulation of the income of property, for the benefit of one or more persons, may be directed by any will or transfer in writing, sufficient to pass the property out of which the fund is to arise, as follows:

1. If such accumulation is directed to commence on the creation of the interest out of which the income is to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority; or,

2. If such accumulation is directed to commence at any time subsequent to the creation of the interest out of which the income is to arise, it must commence within the time in this title permitted for the vesting of future interests, and during the minority of the beneficiaries, and terminate at the expiration of such minority.

Other directions, when void in part.

SEC. 207. If, in either of the cases mentioned in the last section, the direction for an accumulation is for a longer term than during the minority of the beneficiaries, the direction only, whether separable or not from other provisions of the instrument, is void as respects the time beyond such minority.

Application of income to support, &c., of minor.

SEC. 208. When a minor, for whose benefit an accumulation has been directed, is destitute of other sufficient means of support and education, the district court, upon application, may direct a suitable sum to be applied thereto, out of the fund.

CHAPTER III.

RIGHTS OF OWNERS.

SECTION 209. Increase of property.

210. In certain cases who entitled to income of property.

Increase of property.

SEC. 209. The owner of a thing owns also all its products and accessions.

SEC. 210. When in consequence of a valid limitation of a future interest, there is a suspension of the power of alienation or of the ownership, during the continuation of which the income is undisposed of, and no valid direction for its accumulation is given, such income belongs to the persons presumptively entitled to the next eventual interest.

In certain cases who entitled to income of property.

CHAPTER IV.

TERMINATION OF OWNERSHIP.

SECTION 211, 212. Future interests, when defeated.

213, 214. Future interests, when not defeated.

SEC. 211. A future interest, depending on the contingency of the death of any person without successors, heirs, issue, or children, is defeated by the birth of a posthumous child of such person, capable of taking by succession.

Future interest, when defeated.

SEC. 212. A future interest may be defeated in any manner, or by any act or means, which the party creating such interest provided for authorized in the creation thereof: nor is a future interest, thus liable to be defeated, to be on that ground adjudged void in its creation.

Same.

SEC. 213. No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger or otherwise, except as provided by the next section, or where a forfeiture is imposed by statute as a penalty for the violation thereof.

Future interests, when not defeated.

SEC. 214. No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but should such contingency afterwards happen, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period.

Same.

TITLE III.

GENERAL DEFINITIONS.

SECTION. 215. Income, what.

216. Time of creation.

Income, what.

SEC. 215. The income of property, as the term is used in this Part of the Code, includes the rents and profits of real property, the interest of money, dividends upon stock, and other produce of personal property.

Time of creation, what.

SEC. 216. The delivery of the grant, where a limitation, condition, or future interest is created by grant, and the death of the testator, where it is created by will, is to be deemed the time of the creation of the limitation, condition, or interest within the meaning of this Part of the Code.

 PART II.

REAL OR IMMOVABLE PROPERTY.

TITLE I. General Provisions.

II. Estates in Real Property.

III. Rights and Obligations of owners.

IV. Uses and Trusts.

V. Powers.

TITLE I.

GENERAL PROVISIONS.

SEC. 217. Real property within this Territory is governed by the law of this Territory.

TITLE II.

ESTATES IN REAL PROPERTY.

- CHAPTER I. Estates in General.
 II. Termination of Estates.
 III. Servitudes.

CHAPTER I.

ESTATES IN GENERAL.

- SECTION 218. Enumeration of estates.
 219. What estate a fee simple.
 220. Estates tail abolished; their nature declared.
 221. Certain remainders valid.
 222. Freeholds; chattels real; chattel interests.
 223. Estate for life of a third person, when a freehold, &c.
 224. Future estates, what.
 225. Reversions.
 226. Remainders.
 227. Limitations of chattels real.
 228. Suspension by trust.
 229. Contingent remainder in fee.
 230. Remainders, future and contingent estates, how created.
 231. Limitation of successive estates for life.
 232, 233. Remainder upon estates for life of third person.
 234. Contingent remainder on a term of years.
 235. Remainder of estates for life.
 236. Remainder upon a contingency.
 237. Heirs of a tenant for life, when to take as purchasers.
 238. Construction of certain remainders.
 239. Effect of power of appointment.

SEC. 218. Estates in real property, in respect to the duration Enumeration of estate. of their enjoyment, are either:

1. Estates of inheritance, or perpetual estates;
2. Estates for life;
3. Estates for years; or,
4. Estates at will.

SEC. 219. Every estate of inheritance, notwithstanding the What estate a fee simple. abolition of tenures, continues to be called a fee simple, or

fee; and every such estate, when not defeasible or conditional, is called a fee simple absolute, or an absolute fee.

Estates tail abolished; their nature declared.

SEC. 220. Estates tail are abolished; and every estate is a fee simple; and if no valid remainder is limited thereon, is a fee simple absolute.

Certain remainders valid.

SEC. 221. Where a remainder in fee is limited upon any estate, which would by the law mentioned in the last section be adjudged a fee tail, such remainder is valid as a contingent limitation upon a fee, and vests in possession, on the death of the first taker, without issue living at the time of his death.

Freeholds; chattels real; chattels interests.

SEC. 222. Estates of inheritance and for life, are called estates of freehold; estates for years are chattels real; and estates at will are chattel interests, but are not liable as such to sale on execution.

Estates for life of a third person, when freehold, &c.

SEC. 223. An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold only during the life of the grantee or devisee. After his death it is a chattel real.

Future estates, what.

SEC. 224. A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination, by lapse of time, or otherwise, of a precedent estate, created at the same time.

Reversions.

SEC. 225. A reversion is the residue of an estate left, by operation of law, in the grantor, or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

Remainder.

SEC. 226. When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder, and may be created and transferred by that name.

Limitations of chattels real.

SEC. 227. The provisions of Title II of Part I of this Division, relative to future estates, apply to limitations of chattels real, as well as of freehold estates, so that the absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

Suspension by trust.

SEC. 228. The suspension of all power to alienate the subject of a trust, other than a power to exchange it for other property to be held upon the same trust, or to sell it and reinvest the proceeds to be held upon the same trust, is a suspen-

sion of the power of alienation, within the meaning of section 201.

SEC. 229. A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined, before they attain majority.

Contingent remainder in fee.

SEC. 230. Subject to the rules of this Title, and of Part I of this Division, a freehold estate, as well as a chattel real, may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon: a remainder of a freehold or chattel real, either contingent or vested, may be created, expectant on the determination of a term of years; and a fee may be limited on a fee, upon a contingency, which, if it should occur, must happen within the period prescribed in this Title.

Remainders, future and contingent estates, how created.

SEC. 231. Successive estates for life cannot be limited, except to persons in being at the creation thereof; and where a remainder is limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto are void, and upon the death of those persons the remainder, if valid in its creation, takes effect in the same manner as if no other life estates had been created.

Limitations of successive estates for life.

SEC. 232. No remainder can be created upon an estate for the life of any other person than the grantee or devisee of such estate, unless such remainder is in fee; nor can a remainder be created upon such an estate in a term for years, unless it is for the whole residue of such term.

Remainder upon estates for life of third person.

SEC. 233. When a remainder is created upon an estate for the life of any other person that the grantee or devisee thereof, and more than two persons are named as the persons during whose lives the life estate shall continue, the remainder, if valid in its creation, takes effect upon the death of the two persons first named, in the same manner as if no other lives had been introduced.

Same.

SEC. 234. A contingent remainder cannot be created on a term of years, unless the nature of the contingency on which it is limited is such, that the remainder must vest in interest

Contingent remainder on a term of years.

during the continuance of not more than two lives in being at the creation of such remainder, or upon the termination thereof.

Remainder of estates for life.

SEC. 235. No estate for life can be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

Remainder upon a contingency.

SEC. 236. A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder is to be deemed a conditional limitation.

Heirs of a tenant for life, when to take as purchasers.

SEC. 237. When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate, are the successors or heirs of the body of the owner for life, are entitled to take by virtue of the remainder so limited to them, and not as mere successors of the owner for life.

Construction of certain remainders.

SEC. 238. When a remainder, on an estate for life or for years, is not limited on a contingency defeating or avoiding such precedent estate, it is to be deemed intended to take effect only on the death of the first taker, or the expiration, by lapse of time, of such term of years.

Effect of power of appointment.

SEC. 239. A general or special power of appointment does not prevent the vesting of a future estate limited to take effect in case such power is not executed.

CHAPTER II.

TERMINATION OF ESTATES.

SECTION 240. Tenancy at will may be terminated by notice.

241. Form and service of notice.

242. Effect of notice.

243. Re-entry, when and how to be made.

244. Notice not necessary before action.

Tenancy at will may be terminated by notice.

SEC. 240. A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice to the tenant, in the manner prescribed by the next section, to remove from the premises within a period specified in the notice, of not less than one month.

SEC. 241. The notice prescribed by the last section must be Form of service of notice. in writing, and must be served by delivering the same to the tenant, or to some person of discretion residing on the premises, or if neither can, with reasonable diligence, be found, the notice may be served by affixing it on a conspicuous part of the premises, where it may be conveniently read.

SEC. 242. After the notice prescribed by sections 240 and 241 has been served in the manner therein directed, and the period specified by such notice has expired, but not before, the landlord may re-enter, or proceed according to law to recover possession. Effect of notice.

SEC. 243. Whenever the right of re-entry is given to a grantor or lessor in any grant or lease, or otherwise, such re-entry may be made at any time after the right has accrued, upon fifteen days' previous written notice of intention to re-enter, served in the mode prescribed by section 241. Re-entry, when and how to be made.

SEC. 244. An action for the possession of real property leased or granted, with a right of re-entry, may be maintained at any time after the right to re-enter has accrued, without the notice prescribed in section 243. Notice not necessary before action.

CHAPTER III.

SERVITUDES.

SECTION 245. Servitudes attached to land.

246. Servitudes not attached to land.

247. Designation of estates.

248. By whom granted.

249. By whom held.

250. Extent of servitudes.

251. Apportioning easements.

252. Rights of owner of future estate.

253. Actions by owner and occupant of dominant tenement.

254. Actions by owner of servient tenement.

255. How extinguished.

SEC. 245. The following land burdens, or servitudes upon Servitudes attached to land. land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture;

2. The right of fishing;
3. The right of taking game;
4. The right of way;
5. The right of taking water, wood, minerals and other things.
6. The right of transacting business upon land;
7. The right of conducting lawful sports upon land;
8. The right of receiving air, light or heat from or over, or discharging the same upon or over, land;
9. The right of receiving water from or discharging the same upon land;
10. The right of flooding land;
11. The right of having water flow without diminution or disturbance of any kind;
12. The right of using a wall as a party wall;
13. The right of receiving more than natural support from adjacent land or things affixed thereto;
14. The right of having the whole of a division fence maintained by a coterminous owner;
15. The right of having public conveyances stopped, or of stopping the same, on land;
16. The right of a seat in church;
17. The right of burial.

Servitudes not attached to land.

SEC. 246. The following land burdens, or servitudes upon land, may be granted, and held, though not attached to land:

1. The right of fishing and taking game;
2. The right of a seat in church;
3. The right of burial;
4. The right of taking rents and tolls;
5. The right of way.

Designation of estates.

SEC. 247. The land to which an easement is attached is called the dominant tenement; the land upon which a burden or servitude is laid is called the servient tenement.

By whom grantable.

SEC. 248. A servitude can be created only by one who has a vested estate in the servient tenement.

By whom held.

SEC. 249. A servitude thereon cannot be held by the owner of the servient tenement.

Extent of servitudes.

SEC. 250. The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired.

SEC. 251. In case of partition of the dominant tenement, ^{Apportioning easements.} the burden must be apportioned, according to the division of the dominant tenement, but not in such a way as to increase the burden upon the servient tenement.

SEC. 252. The owner of a future estate in a dominant tenement may use easements attached thereto, for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easements, although such tenement is occupied by a tenant. ^{Rights of owner of future estate.}

SEC. 253. The owner of any estate in a dominant tenement, or the occupant of such tenement, may maintain an action for the enforcement of an easement attached thereto. ^{Actions by owner and occupant of dominant tenement.}

SEC. 254. The owner in fee of a servient tenement, may maintain an action for the possession of the land, against any one unlawfully possessed thereof, though a servitude exists thereon in favor of the public. ^{Actions by owner of servient tenement.}

SEC. 255. A servitude is extinguished:

^{Extinction of servitudes.}

1. By the vesting of the right to the servitude and the right to the servient tenement in the same person;
2. By the destruction of the servient tenement;
3. By the performance of any act upon either tenement, by the owner of the servitude, or with his assent, which is incompatible with its nature or exercise; or,
4. When the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

TITLE III.

RIGHTS AND OBLIGATIONS OF OWNERS.

CHAPTER I. Rights of owners.

II. Obligations of owners.

CHAPTER I.

RIGHTS OF OWNERS.

ARTICLE I. Incidents of ownership.

II. Boundaries.

ARTICLE I.

INCIDENTS OF OWNERSHIP.

SECTION 256. Water

257. Rights of tenant for life.

258, 259. Rights of tenant for years, &c.

260. Rights of grantees of rents and reversions.

261. Rights of lessees and their assignees, &c.

262. Application of last two sections.

263. Remedy on leases for life.

264. Rent dependent on life.

265. Remedy of reversioners, &c.

Water.

SEC. 256. The owner of the land owns water standing thereon, or flowing over or under its surface, but not forming a definite stream. Water running in a definite stream, formed by nature over or under the surface, may be used by him as long as it remains there; but he may not prevent the natural flow of the stream, or of the natural spring from which it commences its definite course, nor pursue, nor pollute the same.

Rights of tenant for life.

SEC. 257. The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance.

Rights of tenant for years, &c.

SEC. 258. A tenant for years or at will, unless he is a wrongdoer by holding over, may occupy the building, take the annual products of the soil, work mines and quarries open at the commencement of his tenancy, and cultivate and harvest the crops growing at the end of his tenancy.

SEC. 259. A tenant for years or at will has no other rights to the property than such as are given to him by the agreement or instrument by which his tenancy is acquired, or by the last section. Same.

SEC. 260. A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any such rent is transferred, is entitled to the same remedies for recovery of rent, for non-performance of any of the terms of the lease, or for any waste or cause of forfeiture, as his grantor or devisor might have had. Rights of grantees of rent and reversion.

SEC. 261. Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against incumbrances, or relating to the title or possession of the premises. Rights of lessees and their assigns, &c.

SEC. 262. The provisions of the last two sections apply to all grants reserving rent, except grants in fee executed before the ninth day of April, 1805, or after the fourteenth day of April, 1860, the rents reserved by which have been transferred since the latter date. Application of last two sections.

SEC. 263. Rent due upon a lease for life may be recovered in the same manner as upon a lease for years. Remedy on leases for life.

SEC. 264. Rent dependent on the life of a person may be recovered after, as well as before, his death. Rent dependent on life.

SEC. 265. A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years, and although, after its commission, his estate is transferred, and he has no interest in the property at the commencement of the action. Remedies of reversioners, &c.

ARTICLE II.

BOUNDARIES.

- SECTION 266. Rights of owner.
 267. Boundaries by water.
 268. Boundaries by ways.
 269. Lateral and subjacent support.
 270. Trees whose trunks are wholly on land of one.
 271. Line trees.

Rights of
owner.

SEC. 266. The owner of land in fee has the right to the surface, and to every thing permanently situated beneath or above it.

Boundaries
by water.

SEC. 267. When land borders upon water which constitutes an exterior boundary of the Territory, the owner of the upland takes to high-water mark; when it borders upon a navigable lake where there is no tide, the owner takes to the edge of the lake at low-water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream.

Boundaries
by ways.

SEC. 268. An owner of land, bounded by a road or street, is presumed to own to the center of the way, but the contrary may be shown.

Internal and
subjacent sup-
port.

SEC. 269. Each coterminous owner is entitled to the lateral and subjacent support which his land by nature receives from the land of the other.

Trees whose
trunks are
wholly on land
of one.

SEC. 270. Trees whose trunks stand wholly upon the land of one owner, belong exclusively to him, although their roots grow into the land of another.

Line trees.

SEC. 271. Trees whose trunks stand partly on the land of two or more coterminous owners, belong to them in common.

CHAPTER II.

OBLIGATIONS OF OWNERS.

- SECTION 272. Duties of tenant for life.
 273. Monuments and fences.

SEC. 272. The owner of a life estate must keep the buildings and fences in repair from ordinary waste, and must pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefiting the whole inheritance. Duties of tenant for life.

SEC. 273. Coterminous owners are mutually bound equally to maintain: Monuments and fences.

1. The boundaries and monuments between them;
2. The fences between them; unless one of them chooses to let his land lie open as a public common, in which case, if he afterwards incloses it, he must refund to the other a just proportion of the value, at that time, of any division fence made by the latter.

TITLE IV.

USES AND TRUSTS.

SECTION 274. What uses and trusts may exist.

- 275. Executed uses existing.
- 276. Right to possession of land creates legal ownership.
- 277. Certain trusts unaffected.
- 278. Trustees of estate for use of another take no interest.
- 279. Preceding sections qualified.
- 280. Trust must be in writing.
- 281. Transfer to one for money paid by another.
- 282. Rights of creditors.
- 283. Section 281 qualified.
- 284. Purchasers protected.
- 285. For what purposes express trusts may be created.
- 286. Certain devises in trust to be deemed powers.
- 287. Profits of land liable to creditors in certain cases.
- 288. Other express trusts to be powers in trust.
- 289. Creation of certain powers not prohibited.
- 290. And land, &c., to descend to persons entitled.
- 291. Trustees of express trusts to have whole estate.
- 292. Author of trust may devise, &c.
- 293. Title of grantor of trust property.
- 294. Interests remaining in grantor of express trust.
- 295, 296. Powers over trust of party interested.
- 297. Effect of omitting trust in conveyance.
- 298. Certain sales, &c., by trustees, void.
- 299. When estate of trustee to cease.

SEC. 274. Uses and trusts, in relation to real property, are those only which are specified in this Title. What uses and trusts may exist.

Executed uses existing.

SEC. 275. Every estate which is now held as a use, executed under any former statute of this Territory, is confirmed as a legal estate.

Right to possession of land creates legal ownership.

SEC. 276. Every person who, by virtue of any transfer or devise, is entitled to the actual possession of real property, and the receipt of the rents and profits thereof, is to be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions, as his beneficial interest.

Certain trusts unaffected.

SEC. 277. The last section does not divest the estate of any trustee in a trust heretofore existing, where the title of such trustee is not merely nominal, but is connected with some power of actual disposition or management in relation to the real property which is the subject of the trust.

Trustees of estate for use of another take no interest.

SEC. 278. Every disposition of real property, whether by transfer or will, must be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to any other, to the use of or in trust for such person; and if made to any person, to the use of or in trust for another, no estate or interest vests in the trustee; but he must execute a release of the property to the beneficiary on demand, the latter paying the expense thereof.

Preceding sections qualified.

SEC. 279. The preceding sections of this Title do not extend to trusts arising or resulting by implication of law, nor prevent or affect the creation of such express trusts as are hereinafter authorized and defined.

Trust to be in writing.

SEC. 280. No trust in relation to real property is valid, unless created or declared:

1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized by writing;

2. By the instrument under which the trustee claims the estate affected; or,

3. By operation of law.

Transfer to one for money paid by another.

SEC. 281. Where a transfer of real property is made to one person, and the consideration therefor is paid by or for another, no use or trust results in favor of the person by or for whom such payment is made; but the title vests in the grantee, subject only to the provisions of the next two sections.

SEC. 282. Every such transfer as is described in the last section is presumed to be fraudulent as against the creditors, at that time, of the person paying the consideration; and where a fraudulent intent is not disproved, a trust results in favor of such creditors, to the extent necessary to satisfy their just demands.

Rights of creditors.

SEC. 283. Section 281 does not apply:

Section 281 qualified.

1. To cases where the grantee took the grant as an absolute transfer in his own name, without the consent or knowledge of the person paying the consideration; nor,

2. To cases where the grantee, in violation of a trust, purchased the real property so transferred, with property belonging to another person.

SEC. 284. No implied or resulting trust can prejudice the rights of a purchaser or incumbrancer of real property, for value and without notice of the trust.

Purchasers protected.

SEC. 285. Express trusts may be created for any of the following purposes:

For what purposes express trusts may be created.

1. To sell real property for the benefit of creditors:

2. To sell, mortgage or lease real property, for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon;

3. To receive the rents and profits of real property, and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family during the life of such person, or for any shorter term, subject to the rules of Title II of this Part; or,

4. To receive the rents and profits of real property, and to accumulate the same for the purposes and within the limits prescribed by the same Title.

SEC. 286. A devise of real property to executors or other trustees, to be sold or mortgaged, where the trustees are not also empowered to receive the rents and profits, vests no estate in them; but the trust is valid as a power in trust.

Certain devices in trust to be deemed powers.

SEC. 287. Where a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, is liable

Profits of land liable to creditors in certain cases.

to the claims of the creditors of such person, in the same manner as personal property which cannot be reached by execution.

Other express trusts to be powers in trust.

SEC. 288. Where an express trust in relation to real property is created for any purpose not enumerated in the preceding sections, such trust vests no estate in the trustees; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, is valid as a power in trust, subject to the provisions in relation to such powers, contained in Title V of this Part.

Creation of certain powers not prohibited.

SEC. 289. Nothing in this Title prevents the creation of a power in trust, for any of the purposes for which an express trust may be created.

And land, &c. to descend to persons entitled.

SEC. 290. In every case where a trust is valid as a power in trust, the real property to which the trust relates, remains in, or passes by succession to, the persons otherwise entitled, subject to the execution of the trust as a power in trust.

Trustees of express trusts to have whole estate.

SEC. 291. Except as hereinafter otherwise provided, every express trust in real property, valid as such, in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust.

Author of trust may devise, &c.

SEC. 292. Notwithstanding anything contained in the last section, the author of a trust may, in its creation, prescribe to whom the real property to which the trust relates shall belong, in the event of the failure or termination of the trust, and may transfer or devise such property, subject to the execution of the trust.

Title of grantor of trust property.

SEC. 293. The grantee or devisee of real property subject to a trust acquires a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them.

Interests remaining in grantor of express trust.

SEC. 294. Where an express trust is created in relation to real property, every estate not embraced in the trust, and not otherwise disposed of, is left in the author of the trust, or his successors.

Powers over trust of party interested.

SEC. 295. The beneficiary of a trust for the receipt of the rents and profits of real property cannot transfer, or in any manner dispose of, his interest in such trust.

SEC. 296. The beneficiary of a trust for the payment of an annuity out of the rents and profits of real property, or of a sum in gross, can dispose of his interest in such trust. Same.

SEC. 297. Where an express trust is created in relation to real property, but is not contained or declared in the grant to the trustee, such grant must be deemed absolute, in favor of the subsequent creditors of the trustees, not having notice of the trust, and in favor of purchasers from such trustees, without notice, and for a valuable consideration. Effect of omitting trust in conveyance.

SEC. 298. Where a trust in relation to real property is expressed in the instrument creating the estate, every transfer or other act of the trustees, in contravention of the trust, is absolutely void. Certain sales, &c., by trustees void.

SEC. 299. When the purpose for which an express trust was created ceases, the estate of the trustee also ceases. When estate of trustee to cease.

TITLE V.

POWERS.

SECTION 300. What powers exist.

301. Application of this title.

302. Definition of a power.

303. Terms "author of a power" and "holder of a power," defined.

304. Division of power.

305. Definition of general powers.

306. Definition of special powers.

307. Beneficial powers.

308. Powers in trust.

309. General powers, when in trust.

310. Special powers, when in trust.

311. Who may create power.

312. To whom power may be given.

313. How created.

314. Reservation of powers in conveyances.

315. When power irrevocable.

316. When power a lien.

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318. Beneficial powers, &c., transferred by insolvent assignments.

319. Who to execute powers.

320, 321. Married women.

322. How executed.

- 323. Execution by survivors.
- 324. Execution of power to dispose by devise.
- 325. Execution of power to dispose by grant.
- 326, 327. Directions by author, when disregarded.
- 328. Nominal conditions.
- 329. When directions of author to be observed.
- 330, 331. Consent of third person to execution of power.
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- 334. Certain dispositions not void.
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- 338. Defective execution.
- 339. Fraud.
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- 342, 343. Certain powers create a fee.
- 344. Effect of power to devise inheritance in certain cases.
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- 346. Power to revoke.
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- 348. Construction of leasing powers.
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- 350. Release of such power.
- 351. Mortgages by party having power to lease, &c.
- 352. Effect thereof.
- 353. Special and beneficial powers liable to creditors.
- 354. Future beneficial powers.
- 355. Trust powers imperative.
- 356. Effect of right of selection.
- 357, 358. Construction of certain powers.
- 359, 360. When court to execute power.
- 361. Execution of trust power when compelled by creditors, &c.
- 362. Defective execution.
- 363. Application of certain sections.

What powers exist. SEC. 300. Powers, in relation to real property, are those only which are specified in this Title.

Application of this title. SEC. 301. The provisions of this Title do not extend to a simple power of attorney to convey real property in the name of the owner and for his benefit.

Definition of SEC. 302. A power, as the term is used in this Title, is an authority to do some act in relation to real property, or to the creation or revocation of an estate therein, or a charge thereon, which the owner granting or reserving such power might himself perform for any purpose.

Terms "author of a power" and "holder of a power" defined. SEC. 303. The author of a power, as the term is used in this Title, is the person by whom a power is created, whether by

grant or devise; and the holder of a power is the person in whom a power is vested, whether by grant, devise or reservation.

SEC. 304. Powers are general or special, and beneficial or in trust. Division of powers.

SEC. 305. A power is general, when it authorizes the alienation or incumbrance of a fee in the property embraced therein, by grant, will or charge, or any of them, in favor of any person whatever. Definition of general powers.

SEC. 306. A power is special:

Definition of special powers.

1. When a person or class of persons is designated, to whom the disposition of property under the power is to be made; or,

2. When it authorizes the alienation or incumbrance, by means of a grant, will, or charge, of only an estate less than a fee.

SEC. 307. A power is beneficial when no person other than its holder has, by the terms of its creation, any interest in its execution. Beneficial powers.

SEC. 308. A power is in trust, when any person or class of persons, other than its holder, has, by the terms of its creation, an interest in its execution. Powers in trust.

SEC. 309. A general power is in trust, when any person or class of persons, other than its holder, is designated as entitled to the proceeds of the disposition or charge authorized by the power, or to any portion of the proceeds or other benefits to result from its execution. General powers when in trust.

SEC. 310. A special power is in trust:

Special powers when in trust.

1. When the disposition or charge which it authorizes is limited to be made to any person or class of persons, other than the holder of the power; or,

2. When any person or class of persons, other than the holder, is designated as entitled to any benefit from the disposition or charge authorized by the power.

SEC. 311. No person is capable of creating a power, who is not at the same time capable of granting some estate in the property to which the power relates. Who may create power.

SEC. 312. A power may be vested in any person.

To whom power may be given

SEC. 313. A power may be created only:

How to be created.

1. By a suitable clause, contained in a grant of some estate in the real property to which the power relates, or in an agreement to execute such a grant; or,
2. By a devise contained in a will.

Reservation of powers in conveyance.

SEC. 314. The grantor in any conveyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another; and every power thus reserved is subject to the provisions of this Title, in the same manner as if granted to another.

When powers irrevocable.

SEC. 315. Every power, beneficial or in trust, is irrevocable, unless an authority to revoke it is given or reserved in the instrument creating the power.

When power a lien.

SEC. 316. A power is a lien upon the real property which it embraces, from the time the instrument in which it is contained takes effect; except that against creditors, purchasers and incumbrancers, in good faith and without notice, from any person having an estate in such real property, the power is a lien only from the time the instrument in which it is contained is duly recorded.

Power of sale in mortgage.

SEC. 317. Where a power to sell real property is given to a mortgagee or other incumbrancer, in an instrument intended to secure the payment of money, the power is to be deemed a part of the security, and vests in and may be executed by any person, who, by assignment or otherwise, become entitled to the money so secured to be paid.

Beneficial powers, &c., transferred by insolvent assignment, &c.

SEC. 318. Every beneficial power, and the interest of every person entitled to compel the execution of a trust power, passes to the assignees, pursuant to statute, of the estate of a non-resident, absconding, insolvent or imprisoned debtor, or of a person of unsound mind, in whom such a power or interest is vested.

Who to execute powers.

SEC. 319. A power cannot be executed by any person not capable of disposing of real property.

Married women.

SEC. 320. A married woman may execute a power during her marriage, without the concurrence of her husband, unless otherwise prescribed by the terms of the power.

Same.

SEC. 321. No power can be executed by a married woman before she attains her majority, nor without being acknowledged by her in the manner prescribed by the chapter on Recording transfers.

SEC. 322. A power can be executed only by a written instrument which would be sufficient to pass the estate or interest intended to pass under the power, if the person executing the power was the actual owner. How executed.

SEC. 323. Where a power is vested in several persons, all must unite in its execution; but in case any one or more of them is dead, the power may be executed by the survivor or survivors, unless otherwise prescribed by the terms of the power. Execution by survivors, &c.

SEC. 324. Where a power to dispose of real property is confined to a disposition by devise or will, the instrument of execution must be a will duly executed according to the provisions of the Title on Wills. Execution of power to dispose by devise.

SEC. 325. Where a power is confined to a disposition by grant, it cannot be executed by will, even though the disposition is not intended to take effect until after the death of the person executing the power. Execution of power to dispose by grant.

SEC. 326. Where the author of a power has directed or authorized it to be executed by an instrument which would not be sufficient in law to pass the estate, the power is not void, but its execution is to be governed by the rules before prescribed in this Title. Directions by author, when disregarded.

SEC. 327. Where the author of a power has directed any formalities to be observed in its execution, in addition to those which would be sufficient to pass the estate, the observance of such additional formalities is not necessary to a valid execution of the power. Same.

SEC. 328. Where the conditions annexed to a power are merely nominal, and evince no intention of actual benefit to the party to whom, or in whose favor, they are to be performed, they may be wholly disregarded in the execution of the power. Nominal conditions.

SEC. 329. With the exceptions contained in the preceding sections, the intentions of the author of a power as to the mode, time and conditions of its execution must be observed, subject to the power of the district court to supply a defective execution in the cases provided in sections 338 and 362. When directions of author to be observed.

SEC. 330. When the consent of a third person to the execution of a power is requisite, such consent must be expressed Consent of third person to execution power.

in the instrument by which the power is executed, or be certified in writing thereon. In the first case the instrument of execution, in the second, the certificate, must be subscribed by the party whose consent is required; and to entitle the instrument to be recorded, such signature must be duly proved or acknowledged, according to the chapter on Recording Transfers.

Same.

SEC. 331. Where the consent of several persons to the execution of a power is requisite, all must consent thereto; but, in case any one or more of them is dead, the consent of the survivors is sufficient, unless otherwise prescribed by the terms of the power.

Omission to recite power.

SEC. 332. Every instrument executed by the holder of a power, conveying an estate or creating a charge which such holder would have no right to convey or create except by virtue of his power, is to be deemed a valid execution of the power, even though not recited or referred to therein.

Instruments deemed conveyances.

SEC. 333. Every instrument except a will, in execution of a power, even though the power is one of revocation only, is to be deemed a conveyance within the meaning of the chapter on Recording Transfers.

Certain dispositions not void

SEC. 334. A disposition or charge, by virtue of a power, more extensive than was authorized thereby, is not therefore void; but every estate or interest so created, so far as it is embraced by the terms of the power, is valid.

Computation of term of suspensions.

SEC. 335. The period during which the absolute right of alienation may be suspended by an instrument in execution of a power, must be computed, not from the date of the instrument, but from the time of the creation of the power.

What estate may be given.

SEC. 336. No estate or interest can be given or limited to any person, by an instrument in execution of a power, which could not have been given or limited at the time of the creation of the power.

Married women, their authority.

SEC. 337. When a married woman, entitled to an estate in fee, is authorized by a power to dispose of such estate during her marriage, she may, by virtue of such power, create any estate which she might create if unmarried.

Defective execution.

SEC. 338. Purchasers for a valuable consideration, claiming under a defective execution of a power, are entitled to the

same relief as similar purchasers claiming under a defective conveyance from an actual owner.

SEC. 339. Instruments in execution of a power are affected by fraud in the same manner as like instruments executed by owners or trustees. Fraud.

SEC. 340. A general and beneficial power is valid, which gives to a married woman power to dispose, during her marriage, and without the concurrence of her husband, of a present or future estate in real property conveyed or devised to her in fee. General and beneficial powers to married women.

SEC. 341. Where an absolute power of disposition, not accompanied by any trust, is given to the owner of a particular estate for life or years, such estate is changed into a fee, absolute in favor of creditors, purchasers and incumbrancers, but subject to any future estates limited thereon, in case the power should not be executed, or the property should not be sold for the satisfaction of debts. Estate of owner for life, &c., when changed into a fee.

SEC. 342. Where an absolute power of disposition, not accompanied by any trust, is given to any person to whom no particular estate is limited, such person also takes a fee, subject to any future estate that may be limited thereon, but absolute in favor of creditors, purchasers, and incumbrancers. Certain powers create a fee.

SEC. 343. In all cases where an absolute power of disposition is given, not accompanied by any trust, and no remainder is limited on the estate of the holder of the power, he is entitled to an absolute fee. Same.

SEC. 344. Where a general and beneficial power to devise the inheritance is given to the owner of an estate for life or for years, he is deemed to possess an absolute power of disposition, within the meaning of the last three sections. Effect of power to devise inheritance in certain cases.

SEC. 345. Every power of disposition is deemed absolute, by means of which the holder is enabled in his lifetime to dispose of the entire fee, in possession or in expectancy, for his own benefit. Powers to dispose of fee.

SEC. 346. Where the grantor in any conveyance reserves to himself, for his own benefit, an absolute power of revocation, such grantor is still to be deemed the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned. Power to revoke.

Special and beneficial power, who may take.

SEC. 347. A special and beneficial power is valid, which is granted:

1. To a married woman, to dispose, during the marriage, of any estate less than a fee, belonging to her, in the property to which the power relates; or,

2. To the owner of a life estate in the property embraced in the power, to make leases for not more than twenty-one years, commencing in possession during his life.

Construction of leasing powers.

SEC. 348. A special and beneficial power to make leases for not more than twenty-one years given to the owner of a life estate, is void only as to the time beyond twenty-one years, and authorizes leases for that term or less.

Power to make leases by owner for life.

SEC. 349. The power of the owner of a life estate to make leases is not transferable as a separate interest, but is annexed to his estate, and will pass, unless specially excepted, by any grant of such estate. If specially excepted in any such grant, it is extinguished.

Release of such power.

SEC. 350. The power of the owner of a life estate to make leases may be released by him to any person entitled to a future estate in the property, and is thereupon extinguished.

Mortgages by party having power to lease, &c.

SEC. 351. A mortgage, executed by the owner of a life estate having a power to make leases, or by a married woman, by virtue of any beneficial power, does not extinguish or suspend the power; but the power is bound by the mortgage in the same manner as the real property embraced therein.

Effect thereof.

SEC. 352. The effects on the power, of a lien by mortgage such as is mentioned in the last section, are:

1. That the mortgagee is entitled to an execution of the power, so far as the satisfaction of his lien may require it; and,

2. That any subsequent estate created by the owner, in execution of the power, becomes subject to the mortgage in the same manner as if in terms embraced therein.

Special and beneficial powers liable to creditors.

SEC. 353. Every special and beneficial power is liable to the claims of creditors, in the same manner as other interests that cannot be reached by execution, and the execution of the power may be adjudged for the benefit of the creditors entitled.

Future beneficial powers.

SEC. 354. No beneficial power, general or special, not already specified and defined in this Title, can hereafter be created.

SEC. 355. Every trust power, unless its execution is made expressly to depend on the will of the trustee, is imperative, and imposes a duty on the trustee, the performance of which may be compelled for the benefit of the parties interested.

Trust powers imperative.

SEC. 356. A trust power does not cease to be imperative, where the trustee has the right to select any, and exclude others, of the persons designated as the beneficiaries of the trust.

Effect of right of selection.

SEC. 357. Where a disposition under a power is directed to be made to, among, or between several persons, without any specification of the share or sum to be allotted to each, all the persons designated are entitled in equal proportion.

Construction of certain powers.

SEC. 358. Where the terms of a power import that the estate or fund is to be distributed among several persons designated, in such manner or proportions as the trustee of the power may think proper, the trustee may allot the whole to any one or more of such persons in exclusion of the others.

Same.

SEC. 359. If the trustee of a power, with the right of selection, dies leaving the power unexecuted, its execution must be adjudged for the benefit, equally, of all the persons designated as objects of the trust.

When court to execute power.

SEC. 360. Where a power in trust is created by will, and the testator has omitted to designate, expressly or by necessary implication, by whom the power is to be executed, its execution devolves on the district court.

Same.

SEC. 361. The execution, in whole or in part, of any trust power, may be adjudged for the benefit of the creditors or assignees of any person entitled, as one of the beneficiaries of the trust, to compel its execution, when his interest is transferable.

Execution of trust power, when compelled by creditors, &c.

SEC. 362. Where the execution of a power in trust is defective, in whole or in part, under the provisions of this Title, its proper execution may be adjudged in favor of the persons designated as the objects of the trust.

Defective execution.

SEC. 363. The provisions of the Title on Trust, saving the rights of other persons from prejudice by the misconduct of trustees, and authorizing the court to remove and appoint trustees; the provisions of the Title on Succession, devolving express trusts upon the court, on the death of the trustee; and the provisions of section 299, in the Title on Uses and Trusts, apply equally to powers in trust, and the trustees of such powers.

Application of certain sections.

PART III.**PERSONAL OR MOVABLE PROPERTY****TITLE I. Personal Property in General.****II. Particular Kinds of Personal Property.****TITLE I.****PERSONAL PROPERTY IN GENERAL.**

SECTION. 364. By what law governed.

365. Future interests in perishable property, how protected.

By what law governed.

SEC. 364. If there is no law to the contrary in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile.

Future interests in perishable property, how protected.

SEC. 365. Where one has the present and another the future interest in a thing personal, and the thing is perishable, the latter may require it to be sold, and the proceeds invested, for the benefit of both parties, according to their respective interests; except in case of a thing specially appropriated to a particular use.

TITLE II.

PARTICULAR KINDS OF PERSONAL PROPERTY.

CHAPTER I. Things in action.

II. Shipping.

III. Corporations.

IV. Products of the mind.

V. Other kinds of personal property.

CHAPTER I.

THINGS IN ACTION.

SECTION 366. Things in action defined.

367. Transfer and survivorship.

SEC. 366. A thing in action is a right to recover something ^{Things in action defined.} by a judicial proceeding.

SEC. 367. A thing in action, arising out of the violation of ^{Transfer and survivorship.} a right of property, or out of an obligation, may be transferred by the owner. Upon the death of the owner it passes to his personal representatives, except where, in the cases provided by law, it passes to his devisees or successor in office.

CHAPTER II.

SHIPPING.

ARTICLE I. General provisions.
II. Rules of navigation.

ARTICLE I.

GENERAL PROVISIONS.

- SECTION 368. Definition of a ship.
 369. Appurtenances and equipments.
 370. Foreign and domestic navigation.
 371. Foreign and domestic ships distinguished.
 372. Several owners.
 373. Owner for voyage.
 374. Registry, &c.

Definition of
a ship.

SEC. 368. A ship is any boat, vessel or structure fitted for navigation. Every kind of ship is included in the term "shipping," and the following provisions relating to ships or shipping, apply to all boats, or structures fitted for navigation, and to the business thereof.

Appurtenances and equipments.

SEC. 369. All things, belonging to the owners, which are on board a ship, and are connected with its proper use, for the objects of the voyage and adventure in which the ship is engaged, are deemed its appurtenances.

Foreign and domestic navigation.

SEC. 370. Ships are engaged either in foreign or domestic navigation. Ships are engaged in foreign navigation, when passing to or from a foreign country; and in domestic navigation when passing from place to place within the United States.

Foreign and domestic ships distinguished.

SEC. 371. A ship in a port of the state or territory to which it belongs is called a domestic ship: in another port it is called a foreign ship.

SEC. 372. If a ship belongs to several persons, not partners, Several owners. and they differ as to its use or repair, the controversy may be determined by any court of competent jurisdiction.

SEC. 373. If the owner of a ship commits its possession and navigation to another, that other and not the owner, is responsible for its repairs and supplies. Owner for the voyage.

SEC. 374. The registry, enrollment, and license of ships, are regulated by acts of Congress. Registry, enrollment and license.

ARTICLE II.

RULES OF NAVIGATION.

SECTION 375. Collisions.

1. Rules as to ships meeting each other.
2. The rule for sailing vessels.
- 3, 4. Rules for steamers in narrow channels.
5. Rules for steam vessels on different courses.
6. Meeting of steamers.

376. Collision from breach of rules.

377. Breaches of such rules to imply willful default.

378. Loss, how apportioned.

SEC. 375. In the case of ships meeting, the following rules Collisions. must be observed in addition to those prescribed by any statutes of this Territory, which relate to navigation:

1. Whenever any ship, proceeding in one direction, meets another ship, proceeding in another direction, so that if both ships were to continue their respective courses they would pass so near as to involve the risk of a collision, the helms of both ships must be put to port so as to pass on the port side of each other, except where the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger, and subject also to a due regard to the dangers of navigation;

2. A steamer when passing another steamer in such channel, must always leave the other upon the larboard side;

3. When steamers must inevitably or necessarily cross so near that, by continuing their respective courses, there would Rule for steam vessels on different courses.

be a risk of collision, each vessel must put her helm to port, so as always to pass on the larboard side of each other.

If collision ensues from breach of the above rules owner not to be entitled to recover.

SEC. 376. If it appears that a collision was occasioned by failure to observe any rule of the foregoing section, the owner of the ship by which such rule is infringed cannot recover compensation for damages sustained by the ship in such collision, unless it appears that the circumstances of the case made a departure from the rule necessary.

Breach of such rules to imply willful default.

SEC. 377. Damage to person or property arising from the failure of a ship to observe any rule of section 375, must be deemed to have been occasioned by the willful default of the person in charge of the deck of such ship at the time, unless it appears that the circumstances of the case made a departure from the rule necessary.

Loss, how apportioned.

SEC. 378. Losses caused by collision are to be borne as follows:

1. If either party was exclusively in fault he must bear his own loss, and compensate the other for any loss he has sustained;
2. If neither was in fault, the loss must be borne by him on whom it falls;
3. If both were in fault the loss is to be equally divided, unless it appears that there was a great disparity in fault, in which case the loss must be equitably apportioned; or,
4. If it cannot be ascertained where the fault lies, the loss must be equally divided.

CHAPTER III.

CORPORATIONS.

- ARTICLE I. The creation of corporations.
- II. Corporate stock.
- III. Corporate powers.
- IV. Dissolution of corporations.

ARTICLE I.

THE CREATION OF CORPORATIONS.

- SECTION 379. Corporations defined.
- 380. How created.
- 381. Reservation of power to repeal.
- 382. Dealers with a corporation cannot question its corporate existence.
- 383. Name.
- 384. Distinction of corporations.
- 385. Public corporations defined.
- 386. Private corporations.
- 387. Charters.
- 388, 389. Acceptance of charter.
- 390. Number of corporators.
- 391. Purposes for which corporations may be formed.
- 392. Charter to be prepared.
- 393. Charter of road company.
- 394. Subscription and acknowledgment.
- 395. Banking and insurance companies.
- 396, 397. Petition.
- 398. Proceedings on petition.
- 399. Corporation, when formed.
- 400. Who are corporators.

SEC. 379. A corporation is a creature of the law, having cer-^{Corporations}tain powers and duties of a natural person. Being created^{defined.} by the law it may continue for any length of time which the law prescribes.

- How created.** SEC. 380. A corporation can only be created by authority of a statute. But the statute may be special for a particular corporation, or general for a number of corporations.
- Reservation of power to repeal.** SEC. 381. Every grant of corporate power is subject to alteration, suspension or repeal, in the discretion of the legislature.
- Dealers with a corporation cannot question its corporate existence.** SEC. 382. One who assumes an obligation to an ostensible corporation, as such, cannot resist the obligation on the ground that there was in fact no such corporation, until that fact has been adjudged in a direct proceeding for the purpose.
- Name.** SEC. 383. Every corporation must have a corporate name, which it has no power to change unless expressly authorized by law; but the name is to be deemed so far matter of description, that a mistake in the name, in any instrument, may be disregarded, if a sufficient description remains by which to ascertain the corporation intended.
- Distinction of corporations.** SEC. 384. Corporations are either:
1. Public; or,
 2. Private.
- Public corporations defined.** SEC. 385. A public corporation is one that has for its object the government of a portion of the Territory. Such corporations are regulated by local statutes, or by general laws.
- Private corporations.** SEC. 386. Private corporations are of three kinds:
1. Corporations for religion;
 2. Corporations for benevolence;
 3. Corporations for profit.
- Charters.** SEC. 387. The instrument by which a corporation is constituted is called its charter, whether that be a statute, as in case of a special charter, or the document prescribed by a general statute, for the constitution of the corporation.
- Acceptance of charter.** SEC. 388. In order to constitute a private corporation, there must not only be a statutory grant of corporate authority, but an acceptance of that grant by a majority of the corporators, or their agents. The acceptance cannot be conditional or qualified.
- Same.** SEC. 389. Except when otherwise expressly provided, the acceptance of a grant of corporate authority may be proved like any other fact.

SEC. 390. Private corporations may be formed by the voluntary association of three or more persons, for the purposes and in the manner mentioned in the following sections of this article.

Number of
corporators.

SEC. 391. The purposes for which the private corporations mentioned in the last section may be formed, are:

Purposes for
which corpora-
tions may be
formed.

1. The support of public worship;
2. The support of any benevolent, charitable, educational or missionary undertaking;
3. The support of any literary or scientific undertaking; the maintenance of a library; or the promotion of painting, music or other fine arts;
4. The encouragement of agriculture and horticulture;
5. The maintenance of public parks, and of facilities for skating and other innocent sports;
6. The maintenance of a club for social enjoyment;
7. The maintenance of a public or private cemetery;
8. The prevention and punishment of theft or willful injuries to property, and insurance against such risks;
9. The insurance of human life, and dealing in annuities;
10. The insurance of human beings against sickness or personal injury;
11. The insurance of the lives of domestic animals;
12. The insurance of property against marine risks;
13. The insurance of property against loss or injury by fire, or by any risk of inland transportation;
14. The transaction of a banking business;
15. The construction and maintenance of a railway and of a telegraph line in connection therewith;
16. The construction and maintenance of any other species of roads, and of bridges in connection therewith;
17. The construction and maintenance of a bridge;
18. The construction and maintenance of a telegraph line;
19. The establishment and maintenance of a line of stages;
20. The establishment and maintenance of a ferry;
21. The building and navigation of vessels, and carriage of persons and property thereon;
22. The supply of water to the public;
23. The manufacture and supply of gas, or the supply of light or heat to the public by any other means;

24. The transaction of any manufacturing, mining, mechanical or chemical business;

25. The transaction of a printing and publishing business;

26. The establishment and maintenance of an hotel;

27. The erection of buildings, and the accumulation and loan of funds for the purchase of real property; or,

28. The improvement of the breed of domestic animals, by importation, sale or otherwise.

Charter to be prepared.

SEC. 392. A charter must be prepared, setting forth:

1. The name of the corporation;

2. The purpose for which it is formed;

3. The place or places where its business is to be transacted;

4. The term for which it is to exist;

5. The number of its directors or trustees, and the names and residences of those who are appointed for the first year; and,

6. The amount of its capital stock, if any; and number of shares into which it is divided.

Charter of road company.

SEC. 393. The charter of a road company must also state:

1. The kind of road intended to be constructed;

2. The places from and to which the road is intended to be run;

3. The counties through which it is intended to be run; and,

4. The estimated length of the road.

Subscription and acknowledgment.

SEC. 394. The charter of an intended corporation must be subscribed by three or more persons, two of whom at least must be citizens of this Territory, and must be acknowledged by them before a commissioner of deeds, or any officer authorized to take acknowledgments.

Banking and insurance companies.

SEC. 395. The charter of a corporation designed to carry on the business of banking or insurance must be presented to the auditor of the Territory, who must indorse his approval thereon, but may, as a condition thereof, require the name of the corporation to be changed, if it is, in his judgment, likely to mislead the public.

Petition.

SEC. 396. A petition must be presented with the charter of an intended corporation, to the county commissioners of the county in which its principal place of business is to be situated, asking that the charter be examined, approved and filed, and an order of incorporation granted.

SEC. 397. A petition for incorporation must declare the ^{Same.} truth of the statement of the charter, and must be subscribed by all of the persons who subscribed the charter, and verified by their oaths.

SEC. 398. Upon the presentation of a petition for incorporation, ^{Proceedings on petition.} the county commissioners must inquire into the facts; and if satisfied that the matters stated in the petition are true, and that the proceedings have been had in conformity with the law, an order must be made by the commissioners declaring that the charter is approved, and that upon the filing of the order, charter and petition, the subscribers of the charter shall be a corporation, for the purposes, and upon the terms therein stated.

SEC. 399. Upon the filing of the order, charter, and petition, ^{Corporation, when formed.} mentioned in the last section, with the register of deeds of the county in which the order was made, and of a duplicate thereof with the Territorial Auditor; the subscribers of the charter are a corporation for the purposes and upon the terms therein stated.

SEC. 400. Except when otherwise provided, a person ^{Who are corporators.} becomes a corporator in a private corporation, upon the issue of stock to him and his acceptance thereof.

ARTICLE II.

CORPORATE STOCK.

- SECTION 401. Subscriptions for stock.
 402. Remedies for non-payment of subscription.
 403. Issue of stock.
 404. Transfers of stock.
 405. Over-issue of stock.
 406. Purchase of stock by the corporation.
 407. Dividend.

Subscriptions for stock. SEC. 401. A subscription to the stock of a corporation about to be formed, is to be held for the benefit of the corporation, when it is formed, and may be enforced by it.

Remedies for non-payment of subscription. SEC. 402. When a corporation is authorized by its charter, or by the terms of subscription, to forfeit stock for non-payment, it may either forfeit the stock, or recover the amount of the subscription, but cannot do both.

Issue of stock SEC. 403. Stock is issued by placing it in the name of the stockholder upon the books of the corporation; unless the issue of a certificate is required by the charter or by-laws, in which case the stock is issued by the execution and delivery of the certificate.

Transfers of stock. SEC. 404. A certificate of stock may be transferred like any other personal property; and a transfer on the books of the corporation is not necessary between the parties to the transfer; but a certificate is not a negotiable instrument, and a transfer does not confer greater rights against the corporation than the former holder of the stock possessed.

Over issue of stock. SEC. 405. A corporation whose capital is limited by its charter, either in amount or in number of shares, cannot issue valid certificates in excess of the limit thus prescribed.

Purchase of stock by the corporation. SEC. 406. Unless otherwise provided, a corporation may purchase, hold and transfer shares of its own stock.

Dividend. SEC. 407. A dividend belongs to the person in whose name the stock stands upon the books of the corporation on the day when it becomes payable.

ARTICLE III.

CORPORATE POWERS.

- SECTION 403. General powers.
 409, 410. By-laws and other powers.
 411. Mode of acting.
 412. Meetings and agencies.
 413. Meetings of public corporations.
 414. Mode of exercising power.
 415. General restriction.
 416. Exercise of banking powers prohibited.
 417. Liability of stockholders.
 418. Quorum.
 419. Powers of foreign corporations.
 420. Their liabilities.
 421. Power of colleges, &c., to take property.
 422. Power of cities, &c., to take property.
 423. Power of school officers to take property.

SEC. 408. Every corporation, by virtue of its existence as ^{General} such, has the following powers, unless otherwise specially ^{powers.} provided:

1. To have succession by its corporate name, for the period limited by its charter; and when no period is limited, perpetually; subject to the power of the legislature as hereinbefore declared;
2. To maintain and defend judicial proceedings;
3. To make and use a common seal, and alter the same at pleasure;
4. To hold, purchase and transfer such real and personal property as the purposes of the corporation require, not exceeding the amount limited by its charter;
5. To appoint and remove such subordinate officers and agents, as the business of the corporation requires, and to allow them a suitable compensation;
6. To make by-laws, not inconsistent with the law of the land, for the management of its property, the regulation of its affairs, and transfer of its stock;
7. To admit and remove members; and,

8. To enter into any obligation essential to the transaction of its ordinary affairs.

By-laws and other powers.

SEC. 409. The by-laws of a corporation are the regulations subordinate to the charter, prescribed for the government of its officers. They must be made by the corporators in general meeting, unless the charter prescribes another body or a different mode.

Same.

SEC. 410. The powers and duties of corporation, the time, place and manner of exercising the corporate powers, the means by which members may become members or lose membership, the kind and number of officers, and the manner of their appointment or removal, are prescribed by this Code, or by the statutes relating to the corporations respectively, or the by-laws made in pursuance of law.

Mode of acting.

SEC. 411. A corporation may act:

1. By writing, under the corporate seal;
2. By writing, signed by an authorized agent;
3. By resolution of the corporators, directors, or other managing body; or,
4. By an authorized agent.

Meeting and agencies.

SEC. 412. Unless otherwise expressly authorized by its charter, the meetings of the corporators, directors or other managing body of a corporation, must be held within the jurisdiction of the state or territory by whose authority the corporation was created. It may, however, also have agencies elsewhere.

Meetings of public corporations.

SEC. 413. The meetings of a public corporation, or of its officers, must be held within the limits of its own jurisdiction.

Mode of exercising power.

SEC. 414. Where the law expressly confers power upon a corporation to do an act in a certain mode, its power is confined to the mode prescribed.

General restriction.

SEC. 415. Besides the powers and duties specified in this chapter, and such others as are expressly conferred by statute, or may be necessary to the exercise of the powers so conferred, a corporation has no other power.

Exercise of banking powers prohibited.

SEC. 416. No corporation, unless it is expressly incorporated for banking purposes, possesses the power of discounting bills, notes, or other evidences of debt, of receiving deposits, of buying gold and silver bullion or foreign coins, of buying

and selling bills of exchange, or of issuing bills, notes, or other evidences of debt, upon loan or for circulation as money.

SEC. 417. When the whole capital of a corporation is not paid in, and the capital paid is insufficient to satisfy the claims of its creditors, each stockholder is bound to pay, on each share held by him, the sum necessary to complete the amount of such share as fixed by the charter, or such proportion of that sum as is required to satisfy the debts of the corporation.

Liability of stockholders.

SEC. 418. When the corporate powers of a corporation are directed by its charter to be exercised by any particular body, or number of persons, a majority of such body, or persons, if not otherwise provided by its charter, is a sufficient number to form a board for the transaction of business. Such board must be convened in the mode prescribed by the charter or by-laws, or by notice to all the members thereof within the territory; and every decision of a majority of the persons thus duly assembled as a board, is as valid as if made by all.

Quorum.

SEC. 419. A foreign corporation can perform no act in this Territory, which is forbidden by the laws or is contrary to the policy of the Territory.

Powers of foreign corporations.

SEC. 420. Every act of a foreign corporation done in this Territory is subject to its laws, and the corporation itself may be sued in the manner prescribed by the Code of Civil Procedure.

Their liabilities.

SEC. 421. Any corporation, being a college or other literary institution of this Territory, may take and hold property, both real and personal, subject to such conditions and visitations as may be prescribed by the donor, and agreed to by the corporation, in trust for any of the following purposes:

Power of colleges, &c., to take property.

1. To establish and maintain an observatory;
2. To found and maintain professorships and scholarships;
3. To provide and keep in repair a place for the burial of the dead; or,
4. For any other specific purpose comprehended in the general objects authorized by its charter.

SEC. 422. The corporation of any city or village of this Territory may take and hold property, both real and personal, subject to such conditions as may be prescribed by the donor, and agreed to by the corporation, in trust for any purpose of

Power of cities to take property.

education, or for the diffusion of knowledge, or for the relief of distress, or for fire-engine houses, reservoirs, or public docks, or for parks, gardens, or other grounds for health and recreation, or for ornament or military exercise and parade, within or near such incorporated city or village.

Power of school officers to take property

SEC. 423. The school commissioners of any town, and the trustees of any school district, may take and hold property, both real and personal, in trust for the benefit of the schools of the town or district, and for such purposes are to be deemed corporations.

ARTICLE IV.

DISSOLUTION OF CORPORATIONS.

SECTION 424. How dissolved.

425. Forfeiture for non-user.

426. Trustees in case of dissolution.

427. Their powers.

428. Revival.

How dissolved

SEC. 424. A corporation is dissolved:

1. By the expiration of the time limited by its charter; or,
2. By a judgment of dissolution, in the manner provided by the Code of Civil Procedure, or by statute.

Forfeiture for non-user.

SEC. 425. If any corporation hereafter created is not organized and engaged in the transaction of business within one year from the date of its incorporation, its dissolution may be adjudged, unless a different time within which its business must be commenced, is fixed by law.

Trustees in case of dissolution.

SEC. 426. Upon the dissolution of any corporation, unless other persons are appointed by the legislature, or by some court of competent authority, its directors, trustees or managers, at the time of its dissolution, become the trustees of the creditors and stockholders of the corporation dissolved, and have power to settle its affairs, collect and pay debts, and divide among the stockholders the property that remains after the payment of debts and necessary expenses; and for this purpose may maintain or defend any judicial proceeding.

SEC. 427. The trustees mentioned in the last section are jointly and severally responsible to the creditors and stockholders of the corporation, to the extent of its property in their hands. Their powers.

SEC. 428. A corporation once dissolved can be revived only by the same power by which it could be created. Revival.

CHAPTER IV.

PRODUCTS OF THE MIND.

SECTION 429. How far the subject of ownership.

430. Joint authorship.

431. Transfer.

432. Effect of publication.

433. Subsequent inventor, author, &c.

434. Private writings.

SEC. 429. The author of any product of the mind, whether it is an invention, or a composition in letters or art, or a design, with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof, which continues so long as the product, and the representations or expressions thereof made by him, remain in his possession. How far the subject of ownership.

SEC. 430. Unless otherwise agreed, a product of the mind, in the production of which several persons are jointly concerned, is owned by them as follows: Joint authorship-

1. If the product is single, in equal proportions; or,
2. If it is not single, in proportion to the contribution of each.

SEC. 431. The owner of any product of the mind, or of any representation or expression thereof, may transfer his property in the same. Transfer.

SEC. 432. If the owner of a product of the mind intentionally makes it public, a copy or reproduction may be made public by any person, without responsibility to the owner, so far as the law of this Territory is concerned. Effect of publication.

Subsequent
inventor,
author, &c.

SEC. 433. If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing, has the same right therein as the prior author, which is exclusive to the same extent, against all persons except the prior author, or those claiming under him.

Private
writings.

SEC. 434. Letters, and other private communications in writing, belong to the person to whom they are addressed and delivered; but they cannot be published against the will of the writer, except by authority of law.

CHAPTER V.

OTHER KINDS OF PERSONAL PROPERTY.

SECTION 435. Trade marks and signs.
436, 437. Good will of business.
438. Title deeds.

Trade-marks
and signs.

SEC. 435. One who produces or deals in a particular thing, or conducts a particular business, may appropriate to his exclusive use, as a trade-mark, any form, symbol or name, which has not been so appropriated by another, to designate the origin or ownership thereof; but he cannot exclusively appropriate any designation or part of a designation, which relates only to the name, quality or description of the thing or business.

Good will of
business.

SEC. 436. The good will of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired.

Same.

SEC. 437. The good will of a business is property, transferable like any other.

Title deeds.

SEC. 438. Instruments essential to the title of real property, and which are not kept in a public office as a record pursuant to law, belong to the person in whom, for the time being, such title may be vested, and pass with the title.

PART IV.

ACQUISITION OF PROPERTY.

TITLE I. Modes in which property may be acquired.

- II. Occupancy.
- III. Accession.
- IV. Transfer.
- V. Will.
- VI. Succession.

TITLE I.

MODES IN WHICH PROPERTY MAY BE ACQUIRED.

SEC. 439. Property is acquired by:

- 1. Occupancy;
- 2. Accession;
- 3. Transfer;
- 4. Will; or,
- 5. Succession.

TITLE II.

OCCUPANCY.

SECTION 440. Simple-occupancy.

441. Prescription.

SEC. 440. Occupancy for any period confers a title sufficient ^{Simple occu-} against all except the Territory and those who have title by ^{pancy.} prescription, accession, transfer, will or succession.

SEC. 441. Occupancy for the period prescribed by the Code ^{Prescription.} of Civil Procedure, or any law of this Territory as sufficient

to bar an action for the recovery of the property, confers a title thereto, denominated a title by prescription, which is sufficient against all.

TITLE III.

ACCESSION.

CHAPTER I. To real property.

II. To personal property.

CHAPTER I.

ACCESSION TO REAL PROPERTY.

SECTION 442. Fixtures.

443. Alluvion.

444. Sudden removal of bank.

445. Islands, in navigable streams.

446. In unnavigable streams.

447. Islands formed by division of stream.

448. Abandoned bed of stream.

Fixtures.

SEC. 442. When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed belongs to the owner of the land, unless he chooses to require the former to remove it.

Alluvion.

SEC. 443. Where, from natural causes, land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material, or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank.

Sudden removal of bank.

SEC. 444. If a river or stream, navigable or not navigable, carries away, by sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, the owner of the part carried away may reclaim it, within a year after the owner of the land to which it has been united takes possession thereof.

SEC. 445. Islands, and accumulations of land, formed in the beds of streams which are navigable, belong to the Territory, if there is no title or prescription to the contrary. Islands in navigable streams.

SEC. 446. An island, or an accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island or accumulation is formed, or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river. Islands in streams not navigable.

SEC. 447. If a stream, navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner. Islands formed by division of streams.

SEC. 448. If a stream, navigable or not navigable, forms a new course, abandoning its ancient bed, the owners of the land newly occupied take, by way of idemnity, the ancient bed abandoned, each in proportion to the land of which he has been deprived. Abandoned bed of stream.

CHAPTER II.

ACCESSION TO PERSONAL PROPERTY.

- SECTION 449. Accession by uniting several things.
 450, 451. Principal part, what.
 452. Uniting materials and workmanship.
 453. Inseparable materials.
 454. Materials of several owners.
 455. Willful trespassers.
 456. Owner may elect between the thing and its value.
 457. Wrongdoer liable in damages.

SEC. 449. When things belonging to different owners have been united so as to form a single thing, and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part, who must, however, reimburse the value of the residue to the other owner, or surrender the whole to him. Accession by uniting several things.

Principal part, what.

SEC. 450. That part is to be deemed the principal, to which the other has been united only for the use, ornament or completion of the former, unless the latter is the more valuable, and has been united without the knowledge of its owner, who may, in the latter case, require it to be separated and returned to him, although some injury should result to the thing to which it has been united.

Same.

SEC. 451. If neither part can be considered the principal, within the rule prescribed by the last section, the more valuable, or, if the values are nearly equal, the more considerable in bulk, is to be deemed the principal part.

Uniting materials and workmanship.

SEC. 452. If one makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the value of the workmanship, unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker, on reimbursing the value of the materials.

Inseparable materials.

SEC. 453. Where one has made use of materials which in part belong to him and in part to another, in order to form a thing of a new description, without having destroyed any of the materials, but in such a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors; in proportion, as respects the one, of the materials belonging to him, and as respects the other, of the materials belonging to him and the price of his workmanship.

Materials of several owners.

SEC. 454. When a thing has been formed by the admixture of several materials of different owners, and neither can be considered the principal substance, an owner, without whose consent the admixture was made, may require a separation, if the materials can be separated without inconvenience. If they cannot be thus separated, the owners acquire the thing in common, in proportion to the quantity, quality, and value of their materials; but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials.

Willful trespassers.

SEC. 455. The foregoing sections of this article are not applicable to cases in which one willfully uses the materials of another without his consent; but, in such cases, the product

belongs to the owner of the material, if its identity can be traced.

SEC. 456. In all cases where one, whose material has been used without his knowledge, in order to form a product of a different description, can claim an interest in such product, he has an option to demand either restitution of his material, in kind, in the same quantity, weight, measure, and quality, or the value thereof; or where he is entitled to the product, the value thereof in place of the product.

Owner may select between the thing and its value.

SEC. 457. One who wrongfully employs materials belonging to another, is liable to him in damages, as well as under the foregoing provisions of this chapter.

Wrongdoer liable in damages.

TITLE IV.

TRANSFER.

CHAPTER I. Transfer in general.

- II. Transfer of real property.
- III. Transfer of personal property.
- IV. Recording transfers.
- V. Unlawful transfers.

CHAPTER I.

TRANSFER IN GENERAL.

ARTICLE I. Definition of transfer.

- II. What may be transferred.
- III. Mode of transfer.
- IV. Interpretation of grants.
- V. Effect of transfer.

ARTICLE I.

DEFINITION OF TRANSFER.

SECTION 458. Transfer, what.

459. Transfer a contract.

Transfers,
what.

SEC. 458. Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another.

Transfer a con-
tract.

SEC. 459. A voluntary transfer is an executed contract, subject to all rules of law concerning contracts in general; except that a consideration is not necessary to its validity.

ARTICLE II.

WHAT MAY BE TRANSFERRED.

SECTION 460. What may be transferred.

461. Possibility.

462. Right of entry.

What may be
transferred.

SEC. 460. Property of any kind may be transferred, except as otherwise provided by this article.

Possibility.

SEC. 461. A mere possibility, not coupled with an interest, cannot be transferred.

Right of entry.

SEC. 462. A mere right of re-entry, or of repossession for breach of a condition subsequent, cannot be transferred to any one except the owner of the property affected thereby.

ARTICLE III.

MODE OF TRANSFER.

SECTION 463. When oral.

464. Grant, what.

465. Delivery necessary.

466. Date.

467. Delivery to grantee is necessarily absolute.

468. Delivery in escrow.

469. Surrendering or canceling grant.

470. Constructive delivery.

471. When voluntary settlement takes effect.

SEC. 463. A transfer may be made without writing, in every case in which a writing is not expressly required by statute. When oral.

SEC. 464. A transfer in writing is called a grant. Grant, what.

SEC. 465. A grant takes effect, so as to vest the interest intended to be transferred, only upon its delivery by the grantor. Delivery necessary.

SEC. 466. A grant duly executed is presumed to have been delivered at its date. Date.

SEC. 467. A grant cannot be delivered to the grantee conditionally. Delivery to him or to his agent as such is necessarily absolute, and the instrument takes effect thereupon, discharged of any condition on which the delivery was made. Delivery to grantee is necessarily absolute.

SEC. 468. A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and, on delivery by the depositary, it will take effect. Delivery in escrow.

SEC. 469. Re-delivering a grant of real property to the grantor, or concealing it, does not operate to transfer the title. Surrendering or cancelling grant.

SEC. 470. Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases: Constructive delivery.

1. Where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered, and under

such circumstances that the grantee is entitled to immediate delivery; or,

2. Where it is delivered to a stranger for the benefit of the grantee, and his assent is shown or may be presumed.

When voluntary settlement takes effect.

SEC. 471. A grant made as a mere gratuity takes effect upon its execution, even though the grantor retains its possession, unless a contrary intention appears.

ARTICLE IV.

INTERPRETATION OF GRANTS.

SECTION 472. Grants, how interpreted.

473. Limitations, how controlled.

474. Recitals, when resorted to.

475. Interpretation against grantor.

476. Irreconcilable provisions.

477. Meaning of "heirs" and "issues" in certain remainders.

478. Words of inheritance, unnecessary.

Grants how interpreted.

SEC. 472. Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided by this article.

Limitations how controlled.

SEC. 473. A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

Recitals, when resorted to.

SEC. 474. If the operative words of a grant are doubtful, recourse may be had to its recitals to assist the construction.

Interpretation against grantor

SEC. 475. A grant is to be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.

Irreconcilable provisions.

SEC. 476. If several parts of a grant are absolutely irreconcilable, the former part prevails.

Meaning of "heirs" and "issue" in certain remainders.

SEC. 477. Where a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words; such words must be taken to mean successors or issue living at the death of the person named as ancestor.

SEC. 478. Words of inheritance or succession are not requisite to transfer a fee in real property. Words of inheritance unnecessary.

ARTICLE V.

EFFECT OF TRANSFER.

SECTION 479. What title passes.

480. What interest affected.

481. Incidents.

482. Grant may inure to benefit of stranger.

SEC. 479. A transfer vests in the transferee all the actual What title passes. title to the thing transferred which the transferrer then has, unless a different intention is expressed or is necessarily implied, and no more, except in the cases specified in sections 480, 499, 1745 and 1773.

SEC. 480. A transfer cannot affect any interest of the transferrer, which he does not own when it is made; but, if it is made with a covenant, neither the transferrer nor any person claiming under him can be permitted to take in contravention of the covenant. What interests affected.

SEC. 481. The transfer of a thing transfers also all its incidents unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself. Incidents.

SEC. 482. A present interest, and the benefit of a condition or covenant respecting property, may be taken by any natural person under a grant, although not named a party thereto. Grant may inure to benefit of stranger

CHAPTER II.

TRANSFER OF REAL PROPERTY.

ARTICLE I. Mode of transfer.

II. Effect of transfer.

ARTICLE I.

MODE OF TRANSFER.

- SECTION 483. Requisites to convey certain estates.
- 484. Grants in fee or of freeholds, how executed ; when to take effect.
- 485. Form of grant.
- 486. Grant by married woman must be acknowledged.
- 487. Livery of seizin.

Requisites to convey certain estates.

SEC. 483. An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent, thereunto authorized by writing.

Grants in fee, or of freeholds how executed; when to take effect.

SEC. 484. A grant of an estate in real property, other than an estate for years or at will, must be sealed by the grantor or his agent; and if not duly acknowledged, previous to its delivery, according to the provisions of chapter IV of this Title, its subscription and seal must be attested by at least one witness; or if not so attested, it has no effect as against a subsequent purchaser or incumbrancer, or those claiming under him, until so acknowledged.

Form of grant.

SEC. 485. A grant of an estate in real property may be made, in substance, as follows:

“This grant, made the.....day of.....in the year, between A. B., of....., of the first part, and C. D., of....., of the second part, witnesseth:

“That the party of the first part hereby grants to the party of the second part, in consideration of.....dollars, now received, all the real property situated in....., and bounded.....

“Witness the hand and seal of the party of the first part.

“A. B. [SEAL.]

Grant by married women must be acknowledged.

SEC. 486. No estate in the real property of a married woman passes by any grant purporting to be executed or acknowledged by her within this Territory, unless the grant is acknowledged by her in the manner prescribed by section 521.

SEC. 487. The mode formerly in use, of conveying lands by Livery of Seizin feoffment, with livery of seizin, is abolished.

ARTICLE II.

EFFECT OF TRANSFER.

SECTION 488. What easements pass with property.

489. No implied covenants in grants.

490. How far conclusive on purchasers

491. Grants by owners for life or for years.

492. Title to highway.

493. Attornment by tenant unnecessary.

494. Lineal and collateral warranties.

SEC. 488. A transfer of real property passes all easements What easements pass with property. attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred, in the same manner and to the same extent, as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

SEC. 489. No covenant is implied in any grant of an estate No implied covenants in grants. in real property, whether it contains special covenants or not, except as provided by the Title on Hiring.

SEC. 490. Every grant of an estate in real property is conclusive against the grantor and every one subsequently claiming under him, except a purchaser or incumbrancer who, in good faith, and for a valuable consideration, acquires a superior title or lien by an instrument that is first duly recorded. How far conclusive on purchasers.

SEC. 491. A grant, made by the owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer. Conveyances by owner for life or for years.

SEC. 492. A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil Title to highway. of the highway in front thereof.

SEC. 493. When real property is occupied by a tenant, a grant of any estate therein, by his landlord, is valid without Attornment by tenant, when unnecessary.

Liabilities of tenant. of an attornment of the tenant to the grantee; but the payment of rent to such grantor, by his tenant, before notice of the grant, is binding upon the grantee; and the tenant is not liable to the grantee for any breach of the condition of the lease, until he has had notice of the grant.

Lineal and collateral warranties. SEC. 494. Lineal and collateral warranties, with all their incidents, and all the incidents of feudal tenures, not expressly retained by this Code, are abolished. The liability of those who acquire the real property of a decedent, by will or succession, is regulated by the Code of Civil Procedure, or by statute.

CHAPTER III.

TRANSFERS OF PERSONAL PROPERTY.

ARTICLE I. Mode of transfer.

II. What operates as a transfer.

III. Gifts.

ARTICLE I.

MODE OF TRANSFER.

SECTION 495. When must be in writing.

496. Transfer by sale, &c.

When must be in writing. SEC. 495. An interest in a ship, or in an existing trust, can be transferred only by operation of law, or by a written instrument, subscribed by the person making the transfer, or by his agent.

Transfer by sale, &c. SEC. 496. The mode of transferring other personal property by sale, is regulated by the Title on that subject in the Third Division of this Code.

ARTICLE II.

WHAT OPERATES AS A TRANSFER.

SECTION 497. Transfer of title under sale.

498. Transfer of title under executory agreement for sale.

499. When buyer acquires better title than seller has.

SEC. 497. The title to personal property, sold or exchanged, passes to the buyer whenever the parties agree upon a present transfer, and the thing itself is identified, whether it is separated from other things or not. Transfer of title under sale

SEC. 498. Title is transferred by an executory agreement for the sale or exchange of personal property, only when the buyer has accepted the thing, or when the seller has completed it, prepared it for delivery, and offered it to the buyer, with intent to transfer the title thereto, in the manner prescribed by the chapter upon Offer of Performance. Transfer of title under executory agreement for sale.

SEC. 499. Where the possession of personal property, together with a power to dispose thereof, is transferred by its owner to another person, an executed sale by the latter, while in possession, to a buyer in good faith and in the ordinary course of business, for value, transfers to such buyer the title of the former owner, though he may be entitled to rescind, and does rescind the transfer made by him. When buyer acquires better title than seller has.

ARTICLE III.

GIFTS.

SECTION 500. Gifts defined.

501. Gift, how made.

502. Gift not revocable.

503. Gift in view of death, what.

504. When gift presumed to be in view of death.

505. Revocation of gift in view of death.

506. Effect of will upon gift.

507. When treated as legacy.

Gifts defined. SEC. 500. A gift is a transfer of personal property, made voluntarily and without consideration.

Gift, how made. SEC. 501. A verbal gift is not valid, unless the means of obtaining possession and control of the thing are given, nor, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee.

Gift not revocable. SEC. 502. A gift, other than a gift in view of death, cannot be revoked by the giver.

Gift in view of death, what. SEC. 503. A gift in view of death is one which is made in contemplation, fear, or peril of death, and with intent that it shall take effect only in case of the death of the giver.

When gift presumed to be in view of death SEC. 504. A gift made during the last illness of the giver, or under circumstances which would naturally impress him with an expectation of speedy death, is presumed to be a gift in view of death.

Revocation of gift in view of death. SEC. 505. A gift in view of death may be revoked by the giver at any time, and is revoked by his recovery from the illness, or escape from the peril, under the presence of which it was made, or by the occurrence of any event which would operate as a revocation of a will made at the same time.

Effect of will upon gift. SEC. 506. A gift in view of death is not affected by a previous will; nor by a subsequent will, unless it expresses an intention to revoke the gift.

When treated as a legacy. SEC. 507. A gift in view of death must be treated as a legacy, so far as relates only to the creditors of the giver.

CHAPTER IV.

RECORDING TRANSFERS.

ARTICLE I. What may be recorded.

II. Mode of recording.

III. Proof and acknowledgment of instruments.

IV. Effect of recording or of the want thereof.

ARTICLE I.

WHAT MAY BE RECORDED.

SECTION 508. Instruments affecting real property.

509. Instruments must be acknowledged.

510. When deed to be recorded.

511. Transfers of personal property, &c.

SEC. 508. Any instrument or judgment, affecting the title to real property, may be recorded under this chapter. Instruments affecting real property.

SEC. 509. Before an instrument may be recorded, its execution must be acknowledged by the person executing it, or proved by a subscribing witness, and the acknowledgment or proof certified in the manner prescribed by article III of this chapter. Instruments must be acknowledged.

SEC. 510. An instrument, proved and certified pursuant to sections 524 and 525, may be recorded in the proper office, if the original is at the same time deposited therein to remain for public inspection, but not otherwise. When deed to be recorded.

SEC. 511. Transfers of property in trust for the benefit of creditors, and transfers of or liens on property, by way of mortgage, are required to be recorded in the cases specified in the Title on special relations of Debtor and Creditor, and the chapter on Mortgages, respectively. Transfers of personal property, &c.

ARTICLE II.

MODE OF RECORDING.

SECTION 512. In what office.

513. Books of record.

514. Duties of register, &c.

515. Transfers of vessels.

- In what office. SEC. 512. Instruments recorded under this chapter, must be recorded with the registers of deeds of the county in which the real property affected thereby is situated.
- Books of record. SEC. 513. Grants, absolute in terms, and not intended as mortgages, or as securities in the nature of mortgages, are to be recorded in one set of books, and mortgages and securities in another.
- Duties of clerk, &c. SEC. 514. The duties of register of deeds, in respect to recording instruments, are prescribed by statute.
- Transfers of vessels. SEC. 515. The mode of recording transfers of vessels, registered under the laws of the United States, is regulated by acts of Congress.

ARTICLE III.

PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS.

- SECTION 516, 517. By whom acknowledgments may be taken in this Territory.
518. By whom taken, without the Territory.
519. By whom taken, without the United States.
520. Requisites for acknowledgments.
521. Requisites for acknowledgments when made by married women.
522. Id.
523. Proof by subscribing witnesses.
524. Proof of deed when witnesses are dead.
525. What proof to be made and certified.
526. Certificate of acknowledgment.
- 527, 528, 529. Certificate of officers, authority.

By whom acknowledgments may be taken in this territory.

SEC. 516. The proof or acknowledgment of an instrument may be made at any place within this Territory, before a judge of the district court, or of the supreme court.

Same.

SEC. 517. The proof or acknowledgment of an instrument may be made in this Territory, within the city or county for which the officer was appointed, before:

1. A judge of a court of record;
2. A mayor or recorder of a city;
3. A justice of the peace;
4. A commissioner of deeds;

5. A notary public; or,
6. A probate judge.

SEC. 518. The proof or acknowledgment of an instrument may be made without the Territory, but within the United States, and within the jurisdiction of the officer, before:

By whom taken, without the territory.

1. A judge of the supreme court, or of a district court, of the United States;
2. A judge of the supreme, superior or circuit court, of any State or Territory;
3. The mayor of any city;
4. Any other officer of the State or Territory where the acknowledgment is made, authorized by its laws to take the proof or acknowledgment;
5. A commissioner appointed for the purpose by the government of this Territory, pursuant to special statutes of this Territory.

By whom taken, without the United States.

SEC. 519. The proof or acknowledgment of an instrument may be made without the United States, before:

1. A minister plenipotentiary, or minister extraordinary, or *charge d'affaires*, of the United States, resident and accredited in the country where the proof or acknowledgment is made;
2. A consul of the United States resident in that country;
3. A judge of the highest court of any of the British American provinces, acting in his own jurisdiction; or,
4. The mayor or chief magistrate of any city in the British islands, acting in his own jurisdiction.

SEC. 520. The acknowledgment of an instrument cannot be taken unless the officer taking it knows, or has satisfactory evidence, that the person making such acknowledgment is the individual who is described in and who executed the instrument.

Requisites for acknowledgments.

SEC. 521. The acknowledgment of a married woman to an instrument, purporting to be executed by her, cannot be taken within this Territory, unless she acknowledges to the officer, on a private examination, apart from her husband, that she executed such instrument freely, and without any compulsion or fear of her husband.

Acknowledgments by married women.

SEC. 522. A conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner, except as mentioned in the last section.

Same.

Proof by subscribing witness.

SEC. 523. The proof of the execution of an instrument must be made by a subscribing witness thereto, who must state his own place of residence, and that he knew the person who is described in and who executed the instrument; and such proof must not be taken, unless the officer is personally acquainted with such subscribing witness, or has satisfactory evidence that he is the subscribing witness to the instrument.

Proof of deed when witnesses are dead.

SEC. 524. When all the witnesses to an instrument which might be recorded are dead, it may be proved before any officer mentioned in sections 517, 518 or 519, other than commissioners of deeds, justices of the peace, notaries public and probate judge.

What proof to be made and certified.

SEC. 525. The proof of the execution of an instrument, in the case mentioned in the last section, must be made by satisfactory evidence of the death of all the witnesses thereto, and of the handwriting of such witnesses, or of one of them, and of the grantor; all which evidence must be set forth by the officer taking the same, in his certificate of the proof.

Certificate of acknowledgment.

SEC. 526. An officer taking the acknowledgment or proof of any instrument must indorse upon the instrument a certificate thereof, signed by himself personally, setting forth all the matters required by law to be done or known by him, or proved before him, on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their evidence.

Certificate of Officers authority.

SEC. 527. A certificate of proof or acknowledgment before any officer in this Territory other than a judge of a court of record, when used in any county other than that in which he resides, must be accompanied by a certificate, under the hand and seal of the register of deeds of the county in which the officer resides, setting forth that such officer, at the time of taking such proof or acknowledgment, was duly authorized to take the same, and that the clerk is acquainted with his handwriting and believes that the signature to the original certificate is genuine.

Same.

SEC. 528. When an instrument is proved or acknowledged before one of the officers mentioned in subdivision 4 of section 518, the certificate of such officer must be accompanied by a certificate under the name and official seal of the clerk, register, recorder or prothonotary, of the county in which such

officer resides, or of the county or district court or court of common pleas thereof, specifying that such officer was, at the time of taking the proof or acknowledgment, duly authorized to take the same, and that such clerk, register, recorder or prothonotary, is acquainted with the handwriting of the officer, and believes his signature to be genuine.

SEC. 529. When an instrument is proved or acknowledged before one of the commissioners mentioned in subdivision 5 of section 518, the certificate of such commissioner must be accompanied by the certificate of the secretary of this Territory, attesting the existence of the officer, and the genuineness of his signature; and such commissioner can only act within the city or county in which he resided at the time of his appointment. Same.

ARTICLE IV.

EFFECT OF RECORDING, OR THE WANT THEREOF.

SECTION 530. Conveyances to be recorded.

531. Conveyance, what.

532. Letter recorded, how revoked.

533. Effect of recording and deposit.

534. Certain leases not affected.

SEC. 530. Every conveyance of real property, other than a lease for a term not exceeding three years, is void as against any subsequent purchaser or incumbrancer (including an assignee of a mortgage, lease, or other conditional estate) of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded. Conveyances to be recorded.

SEC. 531. The term "conveyance," as used in the last section, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged or incumbered, or by which the title to any real property may be affected; except wills, executory contracts for the sale or purchase of real property, and powers of attorney. Conveyance, what.

Letter recorded, how revoked.

SEC. 532. No instrument containing a power to convey real property, which has been recorded, is to be deemed revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded.

Effect of recording and deposit.

SEC. 533. The recording and deposit of an instrument proved and certified according to the provisions of sections 510, 524 and 525 are constructive notice of the execution of such instrument to all purchasers and incumbrancers subsequent to the recording; but the proof, recording and deposit do not entitle the instrument or the record thereof, or the transcript of the record, to be read in evidence.

Certain leases not affected.

SEC. 534. The provisions of this chapter do not extend to leases existing at the time of the adoption of this Code.

CHAPTER V.

UNLAWFUL TRANSFERS.

SECTION 535. Certain instruments void against purchasers, &c.

536. Not void against purchaser having notice, unless fraud is mutual.

537, 538. Power to revoke when deemed executed.

539. Purchaser in good faith, not affected.

540. Conveyance of land adversely possessed.

541. Other provisions.

Certain instruments void against purchasers, &c.

SEC. 535. Every instrument, other than a will, affecting an estate in real property, including every charge upon real property, or upon its rents or profits, made with the intent to defraud prior or subsequent purchasers thereof, or incumbrancers thereon, is void as against every purchaser or incumbrancer, for value, of the same property, rents or profits.

Not void against purchasers having notice, unless fraud is mutual.

SEC. 536. No instrument is to be avoided under the last section, in favor of a subsequent purchaser or incumbrancer having notice thereof at the time his purchase was made or his lien acquired, unless the person in whose favor the instrument was made, was privy to the fraud intended.

SEC. 537. Where a power to revoke or modify an instrument affecting the title to, or the enjoyment of, an estate in real property is reserved to the grantor, or given to any other person, a subsequent grant of or charge upon the estate, by the person having the power of revocation, in favor of a purchaser or incumbrancer for value, operates as a revocation of the original instrument, to the extent of the power, in favor of such purchaser or incumbrancer. Power to revoke, when deemed executed.

SEC. 538. Where a person having a power of revocation, within the provisions of the last section, is not entitled to execute it until after the time at which he makes such a grant or charge as is described in that section, the power is deemed to be executed as soon as he is entitled to execute it. Same.

SEC. 539. The rights of a purchaser or incumbrancer in good faith and for value are not to be impaired by any of the foregoing provisions of this chapter. Purchasers in good faith not affected.

SEC. 540. Every grant of real property, other than one made by the Territory, or under a judicial sale, is void, if at the time of the delivery thereof, such real property is in the actual possession of a person claiming under a title adverse to that of the grantor. Conveyance of land adversely possessed.

SEC. 541. Other provisions concerning unlawful transfers are contained in Part II of the Fourth Division of this Code, concerning the special relations of DEBTOR and CREDITOR. Other provisions.

TITLE V.

WILL.

- CHAPTER I. Execution and revocation of wills
- II. Interpretation of wills.
- III. General provisions relating to wills.

CHAPTER I.

EXECUTION AND REVOCATION OF WILLS.

- SECTION 542. Who may make will.
- 543. Monomaniac incompetent.
- 544. Will procured by fraud, &c.
- 545. What may pass by will.
- 546. Who may take by will.
- 547. Nuncupative will.
- 548. Mutual will.
- 549. Conditional will.
- 550. Written will, how to be executed.
- 551. Nuncupative will, how to be executed.
- 552. Witness to add residence.
- 553. Republication by codicil.
- 554. Will made out of this territory.
- 555. Will not duly executed, void.
- 556. Subsequent change of domicil.
- 557. Wills may be deposited for safe keeping.
- 558. To whom to be delivered.
- 559. Will, when to be opened by surrogate.
- 560. Lost or destroyed will.
- 561. Written will, how revoked.
- 562. Evidence of revocation.
- 563. Revocation by obliteration on face of will.
- 564. Revocation of duplicate.
- 565. Revocation by subsequent will.
- 566. Revocation of subsequent will does not revive the first.
- 567. Revocation by marriage and birth of issue.
- 568. Revocation of woman's will by marriage.
- 569. Contract of sale not a revocation.

- 570. Charge or incumbrance not a revocation.
- 571. Conveyance when not a revocation.
- 572. When it is a revocation.
- 573. Revocation of codicils.
- 574. Afterborn child, unprovided for, to succeed.
- 575. Devises and bequests in certain cases not to lapse.
- 576. Witness to will, cannot take under will.
- 577. When witness may succeed.
- 578. Creditor a competent witness.

SEC. 542. Every male person of the age of eighteen years or upwards, and every female of the age of sixteen years or upwards, of sound mind, and no others, may dispose of real and personal property, by a will duly executed, according to the provisions of this Code. Who may make will.

SEC. 543. A person having any insane delusion is incompetent to make a will. Monomaniac incompetent.

SEC. 544. A will or part of a will procured to be made by duress, menace, fraud or undue influence, may be denied probate: and a revocation, procured by the same means, may be declared void. Will procured by fraud, &c.

SEC. 545. Every estate and interest in real or personal property, to which heirs, husband, widow or next of kin might succeed, may be disposed of by will. What may pass by will.

SEC. 546. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except that no corporation can take under a will, unless expressly authorized by its charter or by statute so to take. Who may take by will.

SEC. 547. A nuncupative will of real or personal property, or both, is valid, when made in contemplation, fear or peril of death: Nuncupative will.

1. By a soldier, while in actual military service, whether he is an officer or private, or a surgeon, or a servant of the army; or.

2. By a sailor (whether he is an officer or surgeon, a marine or mariner, or a servant of the vessel) after he finally goes on board the vessel for the voyage, and before he comes on shore, in port, after the voyage is over.

SEC. 548. A conjoint or mutual will is valid, but it may be revoked by any of the testators, in like manner with any other will. Mutual will.

SEC. 549. A will, the validity of which is made by its own Conditional will.

terms conditional, may be denied probate, according to the event, with reference to the condition.

Written will,
how to be exe-
cuted.

SEC. 550. Every will, other than a nuncupative will, authorized by section 547, must be executed and attested as follows:

1. It must be subscribed at the end thereof, by the testator himself, or by some person in his presence and by his direction;

2. The subscription must be made in the presence of each of the attesting witnesses, or be acknowledged by the testator to each of them, to have been made by him or by his authority;

3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and,

4. There must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will, at the testator's request.

Nuncupative
will, how to be
executed.

SEC. 551. A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities.

Witness to
add residence.

SEC. 552. A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

Republication
by codicil.

SEC. 553. The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil.

Will made
out of this
territory.

SEC. 554. A will of real or personal property, or both, or a revocation thereof, made out of this Territory by a person not having his domicile in this Territory, is as valid, when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this Territory, and according to the provisions of this chapter.

Will not duly
executed, void.

SEC. 555. No will or revocation is valid unless executed either according to the provisions of this chapter, or according to the law of the place in which it was made, or in which the testator was at the time domiciled.

Subsequent
change of
domicil.

SEC. 556. Whenever a will, or a revocation thereof, is duly executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled,

the same is regulated, as to the validity of its execution, by the law of such place, notwithstanding that the testator subsequently changed his domicile to a place, by the law of which such will would be void.

SEC. 557. Every probate judge must deposit, in his office, any will delivered to him for that purpose, and give a written receipt to the depositor; and must inclose such will in a sealed wrapper, so that it cannot be read, and indorse thereon the name of the testator, his residence, and the date of the deposit; and such wrapper must not be opened until its delivery under the provisions of the next section.

Wills may be deposited for safe keeping.

SEC. 558. A will deposited under the provisions of the last section must be delivered only:

To whom to be delivered.

1. To the testator in person;
2. Upon his written order, duly proved by the oath of a subscribing witness:
3. After his death, to the person, if any, named in the indorsement on the wrapper of the will; or,
4. If there is no such indorsement, and if the will was not deposited with the probate judge having jurisdiction of its probate, then to the probate judge who has jurisdiction.

SEC. 559. The probate judge with whom a will is deposited, or to whom it is delivered, must, after the death of the testator, publicly open and examine the will and file it in his office, there to remain until duly proved, or deliver it to the probate judge having jurisdiction of its probate.

Will, when to be opened by surrogate.

SEC. 560. A lost or destroyed will of real or personal property, or both, may be established in the cases provided in the Code of Civil Procedure, or any act in force on that subject.

Lost or destroyed will.

SEC. 561. Except in the cases in this chapter mentioned, no written will, nor any part thereof, can be revoked or altered, otherwise than:

Written will, how revoked.

1. By a written will, or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,
2. By being burnt, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

Evidence of
revocation.

SEC. 562. When a will is canceled or destroyed by any other person than the testator, the direction of the testator, and the fact of such injury or destruction must be proved by two witnesses.

Revocation
by obliteration
on face of will.

SEC. 563. A revocation by obliteration on the face of the will may be partial or total, and is complete if the material part is so obliterated as to show an intention to revoke; but where, in order to effect a new disposition, the testator attempts to revoke a provision of the will, by altering or obliterating it on the face thereof, such revocation is not valid unless the new disposition is legally effected.

Revocation of
duplicate.

SEC. 564. The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates.

Revocation
by subsequent
will.

SEC. 565. A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will.

Revocation of
subsequent
will does not
revive the first.

SEC. 566. If, after making a will, the testator duly makes and executes a subsequent will, the destruction, canceling or revocation of the latter does not revive the former, unless it appears by the terms of such revocation that it was his intention to revive the former will, or unless after such destruction, canceling or revocation, he duly republishes the prior will.

Revocation
by marriage
and birth of
issue.

SEC. 567. If, after having made a will, the testator marries, and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is to be deemed revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

Revocation of
woman's will
by marriage.

SEC. 568. A will executed by an unmarried woman is revoked by her subsequent marriage.

Contract of
sale not a revo-
cation.

SEC. 569. An agreement made by a testator, for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise, against the

devises or legatees, as might be had against the testator's successors, if the same had passed by succession.

SEC. 570. A charge or incumbrance upon any real or personal property, for the purpose of securing the payment of money, or the performance of any other obligation, is not a revocation of a will relating to the same property, previously executed; but the dispositions made by the will take effect subject thereto.

SEC. 571. A conveyance, settlement, or other act of a testator, by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation; but the will passes the property which would otherwise devolve by succession.

SEC. 572. If the instrument, by which an alteration is made in the testator's interest in a thing previously disposed of by his will, expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency, by reason of which they do not take effect.

SEC. 573. The revocation of a will revokes all its codicils.

SEC. 574. Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property, that he would have succeeded to if the testator had died intestate.

SEC. 575. Whenever any real or personal property is disposed of by will to a descendant or a brother or sister of the testator, and such legatee or devisee dies during the lifetime of the testator, leaving a successor who survives the testator, such disposition does not lapse, but the thing so disposed of vests in the surviving successors of the legatee or devisee, as if such legatee or devisee had survived the testator and had died intestate.

SEC. 576. If a person is an attesting witness to the execution of a will wherein any beneficial devise, legacy, interest or power of appointment of any real or personal property, is

made to such witness and the will cannot be proved without his testimony, the devise, legacy, interest or power is void so far only as concerns such witness, or any one claiming under him, and the witness is competent to prove the execution of the will.

When witness may succeed.

SEC. 567. An attesting witness to a will, without whose testimony it cannot be proved, and who would have been entitled to a share of the testator's estate in case the will had not been established, succeeds to the same portion of the testator's estate that he would have succeeded to if the testator had died intestate, not exceeding the value of the devise or bequest to him in the will.

Creditor a competent witness.

SEC. 578. A creditor, whose debt is by a will charged upon property, is not thereby disqualified as a witness to prove the execution of the will.

CHAPTER II.

INTERPRETATION OF WILLS, AND EFFECT OF VARIOUS PROVISIONS.

- SECTION 579. Testator's intention to be carried out.
580. Intention to be ascertained from the will.
581. Rules of interpretation.
582. Several instruments are to be taken together.
- 583, 584, 585. Harmonizing various parts.
586. Words taken in ordinary sense.
587. Words to receive an operative construction.
588. Intestacy to be avoided.
589. Effect of technical words.
590. Technical words not necessary.
591. Certain words not necessary to pass a fee.
592. Power to devise, how executed by terms of will.
593. Devise or bequest of all real or all personal property, or both
- 594, 595. Residuary clause.
596. "Heirs," "relatives," "issue," "descendants," &c.
597. Words of donation and limitation.
598. To what time words refer.
599. Devise or bequest to a class.
600. When conversation takes effect.
601. When child born after testator's death takes under will.

- SECTION 602. Mistakes and omissions.
- 603. When devises and bequest vest.
- 604. When cannot be divested.
- 605. Death of devisee or legatee.
- 606. Interests in remainder are not affected.
- 607. Conditional devises and bequests.
- 608. Condition precedent, what.
- 609. Effect of condition precedent.
- 610. Conditions precedent, when deemed performed.
- 611. Conditions subsequent, what.
- 612. Devises, and &c.. take as tenant in common.
- 613. Advancements when adempptions.

SEC. 579. A will is to be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible.

Testator's intention to be carried out.

SEC. 580. In case of uncertainty, arising upon the face of a will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking into view the circumstances under which it was made; exclusive of his oral declarations.

Intention to be ascertained from the will

SEC. 581. In interpreting a will, subject to the laws of this Territory, the rules prescribed by the following sections of this chapter are to be observed, unless an intention to the contrary clearly appears.

Rules of interpretation.

SEC. 582. Several testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument.

Several instruments to be taken together.

SEC. 583. All the parts of a will are to be construed in relation to each other, and so as if possible to form one consistent whole, but where several parts are absolutely irreconcilable, the latter must prevail.

Harmonizing various parts.

SEC. 584. A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will.

Same.

SEC. 585. Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof, in another part of the will.

Same.

SEC. 586. The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use

Words taken in ordinary sense.

them in another sense can be collected, and that other can be ascertained.

Words to receive an operative construction.

SEC. 587. The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which shall render any of the expressions inoperative.

Intestacy to be avoided.

SEC. 588. Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

Effect of technical words.

SEC. 589. Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention.

Technical words not necessary.

SEC. 590. Technical words are not necessary to give effect to any species of disposition by a will.

Certain words not necessary to pass a fee.

SEC. 591. The term "heirs," or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all the estate of the testator, unless otherwise limited.

Power to devise, how executed by terms of will.

SEC. 592. Real or personal property embraced in a power to devise, passes by a will purporting to devise all the real or personal property of the testator.

Devise or bequest of all real or all personal property or both.

SEC. 593. A devise or bequest of all the testator's real or personal property, in express terms, or in any other terms denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death.

Residuary clause.

SEC. 594. A devise of the residue of the testator's estate, property, or real property, passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will.

Same.

SEC. 595. A bequest of the residue of the testator's estate, property or personal property, passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will.

"Heirs," "relatives," &c.

SEC. 596. A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives" or "personal representatives," or "family," "issue," "descendants," "nearest" or "next of kin" of any person, without other words of qualification, and when the terms are used as words of donation and not of limitation, vests the property in those who would be entitled to succeed to the pro-

perty of such person, according to sections 642 and 643 of this Code.

SEC. 597. The terms mentioned in the last section are used as words of donation, and not limitation, when the property is given to the person so designated, directly, and not as a qualification of an estate given to the ancestor of such person.

Words of donation and of limitation.

SEC. 598. Words in a will referring to death or survivorship, simply, relate to the time of the testator's death, unless possession is actually postponed, when they must be referred to the time of possession.

To what time words refer.

SEC. 599. A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description, before the time to which possession is postponed.

Devise or bequest to a class.

SEC. 600. When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property, from the time of the testator's death.

When conversion takes effect.

SEC. 601. A child conceived before, but not born until after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.

When child born after testator's death, takes under will.

SEC. 602. When, applying a will, it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence; but evidence of the declarations of the testator as to his intention cannot be received.

Mistakes and omissions.

SEC. 603. Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.

When devises and bequests vest.

SEC. 604. A testamentary disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.

When cannot be divested.

SEC. 605. If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place.

Death of devisee or legatee.

Interests in remainder are not affected.

SEC. 606. The death of a devisee or legatee of a limited interest, before the testator's death, does not defeat the interests of persons in remainder, who survive the testator.

Conditional devises and bequests.

SEC. 607. A conditional disposition is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated.

Condition precedent, what.

SEC. 608. A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.

Effect of condition precedent.

SEC. 609. Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled; except where such fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will.

Conditions precedent when deemed performed.

SEC. 610. A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally, complied with.

Condition subsequent, what.

SEC. 611. A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event.

Devises and legatees take as tenants in common.

SEC. 612. A devise or legacy given to more than one person vests in them as owners in common.

Advancements when adeptions

SEC. 613. Advancements or gifts are not to be taken as adeptions of general legacies, unless such intention is expressed by the testator in writing.

CHAPTER III.

GENERAL PROVISIONS.

SECTION 614. Nature and designations of legacies.

1. Specific.
2. Demonstrative.
3. Annuities.
4. Residuary.
5. General.

- SECTION 615. Order of sale in case of an intestate.
 616. Order of sale in case of a testator.
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 620. Specific devises and legacies.
 621. Heir's conveyance good, unless will is proved within four years.
 622. Possession of legatees.
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 624. Satisfaction.
 625. Legacies, when due.
 626. Interest.
 627. Construction of these rules.
 628. Execution according to the tenor.
 629. Power to appoint is invalid.
 630. Executor not to act till qualified.
 631. Executor of an executor.
 632. Provisions as to revocations.
 633. Execution and construction of prior wills not affected.
 634. " Wills " includes codicils.
 635. The law of what place applies.
 636. Liability of beneficiaries for testator's obligations.

SEC. 614. Legacies are distinguished and designated, according to their nature, as follows: Nature and designation of legacies.

1. A legacy of a particular thing, specified, and distinguished from all others of the same kind belonging to the testator, is specific; if such legacy fails, resort cannot be had to the other property of the testator; Specific.

2. A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails, in whole or in part, resort may be had to the general assets, as in case of a general legacy; Demonstrative

3. An annuity is a bequest of certain specified sums periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets, as in case of a general legacy; Annuities.

4. A residuary legacy embraces only that which remains after all the bequests of the will are discharged; Residuary.

5. All other legacies are general legacies. General.

SEC. 615. When a decedent dies intestate, the property, except such as is otherwise disposed of under section 640 of this Code, and such as is exempt under the CODE OF CIVIL PROCEDURE, or any statute exempting property from execution, is to be resorted to, in the following order, in payment of debts: Orders of sale in case of intestacy.

1. Personal property;
2. Real property other than estates of freehold;
3. Estates of freehold.

Order of sale
in case of a tes-
tator.

SEC. 616. The property of a testator, with the exception specified in the last section, is to be resorted to, in the following order, for the payment of debts and legacies;

1. Personal property, excepting such as is expressly exempted in the will;
2. Real property expressly devised to pay debts or legacies, where the personal property is exempted in the will, or where the personal property which is not exempted is insufficient;
3. Real property which is not effectually devised;
4. Property, real or personal, charged with debts or legacies; but though real property be charged with the payment of legacies, the personal property is not to be exonerated;
5. The following property, ratably: real property, devised without being charged with debts or legacies, and specific and demonstrative legacies;
6. Personal property expressly exempted in the will.

Legacies, how
charged with
debts.

SEC. 617. In the application of the personal property of a decedent to the payment of debts, legacies must be charged in the following order, unless a different intention is expressed in the will:

1. Residuary legacies;
2. General legacies;
3. Legacies given for a valuable consideration, or for the relinquishment of dower, or some right or interest;
4. Specific and demonstrative legacies.

Same.

SEC. 618. Legacies to husband, widow or kindred of any class, are chargeable only after legacies to persons not related to the testator.

Abatement.

SEC. 619. Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.

Specific de-
vices and lega-
cies.

SEC. 620. In a specific devise or legacy the title passes by the will, but, in case of legacies, possession can only be obtained from the personal representative; and he may be authorized by the probate judge to sell the property devised or bequeathed, in the cases herein provided.

SEC. 621. The rights of a purchaser or incumbrancer of real property, in good faith, and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing such devise is duly proved as a will, and recorded in the office of the probate judge having jurisdiction thereof, or unless written notice of such devise is filed with the probate judge of the county where the real property is situated, within four years after the devisors death.

Heir's conveyance good unless will is proved within four years.

SEC. 622. Where specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only, and that, on his decease, it is to be delivered and to remain to the use and for the benefit of the second legatee, or to the personal representative, as the case may be.

Possession of legatees.

SEC. 623. In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.

Bequests of interest.

SEC. 624. A legacy, or a gift in contemplation, fear or peril of death may be satisfied.

Satisfaction.

SEC. 625. Legacies are due and deliverable, at the expiration of one year after the testator's decease. Annuities commence at the testator's decease.

Legacies when due.

SEC. 626. Legacies bear interest from the time when they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease.

Interest.

SEC. 627. The four preceding sections are in all cases to be controlled by a testator's express intention.

Construction of these rules.

SEC. 628. Where it appears, by the terms of a will, that it was the intention of the testator to commit the execution thereof and the administration of his estate to any person as executor, such person, although not named executor, is entitled to letters testamentary in like manner as if he had been named executor.

Executor according to the tenor.

SEC. 629. An authority to an executor to appoint an executor is void.

Powers to appoint void.

SEC. 630. No person has any power, as an executor, until he qualifies, except that, before letters have been issued, he

Executor not to act till qualified.

may pay funeral charges and take necessary measures for the preservation of the estate.

Executor of an executor.

SEC. 631. No executor of an executor, as such, has any power over the estate of the first testator.

Provisions as to revocations.

SEC. 632. The provisions of this Title in relation to the revocation of wills, apply to all wills made by any testator living at the expiration of one year from the time this article takes effect.

Execution and construction of prior wills not affected.

SEC. 633. The provisions of this Title do not impair the validity of the execution of any will made before this article takes effect, or affect the construction of any such will.

"Will" includes codicils.

SEC. 634. The term "will," as used in this Code, includes all codicils as well as wills.

The law of what place applies.

SEC. 635. Except as otherwise provided, the validity and interpretation of wills is governed, when relating to real property within this Territory, by the law of this Territory; when relating to personal property, by the law of the testator's domicile.

Liabilities of beneficiaries for testator's obligations.

SEC. 636. Those to whom property is given by will, are liable for the obligations of the testator in the cases and to the extent prescribed by the CODE OF CIVIL PROCEDURE, or the statutes in such case made and provided.

TITLE VI.

SUCCESSION.

SECTION 637. Succession defined.

638. Office of personal representatives.

639. Who are personal representatives.

640. Certain personal and other property not assets but retained by family.

641. Who to retain such property.

642. Order of succession.

1. Husband.

2. Wife and children.

3. Wife and next of kin.

4. Wife alone.

5. Children alone.

- SECTION 643.** Where there is neither widow nor children.
644. Successor of deceased parent.
645. Relative in equal degree; in unequal degree.
646. Several heirs, how to hold.
647. Abolition of dower and curtesy.
648. Certain estates, &c., not to be affected.
649. Trusts.
650. Trust estates vest in the district court.
651. Property in common.
652. Joint property.
653. Succession to real property of a copartnership.
- 654, 655, 656. When advancement to be set-off or deducted.
657. Relatives of the half blood.
- 658, 659. Computation of degrees.
660. Aliens.
661. Mother, &c., of illegitimate decedent may succeed.
662. Illegitimate child may succeed to mother's property.
663. Illegitimacy.
664. Posthumous relatives.
665. Divorce bars succession between the parties.
666. Who are representatives.
667. Escheat.
668. Title of territory subject to charges.
669. Liability of successors for decedent's obligations.

SEC. 637. Succession is the coming in of another to take the ^{Succession defined.} property of one who dies without disposing of it by will.

SEC. 638. The property, both real and personal, of any one ^{Officer of personal representatives.} who dies without disposing of it by will, passes, in the first instance, to the personal representatives of such person, as trustees:

1. To make the provision for the surviving husband or wife or child, which is directed by section 640;

2. To apply the property to the payment of the debts of the decedent, according to the Title on Wills and the provisions of the CODE OF CIVIL PROCEDURE, or the laws on that subject; and

3. To distribute any remaining property among those entitled to succeed to the property of the decedent, according to the provisions of this Title.

SEC. 639. The personal representatives of a decedent are ^{Who are personal representatives.} his executors or administrators, including administrators with will annexed, who have duly qualified according to the provisions of the CODE OF CIVIL PROCEDURE, or the laws now in force on that subject.

Certain property not assets but retained by family.

SEC. 640. Where a decedent leaves a husband, wife or child, the following property is to be immediately delivered by the personal representative, to such wife or husband, and child or children, and is not to be deemed assets:

1. Any estate or interest, to the value of one thousand dollars, in a lot and buildings thereon, occupied as a residence by the decedent, and which, by law, is exempt, as a homestead, from sale on execution;

2. All sewing machines, spinning wheels, weaving looms, and stoves, used by the family;

3. The family Bible, one pew, family pictures, and school books used by the family; and books, not exceeding in value one hundred dollars, used as part of the family library;

4. Sheep, to the number of ten, with their fleeces, and the yarn and cloth manufactured from the same; two cows and four swine;

5. All wearing apparel and clothing, and the wife's ornaments; all beds, bedsteads and bedding; all cooking utensils and kitchen furniture;

6. All family stores, or provisions, or supplies, for ordinary domestic use;

7. Household furniture, or other personal property, or money, to the value or amount of two hundred and fifty dollars; and,

8. Letters and other private writings.

Who to retain such property.

SEC. 641. The property mentioned in the last section is to remain in the possession of the husband or wife if there is one, during the time such husband or wife resides with and provides for the child or children of the marriage. When any child ceases so to reside, he is entitled to receive an equal share, or the value thereof, of such property, except that a wife may retain, as her own, her wearing apparel and ornaments, and one bedstead and bedding.

Order of succession.

SEC. 642. All property remaining after paying of such debts of a decedent as by law can be collected by execution, and satisfaction of the disposition of his will, is to be distributed, together with any damages recovered by the personal representatives for any wrongful act, neglect or default which caused the decedent's death, to the successors of the decedent as follows:

1. If a decedent leaves a husband, the whole surplus goes to him, notwithstanding that it was the separate property of the wife, unless during the marriage she alienated such property, or effectually disposed thereof on her decease, by will or by gift in view of death; Husband.

2. If the decedent leaves a wife and lineal descendants, one-third part goes to the wife, and the other two-thirds to the nearest lineal descendants and the successors of those who are deceased; Widow and child.

3. If the decedent leaves a wife and no descendants, and leaves a father or mother, brother or sister, the whole surplus, if it does not exceed in value at the time of distribution ten thousand dollars, goes to the wife; if it exceeds ten thousand dollars, but does not exceed twenty thousand dollars, then ten thousand dollars go to her; if it exceeds twenty thousand dollars, then one-half goes to her; the remainder if any, goes to the father and mother or the survivor of them, or, if neither is living, to the brothers and sisters, and the successors of those of them who are deceased; Widow and next of kin.

4. If the decedent leaves a wife, and no descendant, parent, brother, or sister, the whole surplus goes to the wife; Widow alone.

5. If the decedent leaves no husband or wife, the whole surplus goes equally to the nearest lineal descendants, and the successors of those who are deceased. Children alone.

SEC. 643. If a decedent leaves no husband or wife, and no descendant, the whole surplus of the estate goes to the next of kin, and the successors of those who are deceased, as follows: Where there is neither widow nor children

1. To the father or mother, or either of them;

2. If there is no parent, to the brothers and sisters, in equal shares, and the successors of those who are deceased;

3. If there is no parent or brother or sister, or successor of a brother or sister, then to the next of kin and the successors of those who are deceased.

SEC. 644. The successors of a deceased parent cannot take by representation in place of the parent. Successor of deceased parent.

SEC. 645. Where the successors of the decedent, except parents, are all in equal degree of consanguinity to the decedent, their shares are equal; but if several are of unequal degree, each of the nearest degree succeeds to the share to which he would have been entitled had all those in the same degree, who have died leaving issue, been living: and the issue of Relatives in equal degree.
In unequal degree.

those who have died, respectively succeed to the shares which such descendants or next of kin would have received if living.

Several heirs
how to hold.

SEC. 646. Whenever real property, or a share thereof, vests in several persons under the provisions of this Title, they take, as owners in common, in proportion to their respective rights.

Abolition of
dower and cur-
tesy.
Certain estates,
&c., not to be
affected.

SEC. 647. Dower and curtesy are abolished.

SEC. 648. This title does not affect any limitation of an estate or interest by deed or will.

Trusts.

SEC. 649. The interest of any person in real property held in trust for him, if not devised by him, vests in his successors, according to the provisions of this chapter.

Trust estates
vest in supreme
court.

SEC. 650. Upon the death of a sole trustee of an express trust, whether a resident of this Territory or not, the trust estate does not devolve by succession, but the trust, if then unexecuted, vests in the district court, with all the powers and duties of the original trustee, and must be executed by a person appointed for that purpose, under the direction of the court.

Property in
common.

SEC. 651. On the death of one of several owners in common, his title passes in like manner with his other property.

Joint property.

SEC. 652. On the death of one or two or more joint owners, with right of survivorship, his title passes to the surviving joint owners.

Partnership
property.

SEC. 653. On the death of a partner, the surviving partners succeed to all the partnership property, whether real or personal, in trust for the purposes of liquidation, even though the deceased was appointed by agreement sole liquidator; and the interest of the deceased in the ultimate distribution of the partnership assets passes to those who succeed to his other personal property.

When ad-
vancement to
be set off or de-
ducted.

SEC. 654. When any real or personal property, or both, whether within or without this Territory, of a person who dies intestate as to all his property, has been advanced by such intestate, directly, or by virtue of a beneficial power, or of a power in trust with a right of selection, to a person entitled to succeed to his property, and with a view to a portion or settlement in life, and so expressed in the instrument establishing the settlement or portion, the value thereof as expressed in the instrument must be reckoned, for the pur-

poses of this section only, as part of the property of such intestate which his successors are to receive; and if such advancement equals or exceeds the share which such relative would be entitled to receive, of the property so reckoned, then such relative and his successors have no share in the property of the intestate. But if the advancement is less than such share, he and his successors are to have so much only of the property as is sufficient to make it equal to such share.

SEC. 655. The exclusion from succession, and the adjustment of shares under the provisions of the last section, take effect only upon judgment in a civil action.

Same.

SEC. 656. Unless both the purpose and the value of the settlement or portion, are expressed in the instrument of settlement, there is no legal advancement within the provisions of section 654.

Same.

SEC. 657. Relatives of the half blood, on either the paternal or maternal side, and their descendants, and the successors of both, succeed equally with those of the whole blood, except that to real property, which came to the decedent by succession, devise or gift of his relative, none who are not in any wise of the blood of such relative can succeed.

Relatives of the half blood.

SEC. 658. In determining succession, degrees of relationship are reckoned by counting from the decedent up to the common ancestor, and then down to the relative in question; reckoning a degree for each person. In such computation the decedent is excluded, the relative included, and the common ancestor counted but once.

Computation of degree.

SEC. 659. Brothers and sisters are in the first degree of relationship, which rule applies for the benefit of their successors.

Same.

SEC. 660. Aliens may take in all cases, by succession, as well as citizens; and no person, capable of succeeding under the provisions of this chapter, is precluded from such succession by reason of the alienage of any relative.

Aliens.

SEC. 661. The mother of an illegitimate child, and the relatives on the part of the mother, succeed to its property as if the child were legitimate.

Mother &c., of illegitimate descendant may succeed.

SEC. 662. In case of the death of a mother leaving no lawful issue, and no husband, and leaving illegitimate children or

Illegitimate child may succeed to mother's property.

their descendants, such children and descendants succeed in the same manner as if such children were legitimate.

Illegitimacy. SEC. 663. No person can succeed through an illegitimate relationship, except in the cases hereinbefore provided.

Posthumous relatives. SEC. 664. Relatives of a decedent, conceived before his death, but born thereafter, succeed, as if born in his lifetime and surviving him.

Divorce bars succession between the parties. SEC. 665. Where a marriage has been dissolved for the misconduct of either party thereto, the guilty party is not entitled to succeed to the property of the other.

Successors of one who dies before the decedent. SEC. 666. Where a person, who would have been entitled, if living at the death of another, to succeed to his property, dies before the latter, the property which he would thus have taken by succession, if living, passes to those who would have been entitled to succeed thereto, if he had so taken it, and had died immediately thereafter.

Escheat. SEC. 667. If there is no one capable of succeeding under the preceding sections, the property of a decedent devolves to the people of the Territory.

Title of territory subject to charges. SEC. 668. Real property passing to the Territory under the last section, whether held by the Territory or its grantees, is subject to the same charges and trusts to which it would have been subject if it had passed by succession; and the district court has power to direct the United States district attorney for this Territory to convey the same to the parties entitled, or to a new trustee appointed by the court.

Liability of successors for decedent's obligations. SEC. 669. Those who succeed to the property of a decedent are liable for his obligations in the cases, and to the extent, prescribed by the Code of Civil Procedure, or by the statutes on that subject.

DIVISION THIRD.

OBLIGATIONS.

- PART I. Obligations in general.
 - II. Contracts.
 - III. Obligations imposed by law.
 - IV. Obligations arising from particular transactions.
-

PART I.

OBLIGATIONS IN GENERAL.

- TITLE I. Definition of obligations.
- II. Interpretation of obligations.
- III. Transfer of obligations.
- IV. Extinction of obligations.

TITLE I.

DEFINITION OF OBLIGATIONS.

- SECTION 670. Obligation, what.
- 671. How created.

SEC. 670. An obligation is a legal duty, by which a person is bound to do or not to do a certain thing. Obligation,
what.

- How created. SEC. 671. An obligation arises either from :
1. The contract of the parties; or,
 2. The operation of law.

TITLE II.

INTERPRETATION OF OBLIGATIONS.

CHAPTER I. General rules of interpretation.

- II. Joint or several obligations.
- III. Conditional obligations.
- IV. Alternative obligations.

CHAPTER I.

GENERAL RULES OF INTERPRETATION.

SECTION 672. General rules.

- General rules. SEC. 672. The rules which govern the interpretation of contracts are prescribed by Part II of this Division. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted.

CHAPTER II.

JOINT OR SEVERAL OBLIGATIONS.

- Obligation.
joint or several.
&c. SECTION 673. Obligation, joint or several, &c.

674. When joint.

675. Contribution between joint parties.

- SEC. 673. An obligation imposed upon several persons, or a right created in favor of several persons, may be:

1. Joint;

- 2. Several; or,
- 3. Joint and several.

SEC. 674. An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint, and not several, except in the special cases mentioned in the Title on the Interpretation of Contracts. This presumption, in the case of a right, can be overcome only by express words to the contrary. When Joint.

SEC. 675. A party to a joint, or joint and several, obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him. Contribution between joint parties.

CHAPTER III.

CONDITIONAL OBLIGATIONS.

SECTION 676. Obligation, when conditional.

- 677. Conditions, kinds of.
- 678. Conditions precedent.
- 679. Conditions concurrent.
- 680. Conditions subsequent.
- 681. Performance, &c., of conditions when essential.
- 682. When performance, &c., excused.
- 683. Impossible or unlawful conditions void.
- 684. Conditions involving forfeiture, how construed.

SEC. 676. An obligation is conditional, when the rights or duties of any party thereto depend upon the occurrence of an uncertain event. Obligation when conditional.

SEC. 677. Conditions may be precedent, concurrent or subsequent. Conditions, kinds of.

SEC. 678. A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed. Condition precedent.

SEC. 679. Conditions concurrent are those which are mutually dependent, and are to be performed at the same time. Conditions concurrent.

Condition subsequent

SEC. 680. A condition subsequent is one referring to a future event, upon happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition.

Performance, &c., of conditions, when essential.

SEC. 681. Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must be able, and offer, to fulfill all conditions concurrent, so imposed upon him, on the like fulfillment by the other party; except as provided by the next section.

When performance, &c., excused.

SEC. 682. If a party to an obligation gives notice to another, before the latter is in default, that he will not perform the same upon his part, and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon his part, in favor of the former party.

Impossible or unlawful conditions void.

SEC. 683. A condition in a contract, the fulfillment of which is impossible or unlawful, within the meaning of the Article on the Object of Contracts; or which is repugnant to the nature of the interest created by the contract, is void.

Conditions involving forfeiture, how construed.

SEC. 684. A condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created.

CHAPTER IV.

ALTERNATIVE OBLIGATIONS.

SECTION 685. Who has the right of selection.

686. Right of selection, how lost.

687. Alternatives indivisible.

688. Nullity of one or more of alternative obligations.

Who has the right of selection.

SEC. 685. If an obligation requires the performance of one of two acts, in the alternative, the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation.

SEC. 686. If the party having the right of selection between alternative acts does not give notice of his selection to the other party within the time, if any, fixed by the obligation for that purpose, or, if none is so fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party. Right of selection, how lost.

SEC. 687. The party having the right of selection between alternative acts, must select one of them in its entirety, and cannot select part of one and part of another, without the consent of the other party. Alternative indivisible.

SEC. 688. If one of the alternative acts required by an obligation is such as the law will not enforce, or becomes unlawful, or impossible of performance, the obligation is to be interpreted as though the other stood alone. Nullity of one or more of alternative obligations.

TITLE III.

TRANSFER OF OBLIGATIONS.

SECTION 689. Burden of obligation, not transferable.

690. Rights arising out of obligation, transferable.

691. Covenants running with land, what.

692, 693, 694. What covenants run with the land.

695. What covenants run with land when assigns are named.

696. Who are bound by covenants.

697. Who are not.

698. Apportionment of covenants.

SEC. 689. The burden of an obligation may be transferred, with the consent of the party entitled to its benefit, but not otherwise, except as provided by section 697. Burden of obligation not transferable.

SEC. 690. A right arising out of an obligation is the property of the person to whom it is due, and may be transferred as such. Rights arising out of obligation transferable.

SEC. 691. Certain covenants, contained in grants of estates in real property, are appurtenant to such estates, and pass with them, so as to bind the assigns of the covenantor, and to vest in the assigns of the covenantee, in the same manner Covenants running with land, what.

as if they had personally entered into them. Such covenants are said to run with the land.

What covenants run with the land.

SEC. 692. The only covenants which run with the land, are those specified in this Title, and those which are incidental thereto.

Same.

SEC. 693. Every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property, or some part of it, then in existence, runs with the land.

Same.

SEC. 694. The last section includes covenants of warranty, for quiet enjoyment, or for further assurance, on the part of a grantor, and covenants for the payment of rent, or of taxes or assessments upon the land, on the part of a grantee.

What covenants run with land when assigns are named.

SEC. 695. A covenant for the addition of some new thing to real property, or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in such property, and made by the covenantor expressly for his assigns or to the assigns of the covenantee, runs with the land so far only as the assigns thus mentioned are concerned.

Who are bound by covenants.

SEC. 696. A covenant running with the land binds those only who acquire the whole estate of the covenantor in some part of the property.

Who are not.

SEC. 697. No one, merely by reason of having acquired an estate subject to a covenant running with the land, is liable for a breach of the covenant before he acquired the estate, or after he has parted with it, or ceased to enjoy its benefits.

Apportionment of covenants.

SEC. 698. Where several persons, holding by several titles, are subject to the burden, or entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained, and if not, then according to their respective interests in point of quantity.

TITLE IV.

EXTINCTION OF OBLIGATIONS.

CHAPTER I. Performance.

- II. Offer of performance.
- III. Prevention of performance or offer.
- IV. Accord and satisfaction.
- V. Novation.
- VI. Release.

CHAPTER I.

PERFORMANCE.

- SECTION 699.** Obligation extinguished by performance.
- 700.** Performance by one of several joint debtors.
- 701.** Performance to one of joint creditors.
- 702.** Effect of directions by creditors.
- 703.** Partial performance.
- 704.** Payment; what.
- 705.** Application of general performance.

SEC. 699. Full performance of an obligation, by the party whose duty it is to perform it, or by any other person on his behalf, and with his assent, if accepted by the creditor extinguishes it. Obligation extinguished by performance

SEC. 700. Performance of an obligation, by one of several persons who are jointly liable under it, extinguishes the liability of all. Performance by one of several joint debtors.

SEC. 701. An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common, or in joint ownership, which is regulated by the Title on Deposit. Performance to one of joint creditors.

Effect of directions by creditor.

SEC. 702. If a creditor, or any one of two or more joint creditors, at any time directs the debtor to perform his obligation in a particular manner, the obligation is extinguished by performance in that manner, even though the creditor does not receive the benefit of such performance.

Partial performance.

SEC. 703. A partial performance of an indivisible obligation extinguishes a corresponding proportion thereof, if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it, without injuring his own property, his retention thereof is not presumed to be voluntary.

Payment, what.

SEC. 704. Performance of an obligation for the delivery of money only, is called payment.

Application of general performance

SEC. 705. Where a debtor, under several obligations to another, does an act, by way of performance, which is equally applicable to two or more of such obligations, such performance is applied as follows:

1. If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation, is manifested to the creditor, it is so applied;

2. If no such application is then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation, performance of which was due to him from the debtor at the time of such performance; except that if similar obligations were due to him both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion; and an application once made by the creditor cannot be rescinded without the consent of the debtor;

3. If neither party makes such application, within the time prescribed herein, the performance is applied to the extinction of obligations in the following order; and, if there is more than one obligation of a particular class, to the extinction of all in that class, ratably:

- (1.) Of an obligation due at the time of performance;
- (2.) Of an obligation not voidable at the option of the debtor;

- (3.) Of an obligation secured by a lien, or collateral undertaking;
- (4.) Of interest;
- (5.) Of the obligation earliest in date of maturity;
- (6.) Of the obligation which it is most for the interest of the debtor to extinguish.

CHAPTER II.

OFFER OF PERFORMANCE.

- SECTION 700.** Obligation extinguished by offer of performance.
- 707.** Offer of partial performance.
- 708.** By whom to be made.
- 709.** To whom to be made.
- 710.** Where offer may be made.
- 711, 721.** When offer must be made.
- 713.** Compensation after delay in performance.
- 714.** Offer to be made in good faith.
- 715.** Conditional offer.
- 716.** Ability and willingness, essential.
- 717.** Production of thing to be delivered, not necessary.
- 718.** Thing offered, to be kept separate.
- 719.** Performance of condition precedent.
- 720.** Written receipts.
- 721.** Extinction of pecuniary obligation.
- 722.** Objections to mode of offer.
- 723.** Title to thing offered.
- 724.** Custody of thing offered.
- 725.** Effect of offer on accessories of obligation.
- 726.** Creditor's retention of thing which he refuses to accept.
- 727.** What excuses performance, &c.
- 728, 729, 730.** Effect of prevention of performance.
- 731.** Effect of refusal to accept performance before offer.

SEC. 706. An obligation is extinguished by an offer of performance, made in conformity to the rules herein prescribed, Obligation extinguished by offer of performance. and with intent to extinguish the obligation.

SEC. 707. An offer of partial performance is of no effect. Offer of partial performance.

SEC. 708. An offer of performance must be made by the debtor, or by some person on his behalf and with his assent. By whom to be made.

To whom to
be made.

SEC. 709. An offer of performance must be made to the creditor, or to any one of two or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation, if such creditor or authorized person is present at the place where the offer may be made; and if not, then to a notary public.

Where offer
may be made.

SEC. 710. In the absence of an express provision to the contrary, an offer of performance may be made, at the option of the debtor:

1. At any place appointed by the creditor; or,
2. Wherever the person, to whom the offer ought to be made, can be found; or,
3. If such person cannot, with reasonable diligence, be found within this Territory, and within a reasonable distance from his residence or place of business, or if he evades the debtor, then at his residence, or place of business, if the same can, with reasonable diligence, be found within the Territory; or,
4. If this cannot be done, then at any place within this Territory.

When offer
must be made.

SEC. 711. Where an obligation fixes a time for its performance, an offer of performance must be made at that time, within reasonable hours, and not before nor afterwards.

Same.

SEC. 712. Where an obligation does not fix the time for its performance, an offer of performance may be made at any time, before the debtor, upon a reasonable demand, has refused to perform.

Compensation
after delay in
performance.

SEC. 713. Where delay in performance is capable of exact and entire compensation, and time has not been expressly declared to be of the essence of the obligation, an offer of performance, accompanied with an offer of such compensation, may be made at any time after it is due, but without prejudice to any rights acquired by the creditor or by any other person in the meantime.

Offer to be
made in good
faith.

SEC. 714. An offer of performance must be made in good faith, and in such manner as is most likely, under the circumstances, to benefit the creditor.

Conditional
offer.

SEC. 715. An offer of performance must be free from any conditions which the creditor is not bound on his part to perform.

SEC. 716. An offer of performance is of no effect, if the person making it is not able and willing to perform according to the offer. Ability and willingness essential.

SEC. 717. The thing to be delivered, if any, need not in any case be actually produced, upon an offer of performance, unless the offer is accepted. Production of thing to be delivered, not necessary.

SEC. 718. A thing, when offered by way of performance, must not be mixed with other things from which it cannot be separated immediately and without difficulty. Thing offered to be kept separate.

SEC. 719. When a debtor is entitled to the performance of a condition precedent to, or concurrent with, performance on his part, he may make his offer to depend upon the due performance of such condition. Performance of condition precedent.

SEC. 720. A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation. Written receipt.

SEC. 721. An obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in the name of the creditor, with some bank of deposit within this Territory, of good repute, and notice thereof is given to the creditor. Extinction of pecuniary obligation.

SEC. 722. All objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time to the person making the offer, and which could be then obviated by him, are waived by the creditor, if not then stated. Objections to mode of offer.

SEC. 723. The title to a thing duly offered in performance of an obligation passes to the creditor, if the debtor at the time signifies his intention to that effect. Title to thing offered.

SEC. 724. The person offering a thing, other than money, by way of performance, must, if he means to treat it as belonging to the creditor, retain it as a depositary for hire, until the creditor accepts it, or until he has given reasonable notice to the creditor that he will retain it no longer, and, if with reasonable diligence he can find a suitable depositary therefor, until he has deposited it with such person. Custody of thing offered.

SEC. 725. An offer of payment or other performance, duly made, though the title to the thing offered be not transferred to the creditor, stops the running of interest on the obligation, and has the same effect upon all its incidents as a performance thereof. Effect of offer on accessories of obligation.

Creditor's retention of thing, which he refuses to accept.

SEC. 726. If anything is given to a creditor by way of performance, which he refuses to accept as such, he is not bound to return it without demand; but if he retains it, he is gratuitous depositary thereof.

CHAPTER III.

PREVENTION OF PERFORMANCE OR OFFER.

SECTION 727. What excuses performance, &c.

728, 729, 730. Effect of prevention of performance.

731. Effect of refusal to accept performance before offer.

What excuses performance, &c.

SEC. 727. The want of performance of an obligation, or of an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate:

1. When such performance or offer is prevented or delayed by the act of the creditor, or by the operation of law, even though there may have been a stipulation that this shall not be an excuse;

2. When it is prevented or delayed by an irresistible superhuman cause, or by the act of public enemies of this Territory or of the United States, unless the parties have expressly agreed to the contrary; or,

3. When the debtor is induced not to make it, by any act of the creditor intended or naturally tending to have that effect, done at or before the time at which such performance or offer may be made, and not rescinded before that time.

Effect of prevention of performance.

SEC. 728. If performance of an obligation is prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained by its performance on both sides.

Same.

SEC. 729. If a debtor is dissuaded by his creditor from performance, but is not actually forbidden to perform, he may, at his option, omit to perform, and retain whatever he has received under the contract, but he is entitled to nothing more.

Same.

SEC. 730. If performance of an obligation is prevented by any cause excusing performance, other than the act of the

creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance, according to the benefit which the creditor receives from the actual performance.

SEC. 731. A refusal by a creditor to accept performance, made before an offer thereof, is equivalent to an offer and refusal, unless, before performance is actually due, he gives notice to the debtor of his willingness to accept it.

Effect of refusal to accept performance before offer.

CHAPTER IV.

ACCORD AND SATISFACTION.

SECTION 732. Accord, what.

733. Effect of accords.

734. Satisfaction, what.

735. Accord of liquidated debt.

SEC. 732. An accord is an agreement to accept, in extinction of an obligation, something to which the person agreeing to accept is not otherwise entitled.

Accord, what.

SEC. 733. Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is fully executed.

Effect of accord.

SEC. 734. Acceptance, by the creditor, of the consideration of an accord, extinguishes the obligation, and is called satisfaction.

Satisfaction, what.

SEC. 735. Payment of an amount less than that of a liquidated debt then payable, is not a satisfaction thereof, though accepted as such.

Accord of liquidated debt.

CHAPTER V.

NOVATION.

- SECTION 736. Novation, what.
 737. Modes of novation.
 738. Novation a contract.
 739. Effect of acceptance of new obligation.
 740. Rescission of novation.

Novation,
what.

SEC. 736. Novation is the substitution of a new obligation for an existing one.

Modes of
novation.

SEC. 737. Novation is made:

1. By the substitution of a new and higher obligation between the same parties, with intent to extinguish the old obligation;

2. By the substitution of a new debtor in place of the old one, with intent to release the latter; or,

3. By the substitution of a new creditor in place of the old one, with intent to transfer the rights of the latter to the former.

Novation
a contract.

SEC. 738. Novation is made by contract, and is subject to all the rules concerning contracts in general.

Effect of ac-
ceptance of new
obligation.

SEC. 739. The acceptance, by a creditor, of a new obligation of the debtor for the payment of money only in satisfaction of another obligation of as high degree, for the payment of a specific sum of money only, then payable, does not extinguish the latter obligation unless accepted as a satisfaction, under section 735, but extends the time of payment until the new obligation becomes payable.

Rescission of
novation.

SEC. 740. When the obligation of a third person, or an order upon such person, is accepted in satisfaction, the creditor may rescind such acceptance, if the debtor prevents such person from complying with the order, or from fulfilling the obligation, or if, before the creditor can with reasonable diligence reach such person, he becomes insolvent.

CHAPTER VI.

RELEASE.

- SECTION 741. Obligation extinguished by release.
- 742. Certain claims not affected by general release.
- 743. Release of several joint debtors.

SEC. 741. An obligation is extinguished by a release therefrom given to the debtor by the creditor, upon a new consideration, or under seal. Obligation extinguished by release.

SEC. 742. A general release does not extend to claims which the creditor did not know or suspect to exist in his favor, at the time of executing the release. Certain claims not affected by general release.

SEC. 743. A release of one of two or more joint debtors does not extinguish the obligations of any of the others, unless they are mere guarantors; nor does it affect their right to contribution from him. Release of several joint debtors.

PART II.

CONTRACTS.

- TITLE I. Nature of a contract.**
- II. Manner of creating contracts.
- III. Interpretation of contracts.
- IV. Unlawful contracts.
- V. Extinction of contracts.

TITLE I.

NATURE OF CONTRACT.

- CHAPTER I. Definition.**
- II. Parties.
- III. Consent.
- IV. Object.
- V. Consideration.

CHAPTER I.

DEFINITION.

- SECTION 744. Contract, what.**
- 745. Essential elements of contract.

Contract,
what.

SEC. 744. A contract is an agreement to do or not to do a certain thing.

SEC. 745. It is essential to the existence of a contract that there should be: Essential elements of contracts.

1. Parties capable of contracting;
2. Their consent;
3. A lawful object; and,
4. Sufficient cause or consideration.

CHAPTER II.

PARTIES.

SECTION 746. Who may contract.

747. Minors, &c.

748. Identification of parties necessary.

749. When contract for benefit of third person may be enforced.

SEC. 746. All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights. Who may contract.

SEC. 747. Minors, and persons of unsound mind, have only such capacity as is defined by Part I of the First Division of this Code. Minor's &c.

SEC. 748. It is essential to the validity of the contract, not only that the parties should exist, but that it should be possible to identify them. Identification of parties necessary.

SEC. 749. A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it. When contract for benefit of third person may be enforced.

CHAPTER III.

CONSENT.

SECTION 750. Essentials of consent.

751. Consent when voidable.

752. Apparent consent, when not free.

753. When deemed to have been obtained by fraud, &c.

- SECTION 754.** Duress, what.
755. Menace, what.
756. Fraud, actual or constructive.
757. Actual fraud, what.
758. Constructive fraud.
759. Actual fraud a question of fact.
760. Undue influence, what.
761. Mistake, what.
762. Mistake of fact.
763. Mistake of law.
764. Mistake of foreign laws.
765. Mutuality of consent.
766. Communication of consent.
767. Mode of communicating acceptance of proposul.
768. When communication deemed complete.
769. Acceptance by performance of conditions.
770. Acceptance must be absolute.
771. Revocation of proposal.
772. Revocation, how made.
773. Ratification of contract, void for want of consent.
774. Assumption of obligation by acceptance of benefits.

Essentials of consent.

- SEC. 750.** The consent of the parties to a contract must be:
1. Free;
 2. Mutual; and,
 3. Communicated by each to the other.

Consent, when voidable.

SEC. 751. A consent which is not free is nevertheless not absolutely void, but may be rescinded by the parties, in the manner prescribed by the chapter on Rescission.

Apparent consent, when not free.

SEC. 752. An apparent consent is not real or free when obtained through:

1. Duress;
2. Menace;
3. Fraud;
4. Undue influence; or,
Mistake.

When deemed to have been obtained by fraud, &c.

SEC. 753. Consent is deemed to have been obtained through one of the causes mentioned in the last section, only when it would not have been given had such cause not existed.

Duress, what.

SEC. 754. Duress consists in:

1. Unlawful confinement of the person of the party, or of husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband or wife;
2. Unlawful detention of the property of any such person:

or,

3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive.

SEC. 755. Menace consists in a threat:

Menace, what.

1. Of such duress as is specified in the first and third subdivisions of the last section;

2. Of unlawful and violent injury to the person or property of any such person as is specified in the last section; or,

3. Of injury to the character of any such person.

SEC. 756. Fraud is either actual or constructive.

Fraud, actual or constructive.

SEC. 757. Actual fraud, within the meaning of this chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

Actual fraud, what.

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

3. The suppression of that which is true, by one having knowledge or belief of the fact;

4. A promise made without any intention of performing it; or,

5. Any other act fitted to deceive.

SEC. 758. Constructive fraud consists:

Constructive fraud, what.

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,

2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

SEC. 759. Actual fraud is always a question of fact.

Actual fraud, a question of fact.

SEC. 760. Undue influence consists:

Undue influence.

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;

2. In taking an unfair advantage of another's weakness of mind; or,

3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

Mistake what. SEC. 761. Mistake may be either of fact or of law.

Mistake of fact. SEC. 762. Mistake of fact is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in:

1. An unconscious ignorance or forgetfulness of a fact past or present, material to the contract; or,

2. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.

Mistake of law. SEC. 763. Mistakes of law constitutes a mistake within the meaning of this article only when it arises from:

1. A misapprehension of the law by all parties, all supposing that they knew and understood it and all making substantially the same mistake as to the law; or,

2. A misapprehension of the law by one party, of which the others are aware at the time of contracting, but which they do not rectify.

Mistake of foreign laws. SEC. 764. Mistake of foreign laws is a mistake of fact.

Mutuality of consent. SEC. 765. Consent is not mutual, unless the parties all agree upon the same thing in the same sense. But in certain cases defined by the chapter on Interpretation, they are to be deemed so to agree without regard to the fact.

Communication of consent. SEC. 766. Consent can be communicated with effect, only by some act or omission of the party contracting, by which he intends to communicate it, or which necessarily tends to such communication.

Mode of communicating acceptance of proposal. SEC. 767. If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

When communication deemed complete. SEC. 768. Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to the last section.

SEC. 769. Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal. Performance of conditions; acceptance.

SEC. 770. An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character, which the proposer can separate from the rest, and which will *con-* [in]clude the person accepting. A qualified acceptance is a new proposal. Acceptance must be absolute.

SEC. 771. A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards. Revocation of proposal.

SEC. 772. A proposal is revoked:

1. By the communication of notice of revocation by the proposer to the other party, in the manner prescribed by sections 766 and 768, before his acceptance has been communicated to the former;

2. By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance;

3. By the failure of the acceptor to fulfill a condition precedent to acceptance; or,

4. By the death or insanity of the proposer.

SEC. 773. A contract which is voidable solely for want of due consent, may be ratified by a subsequent consent. Ratification of contract void for want of consent.

SEC. 774. A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting. Assumption of obligation by acceptance of benefits.

CHAPTER IV.

OBJECT OF A CONTRACT.

SECTION 775. Object, what.

776. Requisites of object.

777. Impossibility, what.

778. When contract wholly void.

779. When contract partially void.

- Object, what.** **SEC. 775.** The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do.
- Requisites of object.** **SEC. 776.** The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed.
- Impossibility, what.** **SEC. 777.** Everything is deemed possible except that which is impossible in the nature of things.
- When contract wholly void.** **SEC. 778.** Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void.
- When contract partially void.** **SEC. 779.** Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful in whole or in part, the contract is void as to the latter, and valid as to the rest.

CHAPTER V.

CONSIDERATION.

- SECTION 780.** Good consideration what.
 781. How far legal or moral obligation is a good consideration.
 782. Consideration lawful.
 783. Effect of its illegality.
 784. Consideration executed or executory.
 785. Executory consideration.
 786. How ascertained.
 787, 788. Effect of impossibility of ascertaining consideration,

(Good consideration, what.) **SEC. 780.** Any benefit conferred, or agreed to be conferred, upon the promiser, by any other person, to which the promiser is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promiser, is a good consideration for a promise.

(How far legal or moral obligation is a good consideration.) **SEC. 781.** An existing legal obligation resting upon the promiser, or a moral obligation, originating in some benefit conferred upon the promiser, or prejudice suffered by the

promisee, is also a good consideration for a promise, to an extent corresponding with the extent of the obligation, but no further or otherwise.

SEC. 782. The consideration of a contract must be lawful. Consideration lawful.
within the meaning of section 827.

SEC. 783. If any part of a single consideration for one or more objects, or for several considerations for a single object, is unlawful the entire contract is void. Effect of its legality.

SEC. 784. A consideration may be executed or executory, in whole or in part. In so far as it is executory, it is subject to the provisions of Chapter IV of this Title. Consideration executed or executory.

SEC. 785. When a consideration is executory, it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person, or regulated by any specified standard. Executory consideration.

SEC. 786. When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth. How ascertained.

SEC. 787. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void. Effect of impossibility of ascertaining consideration.

SEC. 788. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes, impossible of execution, such provision only is void. Same.

TITLE II.

MANNER OF CREATING CONTRACTS

- SECTION 789. Contracts express or implied.
 790. Express contract, what.
 791. Implied contract, what.
 792. What contracts may be oral.
 793. Contract not in writing through fraud, may be enforced against fraudulent party.
 794. What contracts must be written.
 795. Effect of writing.
 796. Contract in writing takes effect when.
 797. Provisions of chapter on transfers of real property.
 798. Seal, what.
 799. Effect of seal.

Contracts express or implied.

SEC. 789. A contract is either express or implied.

Express contract, what.

SEC. 790. An express contract is one, the terms of which are stated in words.

Implied contract, what.

SEC. 791. An implied contract is one, the existence and terms of which are manifested by conduct.

What contracts may be oral.

SEC. 792. All contracts may be oral, except such as are specially required by statute to be in writing.

Contract not in writing through fraud, may be enforced against fraudulent party.

SEC. 793. Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party.

What contracts must be written.

SEC. 794. The following contracts, or some memorandum thereof, expressing the parties, their consent and the object of the contract, must be in writing, subscribed by the party to be charged thereby, or by his agent for the purpose:

1. An agreement that, by its terms, cannot be fully performed within one year;
2. An agreement made upon consideration of marriage, other than mutual promises to marry.

SEC. 795. The execution of a contract in writing, whether Effect of writing. the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter, which preceded or accompanied the execution of the instrument.

SEC. 796. A contract in writing takes effect upon its delivery Contract in writing takes effect, when. to the party in whose favor it is made, or to his agent.

SEC. 797. The provisions of the chapter on Transfers in Provisions of chapter on transfers of real property. General, concerning the delivery of grants, absolute and conditional, apply to all written contracts.

SEC. 798. A corporate or official seal may be affixed to an instrument by a mere impression upon the paper or other material on which such instrument is written. All other seals may be made by writing the word "seal" opposite the name of the person signing or executing the instrument of writing. Seal, what.

SEC. 799. A seal is presumptive evidence of a consideration. Effect of seal

TITLE III.

INTERPRETATION OF CONTRACTS.

SECTION 800. Uniformity of interpretations.

- 801. Contracts, how to be interpreted.
- 802. Intention of parties, how ascertained.
- 803. Intention to be ascertained from language.
- 804. Interpretation of written contracts.
- 805. Writing, when disregarded.
- 806. Effect to be given to every part of contract.
- 807. Several contracts when taken together.
- 808. Interpretation in favor of contract.
- 809. Words to be understood in usual sense.
- 810. Technical words.
- 811. Law of place.
- 812. Contracts explained by circumstances.
- 813. Contract restricted to its evident object.
- 814. Interpretation in sense in which promiser believed promisee to rely.
- 815. Particular clause subordinate to general intent.
- 816. Contract, partly written and partly printed.
- 817. Repugnancies, how reconcled.

SECTION 818. Inconsistent words rejected.

819. Words to be taken most strongly against whom.

820. Reasonable stipulations, when implied.

821. Necessary incidents implied.

822. Time of performance of contract.

823. Time, when of essence.

824. When joint and several.

825. Executed and executory contracts, what.

Uniformity of interpretation.

SEC. 800. All contracts, whether public or private, sealed or unsealed, are to be interpreted by the same rules; except as otherwise provided by this Code.

Contracts, how to be interpreted.

SEC. 801. A contract must be so interpreted as to give effect to the mutual intention of the parties, as it existed at the time of contracting, so far as the same is ascertainable and lawful.

Intention of parties, how ascertained.

SEC. 802. For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

Intention to be ascertained from language.

SEC. 803. The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

Interpretation of written contract.

SEC. 804. When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this Title.

Writing when disregarded.

SEC. 805. When through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded.

Effect to be given to every part of contract.

SEC. 806. The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the others.

Several contracts when taken together.

SEC. 807. Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.

Interpretation in favor of contract.

SEC. 808. A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties.

Words to be understood in usual sense.

SEC. 809. The words of a contract are to be understood in their ordinary and popular sense, rather than according to

their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

SEC. 810. Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense. Technical words.

SEC. 811. A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made. Law of place.

SEC. 812. A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates. Contract explained by circumstances.

SEC. 813. However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract. Contract restricted to its evident object.

SEC. 814. If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promiser believed, at the time of making it, that the promisee understood it. Interpretation in sense in which promiser believed promisee to rely.

SEC. 815. Particular clauses of a contract are subordinate to its general intent. Particular clause subordinate to general intent.

SEC. 816. Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and particular contract in question, the written parts control the printed parts, and the parts which are purely original control those which are copied from a form. And if the two are absolutely repugnant, the latter must be so far disregarded. Contract partly written and partly printed.

SEC. 817. Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clause, subordinate to the general intent and purposes of the whole contract. Repugnancies, how reconciled.

SEC. 818. Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected. Inconsistent words rejected.

Words to be taken most strongly against whom.

SEC. 819. In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promiser is presumed to be such party, except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party.

Reasonable stipulations when implied.

SEC. 820. Stipulations which are necessary to make a contract reasonable, or conformable to usage, are implied, in respect to matters concerning which the contract manifests no contrary intention.

Necessary incidents implied.

SEC. 821. All things that in law or usage, are considered as incidental to a contract, or as necessary to carry it into effect, are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded.

Time of performance of contract.

SEC. 822. If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly, as for example, if it consists in the payment of money only, it must be performed immediately upon the thing to be done being exactly ascertained.

Time, when of essence.

SEC. 823. Time is never considered as of the essence of a contract, unless by its terms expressly so provided.

When contract joint and several.

SEC. 824. Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

Same.

SEC. 825. A promise, made in the singular number, but executed by several persons, is presumed to be joint and several.

Executed and executory contracts, what.

SEC. 826. An executed contract is one, the object of which is fully performed. All others are executory.

TITLE IV.

UNLAWFUL CONTRACTS.

SECTION 827. What is unlawful.

828. Certain contracts unlawful.

829. Penalties void.

830. Contracts fixing damages, void.

831. Exception.

832. Restraints upon legal proceedings.

833. Contract in restraint of trade void.

834. Exception in favor of sale of good will.

835. Exception in favor of partnership arrangements

836. Contract in restraint of marriage, void.

SEC. 827. That is not lawful which is:

1. Contrary to an express provision of law;
2. Contrary to the policy of express law, though not expressly prohibited; or,
3. Otherwise contrary to good morals.

What is unlawful.

SEC. 828. All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

Certain contracts unlawful

SEC. 829. Penalties imposed by contract for any non-performance thereof, are void. But this section does not render void such bonds or obligations, penal in form, as have heretofore been commonly used; it merely rejects and avoids the penal clauses.

Penalties void.

SEC. 830. Every contract, by which the amount of damage to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void, except as expressly provided by the next section.

Contract fixing damages, void.

SEC. 831. The parties to a contract may agree therein upon an amount which shall be presumed to be the amount of damage sustained by a breach thereof, when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

Exceptions.

Restraints upon legal proceedings.

SEC. 832. Every stipulation or condition in a contract, by which any party thereto is restricted from enforcing his rights under the contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void.

Contract in restraint of trade, void.

SEC. 833. Every contract by which any one is restrained from exercising a lawful profession, trade or business of any kind, otherwise than as provided by the next two sections, is to that extent void.

Exception in favor of sale of good will.

SEC. 834. One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, so long as the buyer, or any person deriving title to the good will from him, carries on a like business therein.

Exception in favor of partnership arrangements.

SEC. 835. Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part thereof.

Contract in restraint of marriage, void.

SEC. 836. Every contract in restraint of the marriage of any person, other than a minor, is void.

TITLE V.

EXTINCTION OF CONTRACTS.

CHAPTER I. Contracts, how extinguished.

II. Rescission.

III. Alteration and cancellation.

CHAPTER I.

CONTRACTS HOW EXTINGUISHED.

Contract, how extinguished.

SEC. 837. A contract may be extinguished in like manner with any other obligation, and also in the manner prescribed by this Title.

CHAPTER II.

RESCISSION.

SECTION 838. Rescission extinguishes contract.

839. When party may rescind.

840. When stipulations against right to rescind do not defeat it.

841. Rescission, how effected.

SEC. 838. A contract is extinguished by its rescission.

Rescission
extinguishes
contract.

SEC. 839. A party to a contract may rescind the same in the following cases only:

When party
may rescind.

1. If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party;

2. If, through the fault of the party as to whom he rescinds, the consideration for his obligation fails, in whole or in part;

3. If such consideration becomes entirely void from any cause;

4. If such consideration, before it is rendered to him, fails in a material respect, from any cause; or,

5. By consent of all the other parties.

SEC. 840. A stipulation that errors of description shall not avoid a contract, or shall be the subject of compensation, or both, does not take away the right of rescission for fraud, nor for mistake, where such mistake is in a matter essential to the inducement of the contract, and is not capable of exact and entire compensation.

When stipu-
lations against
right to rescind
do not defeat it.

SEC. 841. Rescission, when not effected by consent, can be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to comply with the following rules:

Rescission
how effected.

1. He must rescind promptly, upon discovering the facts which entitle him to rescind, if he is free from duress, menace,

undue influence, or disability, and is aware of his right to rescind; and,

2. He must restore to the other party every thing of value which he has received from him under the contract; or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable, or positively refuses, to do so.

CHAPTER III.

ALTERATION AND CANCELLATION.

SECTION 842. Alteration by consent.

843. Sealed contracts, how modified.

844. Extinction by cancellation, &c.

845. Extinction by unauthorized alteration.

846. Alteration of duplicate, not to prejudice.

Alteration by consent.

SEC. 842. A contract not under seal may be altered in any respect by consent of the parties, upon a sufficient consideration; and is extinguished thereby to the extent of the alteration.

Sealed contracts how modified.

SEC. 843. A contract under seal may be altered by an agreement under seal, or by an executed agreement without seal; and not otherwise, except as to the time of performance, which may be extended by any form of agreement.

Extinction by cancellation, &c.

SEC. 844. The destruction or cancellation of a written contract, or of the signature of the parties liable thereon, with intent to extinguish the obligation thereof, extinguishes it as to all the parties consenting to the act.

Extinction by unauthorized alteration.

SEC. 845. The intentional destruction, cancellation or material alteration of a written contract, by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor, against parties who do not consent to the act.

Alteration of duplicate not to prejudice.

SEC. 846. Where a contract is executed in duplicate, an alteration or destruction of one copy, while the other exists, is not within the provisions of the last section.

PART III.

OBLIGATIONS IMPOSED BY LAW.

SECTION 847. Abstinance from injury.

848. Fraudulent deceit.

849. Deceit, what.

850. Deceit upon the public, &c.

851. Restoration of thing wrongfully acquired.

852. When demand necessary.

853. Responsibility for willful acts, negligence, &c.

854. Other obligations.

SEC. 847. Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights. Abstinance from injury.

SEC. 848. One who willfully deceives another, with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers. Fraudulent deceit.

SEC. 849. A deceit, within the meaning of the last section, is either: Deceit, what.

1. The suggestion as a fact, of that which is not true, by one who does not believe it to be true;

2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;

3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,

4. A promise, made without any intention of performing it.

SEC. 850. One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit. Deceit upon the public, &c.

SEC. 851. One who obtains a thing without the consent of its owner, or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, must restore it to the person from whom it was thus Restoration of thing wrongfully acquired.

obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides.

When demand
necessary.

SEC. 852. The restoration required by the last section must be made without demand; except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.

Responsibility
for willful acts,
negligence, &c.

SEC. 853. Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person; unless the latter has, willfully, or by want of ordinary care, incurred the risk of such injury. The extent of liability in such cases is defined by the Title on Compensatory Relief.

Other
obligations.

SEC. 854. Other obligations are prescribed by the First and Second Division of this Code.

PART IV.

OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS.

- TITLE I. Sale.
- II. Exchange.
- III. Deposit.
- IV. Loan.
- V. Hiring.
- VI. Service.
- VII. Carriage.
- VIII. Trust.
- IX. Agency.
- X. Partnership.
- XI. Insurance.
- XII. Indemnity.
- XIII. Guaranty.
- XIV. Lien.
- XV. Negotiable instruments.
- XVI. General provisions.

TITLE I.

SALE.

- CHAPTER I. General provisions.**
- II. Rights and obligations of the seller.
- III. Rights and obligations of the buyer.
- IV. Sale by auction.

CHAPTER I.

GENERAL PROVISIONS.

ARTICLE I. Sale.

II. Agreements for sale.

III. Form of the contract.

ARTICLE I.

SALE.

SECTION 855. Sale, what.

856. Subject of sale.

Sale, what.

SEC. 855. Sale is a contract by which, for a pecuniary consideration, called a price, one transfers to another an interest in property.

Subject of sale

SEC. 856. The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

ARTICLE II.

AGREEMENTS FOR SALE.

SECTION 857. Agreement for sale.

858. Agreement to sell.

859. Agreement to buy.

860. Agreement to sell and buy.

861. What may be the subject of the contract.

862. Agreement to sell real property.

863. Usual covenants in deeds of grant.

864. Language of usual covenants.

SEC. 857. An agreement for sale is either:

Agreement for sale.

1. An agreement to sell;
2. An agreement to buy; or,
3. A mutual agreement to sell and buy.

SEC. 858. An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

Agreement to sell.

SEC. 859. An agreement to buy is a contract by which one engages to accept from another, and pay a price for the title to a certain thing.

Agreement to buy.

SEC. 860. An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to accept the same from him, and to pay a price therefor.

Agreement to sell and buy.

SEC. 861. Any property, which, if in existence, might be the subject of sale, may be the subject of an agreement for a sale, whether in existence or not.

What may be the subject of the contract.

SEC. 862. An agreement to sell real property binds the seller to execute a grant in the form and manner prescribed by the chapter on Transfers of Real Property.

Agreement to sell real property.

SEC. 863. An agreement on the part of a seller of real property to give the usual covenants, binds him to insert in the grant, covenants of seizin, quiet enjoyment, further assurance, general warranty, and against incumbrances. •

Usual covenants in deeds of grant.

SEC. 864. The covenants mentioned in the last section must be in substance as follows:

Language of usual covenants.

“The party of the first part covenants with the party of the second part, that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part, and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same.”

ARTICLE III.

FORM OF THE CONTRACT.

SECTION 865. Contract for sale of personal property.

866. Contract to manufacture.

867. Contract for sale of real property.

868. Transfer of real property.

Contract for
sale of personal
property.

SEC. 865. No sale of personal property, or agreement to buy or sell it, for a price of fifty dollars or more, is valid unless:

1. A memorandum of the contract, showing the parties, their consent, and the subject of sale, is made in writing, and subscribed by the party to be charged; or,

2. The buyer accepts and receives part of the thing sold, or, when it consists of a thing in action, part of the evidences thereof; or,

3. The buyer, at the time of sale, pays a part of the price.

Contract to
manufacture.

SEC. 866. An agreement to manufacture a thing, from materials furnished by the manufacturer or by another person, is not within the provisions of the last section.

Contract for
sale of real
property.

SEC. 867. No agreement for the sale of real property, or of any estate therein, is valid, unless a memorandum thereof, showing the parties, their consent, and the subject of sale, is made in writing, and subscribed by the party to be charged, or unless the contract has been partially performed by the party seeking to enforce it, and such part performance has been accepted by the other.

Transfer of
real property.

SEC. 868. The form of a transfer of real property is described by the chapter on such transfers.

CHAPTER II.

RIGHTS AND OBLIGATIONS OF THE SELLER.

ARTICLE I. Rights and duties before delivery.

II. Delivery.

III. Warranty.

ARTICLE I.

RIGHTS AND DUTIES BEFORE DELIVERY.

SECTION 869. When seller must act as depositary.

870. When seller may resell.

SEC. 869. After personal property has been sold, and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property, without charge, until the buyer has had a reasonable opportunity to remove it. When seller must act as depositary.

SEC. 870. If a buyer of personal property does not pay for it according to contract, and it remains in the possession of the seller, after payment is due, the seller may rescind the sale, or may enforce his lien for the price in the manner prescribed by the Title on Liens. When seller may resell.

ARTICLE II.

DELIVERY.

SECTION 871. Delivery on demand.

872. Delivery, where made.

873. Expense of transportation.

874. Notice of election as to delivery.

875. Buyer's directions as to manner of sending thing sold.

876. Delivery to be within reasonable hours.

Delivery on demand.

SEC. 871. One who sells personal property, whether it was in his possession at the time of sale, or not, must put it into a condition fit for delivery, and deliver it to the buyer within a reasonable time after demand, unless he has a lien thereon.

Delivery where made.

SEC. 872. Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or, if it is not then in existence, it is deliverable at the place where it is produced.

Expense of transportation.

SEC. 873. One who sells personal property must bring it to his own door, or other convenient place, for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

Notice of election as to delivery.

SEC. 874. When either party to a contract of sale has an option as to the time, place, or manner of delivery, he must give the other party reasonable notice of his choice; and if he does not give such notice within a reasonable time, his right of option is waived.

Buyer's directions as to manner of sending thing sold.

SEC. 875. If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending, or it will be at his own risk during its transportation. If he follows such directions, or if, in the absence of special directions, he uses ordinary care in forwarding the thing, it is at the risk of the buyer.

Delivery to be within reasonable hours.

SEC. 876. The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

ARTICLE III.

WARRANTY.

SECTION 877. Warranty, what.

878. No implied warranty in mere contract of sale.
 879. Warranty of title to personal property.
 880. Warranty on sale by sample.
 881. When seller knows that buyer relies on his statements, &c.
 882. Merchandise not in existence.
 883. Manufacturer's warranty against latent defects.
 884. Thing bought for particular purpose.
 885. When thing cannot be examined by buyer.
 886. Trade marks.
 887. Other marks.
 888. Warranty on sale of written instrument.
 889. Warranty of provisions for domestic use.
 890. Warranty on sale of good will.
 891. Warranty upon judicial sale.
 892. Effect of general warranty.

SEC. 877. A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present or future. Warranty, what.

SEC. 878. Except as prescribed by this article, a mere contract of sale or agreement to sell does not imply a warranty. No implied warranty in mere contract of sale.

SEC. 879. One who sells or agrees to sell personal property, as his own, thereby warrants that he has a good and unincumbered title thereto. Warranty of title to personal property.

SEC. 880. One who sells or agrees to sell goods by sample, thereby warrants the bulk to be equal to the sample. Warranty on sale by sample.

SEC. 881. One who sells or agrees to sell personal property, knowing that the buyer relies upon his advice or judgment, thereby warrants to the buyer that neither the seller, nor any agent employed by him in the transaction, knows the existence of any fact concerning the thing sold which would, to his knowledge, destroy the buyer's inducement to buy. When seller knows that buyer relies on his judgment, &c.

SEC. 882. One who agrees to sell merchandise not then in existence, thereby warrants that it shall be sound and merchantable at the place of production contemplated by the par- Merchandise not in existence

ties, and as nearly so, at the place of delivery, as can be secured by reasonable care.

Manufacturer's warranty against latent defects.

SEC. 883. One who sells or agrees to sell an article of his own manufacture, thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture, and also that neither he nor his agent in such manufacture has knowingly used improper materials therein.

Thing bought for particular purpose.

SEC. 884. One who manufactures an article under an order for a particular purpose, warrants by the sale that it is reasonably fit for that purpose.

When thing can not be examined by buyer.

SEC. 885. One who sells or agrees to sell merchandise inaccessible to the examination of the buyer, thereby warrants that it is sound and merchantable.

Trade marks.

SEC. 886. One who sells or agrees to sell any article to which there is affixed or attached a trade mark, thereby warrants that mark to be genuine, and lawfully used.

Other marks.

SEC. 887. One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof, or the place where it was in whole or in part produced, manufactured or prepared, thereby warrants the truth thereof.

Warranty on sale of written instruments.

SEC. 888. One who sells or agrees to sell an instrument purporting to bind any one to the performance of an act, thereby warrants the instrument to be what it purports to be, and to be binding according to its purport upon all the parties thereto; and also warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto, where that is material, the extinction of its obligations or its invalidity for any cause.

Warranty of provisions for domestic use.

SEC. 889. One who makes a business of selling provisions for domestic use, warrants, by a sale thereof, to one who buys for actual consumption, and not for the purpose of sale, that they are sound and wholesome.

Warranty on sale of good will.

SEC. 890. One who sells the good will of a business, thereby warrants that he will not endeavor to draw off any of the customers.

Warranty upon judicial sale.

SEC. 891. Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property.

SEC. 892. A general warranty does not extend to defects in-<sup>Effect of gen-
eral warranty.</sup> consistent therewith, of which the buyer was then aware, or which were then easily discernible by him, without the exercise of peculiar skill; but it extends to all other defects.

CHAPTER III.

RIGHTS AND OBLIGATIONS OF THE BUYER.

SECTION 893. Price, when to be paid.

894. Right to inspect goods.

895. Rights in case of breach of warranty.

SEC. 893. A buyer must pay the price of the thing sold on <sup>Price, when
to be paid.</sup> its delivery; and must take it away within a reasonable time after the seller offers to deliver it.

SEC. 894. On an agreement for sale, with warranty, the <sup>Right to
inspect goods.</sup> buyer has a right to inspect the thing sold, at a reasonable time, before accepting it; and may rescind the contract if the seller refuses to permit him to do so.

SEC. 895. The breach of a warranty entitles the buyer to <sup>Rights in case
of breach of
warranty.</sup> rescind an agreement for sale, but not an executed sale, unless the warranty was intended by the parties to operate as a condition.

CHAPTER IV.

SALE BY AUCTION.

SECTION 896. Sale by auction, what.

897. Sale, when complete.

898. Withdrawal of bid.

899. Sale under written conditions.

900. Rights of buyer upon sale without reserve.

901. By-bidding.

902. Auctioneer's memorandum of sale.

Sale by auction, what.

SEC. 896. A sale by auction is a sale by public outcry to the highest bidder on the spot.

Sale, when complete.

SEC. 897. A sale by auction is complete when the auctioneer publicly announces, by the fall of his hammer, or in any other customary manner, that the thing is sold.

Withdrawal of bid.

SEC. 898. Until the announcement mentioned in the last section has been made, any bidder may withdraw his bid, if he does so in a manner reasonably sufficient to bring it to the notice of the auctioneer.

Sale under written conditions.

SEC. 899. When a sale by auction is made upon written or printed conditions, such conditions cannot be modified by any oral declaration of the auctioneer, except so far as they are for his own benefit.

Rights of buyer upon sale without reserve

SEC. 900. If, at a sale by auction, the auctioneer, having authority to do so, publicly announces that the sale will be without reserve, or makes any announcement equivalent thereto, the highest bidder in good faith has an absolute right to the completion of the sale to him; and upon such a sale, bids by the seller or any agent for him are void.

By-bidding.

SEC. 901. The employment by a seller at a sale by auction, without the knowledge of the buyer, of any person to bid at the sale, without an intention on the part of such bidder to buy, and on the part of the seller to enforce his bid, is a fraud upon the buyer, which entitles him to rescind his purchase.

Auctioneer's memorandum of sale.

SEC. 902. When property is sold by auction, the auctioneer, or his partner or clerk, may enter in a sale book, at the time of the sale, a memorandum specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the buyer. A memorandum thus made binds both parties in the same manner as if made by themselves.

TITLE II.

EXCHANGE.

SECTION 903. Exchange, what.

904. Form of contract.

905. Parties have rights and obligations of sellers and buyers.

906. Warranty of money.

SEC. 903. Exchange is a contract by which the parties mutually give, or agree to give, one thing for another, neither thing, or both things, being money only. Exchange, what.

SEC. 904. The provisions of section 865 apply to all exchanges in which the value of the thing to be given by either party is fifty dollars or more. Form of contract.

SEC. 905. The provisions of the Title on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives, and of a buyer as to that which he takes. Parties have rights and obligations of sellers and buyers.

SEC. 906. On an exchange of money, each party thereby warrants the genuineness of the money given by him. Warranty of money.

TITLE III.

DEPOSIT.

- CHAPTER I. Deposit in general.
 II. Deposit for keeping.
 III. Deposit for exchange.

CHAPTER I.

DEPOSIT IN GENERAL.

- ARTICLE I. Nature and creation of deposit.
 II. Obligations of the depositary.

ARTICLE I.

NATURE AND CREATION OF DEPOSIT.

- SECTION 907. Deposit, kinds of.
 908. Voluntary deposit, how made.
 909, 910. Involuntary deposit, how made.
 911. Deposit for keeping, what.
 912. Deposit for exchange, what.

Deposit,
kinds of.

Voluntary
deposit, how
made.

SEC. 907. A deposit may be voluntary or involuntary; and for safe keeping or for exchange.

SEC. 908. A voluntary deposit is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former, or of a third party. The

person giving is called the depositor, and the person receiving the depositary.

SEC. 909. An involuntary deposit is made:

Involuntary deposit, how made.

1. By the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of its owner; or,

2. In cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it, out of necessity, to the care of any person.

SEC. 910. The person with whom a thing is deposited, in the manner described in the last section, is bound to take charge of it, if able to do so.

Same.

SEC. 911. A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

Deposit for keeping, what.

SEC. 912. A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited.

Deposit for exchange, what

ARTICLE II.

OBLIGATIONS OF THE DEPOSITARY.

SECTION 913. Depositary must deliver on demand.

914. No obligation to deliver without demand.

915. Place of delivery.

916. Notice to owner of adverse claim.

917. Notice to owner of thing wrongfully detained.

918. Delivery of thing owned jointly, &c.

SEC. 913. A depositary must deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner thereof, or by the act of the law, and has given the notice required by section 916.

Depositary must deliver on demand.

SEC. 914. A depositary is not bound to deliver a thing deposited without demand, even where the deposit is made for a specified time.

No obligation to deliver without demand.

Place of delivery.

SEC. 915. A depository must deliver the thing deposited at his residence or place of business, as may be most convenient for him.

Notice to owner of adverse claim.

SEC. 916. A depository must give prompt notice to the person for whose benefit the deposit was made, of any proceedings taken adversely to his interest in the thing deposited which may tend to excuse the depository from delivering the thing to him.

Notice to owner of thing wrongfully detained.

SEC. 917. A depository, who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit; and if within a reasonable time afterwards he does not claim it, and sufficiently establish his right thereto, and indemnify the depository against the claim of the depositor, the depository is exonerated from liability to the person to whom he gave the notice, upon returning the thing to the depositor, or assuming, in good faith, a new obligation changing his position in respect to the thing, to his prejudice.

Delivery of thing owned jointly, &c.

SEC. 918. If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depository may deliver to each his proper share thereof, if it can be done without injury to the thing.

CHAPTER II.

DEPOSIT FOR KEEPING.

- ARTICLE I. General provisions.
- II. Gratuitous deposit.
- III. Storage.
- IV. Inn keepers.
- V. Finding.

ARTICLE I.

GENERAL PROVISIONS.

SECTION 919. Depositor must indemnify depositary.

920. Obligation of depositary of animals.

921. Obligations as to use of things deposited.

922. Liability for damage arising from wrongful use.

923. Sale of thing in danger of perishing.

924. Injury to, or loss of thing deposited.

925. Service rendered by depositary.

926. Extent of his liability for negligence.

SEC. 919. A depositor must indemnify the depositary:

1. For all damage caused to him by the defects or vices of the thing deposited; and,
2. For all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

Depositor must indemnify depositary.

SEC. 920. A depositary of living animals must provide them with suitable food and shelter, and treat them kindly.

Obligation of depositary of animals.

SEC. 921. A depositary may not use the thing deposited, or permit it to be used, for any purpose, without the consent of the depositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter, in case of necessity.

Obligations as to use of thing deposited

SEC. 922. A depositary is liable for any damage happening to the thing deposited during his wrongful use thereof, unless such damage must inevitably have happened though the property had not been thus used.

Liability for damage arising from wrongful use.

SEC. 923. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable, and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor.

Sale of thing in danger of perishing.

SEC. 924. If a thing is lost or injured during its deposit, and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred, so far as he has information concerning them, or willfully misrepre-

Injury to, or loss of, thing deposited.

sents the circumstances to him, the depositary is presumed to have willfully or by gross negligence permitted the loss or injury to occur.

Service rendered by depositary.

SEC. 925. So far as any service is rendered by a depositary, or required from him, his duties and liabilities are prescribed by the Title on Employment and Service.

Extent of his liability for negligence.

SEC. 926. The liability of a depositary for negligence is limited to the amount which he is informed or has reason to suppose the thing deposited to be worth.

ARTICLE II.

GRATUITOUS DEPOSIT.

SECTION 927. Gratuitous deposit, what.

928. Nature of involuntary deposita.

929. Degree of care required of gratuitous depositary.

930. His duties cease, when.

Gratuitous deposit, what.

SEC. 927. Gratuitous deposit is a deposit for which the depositary receives no consideration beyond the mere possession of the thing deposited.

Nature of involuntary deposit.

SEC. 928. An involuntary deposit is gratuitous, the depositary being entitled to no reward.

Degree of care required of gratuitous depositary.

SEC. 929. A gratuitous depositary must use at least slight care for the preservation of the thing deposited.

His duties cease, when.

SEC. 930. The duties of a gratuitous depositary cease:

1. Upon his restoring the thing deposited to its owner: or,
2. Upon his giving reasonable notice to the owner to remove it, and the owner failing to do so within a reasonable time. But an involuntary depositary, under subdivision 2 of section 909, cannot give such notice until the emergency which gave rise to the deposit is past.

ARTICLE III.

STORAGE.

SECTION 931. Deposit for hire.

932. Degree of care required of depositary for hire.

933. Rate of compensation for fraction of a week, &c.

934, 935. Termination of deposit.

SEC. 931. A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire. Deposit for hire.

SEC. 932. A depositary for hire must use at least ordinary care for the preservation of the thing deposited. Degree of care required of depositary for hire.

SEC. 933. In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half month. Rate of compensation for fraction of a week, &c.

SEC. 934. In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon reasonable notice. Termination of deposit.

SEC. 935. Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor, on paying all that would become due to the depositary in case of the deposit so continuing. Same.

ARTICLE IV.

INNKEEPERS.

SECTION 936. Innkeeper's liability.

937. How exempted from liability.

Innkeeper's
liability.

SEC. 936. An innkeeper is liable for all losses of, or injuries to, personal property placed by his guests under his care, unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of some one whom he brought into the inn.

How exempted
from liability.

SEC. 937. If an innkeeper keeps a fireproof safe, and gives notice to a guest, either personally, or by putting up a printed notice in a prominent place in the room occupied by the guest, that he keeps such a safe, and will not be liable for money, jewelry, documents, or other articles of unusual value and small compass, unless placed therein, he is not liable, except so far as his own acts contribute thereto, for any loss of, or injury to, such article, if not deposited with him, and not required by the guest for present use.

ARTICLE V.

SECTION 938. Obligation of finder.

939. Finder to notify owner.

940. Claimant to prove ownership.

941. Reward, &c., to finder.

942. Finder may put thing found on storage.

943. When finder may sell the thing found.

944. How sale is to be made.

945. Surrender of thing to the finder.

946. Thing abandoned.

SEC. 938. One who finds a thing lost, is not bound to take charge of it, but if he does so, he is thenceforward a depositary for the owner, with the rights and obligations of a depositary for hire. Obligations of finder.

SEC. 939. If the finder of a thing knows or suspects who is the owner, he must, with reasonable diligence, give him notice of the finding; and if he fails to do so, he is liable in damages to the owner, and has no claim to any reward offered by him for the recovery of the thing, or to any compensation for his trouble or expenses. Finder to notify owner.

SEC. 940. The finder of a thing may, in good faith, before giving it up, require reasonable proof of ownership from any person claiming it. Claimant to prove ownership.

SEC. 941. The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation, and for any other service necessarily performed by him about it, and to a reasonable reward for keeping it. Reward, &c., to finder.

SEC. 942. The finder of a thing may exonerate himself from liability at any time, by placing it on storage with any responsible person of good character, at a reasonable expense. Finder may put thing found on storage.

SEC. 943. The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot with reasonable diligence be found, or, being found, refuses upon demand to pay the lawful charges of the finder, in the following cases: When finder may sell the thing found.

1. When the thing is in danger of perishing, or of losing the greater part of its value; or,
2. When the lawful charges of the finder amount to two-thirds of its value.

SEC. 944. A sale under the provisions of the last section must be made in the same manner as the sale of a thing pledged. How sale is to be made.

SEC. 945. The owner of a thing found may exonerate himself from the claims of the finder by surrendering it to him in satisfaction thereof. Surrender of thing to the finder.

SEC. 946. The provisions of this article have no application to things which have been intentionally abandoned by their owners. Thing abandoned.

CHAPTER III.

DEPOSIT FOR EXCHANGE.

SECTION 947. Relations of the parties.

Relations of
the parties.

SEC. 947. A deposit for exchange transfers to the depositary the title to the thing deposited, and creates between him and the depositor the relation of debtor and creditor merely.

TITLE IV.

LOAN.

CHAPTER I. Loan for use.

II. Loan for exchange.

III. Loan for money.

CHAPTER I.

LOAN FOR USE.

SECTION 948. Loan, what.

949. Title to property lent.

- SECTION 950, 951. Care required of borrower.
- 952. Degree of skill.
- 953. Borrower, when to repair injuries.
- 954. Use of thing lent.
- 955. Relending, forbidden.
- 956. Borrower, when to bear expenses.
- 957. Lender liable for defects.
- 958. Lender may require return of thing lent.
- 959. When returnable without demand.
- 960. Place of return.

SEC. 948. A loan for use is a contract by which one gives to another the temporary possession and use of personal property, and the latter agrees to return the same thing to him at a future time, without reward for its use. Loan, what.

SEC. 949. A loan for use does not transfer the title to the thing; and all its increase during the period of the loan belongs to the lender. Title to property lent.

SEC. 950. A borrower for use must use great care for the preservation in safety and in good condition of the thing lent. Care required of borrower.

SEC. 951. One who borrows a living animal for use, must treat it with great kindness, and provide everything necessary and suitable for it. Same.

SEC. 952. A borrower for use is bound to have and to exercise such skill in the care of the thing lent, as he causes the lender to believe him to possess. Degree of skill.

SEC. 953. A borrower for use must repair all deteriorations or injuries to the thing lent, which are occasioned by his negligence, however slight. Borrower, when to repair injuries.

SEC. 954. The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending. Use of thing lent.

SEC. 955. The borrower of a thing for use must not part with it to a third person, without the consent of the lender. Relending forbidden.

SEC. 956. The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For such expense he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrower. Borrower, when to bear expenses.

Lender liable
for defects.

SEC. 957. The lender of a thing for use must indemnify the borrower for damage caused by defects or vices in it, which he knew at the time of lending, and concealed from the borrower.

Lender may
require return
of thing lent.

SEC. 958. The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if, on the faith of such an agreement, the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss, exceeding the benefit derived by him from the loan, the lender must indemnify him for such loss, if he compels such return, the borrower not having in any manner violated his duty.

When return-
able without
demand.

SEC. 959. If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand, as soon as the time has expired, or the purpose has been accomplished. In other cases it need not be returned until demanded.

Place of
return.

SEC. 960. The borrower of a thing for use must return it to the lender, at the place contemplated by the parties at the time of lending; or if no particular place was so contemplated by them, then at the place where it was at that time.

CHAPTER II.

LOAN FOR EXCHANGE.

SECTION 961, 962. Loan for exchange, what.

963. Title to property lent.

964. Contract cannot be modified by lender.

965. Certain sections applicable.

Loan for ex-
change, what.

SEC. 961. A loan for exchange is a contract by which one delivers personal property to another, and the latter agrees to return to the lender a similar thing at a future time, without reward for its use.

SEC. 962. A loan, which the borrower is allowed by the lender to treat as a loan for use, or for exchange, at his option, is subject to all the provisions of this chapter. Same.

SEC. 963. By a loan for exchange the title to the thing lent is transferred to the borrower, and he must bear all its expenses, and is entitled to all its increase. Title to property lent.

SEC. 964. A lender for exchange cannot require the borrower to fulfill his obligations at a time, or in a manner, different from that which was originally agreed upon. Contract cannot be modified by lender.

SEC. 965. Sections 957, 959, and 960, apply to a loan for exchange. Certain sections applicable.

CHAPTER III.

LOAN OF MONEY.

SECTION 966. Loan of money.

967. Loan to be repaid in current money.

968. Loan may be for reward.

969. Interest, what.

970. Annual rate.

971, 972. Legal interest.

973. Deduction of amount of interest in advance.

974. Recovery of amount exceeding legal interest.

975. Reservation of illegal interest renders contract void.

976. Rights of borrower under contract reserving illegal interest.

977. Cure of usury.

978. Subsequent usury.

SEC. 966. A loan of money is a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the chapter on Loan for Use. Loan of money

SEC. 967. A borrower of money must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent. Loan to be repaid in current money.

- Loan may be for reward.** SEC. 968. A loan of money may be made with or without reward, but is presumed to be made for reward.
- Interest, what.** SEC. 969. Reward for the loan, forbearance, or use of money, or its equivalent, is called interest.
- Annual rate.** SEC. 970. When a rate of interest is prescribed by a law or contract, without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.
- Legal interest.** SEC. 971. Under an obligation to pay interest, no rate being specified, interest is payable at the rate of seven one-hundredths of the principal for one year, and in the like proportion for a longer or shorter time; but in the computation of interest for less than a year, three hundred and sixty days are deemed to constitute a year.
- Same.** SEC. 972. No greater interest than is allowed by the last section may be computed, unless otherwise specified in the contract or obligation, in which case it cannot exceed two per cent. per month, or twenty-four one-hundredths of the principal for one year.
- Deduction of amount of interest in advance.** SEC. 973. The interest which would become due at the end of the term for which a loan is made, not exceeding one year's interest in all, may be deducted from the loan in advance if the parties thus agree.
- Recovery of amount exceeding legal interest.** SEC. 974. When a greater rate of interest has been paid than is allowed by this title, the person paying it may recover the excess from the person taking it.
- Reservation of illegal interest renders contract void.** SEC. 975. Every contract by which a lender of money intentionally takes or reserves to himself therefor any benefit or advantage whatever, in addition to the rate of interest allowed by this Title, is voidable by the party prejudiced thereby.
- Rights of borrower under contract reserving illegal interest.** SEC. 976. A borrower under a usurious contract is entitled to recover from the lender all that he gave to him under the same, without restoring or paying anything to the lender.
- Cure of usury.** SEC. 977. A usurious contract may be made valid by an express remission of the usury by the creditor, in good faith, before the debt is due.
- Subsequent usury.** SEC. 978. A loan on lawful interest is not avoided by a subsequent agreement to pay usury, but the latter agreement alone is void.

TITLE V.

HIRING.

- CHAPTER I. Hiring in general.
 II. Hiring of real property.
 III. Hiring of personal property.

CHAPTER I.

HIRING IN GENERAL.

- SECTION 979. Hiring, what.
 980. Products of thing.
 981. Quiet possession.
 982. Degree of care, &c., on part of hirer.
 983. Must repair injuries, &c.
 984. Thing let for a particular purpose.
 985. When letter may terminate the hiring.
 986. When hirer may terminate the hiring.
 987. When hiring terminates.
 988. When terminated by death, &c., of party.
 989. Apportionment of hire.

SEC. 979. Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time. Hiring, what.

SEC. 980. The products of a thing hired, during the hiring, belong to the hirer. Products of thing.

SEC. 981. An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same. Quiet possession.

SEC. 982. The hirer of a thing must use ordinary care for its preservation in safety and in good condition. Degree of care &c., on part of hirer.

Must repair injuries, &c.,

SEC. 983. The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his ordinary negligence.

Thing let for a particular purpose.

SEC. 984. When a thing is let for a particular purpose, the hirer must not use it for any other purpose; and if he does, the letter may hold him responsible for its safety during such use, in all events, or may treat the contract as thereby rescinded.

When letter may terminate the hiring.

SEC. 985. The letter of a thing may terminate the hiring, and reclaim the thing, before the end of the term agreed upon:

1. When the hirer uses, or permits a use of the thing hired, in a manner contrary to the agreement of the parties; or,
2. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

When hirer may terminate the hiring.

SEC. 986. The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into a good condition, or repairing; or,
2. When the greater part of the thing hired, or that part which was, and which the letter had, at the time of the hiring, reason to believe was, the material inducement to the hirer to enter into the contract, perishes from any other cause than the ordinary negligence of the hirer.

When hiring terminates.

SEC. 987. The hiring of a thing terminates:

1. At the end of the term agreed upon;
2. By the mutual consent of the parties;
3. By the hirer acquiring a title to the thing hired, superior to that of the letter; or,
4. By the destruction of the thing hired.

When terminated by death, &c., of party.

SEC. 988. If the hiring of a thing is terminable at the pleasure of one of the parties, it is terminated by notice to the other of his death or incapacity to contract. In other cases, it is not terminated thereby.

Apportionment of hire.

SEC. 989. When the hiring of a thing is terminated before the time originally agreed upon, the hirer must pay the due proportion of the hire for such use as he has actually made of the thing, unless such use is merely nominal, and of no benefit to him.

CHAPTER II.

HIRING OF REAL PROPERTY.

- SECTION 990.** Lessor to make dwelling house fit for its purpose.
991. When lessee may make repairs, &c.
992. Term of hiring when no limit is fixed.
993. Hiring of lodgings for indefinite term.
994. Renewal of lease by lessee's continued possession.
995. Notice to quit.
996. Rent, when payable.
997. Tenant must deliver notice served on him.
998. Letting parts of rooms forbidden.

SEC. 990. The lessor of a building intended for the occupation of human beings must put it into a condition fit for that purpose, and must repair all subsequent dilapidations thereof, except such as are mentioned in section 983.

Lessor to make dwelling house fit for its purpose.

SEC. 991. If, within a reasonable time after notice to the lessor of dilapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, and deduct the expense of such repairs from the rent, or otherwise recover it from the lessor.

When lessee may make repairs, &c.

SEC. 992. A hiring of real property, other than lodgings, is presumed to extend to the next day upon which it is the usage of the place to make annual hiring of real property. In places where there is no usage on the subject, such a hiring is presumed to be for one year from its commencement.

Term of hiring when no limit is fixed.

SEC. 993. A hiring of lodgings for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a weekly rate of rent is presumed to be for one week. In the absence of any agreement respecting the length of time or the rent, the hiring is presumed to be monthly.

Hiring of lodgings for indefinite term.

SEC. 994. If a lessee of real property remains in possession thereof, after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed

Renewal of lease by lessee's continued possession.

the hiring on the same terms and for the same time, not exceeding one year.

Notice to quit.

SEC. 995. A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in the last section, at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month.

Rent when payable.

SEC. 996. The rent of agricultural and wild land is payable yearly at the end of each year. Rents of lodgings are payable monthly at the end of each month. Other rents are payable quarterly at the end of each quarter from the time the hiring takes effect. The rent for a hiring shorter than the periods herein specified, is payable at the termination of the hiring.

Tenant must deliver notice served on him.

SEC. 997. Every tenant who receive notices of any proceeding to recover the real property occupied by him, or the possession thereof, must immediately inform his landlord of the same.

Letting parts of room forbidden.

SEC. 998. One who hires part of a room, for a dwelling, is entitled to the whole of the room, notwithstanding any agreement to the contrary; and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building, under the same landlord, is relieved from all obligation to pay rent to him.

CHAPTER III.

HIRING OF PERSONAL PROPERTY.

SECTION 999. Obligations of letter of personal property.

- 1000. Ordinary expenses.
- 1001. Extraordinary expenses.
- 1002. Return of thing hired.
- 1003. Charter-party, what.

Obligations of letter of personal property.

SEC. 999. One who lets personal property must deliver it to the hirer, secure his quiet enjoyment thereof against all lawful

claimants, put it into a condition fit for the purpose for which he lets it, and repair all deteriorations thereof not occasioned by the fault of the hirer, and not the natural result of its use.

SEC. 1000. A hirer of personal property must bear all such Ordinary expenses. expenses concerning it as might naturally be foreseen to attend it during its use by him. All other expenses must be borne by the letter.

SEC. 1001. If a letter fails to fulfill his obligations, as prescribed by section 999, the hirer, after giving him notice to do so, if such notice can conveniently be given, may expend any reasonable amount necessary to make good the letter's default, and may recover such amount from him. Extraordinary expenses.

SEC. 1002. At the expiration of the term for which personal property is hired, the hirer must return it to the letter at the place contemplated by the parties at the time of hiring, or if no particular place was so contemplated by them, at the place which it was at that time. Return of thing hired.

SEC. 1003. The contract by which a ship is let is termed a Charter-party, what. charter-party. By it, the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or a part owner may be a charterer.

TITLE VI.

SERVICE.

- CHAPTER I. Service with employment.
- II. Particular employment.
- III. Service without employment.

CHAPTER I.

SERVICE WITH EMPLOYMENT.

- ARTICLE I. Definition of employment.
- II. Obligations of the employer.
- III. Obligations of the employee.
- IV. Termination of employment.

ARTICLE I.

DEFINITION OF EMPLOYMENT.

SECTION 1004. Employment, what.

Employment,
what.

SEC. 1004. The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or of a third person.

ARTICLE II.

OBLIGATIONS OF THE EMPLOYER.

SECTION 1005. When employer must indemnify employee.

1006. When not.

1007. Employer to indemnify for his own negligence.

SEC. 1005. An employer must indemnify his employee, except as prescribed in the next section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying such directions, believed them to be unlawful.

When employer must indemnify employee.

SEC. 1006. An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless he has neglected to use ordinary care in the selection of the culpable employee.

When not.

SEC. 1007. An employer must in all cases indemnify his employee for losses caused by his own want of ordinary care.

Employer to indemnify for his own negligence.

ARTICLE III.

OBLIGATIONS OF THE EMPLOYEE.

SECTION 1008, 1009, 1010. Duties of gratuitous employee.

1011. Duties of employee for reward.

1012. Duties of employee for his own benefit.

1013. Contracts for service limited to two years.

1014. Employee must obey employer.

- 1015. Employee to conform to usage.
- 1016. Degree of skill required.
- 1017. Must use what skill he has.
- 1018. What belongs to employer.
- 1019. Duty to account.
- 1020. Employee not bound to deliver without demand.
- 1021. Preference to be given to employers.
- 1022. Responsibility of employee for substitute.
- 1023. Responsibility for negligence.
- 1024. Surviving employee.
- 1025. Confidential employment.

Duties of
gratuitous
employee.

SEC. 1008. One who, without consideration, undertakes to do a service for another, is not bound to perform the same, but if he actually enters upon its performance, he must use at least slight care and diligence therein.

Same.

SEC. 1009. One who, by his own special request, induces another to intrust him with the performance of a service, must perform the same fully. In other cases one who undertakes a gratuitous service may relinquish it at any time.

Same.

SEC. 1010. A gratuitous employee, who accepts a written power of attorney, must act under it so long as it remains in force, or until he gives notice to his employer that he will not do so.

Duties of
employee for
reward.

SEC. 1011. One who, for a good consideration, agrees to serve another, must perform the service, and must use ordinary care and diligence therein, so long as he is thus employed.

Duties of
employee for
his own benefit.

SEC. 1012. One who is employed at his own request to do that which is more for his own advantage than for that of his employer, must use great care and diligence therein to protect the interest of the latter.

Contract for
service limited
to two years.

SEC. 1013. A contract to render personal service, other than a contract of apprenticeship under sections 140, 143, or 149, cannot be enforced against the employee beyond the term of two years from the commencement of service under it, but if the employee voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

Employee
must obey
employer.

SEC. 1014. An employee must substantially comply with all the directions of his employer concerning the service on which he is engaged, even though contrary to the provisions of this Title, except where such obedience is impossible, or unlawful.

or would impose new and unreasonable burdens upon the employee, or in case of an emergency which, according to the best information which the employee can with reasonable diligence obtain, the employer did not contemplate, in which he cannot, with reasonable diligence, be consulted, and in which non-compliance is judged by the employee, in good faith, and in the exercise of reasonable discretion, to be absolutely necessary for the protection of the employer's interests. In all such cases, the employee must conform as nearly to the directions of his employer as may be reasonably practicable, and most for the interest of the latter.

SEC. 1015. An employee must perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable, or manifestly injurious to his employer to do so.

Employee to conform to usage.

SEC. 1016. An employee is bound to exercise a reasonable degree of skill, unless his employer has notice, before employing him, of his want of skill.

Degree of skill required.

SEC. 1017. An employee is always bound to use such skill as he possesses.

Must use what skill he has.

SEC. 1018. Everything which an employee acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully, or during, or after the expiration of, the term of his employment.

What belongs to employer.

SEC. 1019. An employee must, on demand, render to his employer just accounts of all his transactions in the course of his service, as often as may be reasonable, and must, without demand, give prompt notice to his employer of everything which he receives for his account.

Duty to account.

SEC. 1020. An employee, who receives anything on account of his employer, in any capacity other than that of a mere servant, is not bound to deliver it to him until demanded, and is not at liberty to send it to him from a distance without demand, in any mode involving greater risk than its retention by the employee himself.

Employee not bound to deliver without demand.

SEC. 1021. An employee, who has any business to transact on his own account, similar to that intrusted to him by his employer, must always give the latter the preference. If intrusted with similar affairs by different employers, he must

Preference to be given to employers.

give them preference according to their relative urgency, or, other things being equal, according to the order in which they were committed to him.

Responsibility
of employee
for substitute.

SEC. 1022. An employee, who is expressly authorized to employ a substitute, is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

Responsibility
for negligence.

SEC. 1023. An employee, who is guilty of a culpable degree of negligence, is liable to his employer for the damage thereby caused to the latter; and the employer is liable to him, if the service is not gratuitous, for the value of such services only as are properly rendered.

Surviving
employee.

SEC. 1024. Where service is to be rendered by two or more persons jointly, and one of them dies, the survivor must act alone, if the service [to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

Confidential
employment.

SEC. 1025. The obligations peculiar to confidential employments are defined in the Title on Trusts.

ARTICLE IV.

TERMINATION OF EMPLOYMENT.

SECTION 1026. Termination by death, &c., of employer.

1027. Employment, how terminated.

1028. Continuance of service in certain cases.

1029. Termination at will.

1030. Termination by employer for fault.

1031. Termination by employee for fault.

1032. Compensation of employee dismissed for cause.

1033. Compensation of employee leaving for cause.

Termination
by death, &c.,
of employer.

SEC. 1026. Every employment, in which the power of the employee is not coupled with an interest in its subject, is terminated by notice to him of:

1. The death of the employer; or,
2. His legal incapacity to contract.

SEC. 1027. Every employment is terminated:

Employment,
how terminated

1. By the expiration of its appointed term;
2. By the extinction of its subject;
3. By the death of the employee; or,
4. By his legal incapacity to act as such.

SEC. 1028. An employee, unless the term of his service has expired, or unless he has a right to discontinue it at any time, without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employee for such service, according to the terms of the contract of employment.

Continuance
of service in
certain cases.

SEC. 1029. An employment having no specified term may be terminated at the will of either party, on notice to the other, except where otherwise provided by this Title.

Termination
at will.

SEC. 1030. An employment, even for a specified term, may be terminated at any time by the employer, in case of any willful breach of duty by the employee, in the course of his employment, or in case of his habitual neglect of his duty, or continued incapacity to perform it.

Termination
by employer
for fault.

SEC. 1031. An employment, even for a specified term, may be terminated by the employee at any time, in case of any willful or permanent breach of the obligations of his employer to him as an employee.

Termination
by employee
for fault.

SEC. 1032. An employee, dismissed by his employer for good cause, is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract.

Compensation
of employee
dismissed for
cause.

SEC. 1033. An employee, who quits the service of his employer for good cause, is entitled to such proportion of the compensation which would become due in case of full performance, as the services which he has already rendered bear to the services which he was to render as full performance.

Compensation
of employee
leaving for
cause.

CHAPTER II.

PARTICULAR EMPLOYMENTS.

ARTICLE I. Master and servant.

II. Agents.

III. Factors.

IV. Shipmasters.

V. Mates and seamen.

VI. Ships' managers.

ARTICLE I.

MASTER AND SERVANT.

SECTION 1034. Servant, what.

1035, 1036. Term of hiring.

1037. Renewal of hiring.

1038. Time of service.

1039. Servant to pay over without demand.

1040. When servant may be discharged.

Servant, what. SEC. 1034. A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master.

Term of hiring. SEC. 1035. A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for one year; a hiring at a daily rate, for one day; a hiring by piece work, for no specified term.

SEC. 1036. In the absence of any agreement as to wages, a domestic servant is presumed to be hired by the month; a clerk, or other servant not merely mechanical or agricultural, by the year; and other servants for no specified term. Same.

SEC. 1037. Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service. Renewal of hiring.

SEC. 1038. The entire time of a domestic servant belongs to the master; and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case ten hours in the day. Time of service.

SEC. 1039. A servant must deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for his account, without demand; but he is not bound without orders from his master, to send anything to him through another person. Servant to pay over without demand.

SEC. 1040. A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not: When servant may be discharged.

1. If he is guilty of misconduct in the course of his service, or of gross immorality, though unconnected with the same; or,

2. If, being employed about the person of the master, or in a confidential position, the master discovers that he has been guilty of misconduct, before or after the commencement of his service, of such a nature that, if the master had known or contemplated it, he would not have so employed him.

ARTICLE II.

AGENTS.

- SECTION 1041.** Agent to conform to his authority.
1042. Must keep his principal informed.
1043. Collecting agent.
1044. Responsibility of sub-agent.

Agent to conform to his authority.

SEC. 1041. An agent must not exceed the limits of his actual authority, as defined by the Title on Agency.

Must keep his principal informed.

SEC. 1042. An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency.

Collecting agent.

SEC. 1043. An agent, employed to collect a negotiable instrument, must collect it promptly, and take all measures necessary to charge the parties thereto, in case of its dishonor, and, if it is a bill of exchange, must present it for acceptance with reasonable diligence.

Responsibility of sub-agent.

SEC. 1044. A mere agent of an agent is not responsible as such to the principal of the latter.

ARTICLE III.

FACTORS.

SECTION 1045. Factor, what.

1046. Obedience required from factor.

1047. Sale on credit.

1048. Liability of factor under guaranty commission.

1049. Factor cannot relieve himself from liability.

Factor, what.

SEC. 1045. A factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser.

Obedience required from factor.

SEC. 1046. A factor must obey the instructions of his principal, to the same extent as any other employee, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids him to sell at the market price, he may nevertheless sell for his reimbursement, after giving to his principal reasonable notice of his intention to do so, and of the time and place of sale, and proceeding in all respects as a pledgee.

SEC. 1047. A factor may sell property consigned to him on such credit as is usual, but, having once agreed with the purchaser upon the term of credit, may not extend it. Sales on credit.

SEC. 1048. A factor, who charges his principal with a guaranty commission upon a sale, thereby assumes absolutely to pay the price when it falls due, as if it were a debt of his own, and not as a mere guaranty for the purchaser; but he does not thereby assume any additional responsibility for the safety of his remittance of the proceeds. Liability of factor under guaranty commission.

SEC. 1049. A factor who receives property for sale under a general agreement or usage to guaranty the sales, or the remittance of the proceeds, cannot relieve himself from responsibility therefor without the consent of his principal. Factor cannot relieve himself from liability.

ARTICLE IV.

SHIPMASTERS.

- SECTION** 1050. Appointment of master.
 1051. When must be on board.
 1052. Pilots.
 1053. Power of master over crew.
 1054. Power of master over passengers.
 1055. Impressing private stores.
 1056. When may abandon the ship.
 1057. Duties on abandonment.
 1058. When master cannot trade on his own account.
 1059. Care and diligence.
 1060. Authority of master.

SEC. 1050. The master of a ship is appointed by the owner, and holds during his pleasure. The word "ship," as used in this Code, shall be construed to mean any boat, vessel, or structure fitted for navigation. Appointment of master.

SEC. 1051. The master of a ship is bound to be always on board when entering or leaving a port. The word "port," as used in this Code, shall be construed to mean any place on a navigable river or lake where a vessel lands, to receive or put When must be on board.

off freight or passengers, or for any other purpose, and when a vessel has made a landing, it is said to be in port.

Pilots.

SEC. 1052. Before leaving a port, the master of a ship must take a pilot on board, and the navigation of the vessel devolves on him.

Power of master over seamen.

SEC. 1053. The master of a ship may enforce the obedience of the mate and crew to his lawful commands by confinement and other reasonable corporeal punishment, not prohibited by law, being responsible for the abuse of his power.

Power of master over passengers.

SEC. 1054. The master of a ship may confine any person on board, during a voyage, for willful disobedience to his lawful commands.

Impressing private stores.

SEC. 1055. If, during a voyage, the ship's supplies fail, the master, with the advice of the officers, may compel persons who have private supplies on board to surrender them for the common want, on payment of their value or giving security therefor.

When may abandon the ship.

SEC. 1056. The master of a ship must not abandon it during the voyage, without the advice of the other officers.

Duties on abandonment.

SEC. 1057. The master of a ship, upon abandoning it, must carry with him, so far as it is in his power, the money and the most valuable of the goods on board, under penalty of being personally responsible. If the articles thus taken are lost from causes beyond his control, he is exonerated from liability.

When master cannot trade on his own account.

SEC. 1058. The master of a ship, who engages for a common profit on the cargo, must not trade on his own account, and if he does, he must account to his employer for all profits thus made by him.

Care and diligence.

SEC. 1059. The master of a ship must use great care and diligence in the performance of his duties, and is responsible for all damage occasioned by his negligence, however slight.

Authority of master.

SEC. 1060. The authority and liability of the master of a ship, as an agent for the owners of the ship and cargo, are regulated by the Title on Agency.

ARTICLE V.

MATES AND SEAMEN.

- SECTION 1061. Mate, what.
 1062. Seamen, what.
 1063. Mate and seamen, how engaged and discharged.
 1064. Unseaworthy vessel.
 1065. Seamen not to lose wages or lien by agreement.
 1066. Special agreement with seamen.
 1067. Wages depend on freightage.
 1068. When wages, &c., begin.
 1069. Wages, where voyage is broken up before departure.
 1070. Wrongful discharge.
 1071. Wages when not lost by wreck.
 1072. Certificate.
 1073. Disabled seamen.
 1074. Maintenance of seamen during sickness.
 1075. Death on the voyage.
 1076. Theft, &c., forfeits wages.
 1077. Seamen cannot ship goods.
 1078. Embezzlement and injuries.
 1079. Law governing seamen.

SEC. 1061. The mate of a ship is the officer next in com- Mate, what.
 mand to the master.

SEC. 1062. All persons, other than the master, mates, pilots, Seamen, what.
 clerks and engineers, employed in and about the navigation
 of a vessel of any description, and in receiving and discharg-
 ing freight, supplies or any other thing, are to be deemed sea-
 men within the provisions of this Code.

SEC. 1063. The mate and seamen of a ship are engaged by Mate and
seamen how
engaged and
discharged.
 the master, and may be discharged by him at any period of
 the voyage, for willful and persistent disobedience or gross
 disqualification, but cannot otherwise be discharged before
 the termination of the voyage.

SEC. 1064. A mate or seamen is not bound to go on a voyage Unseaworthy
vessel.
 in a ship that is not seaworthy; and if there is reasonable
 doubt of its seaworthiness, he may refuse to proceed until a
 proper survey has been had.

Seamen not
to lose wages or
lien by
agreement.

SEC. 1065. A seaman cannot, by reason of any agreement, be deprived of his lien upon the ship, or of any remedy for the recovery of his wages to which he would otherwise have been entitled. Any stipulation by which he consents to abandon his right to wages in case of the loss of a ship, or to abandon any right he may have or obtain in the nature of salvage, is void.

Special agree-
ment with
seamen.

SEC. 1066. No special agreement entered into by a seaman can impair any of his rights, or add to any of his obligations, as defined by law, unless he fully understands the effect of the agreement, and receives a fair compensation therefor.

Wages depend
on freightage.

SEC. 1067. Except as hereinafter provided, the wages of seamen are due at the end of the voyage.

When wages,
&c., begin.

SEC. 1068. The right of a mate or seaman to wages and provisions begins either from the time he begins work, or from the time specified in the agreement for his beginning work, or from his presence on board, whichever first happens.

Wages where
voyage is bro-
ken up before
departure.

SEC. 1069. Where a voyage is broken up before departure of the ship, the seamen must be paid for the time they have served, and may retain for their indemnity such advances as they have received.

Wrongful
discharge.

SEC. 1070. When a mate or seaman is wrongfully discharged, or is driven to leave the ship by the cruelty of the master on the voyage, it is then ended with respect to him, and he may thereupon recover his full wages.

Wages when
not lost by
wreck.

SEC. 1071. In case of loss or wreck of the ship, a seaman is entitled to his wages up to the time of the loss or wreck, whether freightage has been earned or not, if he exerts himself to the utmost to save the ship, cargo and stores.

Certificate.

SEC. 1072. A certificate from the master or chief surviving officer of a ship, to the effect that a seaman exerted himself to the utmost to save the ship, cargo, and stores, is presumptive evidence of the fact.

Disabled
seamen.

SEC. 1073. Where a mate or seaman is prevented from rendering service by illness or injury, incurred without his fault, in the discharge of his duty on the voyage, or by being wrongfully discharged, or by a capture of the ship, he is entitled to wages notwithstanding.

Maintenance
of seamen dur-
ing sickness.

SEC. 1074. If a mate or seaman becomes sick or disabled during the voyage without his fault, the expense of furnishing

him with suitable medical advice, medicine, attendance, and other provision for his wants, must be borne by the ship till the close of the voyage.

SEC. 1075. If a mate or seaman dies during the voyage, his ^{Death on the voyage.} personal representatives are entitled to his wages to the time of his death, if he would have been entitled to them had he lived to the end of the voyage.

SEC. 1076. Desertion of the ship without cause, or a justifiable discharge by the master during the voyage, for misconduct, or a theft of any part of the cargo or appurtenances of the ship, or a willful injury thereto or to the ship, forfeits all ^{Theft, &c., forfeits wages.} wages due for the voyage to a mate or seaman thus in fault.

SEC. 1077. A mate or seaman may not, under any pretext, ^{Seamen cannot ship goods.} ship goods on his own account, without permission from the master.

SEC. 1078. If any part of the cargo or appurtenances of a ^{Embezzlement and injuries.} ship is embezzled or injured by the mate or a seaman, the offender, or, if it is not known which is the offender, all those of whom negligence or fault may be presumed, must make good the loss.

SEC. 1079. The shipment of officers and seamen, and their ^{Law governing seamen.} rights and duties, are further regulated by law.

ARTICLE VI.

SHIPS' MANAGERS.

SECTION 1080. Manager, what.

1081. Duties of manager.

1082. Compensation.

SEC. 1080. The general agent for the owners, in respect to ^{Manager, what.} the care of a ship and freight, is called the manager; if he is a part owner he is also called the managing owner.

SEC. 1081. Unless otherwise directed, it is the duty of the ^{Duties of manager.} manager of a ship to provide for the complete seaworthiness

of the ship; to take care of it in port; to see that it is provided with necessary papers, with a proper master, mate and crew, and supplies of provisions and stores.

Compensation. SEC. 1082. A managing owner is presumed to have no right to compensation for his own services.

CHAPTER III.

SERVICE WITHOUT EMPLOYMENT.

SECTION 1083. Voluntary interference with property.
1084. Salvage.

**Voluntary
interference
with property.**

SEC. 1083. One who officiously, and without the consent of the real or apparent owner of a thing, takes it into his possession, for the purpose of rendering a service about it, must complete such service, and use ordinary care, diligence, and reasonable skill about the same. He is not entitled to any compensation for his service or expenses, except that he may deduct actual and necessary expenses, incurred by him about such service, from any profits which his service has caused the thing to acquire for its owner, and must account to the owner for the residue.

Salvage.

SEC. 1084. Any person, other than the master, mate, or a seaman thereof, who rescues a ship, her appurtenances, or cargo, from danger, is entitled to a reasonable compensation therefor, to be paid out of the property saved. He has a lien for such claim, which is regulated by the Title on Liens.

TITLE VII.

CARRIAGE.

- CHAPTER I. Carriage in general.
 - II. Carriage of persons.
 - III. Carriage of property.
 - IV. Carriage of messages.
 - V. Common carriers.

CHAPTER I.

CARRIAGE IN GENERAL.

- SECTION 1085. Contract of carriage.
- 1086. Different kinds of carriers.
- 1087. Marine and inland carriers, what.
- 1088. Carriers by railroad and steamboat.
- 1089. Carriers by sea.
- 1090. Obligations of gratuitous carriers.
- 1091. Obligations of gratuitous carrier who has begun to carry.

SEC. 1085. The contract of carriage is a contract for the conveyance of property, persons, or messages, from one place to another.

Contract of carriage.

- SEC. 1086. Carriage is either:
 1. Inland; or,
 2. Marine.

Different kinds of carriers.

SEC. 1087. Carriers upon the ocean, upon arms of the sea, upon the great lakes, Ontario, Ere, Huron, Michigan and Superior, and upon the rivers and canals connecting those lakes

Marine and inland carriers what.

with each other, are marine carriers. All others are inland carriers.

Carriers by
railroad and
steamboat.

SEC. 1088. Rights and duties peculiar to carriers by railway and steamers, are defined in other codes or statutes.

Carriers by
sea.

SEC. 1089. Rights and duties peculiar to carriers by sea, are defined by acts of congress.

Obligations
of gratuitous
carriers.

SEC. 1090. Carriers without reward are subject to the same rules as employees without reward, except so far as is otherwise provided by this Title.

Obligations
of gratuitous
carrier who
has begun to
carry.

SEC. 1091. A carrier without reward, who has begun to perform his undertaking, must complete it in like manner as if he had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced the carriage.

CHAPTER II.

CARRIAGE OF PERSONS.

ARTICLE I. Gratuitous carriage.

II. Carriage for reward.

ARTICLE I.

GRATUITOUS CARRIAGE OF PERSONS.

SECTION 1092. Degree of care required.

Degree of care
required.

SEC. 1092. A carrier of persons without reward must use ordinary care and diligence for their safe carriage.

ARTICLE II.

CARRIAGE FOR REWARD.

SECTION 1093. General duties of carrier.

1094. Vehicles.

1095. Not to overload his vehicles.

1096. Treatment of passengers.

1097. Rate of speed and delays.

SEC. 1093. A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill. General duties of carrier.

SEC. 1094. A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care. Vehicles.

SEC. 1095. A carrier of persons for reward must not overcrowd or overload his vehicle. Not to overload his vehicles.

SEC. 1096. A carrier of persons for reward must give to passengers all such accommodations as are usual and reasonable, must treat them with civility, and give them a reasonable degree of attention. Treatment of passengers.

SEC. 1097. A carrier of persons for reward must travel at a reasonable rate of speed, and without any unreasonable delay, or deviation from his proper route. Rate of speed and delays.

CHAPTER III.

CARRIAGE OF PROPERTY.

- ARTICLE I. General definitions.
 II. Obligations of the carrier.
 III. Bill of lading.
 IV. Freightage.
 V. General average.

ARTICLE I.

GENERAL DEFINITIONS.

SECTION 1098. Freight, consignor, &c., what.

Freight, con-
 signor, &c.,
 what.

SEC. 1098. Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor, and the person to whom it is to be delivered is called the consignee.

ARTICLE II.

OBLIGATIONS OF THE CARRIER.

- SECTION 1099. Care and diligence required of carriers.
 1100. Carrier to obey directions.
 1101. Conflict of orders.
 1102. Stowage, deviation, &c.
 1103. Delivery of freight.

SECTION 1104. Place of delivery.

1105. Obligations of carrier when freight is not delivered to consignee.

1106. How carrier may terminate his liability.

1107. When consignee cannot be found.

SEC. 1099. A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. A carrier without reward must use at least slight care and diligence.

Care and diligence required of carriers.

SEC. 1100. A carrier must comply with the directions of the consignor or consignee, to the same extent that an employee is bound to comply with those of his employer.

Carrier to obey directions.

SEC. 1101. When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own.

Conflict of orders.

SEC. 1102. A marine carrier must not stow freight upon deck during the voyage, except where it is usual to do so, nor make any improper deviation from or delay in the voyage, nor do any other unnecessary act which would avoid an insurance in the usual form upon the freight.

Stowage, deviation, &c.

SEC. 1103. A carrier of property must deliver it to the consignee, at the place to which it is addressed, in the manner usual at that place.

Delivery of freights.

SEC. 1104. If there is no usage to the contrary at the place of delivery, freight must be delivered as follows:

Place of delivery.

1. If carried upon a railway owned and managed by the carrier, it may be delivered at the station nearest the place to which it is addressed;

2. If carried by sea from a foreign country, it may be delivered at the wharf where the ship moors, within a reasonable distance from the place of address; or if there is no wharf, on board a lighter alongside the ship; or,

3. In other cases, it must be delivered to the consignee or his agent, personally, if either can, with reasonable diligence, be found.

Obligations of carrier when freight is not delivered to consignee.

SEC. 1105. If, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival, and keep the same in safety, upon his responsibility as a carrier, until the consignee has had a reasonable time to remove it.

How carrier may terminate his liability.

SEC. 1106. If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver, or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse, on storage, and giving notice thereof to the consignee.

When consignee cannot be found.

SEC. 1107. If a consignee of freight cannot, with reasonable diligence, be found, the carrier may place it in a suitable warehouse for his account, but must give notice thereof to the consignor.

ARTICLE III.

BILL OF LADING.

SECTION 1108. Bill of lading, what.

1109, 1110. Bill of lading negotiable.

1111. Effect of bill of lading on rights, &c., of carrier.

1112. Bills of lading to be given to consignor.

1113. Carrier exonerated by delivery according to bill of lading.

1114. Carrier may demand surrender of bill of lading before delivery.

Bill of lading, what.

SEC. 1108. A bill of lading is an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place.

Bill of lading negotiable.

SEC. 1109. All the title to the freight which the first holder of a bill of lading had when he received it, passes to every subsequent indorsee thereof in good faith and for value, in the ordinary course of business, with like effect and in like manner as in the case of a bill of exchange.

SEC. 1110. When a bill of lading is made to "bearer," or in equivalent terms, a simple transfer thereof by delivery conveys the same title as an indorsement. Same.

SEC. 1111. A bill of lading does not alter the rights or obligation of the carrier, as defined in this chapter, unless it is plainly inconsistent therewith. Effect of bill of lading on rights, &c., of carrier.

SEC. 1112. A carrier must subscribe and deliver to the consignor, on demand, any reasonable number of bills of lading, of the same tenor, expressing truly the original contract for carriage; and if he refuses to do so, the consignor may take the freight from him, and recover from him besides all damage thereby occasioned. Bill of lading to be given to consignor.

SEC. 1113. A carrier is exonerated from liability for freight by delivery thereof, in good faith, to any holder of a bill of lading therefor, properly indorsed, or made in favor of the bearer. Carrier exonerated by delivery according to bill of lading

SEC. 1114. When a carrier has given a bill of lading, or other instrument substantially equivalent thereto, he may require its surrender, or a reasonable indemnity against claims thereon, before delivering the freight. Carrier may demand surrender of bill of lading before delivery.

ARTICLE IV.

FREIGHTAGE.

- SECTION 1115.** When freightage is to be paid.
1116. Consignor, when liable for freightage.
1117. Consignee, when liable.
1118. Natural increase of freight.
- 1119, 1120. Apportionment by contract.
1121. Apportionment according to distance.
1122. Freight carried further than agreed, &c.
1123. Carrier's lien for freightage.

SEC. 1115. A carrier may require his freightage to be paid upon his receiving the freight; but if he does not demand it then, he cannot until he is ready to deliver the freight to the consignee. When freightage is to be paid.

Consignor,
when liable
for freightage.

SEC. 1116. The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it, and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor.

Consignee,
when liable.

SEC. 1117. The consignee of freight is liable for the freightage, if he accepts the freight with notice of the intention of the consignor that he should pay it.

Natural
increase of

SEC. 1118. No freightage can be charged upon the natural increase of freight.

Apportion-
ment by
contract.

SEC. 1119. If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for so much as he delivers.

Same.

SEC. 1120. If a part of the freight is accepted by a consignee, without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

Apportion-
ment according
to distances.

SEC. 1121. If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage, according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion, and the consignee receives the freight only from necessity, the carrier is not entitled to any freightage.

Freight car-
ried further
than agreed, &c.

SEC. 1122. If freight is carried further, or more expeditiously, than was agreed upon by the parties, the carrier is not entitled to additional compensation, and cannot refuse to deliver it, on the demand of the consignee, at the place and time of its arrival.

Carrier's lien
for freightage.

SEC. 1123. A carrier has a lien for freightage, which is regulated by the Title on Liens.

ARTICLE V.

GENERAL AVERAGE.

SECTION 1124. Jettison and general average, what.

1125. Order of jettison.

1126. By whom made.

1127. Loss, how borne.

1128. General average loss, how adjusted.

1129. Values, how ascertained.

1130. Things stowed on deck.

1131. Application of the foregoing rules.

SEC. 1124. A carrier by water may, when in case of extreme ^{Jettison and general average.} peril it is necessary for the safety of the ship or cargo, throw ^{what.} overboard, or otherwise sacrifice, any or all of the cargo or appurtenances of the ship. Throwing property overboard for such purpose is called jettison, and the loss incurred thereby is called a general average loss.

SEC. 1125. A jettison must begin with the most bulky and ^{Order of jettison.} least valuable articles, so far as possible.

SEC. 1126. A jettison can be made only by authority of the ^{By whom made.} master of a ship, except in case of his disability, or of an overruling necessity, when it may be made by any other person.

SEC. 1127. The loss incurred by a jettison, when lawfully ^{Loss, how borne.} made, must be borne in due proportion by all that part of the ship, appurtenances, freightage and cargo, for the benefit of which the sacrifice is made, as well as by the owner of the thing sacrificed.

SEC. 1128. The proportions in which a general average loss ^{General average loss, how adjusted.} is to be borne, must be ascertained by an adjustment, in which the owner of each separate interest is to be charged with such proportion of the value of the thing lost, as the value of his part of the property affected bears to the value of the whole.

But an adjustment made at the end of the voyage, if valid there is valid everywhere.

Values, how ascertained.

SEC. 1129. In estimating values for the purpose of a general average, the ship and appurtenances must be valued as at the end of the voyage, the freightage at one-half the amount due on delivery, and the cargo as at the time and place of its discharge; adding, in each case, the amount made good by contribution.

Things stowed on deck.

SEC. 1130. The owner of things stowed on deck, in case of their jettison, is entitled to the benefit of a general average contribution only in case it is usual to stow such things on deck upon such a voyage.

Application of the foregoing rules.

SEC. 1131. The rules herein stated concerning jettison are equally applicable to every other voluntary sacrifice of property on a ship, or expense necessarily incurred, for the preservation of the ship and cargo from extraordinary perils.

CHAPTER IV.

CARRIAGE OF MESSAGES.

SECTION 1132. Obligations of carrier of messages.

1133. Degree of care and diligence required.

Obligations of carrier of messages.

SEC. 1132. A carrier of messages for reward must deliver them at the place to which they are addressed, or to the persons for whom they are intended.

Degree of care and diligence required.

SEC. 1133. A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages. A carrier by telegraph must use the utmost diligence therein.

CHAPTER V.

COMMON CARRIERS.

- ARTICLE I. Common carriers in general.
 II. Common carriers of persons.
 III. Common carriers of property.
 IV. Common carriers of messages.

ARTICLE I.

COMMON CARRIERS IN GENERAL.

- SECTION 1134. Common carrier, what.
 1135. Obligation to accept freight.
 1136. Obligation not to give preference.
 1137. What preferences he must give.
 1138. Starting.
 1139. Compensation.
 1140. Obligations of carrier altered by agreement.
 1141. Certain agreements void.
 1142. Effect of written contract.

SEC. 1134. Every one who offers to the public to carry per-^{Common carrier, what.} sons, property or messages, is a common carrier of whatever he thus offers to carry.

SEC. 1135. A common carrier must, if able to do so, accept^{Obligation to accept freight.} and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry.

SEC. 1136. A common carrier must not give preference, in^{Obligation not to give preference.} time, price, or otherwise, to one person over another, except where expressly authorized by statute.

SEC. 1137. A common carrier must always give a preference^{What preferences he must give.} in time, and may give a preference in price, to the United States and to this Territory.

Starting. SEC. 1138. A common carrier must start at such a time and place as he announces to the public.

Compensation SEC. 1139. A common carrier is entitled to a reasonable compensation and no more; which he may require to be paid in advance. If payment thereof is refused, he may refuse to carry.

Obligations of carrier altered only by agreement. SEC. 1140. The rights and obligations of a common carrier cannot be altered by notice on his part, or by any other means except a written agreement between him and the person with whom he deals.

Certain agreements void. SEC. 1141. A common carrier cannot be exonerated, by any agreement made in anticipation thereof, from liability for the gross negligence, fraud, or willful wrong, of himself or his servants.

Effect of written contract. SEC. 1142. A passenger, consignor, or consignee, by accepting a ticket, bill of lading or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place and manner of delivery therein stated. But his assent to any other modification of the carrier's rights or obligations contained in such instrument can only be manifested by his signature to the same.

ARTICLE II.

COMMON CARRIERS OF PERSONS.

- SECTION** 1143. Obligation to carry luggage.
 1144. Luggage, what.
 1145. Liability for luggage.
 1146. Luggage, how carried and delivered.
 1147. Obligation to provide vehicles.
 1148. Seats for passengers.
 1149. Regulations for conduct of business.
 1150. Fare, when payable.
 1151. Ejection of passengers.
 1152. Fare not payable after ejection.
 1153. Carriers's lien.

SEC. 1143. A common carrier of persons, unless his vehicle is fitted for the reception of passengers exclusively, must receive and carry a reasonable amount of luggage for each passenger, without any charge except for an excess of weight over one hundred pounds to a passenger.

Obligation to carry luggage.

SEC. 1144. Luggage may consist of any articles intended for the use of a passenger while traveling, or for his personal equipment.

Luggage, what.

SEC. 1145. The liability of carrier for luggage received by him with a passenger, is the same as that of a common carrier of property.

Liability for luggage.

SEC. 1146. A common carrier must deliver every passenger's luggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination; and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belongs.

Luggage, how carried and delivered.

SEC. 1147. A common carrier of persons, upon a route to which he has an exclusive right, must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time.

Obligation to provide vehicles.

SEC. 1148. A common carrier of persons must provide every passenger with a seat.

Seats for passengers.

SEC. 1149. A common carrier of persons may make rules for the conduct of his business, and may require passengers to conform to them, if they are lawful, public, uniform in their application, and reasonable.

Regulations for conduct of business.

SEC. 1150. A common carrier may demand the fare of passengers, either at starting, or at any subsequent time.

Fare, when payable.

SEC. 1151. A passenger, who refuses to pay his fare, or to conform to any lawful regulation of the carrier, may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible, and within a short distance from some dwelling house.

Ejection of passengers.

SEC. 1152. After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

Fare not payable after ejection.

SEC. 1153. A common carrier has a lien upon the luggage of a passenger, for the payment of such fare as he is entitled to from him. This lien is regulated by the Title on Liens.

Carrier's lien.

ARTICLE III.

COMMON CARRIERS OF PROPERTY.

- SECTION 1154. Liability of inland carriers for loss.
 1155. When exemptions do not apply.
 1156. Liability for delay.
 1157, 1158. Liability of marine carriers.
 1159. Perils of sea, what.
 1160. Consignor of valuables to declare their nature.
 1161. Delivery of freight beyond usual route.
 1162. Proof to be given in case of loss.
 1163. Carrier's services other than carriage and delivery.

SEC. 1154. Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable, from the time that he accepts until he relieves himself from liability pursuant to sections 1103 to 1107, for the loss or injury thereof from any cause whatever, except:

1. An inherent defect, vice or weakness, or a spontaneous action, of the property itself;
2. The act of a public enemy of the United States, or of this Territory;
3. The act of the law; or,
4. Any irresistible superhuman cause.

SEC. 1155. A common carrier is liable, even in the cases excepted by the last section, if his ordinary negligence exposes the property to the cause of the loss.

SEC. 1156. A common carrier is liable for delay, only when it is the effect of his ordinary negligence.

SEC. 1157. A marine carrier is liable in like manner as an inland carrier, except for loss or injury caused by the perils of the sea or fire.

SEC. 1158. The liability of a common carrier by sea is further regulated by acts of congress.

SEC. 1159. Perils of the sea are from:

1. Storms and waves;
2. Rocks, shoals and rapids;
3. Other obstacles, though of human origin;
4. Changes of climate;
5. The confinement necessary at sea;
6. Animals peculiar to the sea; and,
7. All other dangers peculiar to the sea.

SEC. 1160. A common carrier of gold, silver, platina, or precious stones, or of imitations thereof, in a manufactured or unmanufactured state, of timepieces of any description, of negotiable paper or other valuable writings, of pictures, glass or china ware, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice, upon his receipt thereof, by mark upon the package or otherwise, of the nature of the freight.

Consignor of valuables to declare their nature.

SEC. 1161. If a common carrier accepts freight for a place beyond his usual route, he must, unless he stipulates otherwise, deliver it at the end of his route in that direction to some other competent carrier, carrying to the place of address, or connected with those who thus carry, and his liability ceases upon making such delivery.

Delivery of freight beyond the usual route.

SEC. 1162. If freight, addressed to a place beyond the usual route of the common carrier who first received it, is lost or injured, he must, within a reasonable time after demand, give satisfactory proof to the consignor, that the loss or injury did not occur while it was in his charge, or he will be himself liable therefor.

Proof to be given in case of loss.

SEC. 1163. In respect to any service rendered by a common carrier about freight, other than its carriage and delivery, his rights and obligations are defined by the Titles on Deposit and Service.

Carrier's services other than carriage and delivery.

ARTICLE IV.

COMMON CARRIERS OF MESSAGES.

SECTION 1164. Order of transmission of telegraphic messages.

1165. Order in other cases.

1166. Damages when message is refused or postponed.

Order of transmission of telegraphic messages.

SEC. 1164. A carrier of messages by telegraph must, if it is practicable, transmit every such message immediately upon its receipt. But if this is not practicable, and several messages accumulate upon his hands, he must transmit them in the following order:

1. Messages from public agents of the United States or of this Territory, on public business;
2. Messages intended in good faith for immediate publication in newspapers, and not for any secret use;
3. Messages giving information relating to the sickness or death of any person;
4. Other messages, in the order in which they were received.

Order in other cases.

SEC. 1165. A common carrier of messages, otherwise than by telegraph, must transmit messages in the order in which he receives them, except messages from agents of the United States or of this Territory, on public business, to which he must always give priority. But he may fix upon certain times for the simultaneous transmission of messages previously received.

Damage when message is refused or postponed.

SEC. 1166. Every person whose message is refused or postponed, contrary to the provisions of this chapter, is entitled to recover from the carrier his actual damages, and fifty dollars in addition thereto.

TITLE VIII.

TRUST.

- CHAPTER I. Trusts in general.
- II. Trusts for the benefit of third persons.

CHAPTER I.

TRUSTS IN GENERAL.

- ARTICLE I. Nature and creation of a trust.
- II. Obligations of trustees.
- III. Obligations of third persons.

ARTICLE I.

NATURE AND CREATION OF A TRUST.

- SECTION 1167. Trusts classified.
- 1168. Voluntary trust, what.
- 1169. Involuntary trust, what.
- 1170. Parties to the contract.
- 1171. What constitutes one a trustee.
- 1172. For what purpose a trust may be created.
- 1173. Voluntary trust, how created as to trustor.
- 1174. How created as to trustee.
- 1175. Involuntary trustees, who is.
- 1176. Involuntary trust resulting from negligence, &c.

Trusts classified.

SEC. 1167. A trust is either:

1. Voluntary; or,
2. Involuntary.

Voluntary trust, what.

SEC. 1168. A voluntary trust is an obligation arising out of a personal confidence reposed in, and voluntarily accepted by one, for the benefit of another.

Involuntary trust, what.

SEC. 1169. An involuntary trust is one which is created by operation of law.

Parties to the contract.

SEC. 1170. The person whose confidence creates a trust, is called the trustor; the person in whom the confidence is reposed, is called the trustee; and the person for whose benefit the trust is created is called the beneficiary.

What constitutes one a trustee.

SEC. 1171. Every one who voluntarily assumes a relation of personal confidence with another, is deemed a trustee within the meaning of this chapter, not only as to the person who reposes such confidence, but also as to all persons of whose affairs he thus acquires information which was given to such person in the like confidence, or over whose affairs he, by such confidence, obtains any control.

For what purpose a trust may be created.

SEC. 1172. A trust may be created for any purpose for which a contract may lawfully be made, except as otherwise prescribed by the Titles on Uses and Trusts and on Transfers.

Voluntary trust, how created as a trustor.

SEC. 1173. Subject to the provisions of section 280, a voluntary trust is created, as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty:

1. An intention on the part of the trustor to create a trust; and,
2. The subject, purpose and beneficiary of the trust.

As to trustee.

SEC. 1174. Subject to the provisions of section 280, a voluntary trust is created, as to the trustee, by any words or acts of his, indicating with reasonable certainty:

1. His acceptance of the trust, or his acknowledgment, made upon sufficient consideration, of its existence; and,
2. The subject, purpose and beneficiary of the trust,

Involuntary trustee, who is.

SEC. 1175. One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner.

Involuntary trust resulting from negligence, &c.

SEC. 1176. One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrong-

ful act, is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

SECTION 1177. Trustee's obligation to good faith.

1178. Trustee not to use property for his own profit.

1179. Certain transactions forbidden.

1180. Trustee's influence not to be used for his advantage.

1181. Trustee not to assume a trust adverse to interest of beneficiary.

1182. To disclose adverse interest.

1183. Trustee guilty of fraud, when.

1184. Presumption against trustees.

1185. Trustee mingling trust property with his own.

1186, 1187. Measure of liability for breach of trust.

1188. Co-trustees, how far liable for each other.

SEC. 1177. In all matters connected with his trust, a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter, by the slightest misrepresentation, concealment, threat or adverse pressure of any kind.

Trustee's
obligation to
good faith.

SEC. 1178. A trustee may not use or deal with the trust property for his own profit, or for any other purpose unconnected with the trust, in any manner.

Trustee not to
use property for
his own profit.

SEC. 1179. Neither a trustee, nor any of his agents, may take part in any transaction concerning the trust, in which he, or any one for whom he acts as agent, has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

Certain trans-
actions forbid-
den.

1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so;

2. When, the beneficiary not having capacity to contract, the district court, upon the like information of the facts, grants the like permission; or,

3. When some of the beneficiaries having capacity to contract, and some not having it, the former grant permission for themselves, and the district court for the latter, in the manner above prescribed.

Trustees influence not to be used for his advantage.

SEC. 1180. A trustee may not use the influence, which his position gives him, to obtain any advantage from his beneficiary.

Trustee not to assume a trust adverse to interest of beneficiary.

SEC. 1181. No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter.

To disclose adverse interest.

SEC. 1182. If a trustee acquires any interest, or becomes charged with any duty, adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof, and may be at once removed.

Trustee guilty of fraud, when.

SEC. 1183. Every violation of the provisions of the preceding sections of this article, is a fraud against the beneficiary of a trust.

Presumption against trustee.

SEC. 1184. All transactions between a trustee and his beneficiary, during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration, and under undue influence.

Trustee mingling trust property with his own.

SEC. 1185. A trustee who willfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events.

Measure of liability for breach of trust.

SEC. 1186. A trustee who uses or disposes of the trust property, contrary to section 1178, may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds, with interest.

Same.

SEC. 1187. A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good

faith, and with intent to serve the interest of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error.

SEC. 1188. A trustee is responsible for the wrongful acts of a co-trustee, to which he consented, or which by his negligence he enabled the latter to commit; but for no others. Co-trustees, how far liable for each other.

ARTICLE III.

OBLIGATIONS OF THIRD PERSONS.

SECTION 1189. Third person, when involuntary trustee.

1190. When third person must see to application of trust property.

SEC. 1189. Every one to whom property is transferred, in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith and for a valuable consideration. Third person, when involuntary trustee.

SEC. 1190. One who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application thereof; and his rights can in no way be prejudiced by a misapplication thereof by the trustee. Other persons must, at their peril, see to the proper application of money or other property paid or delivered by them. When third person must see to application of trust property.

CHAPTER II.

TRUSTS FOR THE BENEFIT OF THIRD PERSONS.

ARTICLE I. Nature and creation of the trust.

II. Obligations of trustees.

III. Powers of trustees.

IV. Rights of trustees.

V. Termination of the trust.

VI. Succession or appointment of new trustees.

ARTICLE I.

NATURE AND CREATION OF THE TRUST.

SECTION 1191. Who are trustees within scope of this chapter.

1192. Creation of trust.

1193. Trustee appointed by court.

1194, 1195. Declaration of trust.

Who are trustee within scope of this chapter.

SEC. 1191. The provisions of this chapter apply only to express trusts, created for the benefit of another than the trustor, and in which the title to the trust proper is vested in the trustee; not including, however, those of executors, administrators and guardians, as such.

Creation of trust.

SEC. 1192. The mutual consent of a trustor and trustee creates a trust, of which the beneficiary may take advantage at any time prior to its rescission.

Trustee appointed by court.

SEC. 1193. When a trustee is appointed by a court or public officer as such, such court or officer is the trustor, within the meaning of the last section.

Declaration of trust.

SEC. 1194. The nature, extent and object of a trust are expressed in the declaration of trust.

SEC. 1195. All declarations of a trustor to his trustees, in relation to the trust, before its acceptance by the trustees, or any of them, are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same trustor are merged therein. Same.

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

- SECTION 1196.** Trustee must obey declaration of trust.
1197. Degree of care and diligence in execution of trust.
1198. Duty of trustee as to appointment of successor.
1199. Investment of money by trustee.
1200. Interest, simple or compound, on omission to invest trust moneys.
1201. Purchase by trustee of claims against trust fund.

SEC. 1196. A trustee must fulfill the purpose of the trust, as declared at its creation, and must follow all the directions of the trustor given at that time, except as modified by the consent of all parties interested, in the same manner, and to the same extent, as an employee. Trustee must obey declaration of trust.

SEC. 1197. A trustee, whether he receives any compensation or not, must use at least ordinary care and diligence in the execution of his trust. Degree of care and diligence in execution of trust.

SEC. 1198. If a trustee procures or assents to his discharge from his office, before his trust is fully executed, he must use at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge. Duty of trustee as to appointment of successor.

SEC. 1199. A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same. Investment of money by trustee.

Interest, simple or compound, on omission to invest trust moneys.

SEC. 1200. If a trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is willful.

Purchase by trustee of claims against trust fund.

SEC. 1201. A trustee cannot enforce any claim against the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be allowed by any competent court, to charge to the trust property what he has in good faith paid for the claim, upon discharging the same.

ARTICLE III.

POWERS OF TRUSTEES.

SECTION 1202. Trustee's powers as agent.

1203. All must act.

1204. Discretionary powers.

Trustee's powers as agent

SEC. 1202. A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust, and by this chapter, and none other. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal.

All must act.

SEC. 1203. Where there are several co-trustees, all must unite in any act to bind the trust property, unless declaration of trust otherwise provides.

Discretionary powers.

SEC. 1204. A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the district court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust.

ARTICLE IV.

RIGHTS OF TRUSTEES.

- SECTION** 1205. Indemnification of trustee.
 1206. Compensation of trustee.
 1207. Involuntary trustee.

SEC. 1205. A trustee is entitled to the payment, out of the trust property, of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate. ^{Indemnification of trustee.}

SEC. 1206. When a declaration of trust is silent upon the subject compensation, the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled to the amount thus specified, and no more. If it directs that he shall be allowed a compensation, but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances. ^{Compensation of trustee.}

SEC. 1207. An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in this article. ^{Involuntary trustee.}

ARTICLE V.

TERMINATION OF THE TRUST.

- SECTION** 1208. Trust, how extinguished.
 1209. Not revocable.
 1210. Trustee's office, how vacated.
 1211. Trustee, how discharged.
 1212. Removal by district court.

Trust, how extinguished.

SEC. 1208. A trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful.

Not revocable.

SEC. 1209. A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor, and in that case the power must be strictly pursued.

Trustee's office, how vacated.

SEC. 1210. The office of a trustee is vacated:

1. By his death; or,
2. By his discharge.

Trustee, how discharged.

SEC. 1211. A trustee can be discharged from his trust only as follows:

1. By the extinction of the trust;
2. By the completion of his duties under the trust;
3. By such means as may be prescribed by the declaration of trust;
4. By the consent of the beneficiary, if he has capacity to contract;
5. By the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is of unsound mind; or,
6. By the district court.

Removal by supreme court.

SEC. 1212. The district court may remove any trustee who has violated or is unfit to execute the trust.

ARTICLE VI.

SUCCESSION OR APPOINTMENT OF NEW TRUSTEES.

SECTION 1213. Vacant trusteeship filled by court.

1214. Survivorship between co-trustees.

1215. District court as trustee.

Vacant trusteeship filled by court.

SEC. 1213. The district court may appoint a trustee whenever there is a vacancy, and the declaration of trust does not provide a practicable method of appointment.

SEC. 1214. On the death, renunciation or discharge of one of several co-trustees, the trust survives to the others. Survivorship between co-trustees.

SEC. 1215. When a trust exists without any appointed trustee, or where all the trustees renounce, die or are discharged, the district court must execute the trust until another trustee is appointed. Supreme court as trustee.

TITLE IX.

AGENCY.

- CHAPTER I. Agency in general.
- II. Particular agencies.

CHAPTER I.

AGENCY IN GENERAL.

- ARTICLE I. Definition of agency.
- II. Authority of agents.
- III. Mutual obligations of principals and third persons.
- IV. Obligations of agents to third persons.
- V. Delegation of agency.
- VI. Termination of agency.

ARTICLE I.

DEFINITION OF AGENCY.

- SECTION 1216. Agency, what.
- 1217. Who may appoint and who may be an agent.

- SECTION 1218. Agents, general or special.
 1219. Agency, actual or ostensible.
 1220. Actual agency.
 1221. Ostensible agency.

- Agency, what. SEC. 1216. An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.
- Who may appoint and who may be an agent. SEC. 1217. Any person, having capacity to contract, may appoint an agent; and any person may be an agent.
- Agents, general or special. SEC. 1218. An agent for a particular act or transaction, is called a special agent. All others are general agents.
- Agency, actual or ostensible. SEC. 1219. An agency is either actual or ostensible.
- Actual agency. SEC. 1220. An agency is actual when the agent is really employed by the principal.
- Ostensible agency. SEC. 1221. An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent, who is not really employed by him.

ARTICLE II.

AUTHORITY OF AGENTS.

- SECTION 1222. What authority may be conferred.
 1223. Agent may perform acts required of principal by Code.
 1224. Agent cannot have authority to defraud principal.
 1225. Creation of agency.
 1226. Consideration, unnecessary.
 1227. Form of authority.
 1228. Ratification of agent's act.
 1229. Ratification of part of a transaction.
 1230. When ratification void.
 1231. Ratification not to work injury to third persons.
 1232. Rescission of ratification.
 1233. Measure of agent's authority.
 1234. Actual authority, what.

- 1235. Ostensible authority, what.
- 1236. Agent's authority as to persons having notice of restrictions upon it.
- 1237. Agent's necessary authority.
- 1238. Agent's power to disobey instructions.
- 1239. Authority to be construed by its specific, rather than by its general, terms.
- 1240. Exceptions to general authority.
- 1241. What included in authority to sell personal property.
- 1242. What included in authority to sell real property.
- 1243. Authority of general agent to receive price of property.
- 1244. Authority of special agent to receive price.

SEC. 1222. An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention. What authority may be conferred.

SEC. 1223. Every act which, according to this Code, may be done by or to any person, may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears. Agent may perform acts required of principal by Code.

SEC. 1224. An agent can never have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom he deals to be, a fraud upon the principal. Agent cannot have authority to defraud principal.

SEC. 1225. An agency may be created, and an authority may be conferred, by a precedent authorization, or a subsequent ratification. Creation of agency.

SEC. 1226. A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal. Consideration unnecessary.

SEC. 1227. An oral authorization is sufficient for any purpose, except that: Form of authority.

1. An authority to enter into a contract under seal can only be given by an instrument under seal; and,
2. An authority to enter into a contract for the transfer of real property, or to declare a trust in relation thereto, can only be given in writing.

SEC. 1228. A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or, where an oral authorization would suffice, by accepting or retaining the benefit of the act, with notice thereof. Ratification of agent's act.

Ratification of part of a transaction.

SEC. 1229. Ratification of part of an indivisible transaction is a ratification of the whole.

When ratification void.

SEC. 1230. A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

Ratification not to work injury to third persons.

SEC. 1231. No authorized act can be made valid, retroactively, to the prejudice of third persons, without their consent.

Rescission of ratification.

SEC. 1232. A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise.

Measure of agent's authority.

SEC. 1233. An agent has such authority as the principal, actually or ostensibly, confers upon him.

Actual authority, what.

SEC. 1234. Actual authority is such as a principal intentionally confers upon the agent, or intentionally or by want of ordinary care, allows the agent to believe himself to possess.

Ostensible authority, what.

SEC. 1235. Ostensible authority is such as a principal intentionally, or by want of ordinary care, causes or allows a third person to believe the agent to possess.

Agent's authority as to persons having notice of restrictions upon it.

SEC. 1236. Every agent has actually such authority as is defined by this Title, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority.

Agent's necessary authority.

SEC. 1237. An agent has authority:

1. To do everything necessary, or proper and usual in the ordinary course of business, for effecting the purpose of his agency; and,

2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

Agent's power to disobey instructions.

SEC. 1238. An agent has power to disobey instructions in dealing with the subject of the agency, in cases where it is clearly for the interest of his principal that he should do so, and there is not time to communicate with the principal.

SEC. 1239. When an authority is given partly in general, and partly in specific terms, the general authority gives no higher powers than those specifically mentioned. Authority to be construed by its specific, rather than its general terms.

SEC. 1240. An authority expressed in general terms, however broad, does not authorize an agent: Exceptions to general authority.

1. To act in his own name, unless it is in the usual course of his business to do so;

2. To define the scope of his agency; or,

3. To do any act which a trustee is forbidden to do by article II, of chapter I, of the last Title.

SEC. 1241. An authority to sell personal property includes authority to warrant the title of the principal, and the quality and quantity of the property. What included in authority to sell personal property.

SEC. 1242. An authority to sell and convey real property includes authority to give the usual covenants of warranty. What included in authority to sell real property.

SEC. 1243. A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price. Authority of general agent to receive price of property.

SEC. 1244. A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards. Authority of special agent to receive price.

ARTICLE III.

MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS.

SECTION 1245. Principal how affected by acts of agent within the scope of his authority.

1246. Principal, when bound by incomplete execution of authority.

1247. Notice to agent, when notice to principal.

1248. Obligation of principal when agent exceeds his authority.

1249. For acts done under a merely ostensible authority.

1250. When exclusive credit is given to agent.

1251. Rights of person who deals with agent without knowledge of his agency.

1252. Effect of a written instrument by which the agent intends to bind the principal.

1253. Principal's responsibility for agent's negligence or omission.

1254. Principal's responsibility for wrongs willfully committed by the agent.

Principal, how affected by acts of agent within the scope of his authority.

SEC. 1245. An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal.

Principal, when bound by incomplete execution of authority.

SEC. 1246. A principal is bound by an incomplete execution of an authority, when it is consistent with the whole purpose and scope thereof, but not otherwise.

Notice to agent when notice to principal.

SEC. 1247. As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

Obligation of principal when agent exceeds his authority.

SEC. 1248. When an agent exceeds his authority, his principal is bound by his authorized acts so far only as they can be plainly separated from those which are [un]authorized.

For acts done under a merely ostensible authority.

SEC. 1249. A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without ordinary negligence, incurred a liability, or parted with value, upon the faith thereof.

When exclusive credit is given to agent.

SEC. 1250. If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent, in good faith, before receiving notice of the creditor's election to hold him responsible.

Rights of persons who deal with agent without knowledge of his agency.

SEC. 1251. One who deals with an agent, without knowing or having reason to believe that the agent acts as such in the transaction, may set off, against any claim of the principal arising out of the same, all claims which he might have set off against the agent before notice of the agency.

Effect of a written instrument by which the agent intends to bind the principal.

SEC. 1252. Any instrument within the scope of his authority, whether under seal or not, by which an agent intends to bind his principal, does bind him, if such intent is plainly inferable from the instrument itself.

Principal's responsibility for agent's negligence or omission.

SEC. 1253. Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in, and as a part of, the transaction

of such business; and for his willful omission to fulfill the obligations of the principal.

SEC. 1254. A principal is responsible for no other wrongs committed by his agent, than those mentioned in the last section, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

Principal's responsibility for wrongs willfully committed by the agent.

ARTICLE IV.

OBLIGATIONS OF AGENTS TO THIRD PERSONS.

SECTION 1255. Warranty of authority.

1256. Agent's responsibility to third persons.

1257. Obligation of agent to surrender property to third person.

1258. Agent not having capacity to contract.

SEC. 1255. One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assumes.

Warranty of authority.

SEC. 1256. One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, in any of the following cases, and in no others:

Agent's responsibility to third persons.

1. When, with his consent, credit is given to him personally in a transaction;
2. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so; or,
3. When his acts are wrongful in their nature.

SEC. 1257. If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same; and is responsible therefor, if, after notice from the owner, he delivers it to his principal.

Obligation of agent to surrender property to third person.

Agent not having capacity to contract.

SEC. 1258. The provisions of this article are subject to the provisions of Part I of the First Division of this Code.

ARTICLE V.

DELEGATION OF AGENCY.

- SECTION 1259. Agent's delegation of his powers.
- 1260. Agent's unauthorized employment of sub-agent.
- 1261. Sub-agent, rightfully appointed, represents principal.

Agent's delegation of his powers.

SEC. 1259. An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, and in no others:

1. When the act to be done is purely mechanical;
2. When it is such as the agent cannot himself, and the sub-agent can, lawfully perform;
3. When it is the usage of the place to delegate such powers; or,
4. When such delegation is specially authorized by the principal.

Agent's unauthorized employment of sub agent.

SEC. 1260. If an agent employs a sub-agent without authority, the former is a principal, and the latter his agent, and the principal of the former has no connection with the latter.

Sub-agent rightfully appointed represents principal.

SEC. 1261. A sub-agent, lawfully appointed, represents the principal in like manner with the original agent; and the original agent is not responsible to third persons for the acts of the sub-agent.

ARTICLE VI.

TERMINATION OF AGENCY.

SECTION 1262, 1263. Termination of agency.

SEC. 1262. An agency is terminated, as to every person hav- Termination
of agency.
ing notice thereof, by:

1. The expiration of its term;
2. The extinction of its subject;
3. The death of the agent;
4. His renunciation of the agency; or,
5. The incapacity of the agent to act as such.

SEC. 1263. Unless the power of an agent is coupled with an Same.
interest in the subject of the agency, it is terminated as to
every person having notice thereof, by:

1. Its revocation by the principal;
2. His death; or,
3. His incapacity to contract.

CHAPTER II.

PARTICULAR AGENCIES.

ARTICLE I. Auctioneers.

II. Factors.

III. Shipmasters and pilots.

IV. Ship's managers.

ARTICLE I.

AUCTIONEERS.

SECTION 1264. Auctioneer's authority from the seller.

1265. Auctioneer's authority from the bidder.

Auctioneer's
authority from
the seller.

SEC. 1264. An auctioneer, in the absence of special authorization or usage to the contrary, has authority from the seller, only as follows:

1. To sell by public auction to the highest bidder;
2. To sell for cash only, except such articles as are usually sold on credit at auction;
3. To warrant in like manner with other agents to sell, according to section 1241;
4. To prescribe reasonable rules and terms of sale;
5. To deliver the thing sold, upon payment of the price;
6. To collect the price; and,
7. To do whatever else is necessary, or proper and usual, in the ordinary course of business, for effecting these purposes.

Auctioneer's
authority from
the bidder.

SEC. 1265. An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract as prescribed in the Title on Sale.

ARTICLE II.

FACTORS.

SECTION 1266. Factor, what.

1267. Actual authority of factor.

1268. Ostensible authority.

SEC. 1266. A factor is an agent, who is employed to buy or sell property in his own name, and who is intrusted by his principal with the possession thereof. Factor, what.

SEC. 1267. In addition to the authority of agents in general, a factor has actual authority from his principal, unless specially restricted. Actual authority of factor.

1. To insure property consigned to him uninsured;
2. To sell, on credit, anything intrusted to him for sale, except such things as it is contrary to usage to sell on credit; but not to pledge, mortgage, or barter the same; and,
3. To delegate his authority to his partner or servant, but not to any person in an independent employment.

SEC. 1268. A factor has ostensible authority, as to persons having no notice that the property with which he deals is not his own, to deal with it in any manner. Ostensible authority.

ARTICLE III.

SHIP MASTERS AND PILOTS.

SECTION 1269. Authority of shipmaster on behalf of shipowner.

- 1270. Authority to borrow.
- 1271. Authority on behalf of owners of cargo.
- 1272. Power to make contracts.
- 1273. Power to hypothecate.
- 1274. Master's power to sell ship.
- 1275. Master's power to sell cargo.
- 1276. Authority to ransom ship.
- 1277. Abandonment terminates master's power.
- 1278. Personal liability for contracts concerning the ship.
- 1279. Liability for acts of persons employed upon the ship.
- 1280. Responsibility for negligence of pilot.

SEC. 1269. The master of a ship is a general agent for its owner in all matters concerning the same. Authority of shipmaster on behalf of shipowner.

SEC. 1270. The master of a ship has authority to borrow money on the credit of its owner, if it is necessary to enable Authority to borrow.

him to complete the voyage, and if neither the owner nor his proper agent for such matters can be consulted, without injurious delay.

Authority on behalf of owners of cargo.

SEC. 1271. The master of a ship, during a voyage, is a general agent for each of the owners of the cargo, and has authority to do whatever they might do for the preservation of their respective interests, except to sell or hypothecate the same.

Power to make contracts.

SEC. 1272. The master of a ship may procure all its necessary repairs and supplies, may engage cargo and passengers for carriage, and in foreign port, may enter into a charter-party; and his contracts for these purposes bind the owner to the full amount of the value of the ship and freightage.

Power to hypothecate.

SEC. 1273. The master of a ship may hypothecate the ship, freightage and cargo, in the cases prescribed by the chapters on Bottomry and Respondentia, and in no others.

Master's power to sell ship.

SEC. 1274. When a ship, whether foreign or domestic, is seriously injured, or the voyage is otherwise broken up, beyond the possibility of pursuing it, the master, in case of necessity, may sell the ship without instructions from the owners, unless by the earliest use of ordinary means of communication, he can inform the owners, and await their instructions.

Master's power to sell cargo.

SEC. 1275. The master of a ship may sell the cargo, if the voyage is broken up beyond the possibility of pursuing it, and no other ship can be obtained to carry it to its destination, and the sale is otherwise absolutely necessary.

Authority to ransom ship.

SEC. 1276. The master of a ship, in case of its capture, may engage to pay a ransom for it, in money or in part of the cargo, and his engagement will bind the ship, freightage and cargo.

Abandonment terminates master's power.

SEC. 1277. The power of the master of a ship to bind its owner, or the owners of the cargo, ceases upon the abandonment of the ship and freightage to insurers.

Personal liability for contracts concerning the ship.

SEC. 1278. Unless otherwise expressly agreed, or unless the contracting parties give exclusive credit to the owner, the master of a ship is personally liable upon his contracts relative thereto, even when the owner is also liable.

Liability for acts of persons employed upon the ship.

SEC. 1279. The master of a ship is liable to third persons for the acts or negligence of persons employed in its naviga-

tion, whether appointed by him or not, to the same extent as the owner of the ship.

SEC. 1280. The owner or master of a ship is not responsible for the negligence of a pilot whom he is bound by law to employ; but if he is allowed an option between pilots, some of whom are competent, or is required only to pay compensation to a pilot, whether he employs him or not, he is responsible to third persons.

Responsibility
for negligence
of pilot.

ARTICLE IV.

SHIP'S MANAGERS.

SECTION 1281. What powers manager has.

1282. What powers he has not.

SEC. 1281. A ship's manager has power to make contracts requisite for the performance of his duties as such; to enter into charter-parties, or make contracts for carriage; and to settle for freightage and adjust averages.

What powers
manager has.

SEC. 1282. Without special authority, a ship's manager cannot borrow money, or give up the lien for freightage, or purchase a cargo, or bind the owners of the ship to an insurance.

What powers
he has not.

TITLE X.

PARTNERSHIP.

CHAPTER I. Partnership in general.

II. General partnership.

III. Special partnership.

CHAPTER I.

PARTNERSHIP IN GENERAL.

ARTICLE I. What constitutes a partnership.

II. Partnership property.

III. Mutual obligations of partners.

IV. Renunciation of partnership.

ARTICLE I.

WHAT CONSTITUTES A PARTNERSHIP.

SECTION 1283. Partnership, what.

1284. Ship owners.

1285. Formation of partnership.

Partnership,
what.

SEC. 1283. Partnership is the association of two or more persons, for the purpose of carrying on business together, and dividing its profits between them.

Ship owners.

SEC. 1284. Part owners of a ship do not, by simply using it in joint enterprise, become partners as to the ship.

Formation of
partnership.

SEC. 1285. A partnership can be formed only by the consent of all the parties thereto, and therefore no new partner can be admitted into a partnership, without the consent of every existing member thereof.

ARTICLE II.

PARTNERSHIP PROPERTY.

- SECTION 1286.** Partnership property, what.
- 1287. Partner's interest in partnership property.
- 1288. Partner's share in profits and losses.
- 1289. When division of losses implied.
- 1290. Partner may require application of partnership property.
- 1291. What property is partnership property.

SEC. 1286. The property of a partnership consists of all that Partnership property, what. is contributed to the common stock at the formation of the partnership, and of all that is subsequently acquired thereby.

SEC. 1287. The interest of each member of a partnership Partner's interest in partnership property. extends to every portion of its property.

SEC. 1288. In the absence of an agreement on the subject, Partner's share in profits and losses. the shares of partners in the profits or loss of the business are equal, and the share of each in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.

SEC. 1289. An agreement to divide the profits of a business When division of losses implied. implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated.

SEC. 1290. Each member of a partnership may require its Partner may require application of partnership property to payment of debts. property to be applied to the discharge of its debts, and has a lien upon the shares of the other partners for this purpose, and for the payment of the general balance, if any, due to him.

SEC. 1291. Property, whether real or personal, acquired with What property is partnership property. partnership funds, is presumed to be partnership property.

ARTICLE III.

MUTUAL OBLIGATIONS OF PARTNERS.

SECTION 1292. Partners, trustees for each other.

1293. Good faith to be observed between partners.

1294. Mutual liability of partners to account.

1295. No compensation for services to firm.

Partners,
trustees for
each other.

SEC. 1292. The relations of partners are confidential. They are trustees for each other, within the meaning of Chapter I of the Title on Trusts. Their obligations, as such trustees, are defined by that chapter.

Good faith to
be observed
between
partners.

SEC. 1293. In all proceedings connected with the formation, conduct, dissolution, and liquidation of the partnership, every partner is bound to act in the highest good faith, toward his copartners. He may not obtain any advantage over them in the partnership affairs by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

Mutual liability
of partners
to account.

SEC. 1294. Each member of a partnership must account to it for everything that he receives on account thereof, and is entitled to reimbursement therefrom for everything that he properly expends for the benefit thereof, and to be indemnified thereby for all losses and risks which he necessarily incurs on its behalf.

No compensa-
tion for servi-
ces to firm.

SEC. 1295. A partner is not entitled to any compensation for services rendered by him to the partnership.

ARTICLE IV.

RENUNCIATION OF PARTNERSHIP.

SECTION 1296. Renunciation of future profits exonerates from liability.

1297. Effect of renunciation.

SEC. 1296. A partner may exonerate himself from all future liability to a third person on account of the partnership, by renouncing, in good faith, all participation in its future profits, and giving notice to such third person, and to his own copartners, that he has made such renunciation, and that, so far as may be in his power, he dissolves the partnership, and does not intend to be liable on account thereof for the future.

Renunciation
of future profits
exonerates
from liability.

SEC. 1297. After a partner has given notice of his renunciation of the partnership, he cannot claim any of its subsequent profits, and his copartners may proceed to dissolve the partnership.

Effect of
renunciation.

CHAPTER II.

GENERAL PARTNERSHIP.

ARTICLE I. What is a general partnership.

II. Powers and authority of partners.

III. Mutual obligations of partners.

IV. Liability of partners.

V. Termination of partnership.

VI. Liquidation.

VII. Of the use of fictitious names.

ARTICLE I.

WHAT IS A GENERAL PARTNERSHIP.

SECTION 1298. General partnership, what.

SEC. 1298. Every partnership, that is not formed in accordance with the law concerning special partnership, and every special partnership, so far only as the general partners are concerned, is a general partnership.

General part-
nership, what.

ARTICLE II.

POWERS AND AUTHORITY OF PARTNERS.

SECTION 1299. Power of majority of partners.

1300. Authority of individual partner.

1301. What authority partner has not.

1302. Partner's acts in bad faith, when ineffectual.

Power of ma-
jority of
partners.

SEC. 1299. Unless otherwise expressly stipulated, the decision of the majority of the members of a general partnership binds it in the conduct of its business.

Authority of
individual
partner.

SEC. 1300. Every general partner is agent for the partnership in the transaction of its business, and has authority to do whatever is necessary to carry on such business in the ordinary manner, and for this purpose may bind his copartners by an agreement under seal.

What author-
ity partner has
not.

SEC. 1301. A partner, as such, has not authority to do any of the following acts, unless his copartners have wholly abandoned the business to him, or are incapable of acting:

1. To make an assignment of the partnership property, or any portion thereof, to a creditor, or to a third person, in trust for the benefit of a creditor or of all creditors;
2. To dispose of the good will of the business;
3. To dispose of the whole of the partnership property at once, unless it consists entirely of merchandise;
4. To do any act which would make it impossible to carry on the ordinary business of the partnership; or,
5. To do any other act not within the scope of section 1300.

Partner's acts
in bad faith,
when ineffec-
tual.

SEC. 1302. A partner is not bound by any act of a copartner in bad faith toward him, though within the scope of a partner's powers, except in favor of persons who have in good faith parted with value in reliance upon such act.

ARTICLE III.

MUTUAL OBLIGATIONS OF PARTNERS.

SECTION 1303. Profits of individual partners.

1304. In what business partner may not engage.

1305. In what he may engage.

1306. Must account to the firm for profits.

SEC. 1303. All profits made by a general partner, in the course of any business usually carried on by the partnership, belong to the firm. Profits of individual partner.

SEC. 1304. A general partner, who agrees to give his personal attention to the business of the partnership, may not engage in any business which gives him an interest adverse to that of the partnership, or which prevents him from giving to such business all the attention which would be advantageous to it. In what business partner may not engage

SEC. 1305. A partner may engage in any separate business, except as otherwise provided by the last two sections. In what he may engage.

SEC. 1306. A general partner, transacting business contrary to the provisions of this article, may be required by any co-partner to account to the partnership for the profits of such business. Must account to the firm for profits.

ARTICLE IV.

LIABILITY OF PARTNERS.

SECTION 1307, 1308. Liability of partners to third persons.

1309. Liability of one held out as partner.

1310. No one liable as partner, unless held out as such.

Liability of partners to third persons.

SEC. 1307. Every general partner is liable to third persons for all the obligations of the partnership, jointly with his co-partners.

Liability of general partners for other's acts.

SEC. 1308. The liability of general partners for each other's acts is defined by the Title on Agency.

Liability of one held out as partner.

SEC. 1309. Any one permitting himself to be represented as a partner, general or special, is liable as such to third persons to whom such representation is communicated, who on the faith thereof give credit to the partnership.

No one liable as partner, unless held out as such.

SEC. 1310. No one is liable as a partner, who is not such in fact, except as provided by the last section.

ARTICLE V.

TERMINATION OF PARTNERSHIP.

- SECTION 1311. Duration of partnership.
 1312. Total dissolution of partnership.
 1313. Partial dissolution.
 1314. Partner entitled to dissolution.
 1315. Notice of termination.
 1316. Notice by change of name.

Duration of partnership.

SEC. 1311. If no term is prescribed by agreement for its duration, a general partnership continues until dissolved by a partner or by operation of law.

Total dissolution of partnership.

SEC. 1312. A general partnership is dissolved, as to all the partners:

1. By lapse of the time prescribed by agreement for its duration;
2. By the expressed will of any partner, if there is no such agreement;
3. By the death of a partner;
4. By the transfer, to a person not a partner, of the interest of any partner in the partnership property;

5. By war, or the prohibition of commercial intercourse, between the country in which one partner resides, and that in which another resides; or,

6. By a judgment of dissolution.

SEC. 1313. A general partnership may be dissolved, as to ^{Partial disso-} himself only, by the expressed will of any partner, notwithstanding his agreement for its continuance, subject, however, to liability to his copartners for any damage caused to them thereby, unless the circumstances are such as entitle him to a judgment of dissolution.

SEC. 1314. A general partner is entitled to a judgment of ^{Partner enti-} dissolution: ^{itled to dissolu-}

1. When he, or another partner, becomes legally incapable of contracting;

2. When another partner fails to perform his duties under the agreement of partnership, or is guilty of serious misconduct; or,

3. When the business of the partnership can be carried on only at a permanent loss.

SEC. 1315. The liability of a general partner for the acts of ^{Notice of ter-} his co-partners continues, even after a dissolution of the partnership, in favor of persons who have had dealings with, and given credit to, the partnership, during its existence, until they have had personal notice of the dissolution; and in favor of other persons, until such dissolution has been advertised in a newspaper published in every county where the partnership, at the time of its dissolution, had a place of business; to the extent, in either case, to which such persons part with value, in good faith, and in the belief that such partner is still a member of the firm.

SEC. 1316. A change of the partnership name, which plainly indicates the withdrawal of a partner, is sufficient notice of the fact of such withdrawal to all persons to whom it is communicated. But a change in the name which does not contain such an indication, is not notice of the withdrawal of any partner. ^{Notice by} ^{change of name.}

ARTICLE VI.

LIQUIDATION.

SECTION 1317. Powers of partners after dissolution.

1318. Who may act in liquidation.

1319. Who may not act in liquidation.

1320, 1321. Powers of partners in liquidation.

Powers of
partners after
dissolution.

SEC. 1317. After the dissolution of a partnership, the powers and authority of the partners are such only as are prescribed by this article.

Who may act
in liquidation.

SEC. 1318. Any member of a general partnership may act in liquidation of its affairs, except as provided by the next section.

Who may not
act in liquida-
tion.

SEC. 1319. If the liquidation of a partnership is committed, by consent of all the partners, to one or more of them, others have no right to act therein; but their acts are valid favor of persons parting with value, in good faith, upon the credit thereof.

Powers of
partners in
liquidation.

SEC. 1320. A partner authorized to act in liquidation may collect, compromise or release any debts due to the partnership, pay or compromise any claims against it, and dispose of the partnership property.

Same.

SEC. 1321. A partner authorized to act in liquidation may enter, in the name of the firm, into any obligation by way of satisfaction of a partnership debt, or as a collateral security therefor, but he cannot make, draw or indorse, any other obligation in its name, nor revive a debt against the firm, by any acknowledgment or part payment, within the provisions of the Code of Civil Procedure concerning the times of commencing actions.

ARTICLE VII.

OF THE USE OF FICTITIOUS NAMES.

SECTION 1322. Fictitious name.

1323. Style of foreign partnership.

1324. Continuation of style of firm having foreign business relations.

1325. Certificate stating names, &c., of persons using such firm name to be filed and published.

1326. Register of such firms to be kept by register of deeds.

1327. Certified copies from register of deeds, and affidavits of publication to be evidence.

SEC. 1322. No partnership or person may transact business **by a fictitious name**, or in the name of a person not interested **in such business**, except as prescribed in this article. Fictitious name.

SEC. 1323. A commercial partnership, established and trans- Style of foreign partnership.
acting business in a place without the United States, may use **in this Territory** the partnership name used by it there, **although fictitious**.

SEC. 1324. The name of a partnership, which has had busi- Continuation of style of firm having foreign business relations.
ness relations with places without the United States, may be **continued in use** by the persons succeeding to its business, and **by their successors**, upon compliance with the provisions of **this article**, and with the consent of the persons, if living, **whose names are used**.

SEC. 1325. On every change of the persons continuing the Certificates stating names, &c., of persons using such firm name to be filed and published.
use of a partnership name, under the last section, the person **acquiring the right** to use it must sign and acknowledge **before a proper officer** for that purpose, a certificate, stating **the name of each person** dealing under such name, and his **place of residence**, and must file the same with the register of **deeds of the county** in which their principal place of business **is situated**, and must publish such certificate, or a statement **containing the substance thereof**, once in each week, for four

successive weeks, beginning within one week after his first using such name, in a newspaper of this Territory.

Register of such firms to be kept by county clerk.

SEC. 1326. Every register of deeds must keep a register of the names of firms and persons mentioned in certificates filed with him, pursuant to the last section, entering in alphabetical order the name of every such partnership, and of each partner therein.

Certified copies from register and affidavit of publication to be evidence.

SEC. 1327. Copies of the entries of a register of deeds herein directed, when certified by him, and affidavits of publication as herein directed, made by the printer, publisher or chief clerk of a newspaper, are presumptive evidence of the facts therein stated.

CHAPTER III.

SPECIAL PARTNERSHIP.

ARTICLE I. Formation of the partnership.

II. Powers, rights and duties of the partners.

III. Liability of partners.

IV. Alteration and dissolution of the partnership.

ARTICLE I.

FORMATION OF THE PARTNERSHIP.

SECTION 1328. Special partnership, how formed.

1329. Constitution of.

1330. Certificate of special partnership.

1331. Proof of certificate.

1332, 1333. Certificate to be filed and recorded.

SECTION 1334. Affidavit of actual payment of capital by special partner to be filed.

1335. Special partnership, when formed.

1336. Publication of certificate.

1337. Affidavit of publication.

1338. Effect of omission or informality of publication.

1339. Renewal of special partnership to be certified and published.

SEC. 1328. A special partnership may be formed by two or more persons in the manner and with the effect prescribed in this chapter, for the transaction of any business, except banking or insurance. Special partnership, how formed.

SEC. 1329. A special partnership may consist of one or more persons, called general partners, and one or more persons called special partners. Constitution of.

SEC. 1330. Persons desirous of forming a special partnership must severally sign a certificate, stating: Certificate of special partnership.

1. The name under which such partnership is to be conducted;

2. The general nature of the business intended to be transacted;

3. The names of all the partners, and their residences, specifying which are general and which are special partners;

4. The amount of capital which each special partner has contributed to the common stock; and,

5. The periods at which such partnership will begin and end.

SEC. 1331. A certificate under the last section must be acknowledged or proved, as to the several persons signing the same, in the manner prescribed by sections 516 to 529. Proof of certificate.

SEC. 1332. The certificate of a special partnership, when duly acknowledged and certified, must be filed with the register of deeds of the county in which the partnership is to have its principal place of business, and must be recorded by him at large, in a book kept for that purpose, open to public inspection. Certificate to be filed and recorded.

SEC. 1333. A transcript of the record made pursuant to the last section, duly certified by the register of deeds under his official seal, must be filed and recorded in like manner in the office of the register of deeds of every county in which the partnership has a place of business. Same.

Affidavit of actual payment of capital by special partner to be filed.

SEC. 1334. An affidavit of one or more of the general or special partners in a special partnership, stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners, have been actually and in good faith paid in cash, must be filed in the same office with the original certificate.

Special partnership, when formed.

SEC. 1335. No special partnership is formed, until the provisions of the last five sections are complied with.

Publication of certificate.

SEC. 1336. The certificate mentioned in section 1330, or a statement of its substance, must be published in one or more newspapers, designated by the register of deeds with whom the original certificate is filed, and published in this Territory. Such publication must be made once a week for six weeks, beginning within one week from the time of filing the certificate.

Affidavit of publication.

SEC. 1337. An affidavit of publication pursuant to this chapter, made by the printer, publisher or chief clerk of a newspaper, may be filed with the register of deeds with whom the original certificate was filed, and is presumptive evidence of the facts therein stated.

Effect of omission or informality of publication.

SEC. 1338. If the publication directed by section 1336 is not made, the partnership is general from its beginning. But if, from any cause beyond the control of the partners, the publication is not made in exact conformity with that section, it is sufficient if made as nearly in conformity therewith as may be in their power.

Renewal of special partnership to be certified and published.

SEC. 1339. Every renewal or continuance of a special partnership must be certified, recorded, verified and published in the same manner as upon its original formation.

ARTICLE II.

POWERS, RIGHTS AND DUTIES OF THE PARTNERS.

SECTION 1340. Firm name, how composed.

1341. Authority of special partner.

SECTION 1342. His relation to his copartners.

1343. Loans of special partner to firm.

1344. Special partner need not be joined in suit with general partners.

1345. May not withdraw his capital.

1346. May draw profits, &c.

1347. Capital withdrawn to be restored.

1348. Certain transfers of property, void.

SEC. 1340. The business of a special partnership must be conducted under a name, consisting of the names of one or more of the general partners only, with or without the addition of the words "and company." Firm name, how composed.

SEC. 1341. The general partners only have authority to transact the business of a special partnership. The special partners may negotiate business for it, subject to the subsequent approval of a general partner, but must not act on its behalf in any other manner. Authority of special partner.

SEC. 1342. A special partner may at all times investigate the partnership affairs, and advise his partners or their agents as to their management. His relation to his co-partners.

SEC. 1343. A special partner may lend money to the partnership, or advance money for it, and take from it security therefor, and as to such loans or advances has the same rights as any other creditor; but, in case of the insolvency of the partnership, all other claims which he may have against it must be postponed until all other creditors are satisfied. Loans of special partner to firm.

SEC. 1344. In all matters relating to a special partnership, its general partners may sue and be sued alone, in the same manner as if there were no special partners. Special partner need not be joined in suit with general partners.

SEC. 1345. No special partner under any pretense, may withdraw any part of the capital invested by him in the partnership during its continuance. May not withdraw his capital.

SEC. 1346. A special partner may receive such lawful interest, and such proportion of profits, as may be agreed upon, if not paid out of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses. May draw profits, &c.

SEC. 1347. If a special partner withdraws capital from the firm, contrary to the provisions of sections 1345, he must restore the same with interest. Capital withdrawn to be restored.

Certain transfers of property, void.

SEC. 1348. Every transfer of the property of a special partnership, or of a partner therein, made after or in contemplation of the insolvency of such partnership or partner, with intent to give a preference to any creditor of such partnership or partner, over any other creditor of such partnership, is void against the creditors thereof; and every judgment confessed, lien created, or security given, in like manner and with the like intent is in like manner void.

ARTICLE III.

LIABILITY OF PARTNERS.

SECTION 1340. Liability of general partner in special partnership.

1350, 1351. Liability of special partner; what acts render him a general partner.

1352. Who may not question existence of special partnership.

Liability of general partner in special partnership.

SEC. 1349. The general partners in a special partnership are liable to the same extent as partners in a general partnership.

Liability of special partner; what acts render him a general partner

SEC. 1350. The contribution of a special partner to the capital of the firm, and the increase thereof, is liable for its debts, but he is not otherwise liable therefor, except as follows:

1. If he has willfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed therewith, or the published announcement thereof, he is liable as a general partner to all creditors of the firm;

2. If he has willfully interfered with the business of the firm, except as permitted by sections 1341 and 1342, he is liable in like manner; or,

3. If he has willfully joined in or assented to an act contrary to any of the provisions of sections 1340, 1345 and 1348, he is liable in like manner.

SEC. 1351. When a special partner has unintentionally done any of the acts mentioned in the last section, he is liable as a general partner to any creditor of the firm who has been actually misled thereby to his prejudice. Same.

SEC. 1352. One who, upon making a contract with a partnership, accepts from or gives to it a written memorandum of the contract, stating that the partnership is special, and giving the names of the special partners, cannot afterwards charge the persons thus named as general partners upon that contract, by reason of any error or defect in the proceedings for the creation of the special partnership, prior to the acceptance of the memorandum, if an effort has been made by the partners, in good faith, to form a special partnership in the manner required by law. Who may not question existence of special partnership.

ARTICLE IV.

ALTERATION AND DISSOLUTION.

SECTION 1353. Partnership made general, by omission to notify changes.

1354. Admission of new special partners to be notified.

1355. Purchaser of interest of special partner, &c., may become a special partner.

1356. Dissolution of special partnership.

SEC. 1353. A special partnership becomes general, if, within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature of its business, or in its name, a certificate of such fact, signed by one or more of the partners, is not filed with the clerk with whom the original certificate of the partnership was filed. Partnership made general, by omission to notify change.

SEC. 1354. New special partners may be admitted into a special partnership, upon a certificate, stating the names, residences and contributions to the common stock of each of such partners, signed by each of them, and by the general partners, verified according to section 1334, acknowledged or proved, and filed, according to sections 1331 and 1332, with the regis- Admission of new special partners to be notified.

ter of deeds with whom the original certificate of the partnership was filed.

Purchaser of interest of special partner, &c., may become special partner.

SEC. 1355. A special partner, or his legal representatives, may sell his interest in the partnership, and the purchaser thereof may, with the consent of the other partners, become a special partner, without changing the nature of the partnership, upon filing a notice of sale within ten days thereafter with the register of deeds with whom the original certificate of such partnership was filed.

Dissolution of special partnership.

SEC. 1356. A special partnership is subject to dissolution in the same manner as a general partnership, except that no dissolution by the act of the partners is complete, until a notice thereof has been filed and recorded in the office of the register of deeds with whom the original certificate was recorded, and published once in each week for four weeks, in a newspaper published in this Territory.

TITLE XI.

INSURANCE.

- CHAPTER I. Insurance in general.
- II. Marine insurance.
 - III. Fire insurance.
 - IV. Life and health insurance.

CHAPTER I.

INSURANCE IN GENERAL.

- ARTICLE I. Definition of insurance.
- II. What may be insured.

ARTICLE III. Parties.

- IV. Insurable interest.
- V. Concealment and representation.
- VI. The policy.
- VII. Warranties.
- VIII. Premiums.
- IX. Loss.
- X. Notice of loss.
- XI. Double insurance.
- XII. Re-insurance.

ARTICLE I.

DEFINITION OF INSURANCE.

SECTION 1357. Insurance, what.

SEC. 1357. Insurance is a contract whereby one undertakes ^{insurance.} ~~what.~~ to indemnify another against loss, damage or liability, arising from an unknown or contingent event.

ARTICLE II.

WHAT MAY BE INSURED.

SECTION 1358. What events may be insured against.

1359. Usual kinds of insurance.

1360. All subject to this chapter.

SEC. 1358. Any contingent or unknown event, whether past ^{What events} or future, which may damnify a person having an insurable ^{may be insured} ~~against.~~

interest, or create a liability against him, may be insured against, subject to the provisions of this chapter.

Usual kinds
of insurance.

SEC. 1359. The most usual kinds of insurance are:

1. Marine insurance;
2. Fire insurance;
3. Life insurance; and,
4. Health insurance.

All subject to
this chapter.

SEC. 1360. All kinds of insurance are subject to the provisions of this chapter.

ARTICLE III.

PARTIES TO THE CONTRACT.

SECTION 1361. Designation of parties.

1362. Who may insure.

1363. Who may be insured.

1364, 1365. Assignment to mortgagee of thing insured.

Designation
of parties.

SEC. 1361. The person who undertakes to indemnify another, by a contract of insurance, is called the insurer, and the person indemnified is called the insured.

Who may
insure.

SEC. 1362. Any one who is capable of making a contract may be an insurer, subject to the restrictions imposed by special statutes upon foreign corporations, non-residents and others.

Who may be
insured.

SEC. 1363. Any one except a public enemy may be insured.

Assignment
to mortgagor of
thing insured.

SEC. 1364. Where a mortgagor of property effects insurance in his own name, providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to the mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract, and any act of his which would otherwise avoid the insurance will have the same effect, although the property is in the hands of the mortgagee.

SEC. 1365. If an insurer assents to the transfer of an insurance from a mortgagor to a mortgagee, and, at the time of his assent, imposes further obligations on the assignee, making a new contract with him, the acts of the mortgagor cannot affect his rights.

Same.

ARTICLE IV.

INSURABLE INTEREST.

SECTION 1366. Insurable interest, what.

1367. In what may consist.

1368. Interest of carrier or depositary.

1369. Mere expectancies.

1370. Measure of interest in property.

1371. Insurance without interest, illegal.

1372. When interest must exist.

1373. Effect of transfer.

1374. Transfer after loss.

1375. Exception in the case of several subjects in one policy.

1376. In case of the death of the insurer.

1377. In the case of transfer between co-tenants.

SEC. 1366. Every interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured, is an insurable interest. ^{Insurable interest, what.}

SEC. 1367. An insurable interest in property may consist ^{In what may consist.} in:

1. An existing interest;
2. An inchoate interest founded on an existing interest, or,
3. An expectancy, coupled with an existing interest in that out of which the expectancy arises.

SEC. 1368. A carrier or depositary of any kind has an insurable interest in a thing held by him as such, to the extent ^{Interest of carrier or depositary.} of its value.

SEC. 1369. A mere contingent or expectant interest in any thing, not founded on an actual right to the thing, nor upon any valid contract for it, is not insurable. ^{Mere expectancies.}

Measures of interest in property.

SEC. 1370. The measure of an insurable interest in property is the extent to which the insured might be damaged by loss or injury thereof.

Insurance without interest, illegal.

SEC. 1371. The sole object of insurance is the indemnity of the insured, and if he has no insurable interest the contract is void.

When interest must exist.

SEC. 1372. An interest insured must exist when the insurance takes effect, and when the loss occurs, but need not exist in the meantime.

Effect of transfer.

SEC. 1373. Except in the cases specified in the next four sections, and in the cases of life and health insurance, a change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing and the insurance are vested in the same person.

Transfer after loss.

SEC. 1374. A change of interest in a thing insured, after the occurrence of an injury which results in a loss, does not affect the right of the insured to indemnity for the loss.

Exception in the case of several subjects in one policy.

SEC. 1375. A change of interest in one or more of several distinct things, separately insured by one policy, does not avoid the insurance as to the others.

In the case of the death of the insured.

SEC. 1376. A change of interest, by will or succession, on the death of the insured, does not avoid an insurance; and his interest in the insurance passes to the person taking his interest in the thing insured.

In the case of transfer between co-tenants.

SEC. 1377. A transfer of interest by one of several partners, joint owners or owners in common, who are jointly insured, to the others, does not avoid an insurance, even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.

ARTICLE V.

CONCEALMENT AND REPRESENTATION.

- SECTION 1378.** Concealment, what.
 1379. Effect of concealment.
 1380. What must be disclosed.
 1381. Matters which need not be communicated without inquiry.
 1382. Test of materiality.
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 1391. Representation as to future.
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 1396. Falsity.
 1397. Effect of falsity.
 1398. Materiality.
 1399. Application of provisions of this article.

SEC. 1378. A neglect to communicate that which a party knows, and ought to communicate, is called a concealment. Concealment, what.

SEC. 1379. A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance. Effect of concealment.

SEC. 1380. Each party to a contract of insurance must communicate to the other, in good faith, all facts within his knowledge, which are, or which he believes to be material to the contract, and which the other has not the means of ascertaining, and as to which he makes no warranty. What must be disclosed.

Matters which need not be communicated without inquiry

SEC. 1381. Neither party to a contract of insurance is bound to communicate information of the matters following, except in answer to the inquiries of the other:

1. Those which the other knows;
2. Those which, in the exercise of ordinary care, the other ought to know, and of which the former has no reason to suppose him ignorant;
3. Those of which the other waives communication;
4. Those which prove or tend to prove the existence of a risk excluded by a warranty, and which are not otherwise material; and,
5. Those which relate to a risk excepted from the policy, and which are not otherwise material.

Text of materiality.

SEC. 1382. Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries.

Matters which each is bound to know.

SEC. 1383. Each party to a contract of insurance is bound to know all the general causes which are open to his inquiry, equally with that of the other, and which may affect either the political or material perils contemplated; and all general usages of trade.

Waiver of communication

SEC. 1384. The right to information of material facts may be waived, either by the terms of insurance, or by neglect to make inquiries as to such facts, where they are distinctly implied in other facts of which information is communicated.

Interest of insured.

SEC. 1385. Information of the nature or amount of the interest of one insured need not be communicated unless in answer to inquiry, except as prescribed by section 1401.

Fraudulent warranty.

SEC. 1386. An intentional and fraudulent omission, on the part of one insured, to communicate information of matters proving or tending to prove the falsity of a warranty, entitles the insurer to rescind.

Matters of opinion.

SEC. 1387. Neither party to a contract of insurance is bound to communicate, even upon inquiry, information of his own judgment upon the matters in question.

Representation, what.

SEC. 1388. A representation may be oral or written.

When made.

SEC. 1389. A representation may be made at the same time with the policy, or before it.

SEC. 1390. The language of a representation is to be interpreted by the same rules as the language of contracts in general. How interpreted.

SEC. 1391. A representation as to the future is to be deemed a promise, unless it appears that it was merely a statement of belief or expectation. Representation as to future.

SEC. 1392. A representation cannot be allowed to qualify an express provision in a contract of insurance; but it may qualify an implied warranty. How may affect policy.

SEC. 1393. A representation may be altered or withdrawn before the insurance is effected, but not afterwards. When may be withdrawn.

SEC. 1394. The completion of the contract of insurance is the time to which a representation must be presumed to refer. Time intended by representation.

SEC. 1395. When a person insured has no personal knowledge of a fact, he may nevertheless repeat information which he has upon the subject, and which he believes to be true, with the explanation that he does so on the information of others, or he may submit the information, in its whole extent, to the insurer; and in neither case is he responsible for its truth, unless it proceeds from an agent of the insured whose duty it is to give the intelligence. Representing information.

SEC. 1396. A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations. Falsity.

SEC. 1397. If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false. Effect of falsity.

SEC. 1398. The materiality of a representation is determined by the same rule as the materiality of a concealment. Materiality.

SEC. 1399. The provisions of this article apply as well to a modification of a contract of insurance as to its original formation. Application of provisions of this article.

ARTICLE VI.

THE POLICY.

SECTION 1400. Policy, what.

1401. What must be specified in a policy.

1402. Whose interest is covered.

1403. Insurance by agent or trustee.

1404. Insurance by part owner.

1405. General terms.

1406. Successive owners.

1407. Transfer of the thing insured.

1408. Open and valued policies.

1409. Open policy, what.

1410. Valued policy, what.

1411. Running policy, what.

1412. Effect of receipt.

1413. Agreement not to transfer.

Policy, what.

SEC. 1400. The written instrument, in which a contract of insurance is set forth, is called a policy of insurance.

What must be specified in a policy.

SEC. 1401. A policy of insurance must specify:

1. The parties between whom the contract is made;
2. The rate of premium;
3. The property or life insured;
4. The interest of the insured in property insured, if he is not the absolute owner thereof;
5. The risks insured against; and,
6. The period during which the insurance is to continue.

Whose interest is covered.

SEC. 1402. When the name of the person intended to be insured is specified in a policy, it can be applied only to his own proper interest.

Insurance by agent or trustee.

SEC. 1403. When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person really insured may be indicated by describing him as agent or trustee, or by other general words in the policy.

Insurance by part owner.

SEC. 1404. To render an insurance, effected by one partner or part owner, applicable to the interest of his copartners,

or of other part owners, it is necessary that the terms of the policy should be such as are applicable to the joint or common interest.

SEC. 1405. When the description of the insured in a policy is so general that it may comprehend any person, or any class of persons, he only can claim the benefit of the policy who can show that it was intended to include him.

General terms.

SEC. 1406. A policy may be so framed that it will insure to the benefit of whomsoever, during the continuance of the risk, may become the owner of the interest insured.

Successive owners.

SEC. 1407. The mere transfer of a thing insured does not transfer the policy, but suspends it until the same person becomes owner of both the policy and the thing insured.

Transfer of the thing insured.

SEC. 1408. A policy is either open or valued.

Opened and valued policies.

SEC. 1409. An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss.

Open policy, what.

SEC. 1410. A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum.

Valued policy, what.

SEC. 1411. A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements.

Running policy, what.

SEC. 1412. An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid.

Effect of receipt.

SEC. 1413. An agreement made before a loss, not to transfer the claim of a person insured against the insurer, after the loss has happened, is void.

Agreement not to transfer.

ARTICLE VII.

WARRANTIES.

SECTION 1414. Warranty, express or implied.

1415. Form.

1416. Warranty must be in policy.

1417. Past, present and future warranties.

1418. Warranty as to past or present.

1419. Warranty as to the future.

1420. Performance excused.

1421, 1422. What acts avoid the policy.

1423. Breach without fraud.

Warranty,
expressed or
implied.
From.

SEC. 1414. A warranty is either express or implied.

SEC. 1415. No particular form of words is necessary to create a warranty.

Warranty
must be in
policy.

SEC. 1416. Every express warranty, made at or before the execution of a policy, must be contained in the policy itself, and another instrument, whether upon the same paper or not, cannot be referred to as making a party of the policy for this purpose, even by agreement of the parties.

Past, present
and future
warranties.

SEC. 1417. A warranty may relate to the past, the present, the future, or to any or all of these.

Warranty as
to past or
present.

SEC. 1418. A statement in a policy, of a matter relating to the person or thing insured, or to the risk, as a fact, is an express warranty thereof.

Warranty as
to the future.

SEC. 1419. A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such act or omission shall take place.

Performance
excused.

SEC. 1420. When, before the time arrives for performance of a warranty relating to the future, a loss insured against happens, or performance is made illegal, the omission to fulfill the warranty for either reason does not avoid the policy.

SEC. 1421. The violation of a material warranty, or other material provisions of a policy, on the part of either party thereto, entitles the other to rescind. What acts avoid the policy.

SEC. 1422. A policy may declare that a violation of specified provisions thereof shall avoid it; otherwise the breach of an immaterial provision does not avoid the policy. Same.

SEC. 1423. A breach of warranty, without fraud, merely exonerates an insurer from the time that it occurs, or, where it is broken in its inception, prevents the policy from attaching to the risk. Breach without fraud.

CHAPTER VIII.

PREMIUM.

SECTION 1424. When premium is earned.

1425, 1426. Return of premium.

1427. When none allowed.

1428. Over insurance by several insurers.

1429, 1430. Contribution.

SEC. 1424. An insurer is entitled to payment of the premium, as soon as the thing insured is exposed to the peril insured against. When premium is earned.

SEC. 1425. A person insured is entitled to a return of premium paid, or a ratable proportion thereof, if no part of his interest in the thing insured is exposed to any of the perils insured against, or, where the insurance is made for a definite period of time, if it is not exposed to such peril for the whole of that time. Return of premium.

SEC. 1426. A person insured is entitled to a return of the premium when the contract is voidable, on account of the fraud or misrepresentation of the insurer, or on account of facts, of the existence of which the insured was ignorant without his fault; or when, by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy. Same.

When none allowed.

SEC. 1427. If a peril insured against has existed, and the insurer has been liable, for any period, however short, the insured is not entitled to a return of premium, so far as that particular risk is concerned, unless the insurance was for a definite period of time, in which case he is entitled to a proportionate return under section 1425.

Over-insurance by several insurers.

SEC. 1428. In case of an over-insurance by several insurers, the insurer is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk.

Contribution.

SEC. 1429. When an over-insurance is affected by simultaneous policies, the insurers contribute to the premium to be returned, in proportion to the amount insured by their respective policies.

Same.

SEC. 1430. When an over-insurance is effected by successive policies, those only contribute to a return of the premium, who are exonerated by prior insurances from the liability assumed by them, and in proportion as the sum for which the premium was paid exceeds the amount for which, on account of prior insurance, they could be made liable.

ARTICLE IX.

LOSS.

SECTION 1431. Perils, remote and proximate.

1432. Loss incurred in rescue from peril.

1433. Excepted perils.

1434. Negligence and fraud.

Perils, remote and proximate.

SEC. 1431. An insurer is liable for a loss of which a peril insured against was the proximate cause; although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause.

SEC. 1432. An insurer is liable where the thing insured is rescued from a peril insured against, that would otherwise have caused a loss, if in the course of such rescue the thing is exposed to peril, not insured against, which permanently deprives the insured of its possession, in whole or in part; or where a loss is caused by efforts to rescue the thing insured from a peril insured against. Loss incurred, in rescue from peril.

SEC. 1433. Where a peril is specially excepted in a contract of insurance, a loss, which would not have occurred but for such peril, is thereby excepted; although the immediate cause of the loss was a peril which was not excepted. Excepted perils.

SEC. 1434. An insurer is not liable for a loss caused by the willful act of the insured; but he is not exonerated by the negligence of the insured, nor by fraud or negligence on the part of his agents or others. Negligence and fraud.

ARTICLE X.

NOTICE OF LOSS.

SECTION 1435. Notice of loss.

- 1436. Preliminary proofs.
- 1437. Waiver of defects in notice, &c.
- 1438. Waiver of delay.
- 1439. Certificate, when dispensed with.

SEC. 1435. In case of loss, an insurer is exonerated, if notice thereof is not given to him by some person insured, or entitled to the benefit of an insurance, without unnecessary delay. Notice of loss.

SEC. 1436. Where preliminary proof of loss is required by a policy, the insured is not bound to give such proof as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time. Preliminary proofs.

Waiver of defects in notice, &c.

SEC. 1437. All defects in a notice of loss, or in preliminary proof thereof, which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay, as grounds of objection, are waived.

Waiver of delay.

SEC. 1438. Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by any act of his, or if he omits to make objection promptly and specifically upon that ground.

Certificate when dispensed with.

SEC. 1439. If a policy requires, by way of preliminary proof of loss, the certificate or testimony of another person than the insured, it is sufficient for the insured to use reasonable diligence to procure it and in case of the refusal of such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just grounds of disbelief in the facts necessary to be certified.

ARTICLE XI.

DOUBLE INSURANCE.

SECTION 1440. Double insurance.

1441. Contribution in case of double insurance.

Double insurance.

SEC. 1440. A double insurance exists where the same person is insured by several insurers separately in respect to the same subject and interest.

Contribution in case of double insurance.

SEC. 1441. In case of double insurance, the insured may claim payment of a loss from any one of the insurers, who, on paying it, may require the others to contribute ratably thereto.

ARTICLE XII.

RE-INSURANCE.

- SECTION 1442. Re-insurance, what.
 1443. Disclosure required.
 1444. Re-insurance presumed to be against liability.
 1445. Original insured has no interest.

SEC. 1442. A contract of re-insurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance.

SEC. 1443. Where an insurer obtains re-insurance, he must communicate all the representations of the original insured, and also all the knowledge and information he possesses, whether previously or subsequently acquired, which is material to the risk.

SEC. 1444. A re-insurance is presumed to be a contract of indemnity against liability, and not merely against damage.

SEC. 1445. The original insured has no interest in a contract of re-insurance.

CHAPTER II.

MARINE INSURANCE.

- ARTICLE I. Definition of marine insurance.
 II. Insurable interest.
 III. Concealment.
 IV. Representations.
 V. Implied warranties.

ARTICLE VI. The voyage, and deviation.

VII. Loss.

VIII. Abandonment.

IX. Measure of indemnity.

ARTICLE I.

DEFINITION OF MARINE INSURANCE.

SECTION 1446. Marine insurance, what.

Marine insurance, what.

SEC. 1446. Marine insurance is an insurance against risks connected with navigation, to which a ship, cargo, freightage, profits, or other insurable interest in movable property, may be exposed during a certain voyage or a fixed period of time.

ARTICLE II.

INSURABLE INTEREST.

SECTION 1447. Insurable interest in ship.

1448. Interest reduced by bottomry.

1449. Freightage, what.

1450, 1451. Expected freightage.

1452. Insurable interest in profits.

1453. Insurable interest of charterer.

Insurable interest in ship.

SEC. 1447. The owner of a ship has in all cases an insurable interest in it, even when it has been chartered by one who covenants to pay him its value in case of loss.

SEC. 1448. The insurable interest of the owner of a ship hypothecated by bottomry is only the excess of its value over the amount secured by bottomry. Interest reduced by bottomry

SEC. 1449. Freightage, in the sense of a policy of marine insurance, signifies all the benefit derived by the owner, either from the chartering of the ship or its employment for the carriage of his own goods or those of others. Freightage, what.

SEC. 1450. The owner of a ship has an insurable interest in expected freightage which he would have certainly earned but for the intervention of a peril insured against. Expected freightage.

SEC. 1451. The interest mentioned in the last section exists, in the case of a charter-party, when the ship has broken ground on the chartered voyage; and, if a price is to be paid for the carriage of goods, when they are actually on board, or there is some contract for putting them on board, and both ship and goods are ready for the specified voyage. Same.

SEC. 1452. One who has an interest in the thing from which profits are expected to proceed, has an insurable interest in the profits. Insurable interest in profits.

SEC. 1453. The charterer of a ship has an insurable interest in it, to the extent that he is liable to be damnified by its loss. Insurable interest of charterer.

ARTICLE III.

CONCEALMENT.

SECTION 1454. Information must be communicated.

1455. Material information.

1456. Presumption of knowledge of loss.

1457. Concealments which only affect the risk in question.

SEC. 1454. In marine insurance each party is bound to communicate, in addition to what is required by section 1380, all the information which he possesses, material to the risk, except such as is mentioned in section 1381, and to state the ex- Information must be communicated.

act and whole truth in relation to all matters that he represents, or upon inquiry assumes to disclose.

Material information.

SEC. 1455. In marine insurance, information of the belief or expectation of a third person, in reference to a material fact, is material.

Presumption of knowledge of loss.

SEC. 1456. A person insured by a contract of marine insurance is presumed to have had knowledge, at the time of insuring, of a prior loss, if the information might possibly have reached him in the usual mode of transmission, and at the usual rate of communication.

Concealments which only affect the risk in question.

SEC. 1457. The effect of a concealment in a marine insurance, in respect to any of the following matters, is not to vitiate the entire contract, but merely to exonerate the insurer from a loss resulting from the risk concealed:

1. The national character of the insured;
2. The liability of the thing insured to capture and detention;
3. The liability to seizure from breach of foreign laws of trade;
4. The want of necessary documents; and,
5. The use of false and simulated papers.

ARTICLE IV.

REPRESENTATIONS.

SECTION 1458. Effect of intentional falsity.

1459. Representation of expectation.

Effect of intentional falsity.

SEC. 1458. If a representation, by a person insured by a contract of marine insurance, is intentionally false in any respect, whether material or immaterial, the insurer may rescind the entire contract.

Representation of expectation.

SEC. 1459. The eventual falsity of a representation as to expectation does not, in the absence of fraud, avoid a contract of insurance.

ARTICLE V.

IMPLIED WARRANTIES.

SECTION 1400. Warranty of seaworthiness.

1461. Seaworthiness, what.

1462. At what time seaworthiness must exist.

1463. What things are required to constitute seaworthiness.

1464. Different degrees of seaworthiness at different stages of the voyage.

1465. Unseaworthiness during the voyage.

1466. Seaworthiness for purposes of insurance on cargo.

1467. Neutral papers.

SEC. 1460. In every marine insurance upon ship or freightage or upon anything belonging to the shipowner, unless made for a specified length of time, a warranty is implied that the ship shall be seaworthy. Warranty of seaworthiness.

SEC. 1461. A ship is seaworthy, when reasonably fit to perform the services, and to encounter the ordinary perils of the voyage, contemplated by the parties to the policy. Seaworthiness, what.

SEC. 1462. An implied warranty of seaworthiness is complied with if the ship is seaworthy at the time of the commencement of the risk. At what time seaworthiness must exist.

SEC. 1463. A warranty of seaworthiness extends not only to the condition of the structure of the ship itself, but requires that it be properly laden, and provided with a competent master, a sufficient number of competent officers and seamen, and the requisite appurtenances and equipments. What things are required to constitute seaworthiness.

SEC. 1464. Where different portions of the voyage, contemplated by a policy, differ in respect to the things requisite to make the ship seaworthy therefor, a warranty of seaworthiness is complied with, if, at the commencement of each portion, the ship is seaworthy with reference to that portion. Different degrees of seaworthiness at different stages of the voyage.

SEC. 1465. When a ship becomes unseaworthy during the voyage to which an insurance relates, an unreasonable delay Unseaworthiness during the voyage.

in repairing the defect exonerates the insurer from liability for any loss arising therefrom.

Seaworthi-
ness for pur-
poses of insu-
rance on cargo.

SEC. 1466. A ship which is seaworthy for the purpose of an insurance upon the ship, may, nevertheless, by reason of being unfitted to receive the cargo, be unseaworthy for the purpose of insurance upon the cargo.

Neutral
papers.

SEC. 1467. Where the nationality or neutrality of a ship or cargo is expressly warranted, it is implied that the ship will carry the requisite documents to show such nationality or neutrality, and that it will not carry any documents which cast reasonable suspicion thereon.

ARTICLE VI.

THE VOYAGE AND DEVIATION.

SECTION 1468, 1469. Voyage insured, how determined.

1470. Deviation, what.

1471. When proper.

1472. When improper.

1473. Deviation exonerates the insurer.

Voyage in-
sured, how de-
termined.

SEC. 1468. When the voyage contemplated by a policy is described by the places of beginning and ending, the voyage insured is one which conforms to the course from point to point fixed by mercantile usage between those places.

Same.

SEC. 1469. If the course of sailing is not fixed by mercantile usage, the voyage insured by a policy is the way between the places specified, which, to a master of ordinary skill and discretion, would seem the most natural, direct and advantageous.

Deviation,
what.

SEC. 1470. Deviation is a departure from the course of the voyage insured, mentioned in the last two sections, or an unreasonable delay in pursuing the voyage; or the commencement of an entirely different voyage.

SEC. 1471. A deviation is proper:

When proper.

1. When caused by circumstances over which neither the master nor the owner of the ship has any control;
2. When necessary to comply with a warranty, or to avoid a peril, whether insured against or not;
3. When made in good faith, and upon reasonable grounds of belief in its necessity to avoid a peril; or,
4. When made in good faith, for the purpose of saving human life, or relieving another vessel in distress.

SEC. 1472. Every deviation, not specified in the last section, is improper.

When improper.

SEC. 1473. An insurer is not liable for any loss happening to a thing insured subsequently to an improper deviation.

Deviation exonerates the insurer.

ARTICLE VII.

LOSS.

SECTION 1474. Total and partial loss.

1475. Partial loss.

1476. Actual and constructive total loss.

1477. Total loss, what.

1478. Constructive total loss.

1479. Presumed actual loss.

1480. Insurance on cargo, &c., when voyage is broken up.

1481. Cost of reshipment, &c.

1482. When insured is entitled to payment.

1483. Abandonment of goods on insurance of profits.

1484. Average loss.

1485. Insurance against total loss.

SEC. 1474. A loss may be either total or partial.

Total and partial loss.

SEC. 1475. Every loss which is not total is partial.

Partial loss.

SEC. 1476. A total loss may be either actual or constructive.

Actual and constructive total loss.

SEC. 1477. An actual total loss is caused by:

Total loss, what.

1. A total destruction of the thing insured;

2. The loss of the thing by sinking, or by being broken up;
3. Any damage to the thing which renders it valueless to the owner for the purposes for which he held it; or,
4. Any other event which entirely deprives the owner of the possession, at the port of destination, of the thing insured.

Constructive
total loss.

SEC. 1478. A constructive total loss is one which gives to a person insured a right to abandon under section 1487.

Presumed
actual loss.

SEC. 1479. An actual loss may be presumed from the continued absence of a ship without being heard of; and the length of time which is sufficient to raise this presumption depends on the circumstances of the case.

Insurance on
cargo, &c.,
when voyage is
broken up.

SEC. 1480. When a ship is prevented, at an intermediate port, from completing the voyage, the master must make every exertion to procure in the same or a contiguous port, another ship, for the purpose of conveying the cargo to its destination; and the liability of a marine insurer thereon continues after they are thus reshipped.

Cost of re-
shipment, &c.

SEC. 1481. In addition to the liability mentioned in the last section, a marine insurer is bound for damages, expenses of discharging, storage, reshipment, extra freightage, and all other expenses incurred in saving cargo reshipped pursuant to the last section, up to the amount insured.

When insured
is entitled to
payment.

SEC. 1482. Upon an actual total loss a person insured is entitled to payment without notice of abandonment.

Abandonment
of goods on
insurance of
profits.

SEC. 1483. Where profits are insured, but the goods are not insured, a marine insurer is not liable for a constructive total loss unless the insured offers to abandon the goods.

Average loss.

SEC. 1484. Where it has been agreed that an insurance upon a particular thing or class of things shall be free from particular average, a marine insurer is not liable for any loss, not depriving the insured of the possession, at the port of destination, of the whole of such thing, or class of things, even though it becomes entirely worthless.

Insurance
against total
loss.

SEC. 1485. An insurance confined in terms to a total loss, does not cover a constructive total loss, but covers any loss which necessarily results in depriving the insured of the possession, at the port of destination, of the entire thing insured; and also a general average loss.

ARTICLE VIII.

ABANDONMENT.

- SECTION 1486. Abandonment, what.
 1487. When insured may abandon.
 1488. Must be unqualified.
 1489. When may be made.
 1490. Abandonment may be defeated.
 1491. How made.
 1492. Requisites of notice.
 1493. No other cause can be relied on.
 1494. Effect.
 1495. Waiver of formal abandonment.
 1496. Agents of the insured become agents of the insurer.
 1497. Acceptance not necessary.
 1498. Acceptance conclusive.
 1499. Accepted abandonment, irrevocable.
 1500. Freightage, how affected by abandonment of ship.
 1501. Refusal to accept.
 1502. Omission to abandon.

SEC. 1486. Abandonment is the act by which, after a constructive total loss, a person insured by a contract of marine insurance, declares to the insurer that he relinquishes to him his interest in the thing insured. ^{Abandonment, what.}

SEC. 1487. A person insured by a contract of marine insurance may abandon the thing insured, or any particular portion thereof, separately valued by the policy, or otherwise separately insured, and recover for a total loss thereof, when the cause of the loss is a peril insured against: ^{When insured may abandon.}

1. If more than half thereof, in value, is actually lost, or would have to be expended to recover it from the peril;

2. If it is injured to such an extent as to reduce its value more than one-half;

3. If, the thing insured being a ship, the contemplated voyage cannot be lawfully performed, without incurring an ex-

pense to the insured of more than half the value of the thing abandoned, or without incurring a risk which a prudent man would not take under the circumstances; or,

4. If, the thing insured being cargo or freightage, the voyage cannot be performed, nor another ship procured by the master, within a reasonable time, and with reasonable diligence, to forward the cargo, without incurring the like expenses or risk. But freightage cannot in any case be abandoned, unless the ship is also abandoned.

Must be unqualified.

SEC. 1488. An abandonment must be neither partial nor conditional.

When may be made.

SEC. 1489. An abandonment must be made within a reasonable time after information of the loss, and after the commencement of the voyage, and before the party abandoning has information of its completion.

Abandonment may be defeated.

SEC. 1490. Where the information upon which an abandonment has been made proves incorrect, or the thing insured was so far restored when the abandonment was made, that there was then in fact no total loss, the abandonment becomes ineffectual.

How made.

SEC. 1491. Abandonment is made by giving notice thereof to the insurer; which may be done orally, or in writing.

Requisites of notice.

SEC. 1492. A notice of abandonment must be explicit; and must specify the particular cause of the abandonment; but need state only enough to show that there is probable cause therefor, and need not be accompanied with proof of interest or of loss.

No other cause can be relied on.

SEC. 1493. An abandonment can be sustained only upon the cause specified in the notice thereof.

Effect.

SEC. 1494. An abandonment is equivalent to a transfer, by the insured, of his interest, to the insurer, with all the chances of recovery and indemnity.

Waiver of formal abandonment.

SEC. 1495. If a marine insurer pays for a loss as if it were an actual total loss, he is entitled to whatever may remain of the thing insured, or its proceeds or salvage, as if there had been a formal abandonment.

Agents of the insured become agents of the insurer.

SEC. 1496. Upon an abandonment, acts done in good faith, by those who were agents of the thing insured, in respect to the thing insured, subsequent to the loss, are at the risk of the insurer, and for his benefit.

SEC. 1497. An acceptance of an abandonment is not necessary to the rights of the insured, and is not to be presumed from the mere silence of the insurer, upon his receiving notice of abandonment. Acceptance not necessary.

SEC. 1498. The acceptance of an abandonment, whether express or implied, is conclusive upon the parties, and admits the loss and the sufficiency of the abandonment. Acceptance conclusive.

SEC. 1499. An abandonment once made and accepted is irrevocable, unless the ground upon which it was made proves to be unfounded. Accepted abandonment irrevocable.

SEC. 1500. On an accepted abandonment of a ship, freightage earned previous to the loss belongs to the insurer thereof; but freightage subsequently earned, belongs to the insurer of the ship. Freightage, how affected by abandonment of ship.

SEC. 1501. If an insurer refuses to accept a valid abandonment, he is liable as upon an actual total loss, deducting from the amount any proceeds of the thing insured which may have come to the hands of the insured. Refusal to accept.

SEC. 1502. If a person insured omits to abandon, he may nevertheless recover his actual loss. Omission to abandon.

ARTICLE IX.

MEASURE OF INDEMNITY.

- SECTION 1503. Valuation, when conclusive.
- 1504. Partial loss.
 - 1505. Profits.
 - 1506. Valuation apportioned.
 - 1507. Valuation applied to profits.
 - 1508. Estimating loss under an open policy.
 - 1509. Arrival of thing damaged.
 - 1510. Labor and expenses.
 - 1511. General average.
 - 1512. Contribution.
 - 1513. One-third new for old.

Valuation,
when conclu-
sive.

SEC. 1503. A valuation in a policy of marine insurance is conclusive between the parties thereto, in the adjustment of either a partial or total loss, if the insured has some interest at risk, and there is no fraud on his part; except that when a thing has been hypothecated by bottomry or respondentia, before its insurance, and without the knowledge of the person actually procuring the insurance, he may show the real value. But a valuation fraudulent in fact entitles the insurer to rescind the contract.

Partial loss.

SEC. 1504. A marine insurer is liable, upon a partial loss, only for such proportion of the amount insured by him, as the loss bears to the value of the whole interest of the insured in the property insured.

Profits.

SEC. 1505. Where profits are separately insured in a contract of marine insurance, the insured is entitled to recover, in case of loss, a proportion of such profits equivalent to the proportion which the value of the property lost bears to the value of the whole.

Valuation
apportioned.

SEC. 1506. In case of a valued policy of marine insurance on freightage or cargo, if a part only of the subject is exposed to risk, the valuation applies only in proportion to such part.

Valuation
applied to
profits.

SEC. 1507. When profits are valued and insured, by a contract of marine insurance, a loss of them is conclusively presumed from a loss of the property out of which they were expected to arise, and the valuation fixes their amount.

Estimating
loss under an
open policy.

SEC. 1508. In estimating a loss under an open policy of marine insurance, the following rules are to be observed:

1. The value of a ship is its value at the beginning of the risk, including all articles or charges which add to its permanent value, or which are necessary to prepare it for the voyage insured;

2. The value of cargo is its actual cost to the insured, when laden on board, or where that cost cannot be ascertained, its market value at the time and place of lading, adding the charges incurred in purchasing and placing it on board, but without reference to any losses incurred in raising money for its purchase, or to any drawback on its exportation, or to the fluctuations of the market at the port of destination, or to expenses incurred on the way, or on arrival;

3. The value of freightage is the gross freightage, exclusive of primage, without reference to the cost of earning it; and,

4. The cost of insurance is in each case to be added to the value thus estimated.

SEC. 1509. If cargo insured against partial loss arrives at the port of destination in a damaged condition, the loss of the insured is deemed to be the same proportion of the value, which the market price at that port of the thing so damaged, bears to the market price it would have brought if sound. Arrival of thing damaged.

SEC. 1510. A marine insurer is liable for all the expense attendant upon a loss which forces the ship into port to be repaired; and where it is agreed that the insured may labor for the recovery of the property, the insurer is liable for the expense incurred thereby; such expense, in either case, being in addition to the total loss if that afterwards occurs. Labor and expenses.

SEC. 1511. A marine insurer is liable for a loss falling upon the insured, through a contribution in respect to the thing insured, required to be made by him towards a general average loss called for by a peril insured against. General average.

SEC. 1512. Where a person insured by a contract of marine insurance has a demand against others for contribution, he may claim the whole loss from the insurer, subrogating him to his own right to contribution. Contribution.

SEC. 1513. In the case of a partial loss of a ship or its equipments, the old materials are to be applied towards payment for the new, and whether the ship is new or old, a marine insurer is liable for only two thirds of the remaining cost of the repairs, except that he must pay for anchors and cannon in full, and for sheathing metal at a depreciation of only two and one-half per cent. for each month that it has been fastened to the ship. One third new for old.

CHAPTER III.

FIRE INSURANCE.

SECTION 1514. False representation.

1515. Alteration increasing risk.

1516. Alteration not increasing risk.

1517. Acts of the insured.

1518. Measure of indemnity.

False repre-
sentation.

SEC. 1514. An insurance against fire is not affected by concealment, nor by the falsity of a representation not inserted in the policy, though in a material particular, unless made with a fraudulent intent.

Alteration.

SEC. 1515. An alteration in the use or condition of a thing insured, from that to which it is limited by the policy, made without the consent of the insurer, by means within the control of the insured, and increasing the risk, entitles an insurer to rescind a contract of fire insurance.

Alteration.

SEC. 1516. An alteration in the use or condition of a thing insured, from that to which it is limited by the policy, which does not increase the risk, does not affect a contract of fire insurance.

Acts of the
insured.

SEC. 1517. A contract of fire insurance is not affected by any act of the insured, subsequent to the execution of the policy, which does not violate its provisions, even though it increases the risk, and is the cause of a loss.

Measure of
indemnity.

SEC. 1518. If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the expense, at the time that the loss is payable, of replacing the thing lost or injured in the condition in which it was at the time of the injury; but the effect of a violation in a policy of fire insurance is the same as in a policy of marine insurance.

CHAPTER IV.

LIFE AND HEALTH INSURANCE.

- SECTION 1519. Insurance upon life, when payable.
 1520. Insurable interest.
 1521. Assignee, &c., of life policy need have no interest.
 1522. Notice of transfer.
 1523. Measure of indemnity.

SEC. 1519. An insurance upon life may be made payable on the death of the person, or on his surviving a specified period, or periodically so long as he shall live, or otherwise contingently on the continuance or determination of life. Insurance upon life when payable.

SEC. 1520. Every person has an insurable interest in the life and health: Insurable interest.

1. Of himself;
2. Of any person on whom he depends wholly or in part for education or support;
3. Of any person under a legal obligation to him for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and,
4. Of any person upon whose life any estate or interest, vested in him, depends.

SEC. 1521. A policy of insurance upon life or health may pass by transfer, will or succession, to any person, whether he has an insurable interest or not, and such person may recover upon it whatever the insured might have recovered. Assignee, &c., of life policy need have no interest.

SEC. 1522. Notice to an insurer of a transfer or bequest thereof is not necessary to preserve the validity of a policy of insurance upon life or health unless thereby expressly required. Notice of transfer.

SEC. 1523. Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity under a policy of insurance upon life or health is the sum fixed in the policy. Measure of indemnity.

TITLE XII.

INDEMNITY.

SECTION 1524. Indemnity, what.

1525. Indemnity for a future wrongful act, void.

1526. Indemnity for a wrongful act, valid.

1527. Indemnity extends to acts of agent.

1528. Indemnity to several.

1529. Person indemnifying, liable jointly or severally with person indemnified.

1530. Rules for interpreting agreement of indemnity.

1531. When person indemnifying is a surety.

1532. Bail, what.

1533. How regulated.

Indemnity,
what.

SEC. 1524. Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person.

Indemnity for
a future wrong-
ful act, void.

SEC. 1525. An agreement to indemnify a person against an act thereafter to be done, is void, if the act is known by such person, at the time of doing it, to be wrongful.

Indemnity for
a past wrongful
act, valid.

SEC. 1526. An agreement to indemnify a person against an act already done, is valid, even though the act was known to be wrongful, unless it was a felony.

Indemnity
extends to acts
of agent.

SEC. 1527. An agreement to indemnify against the acts of a certain person, applies not only to his acts, and their consequences, but also to those of his agents.

Indemnity to
several.

SEC. 1528. An agreement to indemnify several persons applies to each unless a contrary intention appears.

Persons in-
demnifying,
liable jointly or
severally with
person indem-
nified.

SEC. 1529. One who indemnifies another against an act to be done by the latter, is liable jointly with the person indemnified, and separately, to every person injured by such act.

Rules for
interpreting
agreement of
indemnity.

SEC. 1530. In the interpretation of a contract of indemnity, the following rules are to be applied, unless a contrary intention appears:

1. Upon an indemnity against liability, expressly, or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable;

2. Upon an indemnity against claims, or demands, or damages or costs, expressly, or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof;

3. An indemnity against claims, or demands, or liability, expressly, or in other equivalent terms, embraces the costs of defense against such claims, demands or liability incurred in good faith, and in the exercise of reasonable discretion;

4. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct such defenses, if he chooses to do so;

5. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter suffered by him in good faith, is conclusive in his favor against the former;

6. If the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action or proceedings against the person indemnified, or is not allowed to control its defense, judgment against the latter is only presumptive evidence against the former;

7. A stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is applicable if he had a good defense upon the merits, which by want of ordinary care he failed to establish in the action.

SEC. 1531. Where one, at the request of another, engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety for whatever he may pay.

When person indemnifying is a surety.

SEC. 1532. Upon those contracts of indemnity which are taken in legal proceedings, as security for the performance of an obligation imposed or declared by the tribunals, and known as undertakings or recognizances, the sureties are called bail.

Bail, what.

SEC. 1533. The obligations of bail are governed by the statutes specially applicable thereto.

How regulated

TITLE XIII.

GUARANTY.

- CHAPTER I. Guaranty in general.
- II. Suretyship.

CHAPTER I.

GUARANTY IN GENERAL.

- ARTICLE I. Definition of guaranty.
- II. Creation of guaranty.
- III. Interpretation of guaranty.
- IV. Liability of guarantors.
- V. Continuing guaranty.
- VI. Exoneration of guarantors.

ARTICLE I.

DEFINITION OF GUARANTY.

- SECTION 1534. Guaranty, what.
- 1535. Knowledge of principal not necessary to creation of guaranty.

Guaranty,
what.

SEC. 1534. A guaranty is a promise to answer for the debt, default or miscarriage of another person.

SEC. 1535. A person may become guarantor even without the knowledge or consent of the principal.

Knowledge of principal not necessary to creation of guaranty.

ARTICLE II.

CREATION OF GUARANTY.

SECTION 1536. Necessity of a consideration.

1537. Guaranty to be in writing, &c.

1538. Engagement to answer for obligation of another, when deemed original.

1539. Acceptance of guaranty.

SEC. 1536. Where a guaranty is entered into at the same time with the original obligation, or with the acceptance of the latter by the guarantee, and forms, with that obligation, a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation.

Necessity of a consideration.

SEC. 1537. Except as prescribed by the next section, a guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration.

Guaranty to be in writing, &c.

SEC. 1538. A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promiser, and need not be in writing:

Engagement to answer for obligation of another, when deemed original.

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in part, in consideration of such promise;

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made, his surety;

3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promiser, whether moving from either party to the antecedent obligation, or from another person;

4. Where a factor undertakes, for a commission, to sell merchandise and guaranty the sale;

5. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

Acceptance
of guaranty.

SEC. 1530. A mere offer to guaranty is not binding, until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance.

ARTICLE III.

INTERPRETATION OF GUARANTY.

SECTION 1540. Guaranty of incomplete contract.

1541. Guaranty that an obligation is good or collectible.

1542. Recovery upon such guaranty.

1543. Guarantor's liability upon such guaranty.

Guaranty of
incomplete
contract.

SEC. 1540. In a guaranty of a contract, the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor to greater risks than he would incur under those terms which are most common, in similar contracts, at the place where the principal contract is to be performed.

SEC. 1541. A guaranty to the effect that an obligation is good, or is collectible, imports that the debtor is solvent, and that the demand is collectible by the usual legal proceedings, if taken with reasonable diligence. Guaranty that an obligation is good or collectible.

SEC. 1542. A guaranty, such as is mentioned in the last section, is not discharged by an omission to take proceedings upon the principal debt, or upon any collateral security for its payment, if no part of the debt could have been collected thereby. Recovery upon such guaranty.

SEC. 1543. In the cases mentioned in section 1541, the removal of the principal from the Territory leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal, in its effect upon the rights and obligations of the guarantor. Guarantor's liability upon such guaranty.

ARTICLE IV.

LIABILITY OF GUARANTORS.

SECTION 1544. Guaranty, how construed.

1545. Liability upon guaranty of payment or performance.

1546. Liability upon guaranty of a conditional obligation.

1547. Obligation of guarantor cannot exceed that of the principal.

1548. Guarantor not liable on an illegal contract.

SEC. 1544. A guaranty is to be deemed to be unconditional unless its terms import some condition precedent to the liability of the guarantor. Guaranty, how construed.

SEC. 1545. A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal, and without demand or notice. Liability upon guaranty of payment or performance.

SEC. 1546. Where one guaranties a conditional obligation, his liability is commensurate with that of the principal, and he is not entitled to notice of the default of the principal, unless he is unable, by the exercise of reasonable diligence, to acquire information of such default, and the creditor has actual notice thereof. Liability upon guaranty of a conditional obligation.

Obligation of guarantor can not exceed that of the principal.

SEC. 1547. The obligation of a guarantor must be neither larger in amount nor in other respects more burdensome than that of the principal; and if, in its terms, it exceeds it, it is reducible in proportion to the principal obligation.

Guarantor not liable on an illegal contract.

SEC. 1548. A guarantor is not liable if the contract of the principal is unlawful; but he is liable notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal.

ARTICLE V.

CONTINUING GUARANTY.

SECTION 1549. Continuing guaranty, what.
1550. Revocation.

Continuing guaranty, what.

SEC. 1549. A guaranty relating to a future liability of the principal, under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied, is called a continuing guaranty.

Revocation.

SEC. 1550. A continuing guaranty may be revoked at any time by the guarantor, in respect to future transactions, unless there is a continuing consideration as to such transactions which he does not renounce.

ARTICLE VI.

EXONERATION OF GUARANTORS.

SECTION 1551. What dealings with debtor exonerate guarantor.
1552. Void promises.

SECTION 1553. Rescission of alteration.

1554. Part performance.

1555. Delay of creditor does not discharge guarantor.

1556. Guarantor indemnified by the debtor, not exonerated.

1557. Discharge of principal by act of law does not discharge guarantor.

SEC. 1551. A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, in any way impaired or suspended.

What dealings with debtor exonerate guarantor.

SEC. 1552. A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation or suspend or impair the remedy, within the meaning of the last section.

Void promises.

SEC. 1553. The rescission of an agreement altering the original obligation of a debtor, or impairing the remedy of a creditor, does not restore the liability of a guarantor who has been exonerated by such agreement.

Rescission of alteration.

SEC. 1554. The acceptance, by a creditor, of any thing in partial satisfaction of an obligation, reduces the obligation of a guarantor thereof, in the same measure as that of the principal, but does not otherwise affect it.

Part performance.

SEC. 1555. Mere delay on the part of a creditor to proceed against the principal, or to enforce any other remedy, does not exonerate a guarantor.

Delay of creditor does not discharge guarantor.

SEC. 1556. A guarantor, who has been indemnified by the principal, is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

Guarantor indemnified by the debtor not exonerated.

SEC. 1557. A guarantor is not exonerated by the discharge of his principal by operation of law, without the intervention or omission of the creditor.

Discharge of principal by act of law does not discharge guarantor.

CHAPTER II.

SURETYSHIP.

- ARTICLE I. Who are sureties.
- II. Liability of sureties.
 - III. Rights of sureties.
 - IV. Rights of creditors.
 - V. Letter of credit.

ARTICLE I.

WHO ARE SURETIES.

SECTION 1558. Surety, what.

1559. Apparent principal may show that he is surety.

Surety, what. SEC. 1558. A surety is one who, at the request of another, and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security therefor.

Apparent principal may show that he is surety.

SEC. 1559. One who appears to be a principal, whether by the terms of a written instrument, or otherwise, may show that he is in fact a surety, except as against persons who have acted on the faith of his apparent character of principal.

ARTICLE II.

LIABILITY OF SURETIES.

SECTION 1560. Limit of surety's obligation.

1561. Rules of interpretation.

1562. Judgment against surety does not alter the relation.

1563. Surety exonerated by performance or offer of performance.

1564. Surety discharged by certain acts of the creditor.

SEC. 1560. A surety cannot be held beyond the express terms of his contract, and if such contract prescribes a penalty for its breach, he cannot in any case be liable for more than the penalty. Limit of surety's obligations.

SEC. 1561. In interpreting the terms of a contract of suretyship, the same rules are to be observed as in the case of other contracts. Rules of interpretation.

SEC. 1562. Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety. Judgment against surety does not alter the relation.

SEC. 1563. Performance of the principal obligation, or an offer of such performance, duly made, whether by the principal or by another person, exonerates a surety. Surety exonerated by performance or offer of performance.

SEC. 1564. A surety is exonerated:

1. In like manner with a guarantor;
2. To the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights, or which lessens his security; or,
3. To the extent to which he is prejudiced by an omission of the creditor to do anything, when required by the surety, which it is his duty to do.

Surety discharged by certain acts of the creditor.

ARTICLE III.

RIGHTS OF SURETIES.

SECTION 1565. Surety has rights of guarantor.

1566. Surety may require the creditor to proceed against the principal.

1567. Surety may compel principal to perform obligation, when due.

1568. A principal bound to reimburse his surety.

1569. The surety acquires the right of the creditor.

1570. Surety entitled to benefit of securities held by creditor.

1571. The property of principal to be taken first.

Surety has rights of guarantor.

SEC. 1565. A surety has all the rights of a guarantor, whether he becomes personally responsible or not.

Surety may require the creditor to proceed against the principal.

SEC. 1566. A surety may require his creditor to proceed against the principal, or to pursue any other remedy in his power which the surety cannot himself pursue, and which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced.

Surety may compel principal to perform obligation when due.

SEC. 1567. A surety may compel his principal to perform the obligation when due.

A principal bound to reimburse his surety.

SEC. 1568. If a surety satisfies the principal obligation, or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefitted by his act, except as prescribed by the next section.

The surety acquires the right of the creditor.

SEC. 1569. A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy which the creditor then has against the principal, to the extent of reimbursing what he has expended; and also to require all his co-sureties to contribute thereto, without regard to the order of time in which they became such.

SEC. 1570. A surety is entitled to the benefit of every security for the performance of the principal obligation, held by the creditor, or by a co-surety, at the time of entering into the contract of suretyship, or acquired by him afterwards, whether the surety was aware of the security or not.

Surety entitled to benefit of securities held by creditor.

SEC. 1571. Whenever property of a surety is hypothecated with the property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation.

The property of principal to be taken first.

ARTICLE VI.

RIGHTS OF CREDITORS.

SECTION 1572. Creditor entitled to benefit of securities held by surety.

SEC. 1572. A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation; and may, upon the maturity of the obligation, compel the application of such security to its satisfaction.

Creditor entitled to benefit of securities held by surety.

ARTICLE V.

LETTER OF CREDIT.

SECTION 1573. Letter of credit, what.

1574. How addressed.

1575. Liability of the writer.

1576. Letter of credit either general or special.

SECTION 1577. Nature of general letter of credit.

1578. Extent of general letter of credit.

1579. A letter of credit may be a continuing guaranty.

1580. When notice to the writer necessary.

1581. The credit given must agree with the terms of the letter.

Letter of credit, what.

SEC. 1573. A letter of credit is a written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn.

How addressed.

SEC. 1574. A letter of credit may be addressed to several persons in succession.

Liability of the writer.

SEC. 1575. The writer of a letter of credit is, upon the default of the debtor, liable to those who gave credit in compliance with its terms.

Letter of credit either general or special.

SEC. 1576. A letter of credit is either general or special. When the request for credit, in a letter, is addressed to specified persons by name or description, the letter is special. All other letters of credit are general.

Nature of general letter of credit.

SEC. 1577. A general letter of credit gives any person to whom it may be shown, authority to comply with its request, and by his so doing it becomes, as to him, of the same effect as if addressed to him by name.

Extent of general letter of credit.

SEC. 1578. Several persons may successively give credit upon a general letter.

A letter of credit may be a continuing guaranty.

SEC. 1579. If the parties to a letter of credit appear by its terms to contemplate a course of future dealing between the parties, it is not exhausted by giving a credit, even to the amount limited by the letter, which is subsequently reduced or satisfied by payments made by the debtor; but is to be deemed a continuing guaranty.

When notice to the writer necessary.

SEC. 1580. The writer of a letter of credit is liable for credit given upon it without notice to him, unless its terms express or imply the necessity of giving notice.

The credit given must agree with the terms of the letter.

SEC. 1581. If a letter of credit prescribes the persons by whom, or the mode in which, the credit is to be given, or the term of credit, or limits the amount thereof, the writer is not bound except for transactions which, in these respects, conform strictly to the terms of the letter.

TITLE XIV.

LIEN.

- CHAPTER I. Liens in general.
- II. Mortgage.
- III. Pledge.
- IV. Bottomry.
- V. Respondentia.
- VI. Other liens.
- VII. Stoppage in transit.

CHAPTER I.

LIENS IN GENERAL.

- ARTICLE I. Definition of liens.
- II. Creation of liens.
- III. Effect of liens.
- IV. Priority of liens.
- V. Redemption from liens.
- VI. Extinction of liens.

ARTICLE I.

DEFINITION OF LIENS.

- SECTION 1582. Lien, what.
- 1583. Liens, general or special.

SECTION 1584. General lien, what.

1585. Special lien, what.

1586. Contracts subject to provisions of this chapter.

Lien, what.

SEC. 1582. A lien is a charge imposed upon specific property, by which it is made security for the performance of an act.

Liens, general or special.

SEC. 1583. Liens are either general or special.

General lien, what.

SEC. 1584. A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property.

Special lien, what.

SEC. 1585. A special lien is one which the holder thereof can enforce only as security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto.

Contracts subject to provisions of this chapter.

SEC. 1586. Contracts of mortgage, pledge, bottomry, or respondentia, are subject to all the provisions of this chapter.

ARTICLE II.

CREATION OF LIENS.

SECTION 1587. Lien, how created.

1588. No lien for claim not due.

1589. Lien on future interest.

1590. Lien may be created by contract.

Lien, how created.

SEC. 1587. A lien is created:

1. By contract of the parties; or,
2. By operation of law.

No lien for claim not due.

SEC. 1588. No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed.

Lien on future interest.

SEC. 1589. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the

lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest.

SEC. 1590. A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence. Lien may be created by contract.

ARTICLE III.

EFFECT OF LIENS.

- SECTION 1591. Lien, or contract for lien, transfers no title.
- 1592. Certain contracts, void.
- 1593. Creation of lien does not imply personal obligation.
- 1594. Extent of lien.
- 1595. Existence of lien does not affect the right of creditor.
- 1596. Holder of lien not entitled to compensation.

SEC. 1591. Notwithstanding an agreement to the contrary, a lien or a contract for a lien transfers no title to the property subject to the lien. Lien or contract for lien transfers no title.

SEC. 1592. All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void, except in the case specified in section 945. Certain contracts void.

SEC. 1593. The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security. Creation of lien does not imply personal obligation.

SEC. 1594. The existence of a lien upon property does not of itself entitle the person, in whose favor it exists, to a lien upon the same property for the performance of any other obligation than that which the lien originally secured. Extent of lien.

SEC. 1595. The existence of a lien, as security for the performance of an obligation, does not affect the right of the creditor to enforce the obligation without regard to the lien. Existence of lien does not affect the right of creditor.

Holder of lien
not entitled to
compensation.

SEC. 1596. One who holds property by virtue of a lien thereon, is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under sections 956 and 957.

ARTICLE IV.

PRIORITY OF LIENS.

SECTION 1597. Priority of liens.

1598. Priority of mortgage for price.

1599. Order of resort to different funds.

Priority of
liens.

SEC. 1597. Other things being equal, different liens upon the same property have priority according to the time of their creation, except in cases of bottomry and respondentia.

Priority of
mortgage for
price.

SEC. 1598. A mortgage given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser.

Order of re-
sort to different
funds.

SEC. 1599. Where one has a lien upon several things, and other persons have subordinate liens upon, or interests in, some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself, or of injustice to other persons, must resort to the property in the following order, on the demand of any party interested:

First—To the things upon which he has an exclusive lien;

Second—To the things which are subject to the fewest subordinate liens;

Third—In like manner inversely to the number of subordinate liens upon the same thing; and,

Fourth—When several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had:

1. To the things which have not been transferred since the prior lien was created;

2. To the things which have been so transferred without a valuable consideration; and,

3. To the things which have been so transferred for a valuable consideration.

ARTICLE V.

REDEMPTION FROM LIEN.

SECTION 1600. Right to redeem.

1601. Rights of inferior lienor.

1602. Redemption from lien, how made.

SEC. 1600. Every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed. ^{Right to redeem.}

SEC. 1601. One who has a lien, inferior to another upon the same property, has a right: ^{Rights of inferior lienor.}

1. To redeem the property in the same manner as its owner might, from the superior lien; and,

2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

SEC. 1602. Redemption from a lien is made by performing, or offering to perform, the act for the performance of which it is a security, and paying, or offering to pay, the damages, if any, to which the holder of the lien is entitled for delay. ^{Redemption from lien, how made.}

ARTICLE VI.

EXTINCTION OF LIENS.

SECTION 1603. Lien deemed accessory to the act whose performance it secures.

1604. Extinction by sale or conversion.

1605. Lien not extinguished by lapse of time under statute of limitations.

1606. Apportionment of lien.

1607. When restoration extinguishes lien.

Lien deemed accessory to the act whose performance it secures.

SEC. 1603. A lien is to be deemed accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

Extinction by sale or conversion.

SEC. 1604. The sale of any property on which there is a lien, in satisfaction of the claim secured thereby, or, in case of personal property, its wrongful conversion by the person holding the lien, extinguishes the lien thereon.

Lien, not extinguished by lapse of time under statute of limitations.

SEC. 1605. A lien is not extinguished by the mere lapse of the time within which, under the provisions of the Code of Civil Procedure, an action can be brought upon the principal obligation.

Apportionment of lien.

SEC. 1606. The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

When restoration extinguishes lien.

SEC. 1607. The voluntary restoration of property to its owner, by the holder of a lien thereon, dependent upon possession, extinguishes the lien, as to such property, unless otherwise agreed by the parties; and extinguishes it, notwithstanding any such agreement, as to creditors of the owner, and persons acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration; unless such restoration is made to the owner as a mere employee of the holder of the lien, or for a merely transient purpose.

CHAPTER II.

MORTGAGE.

- ARTICLE I. Mortgage in general.
 II. Mortgage of real property.
 III. Mortgage of personal property.

ARTICLE I.

MORTGAGE IN GENERAL.

- SECTION 1608. Mortgage, what.
 1609. Lien of a mortgage, when special.
 1610. Transfer of interest, when deemed a mortgage.
 1611. Provisions of this chapter do not affect bottomry or respondentia.
 1612. Transfer made subject to defeasance, may be proved.
 1613. What interests may be mortgaged.
 1614. Property adversely held may be mortgaged.
 1615. Power of sale.
 1616. Power of sale, how executed.
 1617. On what a lien.
 1618. Against whom a mortgage is a lien.
 1619. Mortgage of thing held adversely.
 1620. Mortgage does not entitle mortgagee to possession.
 1621. Foreclosure.
 1622. Waste.

SEC. 1608. Mortgage is a contract, by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession. ^{Mortgage.} _{what.}

Lien of a mortgage, when special.

SEC. 1609. The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

Transfer of interest, when deemed a mortgage.

SEC. 1610. Every transfer of an interest in property, made only as a security for the performance of another act, is to be deemed a mortgage, except when, in the case of personal property, it is accompanied by an actual change of possession, in which case it is to be deemed a pledge.

Provisions of this chapter do not affect bottomry or respondentia.

SEC. 1611. Contracts of bottomry or respondentia, although in the nature of mortgages, are not affected by any of the provisions of this chapter.

Transfer made subject to defeasance may be proved.

SEC. 1612. The fact that a transfer was made subject to defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proved, except as against a subsequent purchaser or incumbrancer, for value and without notice, though the fact does not appear by the terms of the instrument.

What interest may be mortgaged.

SEC. 1613. Any interest in property, which is capable of being transferred, may be mortgaged.

Property adversely held may be mortgaged.

SEC. 1614. A mortgage may be created upon property held adversely to the mortgagor.

Power of sale.

SEC. 1615. A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

Power of sale how executed.

SEC. 1616. A power of sale under a mortgage is a trust, and can be executed only in the manner prescribed by the Code of Civil Procedure, or by statute.

On what a lien.

SEC. 1617. A mortgage is a lien upon everything that would pass by a grant of the property, and upon nothing more.

Against whom a mortgage is a lien.

SEC. 1618. A mortgage is a lien upon the property mortgaged, in the hands of every one claiming under the mortgagor subsequently to its execution, except purchasers or incumbrancers in good faith, without notice and for value, and except as otherwise provided by article III of this chapter.

Mortgage of thing held adversely.

SEC. 1619. A mortgage of property held adversely to the mortgagor takes effect from the time at which he, or one claiming under him, obtains possession of the property; but has precedence over every lien upon the mortgagor's interest in the property, created subsequently to the recording of the mortgage.

SEC. 1620. A mortgage does not entitle the mortgagee to the possession of the property, but after the execution of the mortgage the mortgagor may agree to such change of possession upon a new consideration. Mortgage does not entitle mortgagee to possession.

SEC. 1621. A mortgagee may foreclose the right of redemption of the mortgagor, in the manner prescribed by the Code of Civil Procedure, or by statute. Foreclosure.

SEC. 1622. No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security. Waste.

ARTICLE II.

MORTGAGE OF REAL PROPERTY.

SECTION 1623. Mortgage, how created.

1624. Mortgage not a personal obligation.

1625. Mortgages on lands inherited or devised, by whom to be paid.

1626. Mortgage how recorded.

1627. Effect of record.

1628. What must be recorded as a mortgage.

1629. Recording assignment.

1630. Discharge of records, &c., of mortgage.

1631. Certificate, how to be recorded.

SEC. 1623. A mortgage of real property can be created, renewed or extended, only by writing, under seal, with the formalities required in the case of a grant of real property. Mortgage, how created.

SEC. 1624. A mortgage of real property does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect. Mortgage not a personal obligation.

SEC. 1625. When real property, subject to a mortgage, passes by succession or will, the successor or devisee must satisfy the mortgage out of his own property, without resorting to Mortgages on lands inherited or devised, by whom to be paid.

the executor or administrator of the mortgagor, unless there is an express direction in the will of the mortgagor, that the mortgage shall be otherwise paid.

Mortgage.
how recorded.

SEC. 1626. Mortgages of real property may be recorded in like manner with grants thereof, except that they must be recorded in books kept for mortgages exclusively.

Effect of
record.

SEC. 1627. The record of a mortgage, duly made, operates as notice to all subsequent purchasers and incumbrancers.

When must
be recorded as
a mortgage.

SEC. 1628. Every grant of real property, or of any estate therein, which appears, by any other writing, to be intended as a mortgage within the meaning of chapter I of this Title, must be recorded as a mortgage; and if such grant and other writing explanatory of its true character are not recorded together, at the same time and place, the grantee can derive no benefit from such record.

Recording
assignment.

SEC. 1629. An assignment of a mortgage may be recorded in like manner with a mortgage, and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

Discharge of
records, &c.,
of mortgage.

SEC. 1630. A recorded mortgage must be discharged upon the record, by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged, or proved and certified, as prescribed by the chapter on Recording Transfers, stating that the mortgage has been paid, or otherwise satisfied and discharged.

Certificate,
how to be
recorded.

SEC. 1631. A certificate of the discharge of a mortgage, and the proof or acknowledgment thereof, must be recorded at length; and a reference made in the record, to the book and page where the mortgage is recorded, and in the minute of the discharge made upon the record of the mortgage, to the book and page where the discharge is recorded.

ARTICLE III.

MORTGAGE OF PERSONAL PROPERTY.

SECTION 1632. To be in writing.

1633. Foreclosure.

1634. Mortgage must be filed.

1635. Effect of filing.

1636. How filed.

1637. Mortgage valid only in respect to things as to which it is filed.

1638. Renewal of filing.

1639, 1640. Duty of officers.

1641. Where mortgages on vessels must be filed.

1642. Duty of auditor upon filing.

1643. Certain errors to be disregarded.

1644. Negligence of officer.

1645. Copy, &c., when evidence.

1646. To what mortgages this article does not apply.

SEC. 1632. A mortgage of personal property can be created, renewed, or extended, only by a writing subscribed by the mortgagor. To be in writing.

SEC. 1633. A mortgagee of personal property, when the debt for which it is given is due, may foreclose the mortgagor's right of redemption by a sale of the property, made in the manner and upon the notice prescribed by the Title on Pledge, or by proceedings under the Code of Civil Procedure. Foreclosure.

SEC. 1634. A mortgage of personal property is void as against creditors of the mortgagor, and subsequent purchasers and incumbrancers of the property in good faith and for value, unless it is filed as hereafter prescribed. Mortgage must be filed.

SEC. 1635. The filing of a mortgage of personal property, in conformity to the provisions of this article, operates as notice thereof to all subsequent purchasers and incumbrancers. Effect of filing.

How filed.

SEC. 1636. A mortgage of personal property is duly filed by depositing the original, or an authenticated copy thereof, in the office of the register of deeds of the county where the property mortgaged is at such time situated.

Mortgage valid only in respect to things as to which it is filed

SEC. 1637. A single mortgage of personal property situated in more than one county, must be filed, or an authenticated copy thereof, in each county where any of such property is situated. And the mortgage is only valid in respect to the property as to which it is duly filed as herein provided.

Renewal of filing.

SEC. 1638. A mortgage of personal property ceases to be valid, as against creditors of the mortgagor, and subsequent purchasers or incumbrancers in good faith, after the expiration of two years from the filing thereof, unless, within thirty days next preceding the expiration of such term, a copy of the mortgage, and a statement of the amount of existing debt for which the mortgagee claims a lien, subscribed by him, are filed anew in the office of the register of deeds, in the county in which the mortgagor then resides, or, if he does not then reside in the Territory, in the same office in which the mortgage was originally filed.

Duty of officers.

SEC. 1639. The officer mentioned in the last section must receive and file all such instruments as are offered to him under this article, and must keep the same in *him* [his] office for the public.

Same.

SEC. 1640. Every officer with whom an instrument is filed, pursuant to this chapter, must indorse a number upon the same in regular order, together with the time of receiving the same, and must enter the name of every party thereto in a book kept for that purpose, alphabetically, placing mortgagors and mortgagees under a separate head, and stating in separate columns, opposite each name, the number indorsed on the instrument, the date thereof and the filing, the amount secured thereby, and the time at which it is due.

Where mortgages upon vessels must be filed.

SEC. 1641. A mortgage of a canal boat, steam tug, screw, or other craft, intended for navigating canals, must be filed in the office of the register of deeds, of the county in which such boat, tug, screw, or other craft is at the time the mortgage is given.

Duty of register of deeds upon filing.

SEC. 1642. The register of deeds must cause every mortgage filed with him pursuant to the last section, upon receipt there-

of, to be respectively numbered, the time of receiving the same to be indorsed thereon, and the substance thereof to be entered in a book provided for that purpose, entering alphabetically the names of all the parties to such instrument, with the number indorsed thereon opposite to each name; which entry shall be repeated in the index alphabetically under the name of every party thereto, also indexing the name of each boat mortgaged, with the number of the mortgage opposite to each.

SEC. 1643. A mortgage is not to be deemed defectively filed, by reason of any errors in the copy filed, which do not tend to mislead a party interested to his prejudice. Certain errors to be disregarded.

SEC. 1644. The negligence of the officer with whom a mortgage is filed cannot prejudice the rights of the mortgagee. Negligence of officer.

SEC. 1645. A copy of any instrument required to be filed under this article, when certified by the officer with whom it is filed, or his deputy, is presumptive evidence of such filing, in the manner and at the time stated in the official indorsement on such instrument. The original indorsement is also evidence to the same extent only. Copy, &c., when evidence.

SEC. 1646. Sections 1634 to 1645 inclusive, do not apply to any mortgage of a vessel fitted for navigation, other than the kind mentioned in section 1641, which is required by law to be filed or recorded in any other manner. To what mortgages this article does not apply.

CHAPTER III.

PLEDGE.

SECTION 1647. Pledge, what.

1648. When contract is to be deemed a pledge.

1649. Delivery essential to validity of pledge.

1650. Increase of thing.

1651. Lienor may pledge property to extent of his lien.

SECTION 1652. Real owner cannot defeat pledge of property transferred to apparent owner for purposes of pledge.

1653. Pledge lender, what.

1654. Pledgeholder, what.

1655. When pledge lender may withdraw property pledged.

1656. Obligations of pledgeholder.

1657. Pledgeholder must enforce rights of pledgee.

1658. Obligation of pledgee and pledgeholder, for reward.

1659. Gratuitous pledgeholder.

1660. Debtor's misrepresentation of value of pledge.

1661. When pledgee may sell.

1662. When pledgee must demand performance.

1663. Notice of sale to pledgor.

1664. Waiver of notice of sale.

1665. Waiver of demand.

1666. Sale must be by auction.

1667. Pledgee's sale of securities.

1668. Sale on the demand of the pledgor.

1669, 1670. Surplus to be paid to pledgor.

1671. Pledgee's purchase of property pledged.

1672. Pledgee may foreclose right of redemption.

Pledge, what. **SEC. 1647.** Pledge is a deposit of personal property by way of security for the performance of another act.

When contract is to be deemed a pledge. **SEC. 1648.** Every contract by which the possession of personal property is transferred, as a security only, is to be deemed a pledge.

Delivery essential to validity of pledge. **SEC. 1649.** The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee, or to a pledgeholder, as hereafter prescribed.

Increase of thing. **SEC. 1650.** The increase of property pledged is pledged with the property.

Lienor may pledge property to extent of his lien. **SEC. 1651.** One who has a lien upon property may pledge it to the extent of his lien.

Real owner cannot defeat pledge of property transferred to apparent owner for purpose of pledge. **SEC. 1652.** One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it, cannot set up his own title, to defeat a pledge of the property, made by the other, to a pledgee who received the property in good faith, and for value.

Pledge lender, what. **SEC. 1653.** Property may be pledged as security for the obligation of another person than the owner, and in so doing the owner has all the rights of a pledgor for himself, except as hereinafter stated.

SEC. 1654. A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged; who, if he accepts the deposit, is called a pledgeholder.

Pledge holder, what.

SEC. 1655. One who pledges property as security for the obligation of another, cannot withdraw the property pledged otherwise than as a pledgor for himself might; and, if he receives from the debtor a consideration for the pledge, he cannot withdraw it without his consent.

When pledge lender may withdraw property pledged.

SEC. 1656. A pledgeholder for reward cannot exonerate himself from his undertaking; and a gratuitous pledgeholder can do so only by giving reasonable notice to the pledgor and pledgee to appoint a new pledgeholder, and, in case of their failure to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for his care of the same.

Obligations of pledgeholder

SEC. 1657. A pledgeholder must enforce all the rights of the pledgee, unless authorized by him to waive them.

Pledgeholder must enforce rights of pledgee.

SEC. 1658. A pledgee, or a pledgeholder for reward, assumes the duties and liabilities of a depositary for reward.

Obligation of pledgee and pledgeholder for reward.

SEC. 1659. A gratuitous pledgeholder assumes the duties and liabilities of a gratuitous depositary.

Gratuitous pledgeholder.

SEC. 1660. Where a debtor has obtained credit, or an extension of time, by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented; and in default thereof may recover his debt immediately, though it be not actually due.

Debtor's misrepresentation of value of pledge.

SEC. 1661. When performance of the act for which a pledge is given is due, in whole or in part, the pledgee may collect what is due to him by a sale of property pledged, subject to the rules and exceptions hereinafter prescribed.

When pledgee may sell.

SEC. 1662. Before property pledged may be sold, and after performance of the act for which it is security is due, the pledgee must demand performance thereof from the debtor.

When pledgee must demand performance.

SEC. 1663. A pledgee must give actual notice to the pledgor of the time and place at which the property pledged will be sold, at such a reasonable time before the sale, as will enable the pledgor to attend.

Notice of sale to the pledgor.

Waiver of notice of sale.

SEC. 1664. Notice of sale may be waived by a pledgor at any time; but is not waived by a mere waiver of demand of performance.

Waiver of demand.

SEC. 1665. A debtor or pledgor waives a demand of performance as a condition precedent to a sale of the property pledged, by a positive refusal to perform, after performance is due, but cannot waive it in any other manner except by contract.

Sale must be by auction.

SEC. 1666. The sale by a pledgee, of property pledged, must be made by public auction, in the manner and upon the notice to the public usual at the place of sale, in respect to auction sales of similar property; and must be for the highest obtainable price.

Pledgee's sale of securities.

SEC. 1667. A pledgee cannot sell any evidence of debt pledged to him, except the obligations of governments, states, or corporations; but he may collect the same when due.

Sale on the demand of the pledgor.

SEC. 1668. Whenever property pledged can be sold for a price sufficient to satisfy the claim of the pledgee, the pledgor may require it to be sold, and its proceeds to be applied to such satisfaction, when due.

Surplus to be paid to pledgor.

SEC. 1669. After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds, he may deduct therefrom the amount due under the principal obligation, and the necessary expenses of sale and collection, and must pay the surplus to the pledgor, on demand.

Same.

SEC. 1670. When property pledged is sold before the claim of the pledgee is due, he may retain out of the proceeds all that can possibly become due under his claim, until it becomes due; with the proper rebate of interest.

Pledgee's purchase of property pledged.

SEC. 1671. A pledgee, or pledgeholder, cannot purchase the property pledged except by direct dealing with the pledgor.

Pledgee may foreclose right of redemption.

SEC. 1672. Instead of selling property pledged, as hereinbefore provided, a pledgee may foreclose the right of redemption by a judicial sale under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale.

CHAPTER IV.

BOTTOMRY.

SECTION 1673. Bottomry, what.

1674. Owner of ship may hypothecate.

1675, 1676. When master may hypothecate ship.

1677. When master may hypothecate freight money.

1678. Rate of interest.

1679. Rights of lender when no necessity for bottomry existed.

1680. Stipulation for personal liability, void.

1681. When money loaned is to be repaid.

1682. When bottomry loan becomes due.

1683. Bottomry lien, how lost.

1684. Preference of bottomry lien over other liens.

1685. Priority of bottomry liens.

SEC. 1673. Bottomry is a contract by which a ship or its freightage is hypothecated as security for a loan, which is to be repaid only in case the ship survives a particular risk, voyage, or period. Bottomry, what.

SEC. 1674. The owner of a ship may hypothecate it or its freightage, upon bottomry, for any lawful purpose, and at any time and place. Owner of ship may hypothecate.

SEC. 1675. The master of a ship may hypothecate it upon bottomry, only for the purpose of procuring repairs or supplies which are necessary for accomplishing the objects of the voyage, or for securing the safety of the ship. When master may hypothecate ship.

SEC. 1676. The master of a ship can hypothecate it upon bottomry, only when he cannot otherwise relieve the necessities of the ship, and is unable to reach adequate funds of the owner, or to obtain any upon the personal credit of the owner, and when previous communication with him is precluded by the urgent necessity of the case. Same.

SEC. 1677. The master of a ship may hypothecate freightage upon bottomry, under the same circumstances as those which authorize an hypothecation of the ship by him. When master may hypothecate freight money.

Rate of interest.

SEC. 1678. Upon a contract of bottomry, the parties may lawfully stipulate for a rate of interest higher than that allowed by the law upon other contracts. But a competent court may reduce the rate stipulated when it appears unjustifiable and exorbitant.

Rights of lender when no necessity for bottomry existed.

SEC. 1679. A lender upon a contract of bottomry, made by the master of a ship as such, may enforce the contract, though the circumstances necessary to authorize the master to hypothecate the ship did not in fact exist, if, after due diligence and inquiry, the lender had reasonable grounds to believe, and did in good faith believe, in the existence of such circumstances.

Stipulation for personal liability, void.

SEC. 1680. A stipulation, in a contract of bottomry, imposing any liability for the loan independent of the maritime risks, is void.

When money loaned is to be repaid.

SEC. 1681. In case of a total loss of the thing hypothecated, from a risk to which the loan was subject, the lender upon bottomry can recover nothing; in case of a partial loss, he can recover only to the extent of the net value to the owner of the part saved.

When bottomry loan becomes due.

SEC. 1682. Unless it is otherwise expressly agreed, a bottomry loan becomes due immediately upon the termination of the risk, although a term of credit is specified in the contract.

Bottomry lien, how lost.

SEC. 1683. A bottomry lien is independent of possession, and is lost by omission to enforce it within a reasonable time.

Preference of bottomry lien over other liens.

SEC. 1684. A bottomry lien, if created out of a real or apparent necessity, in good faith, is preferred to every other lien or claim upon the same thing, excepting only a lien for seamen's wages, a subsequent lien of materialmen for supplies or repairs, indispensable to the safety of the ship, and a subsequent lien for salvage.

Priority of bottomry liens.

SEC. 1685. Of two or more bottomry liens on the same subject, the latter in date has preference, if created out of necessity.

CHAPTER V.

RESPONDENTIA.

- SECTION 1686. Respondentia, what.
 1687. Respondentia by owner.
 1688. Respondentia by master.
 1689. Rate of interest.
 1690. Obligations of ship owner.

SEC. 1686. Respondentia is a contract by which a cargo, or some part thereof, is hypothecated as security for a loan, the repayment of which is dependent on maritime risk. Respondentia, what.

SEC. 1687. The owner of cargo may hypothecate it upon respondentia, at any time and place, and for any lawful purpose. Respondentia, by owner.

SEC. 1688. The master of a ship may hypothecate its cargo upon respondentia, only in a case in which he would be authorized to hypothecate the ship and freightage, but is unable to borrow sufficient money thereon for repairs or supplies which are necessary for the successful accomplishment of the voyage; and he cannot do so, even in such case, if there is no reasonable prospect of benefiting the cargo thereby. Respondentia, by master.

SEC. 1689. The provisions of sections 1678 to 1685 apply equally to loans on respondentia. Rate of interest.

SEC. 1690. The owner of a ship is bound to repay to the owner of its cargo all which the latter is compelled to pay, under a contract of respondentia made by the master, in order to discharge its lien. Obligations of ship owner.

CHAPTER VI.

OTHER LIENS.

- SECTION** 1691. Lien of seller of real property.
 1692. When transfer of contract waives lien.
 1693. Extent of seller's lien.
 1694. Lien of seller of personal property.
 1695. Purchaser's lien on real property.
 1696. Lien for services.
 1697. Lien of factor.
 1698. Banker's lien.
 1699. Shipmaster's lien.
 1700. Seamen's lien.
 1701. Officer's lien.
 1702. Attorney's lien.
 1703. Judgment lien.
 1704. Mechanic's lien.
 1705. Lien on ships.
 1706. Enforcement of lien.

Lien of seller
of real property

SEC. 1691. One who sells real property has a special lien thereon, independent of possession, for so much of the price as remains unpaid, and unsecured otherwise than by the personal obligation of the buyer.

When trans-
fer of contract
waives lien.

SEC. 1692. Where a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract, by the seller, waives his lien to the extent of the sum payable under the contract.

Extent of
seller's lien.

SEC. 1693. The liens defined in sections 1691 and 1695 are valid against every one claiming under the debtor, except a purchaser or incumbrancer in good faith and for value.

Lien of seller
of personal
property.

SEC. 1694. One who sells personal property has a special lien thereon, dependent on possession, for its price, if it is in his possession when the price becomes payable; and may enforce his lien in like manner as if the property was pledged to him for the price.

SEC. 1695. One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration. Purchaser's lien on real property.

SEC. 1696. Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by labor or skill employed for the protection, improvement, safe keeping or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service. Lien for services.

SEC. 1697. A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are intrusted to him by the same principal. Lien of factor.

SEC. 1698. A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business. Banker's lien.

SEC. 1699. The master of a ship has a general lien, independent of possession, upon the ship and freightage, for advances necessarily made, or liabilities necessarily incurred by him for the benefit of the ship, but has no lien for his wages. Shipmaster's lien.

SEC. 1700. The mate and seamen of a ship have a general lien, independent of possession, upon the ship and freightage for their wages, which is superior to every other lien. Seamen's lien.

SEC. 1701. An officer, who levies an attachment or execution upon personal property, acquires a special lien, dependent on possession, upon such property, which authorizes him to hold it until the process is discharged or satisfied, or a judicial sale of the property is had. Officer's lien

SEC. 1702. An attorney-at-law has a lien, which is defined and regulated by the Code of Civil Procedure, or by statute. Attorney's lien.

SEC. 1703. The lien of a judgment is regulated by the Code of Civil Procedure, or by statute. Judgment lien.

SEC. 1704. The liens of mechanics, for materials and services upon real property, are regulated by special statutes. Mechanic's lien.

Lien on ships.

SEC. 1705. Debts amounting to at least fifty dollars, contracted for the benefit of ships, are liens in the cases provided by the Code of Civil Procedure, or by statute.

Enforcement of lien.

SEC. 1706. The mode of proceeding by a creditor to enforce a lien within this Territory, is regulated by the Code of Civil Procedure, or by statute.

CHAPTER VII.

STOPPAGE IN TRANSIT.

SECTION 1707. When consignor may stop goods.

1708. What is insolvency of consignee.

1709. Transit, when ended.

1710. Stoppage, how effected.

1711. Effect of stoppage.

When consignor may stop goods.

SEC. 1707. A seller or consignor of property, whose claim for its price or proceeds has not been extinguished, may, upon the insolvency of the buyer or consignee becoming known to him after parting with the property, stop it while on its transit to the buyer or consignee, and resume possession thereof.

What is insolvency of consignee.

SEC. 1708. A person is insolvent, within the meaning of the last section, when he ceases to pay his debts in the manner usual with persons of his business, or when he declares his inability or unwillingness to do so.

Transit, when ended.

SEC. 1709. The transit of property is at an end when it comes into the possession of the consignee, or into that of his agent, unless such agent is employed merely to forward the property to the consignee.

Stoppage, how effected.

SEC. 1710. Stoppage in transit can be effected only by notice to the carrier or depositary of the property, or by taking actual possession thereof.

Effect of stoppage.

SEC. 1711. Stoppage in transit does not of itself rescind a sale, but is a means of enforcing the lien of the seller.

TITLE XV.

NEGOTIABLE INSTRUMENTS.

CHAPTER I. Negotiable instruments in general.

- II. Bills of exchange.
- III. Promissory notes.
- IV. Cheques.
- V. Bank notes and certificates of deposit.

CHAPTER I.

NEGOTIABLE INSTRUMENTS IN GENERAL.

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- II. Interpretation.
- III. Indorsement.
- IV. Presentment for payment.
- V. Dishonor.
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ARTICLE I.

GENERAL DEFINITIONS.

SECTION 1712. To what instruments this Title is applicable.

1713. Negotiable instrument, what.

SECTION 1714. Must be for unconditional payment of money.

1715. Payee.

1716. Instrument may be in alternative.

1717. Date, seal, &c.

1718. May contain a pledge, &c.

1719. What it must not contain.

1720. Date.

1721. Different classes of negotiable instruments.

To what instruments this Title is applicable.

SEC. 1712. The provisions of this Title apply only to negotiable instruments, as defined in this article.

Negotiable instrument, what.

SEC. 1713. A negotiable instrument is a written promise or request for the payment of a certain sum of money, to order or bearer, in conformity to the provisions of this article.

Must be for unconditional payment of money.

SEC. 1714. A negotiable instrument must be made payable in money only, and without any condition not certain of fulfillment.

Payee.

SEC. 1715. The person, to whose order a negotiable instrument is made payable, must be ascertainable at the time the instrument is made.

Instrument may be in alternative.

SEC. 1716. A negotiable instrument may give to the payee an option between the payment of the sum specified therein, and the performance of another act; but as to the latter, the instrument is not within the provisions of this Title.

Date, seal, &c.

SEC. 1717. A negotiable instrument may be with or without date; with or without seal; and with or without designation of the time or place of payment.

May contain a pledge, &c.

SEC. 1718. A negotiable instrument may contain a pledge of collateral security, with authority to dispose thereof.

What it must not contain.

SEC. 1719. A negotiable instrument must not contain any other contract than such as is specified in this article.

Date.

SEC. 1720. Any date may be inserted by the maker of a negotiable instrument, whether past, present, or future, and the instrument is not invalidated by his death or incapacity at the time of the nominal date.

Different classes of negotiable paper.

SEC. 1721. There are six classes of negotiable instruments, namely:

1. Bills of exchange;
2. Promissory notes;
3. Bank notes;
4. Cheques;
5. Bonds;
6. Certificates of deposit.

ARTICLE II.

INTERPRETATION OF NEGOTIABLE INSTRUMENTS.

SECTION 1722. Time and place of payment.

1723. Place of payment not specified.

1724. Instruments payable to a person or his order, how construed.

1725. Unindorsed note, when negotiable.

1726. Fictitious payee.

1727. Presumption of consideration.

SEC. 1722. A negotiable instrument which does not specify ^{Time and place of payment.} the time of payment, is payable immediately.

SEC. 1723. A negotiable instrument which does not specify ^{Place of payment not specified.} a place of payment, is payable wherever it is held at its maturity.

SEC. 1724. An instrument, otherwise negotiable in form, ^{Instruments payable to a person or his order, how construed.} payable to a person named, but adding the words, "or to his order," or "or to bearer," or words equivalent thereto, is in the former case payable to the written order of such person, and the latter case, payable to the bearer.

SEC. 1725. A negotiable instrument, made payable to the ^{Unindorsed note, when negotiable.} order of the maker, or of a fictitious person, if issued by the maker for a valid consideration, without indorsement, has the same effect against him and all other persons having notice of the facts, as if payable to the bearer.

SEC. 1726. A negotiable instrument, made payable to the ^{Fictitious payee.} order of a person obviously fictitious, is payable to the bearer.

SEC. 1727. The signature of every drawer, acceptor and indorser of a negotiable instrument, is presumed to have been ^{Presumption of consideration.} made for a valuable consideration, before the maturity of the instrument, and in the ordinary course of business.

ARTICLE III.

INDORSEMENT.

- SECTION 1728. Indorsement, what.
 1729. Agreement to indorse.
 1730. When may be made on separate paper.
 1731. Kinds of indorsement.
 1732. General indorsement, what.
 1733. Special indorsement, what.
 1734. General indorsement, how made special.
 1735. Destruction of negotiability by indorser.
 1736. Implied warranty of indorser.
 1737. Indorser, when liable to payee.
 1738, 1739. Indorsement without recourse.
 1740. Indorsee privy to contract.
 1741. Indorser has rights of guarantor.
 1742. Rights of accommodation indorser.
 1743. Effect of want of consideration.
 1744. Indorsee in due course, what.
 1745. Rights of indorsee in due course.
 1746. Instrument left blank.

Indorsement, what. SEC. 1728. One who writes his name upon a negotiable instrument, otherwise than as a maker or acceptor, and delivers it, with his name thereon, to another person, is called an indorser, and his act is called indorsement.

Agreement to indorse. SEC. 1729. One who agrees to indorse a negotiable instrument is bound to write his signature upon the back of the instrument, if there is sufficient space thereon for that purpose.

When may be made on separate paper. SEC. 1730. When there is not room for a signature upon the back of a negotiable instrument, a signature equivalent to an indorsement thereof may be made upon a paper annexed thereto.

Kinds of indorsement. SEC. 1731. An indorsement may be general or special.

General indorsement, what. SEC. 1732. A general indorsement is one by which no indorsee is named.

SEC. 1733. A special indorsement specifies the indorsee.

Special indorsement, what.

SEC. 1734. A negotiable instrument bearing a general indorsement cannot be afterwards specially indorsed; but any lawful holder may turn a general indorsement into a special one by writing above it a direction for payment to a particular person.

General indorsement, how made special.

SEC. 1735. A special indorsement may, by express words for that purpose, but not otherwise, be so made as to render the instrument not negotiable.

Destruction of negotiability by indorser.

SEC. 1736. Every indorser of a negotiable instrument warrants to every subsequent holder thereof, who is not liable thereon to him:

Implied warranty of indorser.

1. That it is in all respects what it purports to be;
2. That he has a good title to it;
3. That the signatures of all prior parties are binding upon them;
4. That if the instrument is dishonored, the indorser will, upon notice thereof duly given to him, or without notice, where it is excused by law, pay so much of the same as the holder paid therefor, with interest; unless exonerated under the provisions of section 1786, 1824, or 1826.

SEC. 1737. One who indorses a negotiable instrument before it is delivered to the payee, is liable to the payee, thereon, as an indorser.

Indorser, when liable to payee.

SEC. 1738. An indorser may qualify his indorsement with the words, "without recourse," or equivalent words; and upon such indorsement, he is responsible only to the same extent as in the case of a transfer without indorsement.

Indorsement without recourse.

SEC. 1739. Except as otherwise prescribed by the last section, an indorsement without recourse has the same effect as any other indorsement.

Same.

SEC. 1740. An indorsee of negotiable instrument has the same rights against every prior party thereto, that he would have had if the contract had been made directly between them in the first instance.

Indorsee privy to contract.

SEC. 1741. An indorser has all the rights of a guarantor, as defined by the chapter on Guaranty in General, and is exonerated from liability in like manner.

Indorser has rights of guarantor.

Rights of
accommoda-
tion indorser.

SEC. 1742. One who indorses a negotiable instrument, at the request, and for the accommodation of another party to the instrument, has all the rights of a surety, as defined by the chapter on Suretyship, and is exonerated in like manner, in respect to every one having notice of the facts, except that he is not entitled to contribution from subsequent indorsers.

Effect of
want of con-
sideration.

SEC. 1743. The want of consideration for the undertaking of a maker, acceptor, or indorser of a negotiable instrument, does not exonerate him from liability thereon to an indorsee in good faith for a consideration.

Indorsee in
due course,
what.

SEC. 1744. An indorsee in due course is one who, in good faith, in the ordinary course of business, and for value, before its apparent maturity or presumptive dishonor, and without knowledge of its actual dishonor, acquires a negotiable instrument duly indorsed to him, or indorsed generally, or payable to the bearer.

Rights of
indorsee in
due course.

SEC. 1745. An indorsee of a negotiable instrument, in due course, acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable, and notwithstanding any defect in the title of the person from whom he acquired it.

Instrument
left blank.

SEC. 1746. One who makes himself a party to an instrument intended to be negotiable, but which is left wholly or partly in blank, for the purpose of filling afterwards, is liable upon the instrument to an indorsee thereof in due course, in whatever manner and at whatever time it may be filled, so long as it remains negotiable in form.

ARTICLE IV.

PRESENTMENT FOR PAYMENT.

SECTION 1747. Effect of want of demand on principal debtor.

1748. Presentment, how made.

1749. Apparent maturity, when.

SECTION 1750. Presumptive dishonor of bill, payable after sight.

1751. Apparent maturity of bill, payable at sight.

1752, 1753. Apparent maturity of note.

1754. Surrender of instrument, when a condition of payment.

SEC. 1747. It is not necessary to make a demand of payment upon the principal debtor in a negotiable instrument, in order to change him; but if the instrument is by its terms payable at a specified place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to an offer of payment upon his part.

Effect of want of demand on principal debtor.

SEC. 1748. Presentment of a negotiable instrument for payment, when necessary, must be made as follows, as nearly as by reasonable diligence it is practicable:

Presentment, how made.

1. The instrument must be presented by the holder;

2. The instrument must be presented to the principal debtor, if he can be found at the place where presentment should be made, and if not, then it must be presented to some other person of discretion, if one can be found there, and if not, then it must be presented to a notary public within the Territory;

3. An instrument which specifies a place for its payment must be presented there, and if the place specified includes more than one house, then at the place of residence or business of the principal debtor, if it can be found therein;

4. An instrument which does not specify a place for its payment, must be presented at the place of residence or business of the principal debtor, or wherever he may be found, at the option of the presentor; and,

5. The instrument must be presented upon the day of its apparent maturity, or, if it is payable on demand, at any time before its apparent maturity, within reasonable hours, and, if it is payable at a banking-house, within the usual banking hours of the vicinity; but, by the consent of the person to whom it should be presented, it may be presented at any hour of the day.

SEC. 1749. The apparent maturity of a negotiable instrument, payable at a particular time, is the day on which by its terms it becomes due; or, when that is a holiday, the next business day.

Apparent maturity, when.

Presumptive
dishonor of
bill, payable
after sight.

SEC. 1750. A bill of exchange, payable at a specified time after sight, which is not accepted within ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance, is presumed to have been dishonored.

Apparent
maturity of
bill, payable
at sight.

SEC. 1751. The apparent maturity of a bill of exchange, payable at sight or on demand, is:

1. If it bears interest, one year after its date; or,
2. If it does not bear interest, ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance.

Apparent ma-
turity of note.

SEC. 1752. The apparent maturity of a promissory note, payable at sight or on demand, is:

1. If it bears interest, one year after its date; or,
2. If it does not bear interest, six months after its date.

Same.

SEC. 1753. Where a promissory note is payable at a certain time after sight or demand, such time is to be added to the periods mentioned in the last section.

Surrender of
instrument,
when a condi-
tion of payment

SEC. 1754. A party to a negotiable instrument may require, as a condition concurrent to its payment by him:

1. That the instrument be surrendered to him, unless it is lost or destroyed, or the holder has other claims upon it; or,
2. If the holder has a right to retain the instrument, and does retain it, then that a receipt for the amount paid, or an exoneration of the party paying, be written thereon; or,
3. If the instrument is lost, then that the holder give to him a bond, executed by himself and two sufficient sureties, to indemnify him against any lawful claim thereon; or,
4. If the instrument is destroyed, then that proof of its destruction be given to him.

ARTICLE V.

DISHONOR OF NEGOTIABLE INSTRUMENTS.

SECTION 1755. Dishonor, what.

1756. Notice, by whom given.

- 1757. Form of notice.
- 1758. Notice, how served.
- 1759. Notice, how served after indorser's death.
- 1760. Notice given in ignorance of death, valid.
- 1761. Notice, when to be given.
- 1762. Notice of dishonor, when to be mailed.
- 1763. Notice, how given by agent.
- 1764. Additional time for notice by indorser.
- 1765. Effect of notice of dishonor.

SEC. 1755. A negotiable instrument is dishonored, when it is either not paid, or not accepted, according to its tenor, on presentment for the purpose, or without presentment, where that is excused. Dishonor, what.,

SEC. 1756. Notice of the dishonor of a negotiable instrument may be given: Notice, by whom given.

1. By a holder thereof; or,
2. By any party to the instrument who might be compelled to pay it to the holder, and who would, upon taking it up, have a right to reimbursement from the party to whom the notice is given.

SEC. 1757. A notice of dishonor may be given in any form which describes the instrument with reasonable certainty, and substantially informs the party receiving it that the instrument has been dishonored. Form of notice.

SEC. 1758. A notice of dishonor may be given:

1. By delivering it to the party to be charged, personally, at any place; or,
2. By delivering it to some person of discretion at the place of residence or business of such party, apparently acting for him; or,
3. By properly folding the notice, directing it to the party to be charged, at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the post-office most conveniently accessible from the place where the presentment was made, and paying the postage thereon.

SEC. 1759. In case of the death of a party to whom notice of dishonor should otherwise be given, the notice must be given to one of his personal representatives; or if there are none, then to any member of his family who resided with him at his death; or if there is none, then it must be mailed to his Notice, how served after indorser's death.

last place of residence, as prescribed by subdivision 3 of the last section.

Notice given in ignorance of death, valid.

SEC. 1760. A notice of dishonor sent to a party after his death, but in ignorance thereof, and in good faith, is valid.

Notice, when to be given.

SEC. 1761. Notice of dishonor, when given by the holder of an instrument, or his agent, otherwise than by mail, must be given on the day of dishonor, or on the next business day thereafter.

Notice of dishonor, when to be mailed.

SEC. 1762. When notice of dishonor is given by mail, it must be deposited in the post-office in time for the first mail which closes after noon of the first business day succeeding the dishonor, and which leaves the place where the instrument was dishonored, for the place to which the notice should be sent.

Notice, how given by agent.

SEC. 1763. When the holder of a negotiable instrument, at the time of its dishonor, is a mere agent for the owner, it is sufficient for him to give notice to his principal in the same manner as to an indorser, and his principal may give notice to any other party to be charged, as if he were himself an indorser. And if an agent of the owner employs a sub-agent, it is sufficient for each successive agent or sub-agent to give notice in like manner to his own principal.

Additional time for notice by indorser.

SEC. 1764. Every party to a negotiable instrument receiving notice of its dishonor, has the like time thereafter to give similar notice to prior parties, as the original holder had after its dishonor. But this additional time is available only to the particular party entitled thereto.

Effect of notice of dishonor.

SEC. 1765. A notice of the dishonor of a negotiable instrument, if valid in favor of the party giving it, inures to the benefit of all other parties thereto, whose right to give the like notice has not then been lost.

ARTICLE VI.

EXCUSE OF PRESENTMENT AND NOTICE.

SECTION 1766. Notice of dishonor, when excused.

1767, 1768. Presentment and notice, when excused.

- SECTION 1760. Delay, when excused.
 1770. Waiver of presentment and notice.
 1771. Waiver of protest.

SEC. 1766. Notice of dishonor is excused:

1. When the party by whom it should be given cannot, with reasonable diligence, ascertain either the place of residence or business of the party to be charged; or,
2. When there is no post-office communication between the town of the party by whom the notice should be given, and the town in which the place of residence or business of the party to be charged is situated; or,
3. When the party to be charged is the same person who dishonors the instrument; or,
4. When the notice is waived by the party entitled thereto.

Notice of dishonor, when excused.

SEC. 1767. Presentment and notice are excused as to any party to a negotiable instrument, who informs the holder, within ten days before its maturity, that it will be dishonored.

Presentment and notice, when excused.

SEC. 1768. If, before or at the maturity of an instrument, an indorser has received full security for the amount thereof, or the maker has assigned all his estate to him as such security, presentment and notice to him are excused.

Same.

SEC. 1769. Delay in presentment, or in giving notice of dishonor, is excused, when caused by circumstances which the party delaying could not have avoided by the exercise of reasonable care and diligence.

Delay, when excused.

SEC. 1770. A waiver of presentment waives notice of dishonor also, unless the contrary is expressly stipulated; but a waiver of notice does not waive presentment.

Waiver of presentment and notice.

SEC. 1771. A waiver of protest on any negotiable instrument other than a foreign bill of exchange, waives presentment and notice.

Waiver of protest.

ARTICLE VII.

EXTINCTION OF NEGOTIABLE INSTRUMENTS.

- SECTION 1772. Obligation of party, when extinguished.
 1773. Revival of obligation.

Obligation of
party, when
extinguished.

SEC. 1772. The obligation of a party to a negotiable instrument is extinguished:

1. In like manner with that of parties to contracts in general; or,

2. By payment of the amount due upon the instrument, at or after its maturity, in good faith and in the ordinary course of business, to any person having actual possession thereof, and appearing, by its terms, to be entitled to payment.

Revival of
obligation.

SEC. 1773. If, after its extinction, a negotiable instrument comes into the possession of an indorsee in due course, the obligation thereof revives in his favor.

CHAPTER II.

BILLS OF EXCHANGE.

ARTICLE I. Form and interpretation.

II. Days of grace.

III. Presentment for acceptance.

IV. Acceptance.

V. Acceptance or payment for honor.

VI. Presentment for payment.

VII. Excuse of presentment and notice.

VIII. Foreign bills.

ARTICLE I.

FORM AND INTERPRETATION OF A BILL.

SECTION 1774. Bill of exchange, what.

1775. Drawee, in case of need.

- SECTION 1776. Bill in parts of a set.
 1777. When must be in a set.
 1778. Presentment, &c., of part of a set.
 1779. Bill, where payable.
 1780. Rights and obligations of drawer.

SEC. 1774. A bill of exchange is an instrument, negotiable Bill of exchange, what. in form, by which one, who is called the drawer, requests another, called the drawee, to pay a specified sum of money.

SEC. 1775. A bill of exchange may give the name of any Drawee in case of need. person in addition to the drawee, to be resorted to in case of need.

SEC. 1776. A bill of exchange may be drawn in any number Bill in parts of a set. of parts, each part stating the existence of the others, and all forming one set.

SEC. 1777. An agreement to draw a bill of exchange binds When must be in a set. the drawer to execute it in three parts, if the other party to the agreement desires it.

SEC. 1778. Presentment, acceptance, or payment, of a single Presentment, &c., of part of set. part in a set of a bill of exchange, is sufficient for the whole.

SEC. 1779. A bill of exchange is payable:

1. At the place where, by its terms, it is made payable; or,
2. If it specifies no place of payment, then at the place to which it is addressed; or,
3. If it is not addressed to any place, then at the place of residence or business of the drawee, or wherever he may be found; or,
4. If this cannot be done, then at the office of any notary public in the Territory.

SEC. 1780. The rights and obligations of the drawer of a Rights and obligations of drawer. bill of exchange, are the same as those of the first indorser of any negotiable instrument.

ARTICLE II.

DAYS OF GRACE.

SECTION 1781. Days of grace.

SEC. 1781. Days of grace are not allowed.

Days of grace.

ARTICLE III.

PRESENTMENT FOR ACCEPTANCE.

- SECTION 1782. When a bill may be presented.
 1783. Presentment, how made.
 1784. Presentment to joint drawees.
 1785. When presentment to be made to drawee in case of need.
 1786. Presentment, when must be made.

When bill
may be presen-
ted.

SEC. 1782. At any time before a bill of exchange is payable, the holder may present it to the drawee for acceptance, and if acceptance, is refused, the bill is dishonored.

Presentment,
now made.

SEC. 1783. Presentment for acceptance must be made in the following manner, as nearly as by reasonable diligence it is practicable:

1. The bill must be presented by the holder;
2. It must be presented on a business day, and within reasonable hours;
3. It must be presented to the drawee, if he can be found within the Territory, and if not, then at his place of residence or business, if within the Territory, to any person of discretion therein, and if he has no such place of residence or business, or there is no person of discretion therein, then to any notary public in the Territory; and,
4. If the drawee requests it, the bill must be left with him, until the same hour of the next day, to which time he may postpone his acceptance or refusal.

Presentment
to joint
drawees.

SEC. 1784. Presentment for acceptance to one of several joint drawees, and refusal by him, dispense with presentment to the others.

When pre-
sentment to be
made to drawee
in case of need.

SEC. 1785. A bill of exchange, which specifies a drawee in case of need, must be presented to him for acceptance or payment, as the case may be, before it can be treated as dishonored.

SEC. 1786. When a bill of exchange is payable at a specified time after sight, the drawer and indorsers are exonerated, if it is not presented for acceptance within ten days after the time which would suffice, with ordinary diligence, to forward it for acceptance, unless presentment is excused.

Presentment.
when must be
made.

ARTICLE IV.

ACCEPTANCE.

SECTION 1787. Acceptance, how made.

- 1788. Holder entitled to acceptance on face of bill.
- 1789. What acceptance sufficient with consent of holder.
- 1790. Acceptance by separate instrument.
- 1791. Promise to accept, when equivalent to acceptance.
- 1792. Cancellation of acceptance.
- 1793. What is admitted by acceptance.

SEC. 1787. An acceptance of a bill must be made in writing, by the drawee, or by an acceptor for honor; and may be made by the acceptor writing his name across the face of the bill, with or without other words.

Acceptance.
how made.

SEC. 1788. The holder of a bill of exchange, if entitled to an acceptance thereof, may treat the bill as dishonored, if the drawee refuses to write across its face an unqualified acceptance.

Holder entit-
led to accep-
tance on face
of bill.

SEC. 1789. The holder of a bill of exchange may, without prejudice to his rights against prior parties, receive and treat as a sufficient acceptance:

What accep-
tance sufficient.
with consent
of holder.

1. An acceptance written upon any part of the bill, or upon a separate paper;
2. An acceptance qualified so far only as to make the bill payable at a particular place within the city, or town, in which, if the acceptance was unqualified, it would be payable; or,

3. A refusal by the drawee to return the bill to the holder after presentment; in which case the bill is payable immediately, without regard to its terms.

Acceptance by separate instrument.

SEC. 1790. The acceptance of a bill of exchange, by a separate instrument, binds the acceptor only to one to whom it has been shown, and who, upon the faith thereof, has given value for the bill.

Promise to accept, when equivalent to acceptance.

SEC. 1791. An unconditional promise, in writing, to accept a bill of exchange, is a sufficient acceptance thereof, in favor of every person to whom it has been shown, and who, upon the faith thereof, has given value for the bill.

Cancellation of acceptance.

SEC. 1792. The acceptor of a bill of exchange may cancel his acceptance at any time before delivering the bill to the holder, and before the holder has, with the consent of the acceptor, transferred his title to another person who has given value for it upon the faith of such acceptance.

What is admitted by acceptance.

SEC. 1793. The acceptance of a bill of exchange admits the capacity of the drawer to draw and indorse it; and if written upon the bill, it also admits the same to be genuine, and binding upon the drawer; but it does not admit the signature of any indorser to be genuine.

ARTICLE V.

ACCEPTANCE OR PAYMENT FOR HONOR.

SECTION 1794. When bill may be accepted or paid for honor.

1795. Holder of bill of exchange, bound to accept payment for honor.

1796. Acceptance for honor, how made.

1797. How enforced.

1798. Notice of dishonor not excused by acceptance for honor.

When bill may be accepted or paid for honor.

SEC. 1794. On the dishonor of a bill of exchange by the drawee, and, in case of a foreign bill, after it has been duly protested, it may be accepted or paid by any person, for the honor of any party thereto.

SEC. 1795. The holder of a bill of exchange is not bound to allow it to be accepted for honor, but is bound to accept payment for honor. Holder of bill of exchange.

SEC. 1796. An acceptor or payer for honor must write a memorandum upon the bill, stating therein for whose honor he accepts or pays, and must give notice to such parties, with reasonable diligence, of the fact of such acceptance or payment. Having done so, he is entitled to reimbursement from such parties, and from all parties prior to them. Acceptance for honor, how made.

SEC. 1797. A bill of exchange, which has been accepted for honor, must be presented at its maturity to the drawee for payment, and notice of its dishonor by him must be given to the acceptor for honor in like manner as to an indorser; after which the acceptor for honor must pay the bill. How enforced.

SEC. 1798. The acceptance of a bill of exchange for honor does not excuse the holder from giving notice of its dishonor by the drawee. Notice of dishonor, not excused by acceptance for honor.

ARTICLE VI.

PRESENTMENT FOR PAYMENT.

SECTION 1799. Presentment, when bill not accepted, where made.

1800. Presentment of bill, payable at particular place.

1801. Effect of delay in presentment in certain cases.

1802. Effect, in other cases.

SEC. 1799. If a bill of exchange is by its terms payable at a particular place, and is not accepted on presentment, it must be presented at the same place for payment, when presentment for payment is necessary. Presentment, when bill not accepted, where made.

SEC. 1800. A bill of exchange, accepted payable at a particular place, must be presented at that place for payment, when presentment for payment is necessary, and need not be presented elsewhere. Presentment of bill payable at particular place.

Effect of delay
in presentment
in certain cases

SEC. 1801. If a bill of exchange, payable at sight, or on demand, without interest, is not duly presented for payment, within ten days after the time in which it could, with reasonable diligence, be transmitted to the proper place for such presentment, the drawer and indorsers are exonerated, unless such presentment is excused.

Effect, in
other cases.

SEC. 1802. Mere delay in presenting a bill of exchange payable with interest, at sight or on demand, does not exonerate any party thereto.

ARTICLE VII.

EXCUSE OF PRESENTMENT AND NOTICE.

SECTION 1803. Presentment, when excused.

1804. Delay, when excused.

1805. Presentment and notice, when excused.

Presentment,
when excused.

SEC. 1803. The presentment of a bill of exchange for acceptance is excused if the drawee has not capacity to accept it.

Delay, when
excused.

SEC. 1804. Delay in the presentment of a bill of exchange for acceptance is excused, when caused by circumstances over which the holder has no control.

Presentment
and notice,
when excused.

SEC. 1805. Presentment of a bill of exchange for acceptance or payment, and notice of its dishonor, are excused as to the drawer, if he forbids the drawee to accept, or the acceptor to pay the bill; or if, at the time of drawing, he had no reason to believe that the drawee would accept or pay the same.

ARTICLE VIII.

FOREIGN BILLS.

SECTION 1806. Definitions.

1807. Protest necessary.

SECTION 1808. Protest, by whom made.

1809. Protest, how made.

1810. Protest, where made.

1811. Protest, when to be made.

1812. Protest, when excused.

1813. Notice of protest, how given.

1814. Waiver of protest.

1815. Declaration before payment for honor.

1816. Damages allowed on dishonor of foreign bill.

1817. Rate of damages.

1818, 1819. Damages, how estimated.

SEC. 1806. An inland bill of exchange is one drawn and payable within this Territory. All others are foreign. Definitions.

SEC. 1807. Notice of the dishonor of a foreign bill of exchange can be given only by notice of its protest. Protest necessary.

SEC. 1808. Protest must be made by a notary public, if with reasonable diligence one can be obtained; and if not, then by any reputable person in the presence of two witnesses. Protest, by whom made.

SEC. 1809. Protest must be made by an instrument in writing, giving a literal copy of the bill of exchange, with all that is written thereon, or annexing the original; stating the presentment, and the manner in which it was made; the presence or absence of the drawee or acceptor, as the case may be; the refusal to accept, or to pay, or the inability of the drawee to give a binding acceptance; and in case of refusal, the reason assigned, if any; and finally protesting against all the parties to be charged. Protest, how made.

SEC. 1810. A protest for non-acceptance must be made in the city or town in which the bill is presented for acceptance; and a protest for non-payment in the city or town in which it is presented for payment. Protest, where made.

SEC. 1811. A protest must be noted on the day of the presentment, or on the next business day; but it may be written out at any time thereafter. Protest, when to be made.

SEC. 1812. The want of protest of a foreign bill of exchange or delay in making the same, is excused in like cases with the want or delay of presentment. Protest, when excused.

SEC. 1813. Notice of protest must be given in the same manner as notice of dishonor, except that it may be given by the notary who makes the protest. Notice of protest, how given.

Waiver of protest.

SEC. 1814. If a foreign bill of exchange on its face waives protest, notice of dishonor may be given to any party thereto, in like manner as of an inland bill; except that if any indorser of such a bill expressly requires protest to be made, by a direction written on the bill at or before his indorsement, protest must be made, and notice thereof given to him and to all subsequent indorsers.

Declaration before payment for honor.

SEC. 1815. One who pays a foreign bill of exchange for honor must declare, before payment, in the presence of a person authorized to make protest, for whose honor he pays the same, in order to entitle him to reimbursement.

Damages allowed on dishonor of foreign bill.

SEC. 1816. Damages are allowed as hereinafter prescribed, as a full compensation for interest, re-exchange, expenses, and all other damages, in favor of holders for value only, upon bills of exchange drawn or negotiated within this Territory, and protested for non-acceptance or non-payment.

Rate of damages.

SEC. 1817. Damages are allowed under the last section upon bills drawn upon any person:

1. In any part of the United States except this Territory, at the rate of three per centum on the principal sum;

2. In any part of the continent of America, or Europe, or the islands in the Atlantic ocean, at the rate of ten per centum thereon;

3. In any other place, at the rate of twenty per centum thereon.

Damages, how estimated.

SEC. 1818. If the amount of a protested bill of exchange is expressed in money of the United States, damages are estimated upon such amount without regard to the rate of exchange.

Same.

SEC. 1819. If the amount of a protested bill of exchange is expressed in foreign money, damages are estimated upon the value of a similar bill at the time of protest, in the place nearest to the place where the bill was negotiated, and where such bills are currently sold.

CHAPTER III.

PROMISSORY NOTES.

SECTION 1820. Promissory note, what.

1821. Certain instruments, promissory notes.

1822. Bill of exchange, when converted into a note.

1823. Certain sections applicable to notes.

1824. Effect of delay in presentment.

SEC. 1820. A promissory note is an instrument, negotiable in form, whereby the signer promises to pay a specified sum of money. Promissory note, what.

SEC. 1821. An instrument in the form of a bill of exchange, but drawn upon and accepted by the drawer himself, is to be deemed a promissory note. Certain instruments, promissory notes.

SEC. 1822. A bill of exchange, if accepted, with the consent of the owner, by a person other than the drawee, or an acceptor for honor, becomes in effect the promissory note of such person, and all prior parties thereto are exonerated. Bill of exchange when converted into a note.

SEC. 1823. Chapter I of this Title, and sections 1781 and 1802, of this Code, apply to promissory notes. Certain sections applicable to notes.

SEC. 1824. If a promissory note, payable on demand, or at sight, without interest, is not duly presented for payment, within six months from its date, the indorsers thereof are exonerated, unless such presentment is excused. Effect of delay in presentment.

CHAPTER IV.

CHEQUES.

SECTION 1825. Cheque, what.

1826. Rules applicable to cheques.

Cheques,
what.

SEC. 1825. A cheque is a bill of exchange drawn upon a bank or banker, or a person described as such upon the face thereof, and payable on demand, without interest.

Rules appli-
cable to
cheques.

SEC. 1826. A cheque is subject to all the provisions of this Code concerning bills of exchange, except that:

1. The drawer and indorsers are exonerated by delay in presentment, only to the extent of the injury which they suffer thereby; and are exonerated to that extent by a delay of more than one day in presentment.

2. An indorsee, after its apparent maturity, but without actual notice of its dishonor, acquires a title equal to that of an indorsee before such period.

CHAPTER V.

BONDS, BANK NOTES AND CERTIFICATES OF DEPOSIT.

SECTION 1827. Bank note negotiable after payment.

1828. Title acquired by indorsee.

Bank note
negotiable after
payment.

SEC. 1827. A bank note remains negotiable, even after it has been paid by the maker.

Title acquir-
ed by indorsee.

SEC. 1828. A transferee of a bond, bank note or certificate of deposit, after its apparent maturity or actual dishonor within his knowledge, acquires a title equal to that of a transferee before such event.

TITLE XVI.

GENERAL PROVISIONS.

SECTION 1829. Parties may waive provisions of Code.

SEC. 1829. Except where it is otherwise declared, the provisions of the foregoing fifteen Titles of this Part, in respect to the rights and obligations of parties to contracts, are subordinate to the intention of the parties, when ascertained in the manner prescribed by the chapter on the Interpretation of Contracts; and the benefit thereof may be waived by any party entitled thereto, unless such waiver would be against public policy.

Parties may
waive provi-
sions of Code.

DIVISION FOURTH.

GENERAL PROVISIONS.

APPLICABLE TO PERSONS, PROPERTY, AND OBLIGATIONS, OR TO
TWO OF THOSE SUBJECTS.

PART I. Relief.

- II. Special Relations of Debtor and Creditor.
- III. Nuisance.
- IV. Maxims of Jurisprudence.
- V. Definitions and General Provisions.

PART I.

RELIEF.

- TITLE I. Relief in general.
 - II. Compensatory relief.
 - III. Specific relief.
 - IV. Preventive relief.

TITLE I.

RELIEF IN GENERAL.

SECTION 1830. Species of relief.
1831. Relief in case of forfeiture.

Species of
relief.

SEC. 1830. As a general rule, compensation is the relief or remedy provided by the law of this Territory for the violation of private rights, and the means of securing their observance; and specific and preventive relief may be given in no other cases than those specified in this Part of the Civil Code.

Relief in case
of forfeiture.

SEC. 1831. Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, willful or fraudulent breach of duty.

TITLE II.

COMPENSATORY RELIEF.

CHAPTER I. Damages in general.

II. Measure of damages.

CHAPTER I.

DAMAGES IN GENERAL.

- ARTICLE I. General principles.
- II. Interest as damages.
- III. Exemplary damages.

ARTICLE I.

GENERAL PRINCIPLES.

- SECTION 1832. Person suffering detriment, may recover damages.
- 1833. Detriment, what.
- 1834. Injuries resulting or probable after suit brought.

SEC. 1832. Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages. Persons suffering detriment, may recover damages.

SEC. 1833. Detriment is a loss or harm suffered in person or property. Detriment, what.

SEC. 1834. Damages may be awarded, in a judicial proceeding, for detriment resulting after the commencement thereof, or certain to result in the future. Injuries resulting or probable after suit brought.

ARTICLE II.

INTEREST AS DAMAGES.

- SECTION 1835. Person entitled to recover damages, may recover interest thereon.

SECTION 1836. In actions other than contract.

1837. Limit of rate by contract.

1838. Acceptance of principal waives claim to interest.

Person entitled to recover damages, may recover interest thereon.

SEC. 1835. Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor, from paying the debt.

In actions other than on contract.

SEC. 1836. In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury.

Limit of rate by contract.

SEC. 1837. Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.

Acceptance of principal waives claim to interest.

SEC. 1838. Accepting payment of the whole principal, as such, waives all claim to interest.

ARTICLE III.

EXEMPLARY DAMAGES.

SECTION 1839. Exemplary damages, in what cases allowed.

Exemplary damages, in what cases allowed.

SEC. 1839. In any action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud or malice, actual or presumed, the jury, in addition to the actual damages, may give damages for the sake of example, and by way of punishing the defendant.

CHAPTER II.

MEASURE OF DAMAGES.

ARTICLE I. Damages for breach of contract.

ARTICLE II. Damages for wrongs.

III. Penal damages.

IV. General provisions.

ARTICLE I.

DAMAGES FOR BREACH OF CONTRACT.

SECTION 1840. Measure of damages for breach of contract.

1841. Damages must be certain.

1842. Breach of promise to pay liquidated sum.

1843. Dishonor of bills of exchange.

1844. Breach of covenant of seizure, &c.

1845. Breach of covenant against incumbrances.

1846. Breach of agreement to convey real property.

1847. Breach of agreement to buy real property.

1848. Breach of agreement to sell personal property, not paid for.

1849. Breach of agreement to sell personal property, paid for.

1850. Breach of agreement to pay for personal property sold.

1851. Breach of agreement to buy personal property.

1852. Breach of warranty of title to personal property.

1853. Breach of warranty of quality of personal property.

1854. Breach of warranty of quality for special purpose.

1855. Breach of carrier's obligation to receive goods, &c.

1856. Breach of carrier's obligation to deliver.

1857. Carrier's delay.

1858. Breach of warranty of authority.

1859. Breach of promise of marriage.

SEC. 1840. For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, which the party in fault had notice, at the time of entering into the contract, or at any time before the breach, and while it was in his power to perform the contract upon his part, would be likely to result from such breach, or which, in the ordinary course of things, would be likely to result therefrom.

Measure of damages for breach of contract.

Damages must be certain

SEC. 1841. No damages can be recovered for a breach of contract, which are not clearly ascertainable in both their nature and origin.

Breach of promise to pay liquidated sum.

SEC. 1842. The detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation, with interest thereon.

Dishonor of bills of exchange.

SEC. 1843. For the dishonor of foreign bills of exchange, the damages are prescribed by sections 1817 to 1819, inclusive.

Breach of covenant of seizin, &c.

SEC. 1844. The detriment caused by the breach of a covenant of seizin, of right to convey, of warranty, or of quiet enjoyment, in a grant of an estate in real property, is deemed to be:

1. The price paid to the grantor, or if the breach is partial only, such proportion of the price as the value of the property affected by the breach bore, at the time of the grant, to the value of the whole property;

2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding six years; and,

3. Any expenses properly incurred by the covenantee in defending his possession.

Breach of covenant against incumbrances.

SEC. 1845. The detriment caused by the breach of a covenant against incumbrances in a grant of an estate in real property, is deemed to be the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof; not exceeding in the former case a proportion of the price paid to the grantor, equivalent to the relative value, at the time of the grant, of the property affected by the breach, as compared with the whole; or, in the latter case, interest on a like amount.

Breach of agreement to convey real property.

SEC. 1846. The detriment caused by the breach of an agreement to convey an estate in real property, is deemed to be the price paid, and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon; but adding thereto, in case of bad faith, the difference between the price agreed to be paid, and the value of the estate agreed to be conveyed, at the time of the breach, and the expenses properly incurred in preparing to enter upon the land.

SEC. 1847. The detriment caused by the breach of an agreement to purchase an estate in real property, is deemed to be the excess, if any, of the amount which would have been due to the seller under the contract, over the value of the property to him. Breach of agreement to buy real property.

SEC. 1848. The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has not been fully paid in advance, is deemed to be the excess, if any, of the value of the property to the buyer, over the amount which would have been due to the seller under the contract, if it had been fulfilled. Breach of agreement to sell personal property, not paid for.

SEC. 1849. The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has been fully paid to him in advance, is deemed to be the same as in case of a wrongful conversion. Breach of agreement to sell personal property, paid for.

SEC. 1850. The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is vested in him, is deemed to be the contract price. Breach of agreement to pay for personal property sold.

SEC. 1851. The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is not vested in him, is deemed to be: Breach of agreement to buy personal property.

1. If the property has been resold pursuant to section 1694, the excess, if any, of the amount due from the buyer, under the contract, over the net proceeds of the resale; or,

2. If the property has not been resold in the manner prescribed by section 1694, the excess, if any, of the amount due from the buyer, under the contract, over the value to the seller; together with the excess, if any, of the expenses properly incurred in carrying the property to market, over those which would have been incurred for the carriage thereof, if the buyer had accepted it.

SEC. 1852. The detriment caused by the breach of a warranty of the title of personal property sold, is deemed to be the value thereof to the buyer, when he is deprived of its possession, together with any costs which he has become liable to pay, in an action brought for the property by the true owner. Breach of warranty of title to personal property.

SEC. 1853. The detriment caused by the breach of a warranty of the quality of personal property, is deemed to be the Breach of warranty of quality of personal property.

excess, if any, of the value which the property would have had, at the time to which the warranty referred, if it had been complied with, over its actual value at that time.

Breach of warranty of quality for special purpose

SEC. 1854. The detriment caused by the breach of a warranty of the fitness of an article of personal property for a particular purpose, is deemed to be that which is defined by the last section, together with a fair compensation for the loss incurred by an effort in good faith to use it for such purpose.

Breach of carrier's obligation to receive goods &c.

SEC. 1855. The detriment caused by the breach of a carrier's obligation to accept freight, messages or passengers, is deemed to be the difference between the amount which he had a right to charge for the carriage, and the amount it would be necessary to pay for the same service, when it ought to be performed.

Breach of carrier's obligation to deliver.

SEC. 1856. The detriment caused by the breach of a carrier's obligation to deliver freight, where he has not converted it to his own use, is deemed to be the value thereof, at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled, if he had completed the delivery.

Carrier's delay.

SEC. 1857. The detriment caused by a carrier's delay in the delivery of freight, is deemed to be the depreciation in the intrinsic value of the freight during the delay, and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered, and between the day, at which it ought to have been delivered, and the day of its actual delivery.

Breach of warranty of authority.

SEC. 1858. The detriment caused by the breach of a warranty of an agent's authority, is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with, and the reasonable expenses of legal proceedings taken, in good faith, to enforce the act of the agent against his principal.

Breach of promise of marriage.

SEC. 1859. The damages for the breach of a promise of marriage rest in the sound discretion of the jury.

CHAPTER II.

DAMAGES FOR WRONGS.

- SECTION 1860. Breach of obligation other than contract.
 1861. Wrongful occupation of real property.
 1862. Willful holding over.
 1863. Conversion of personal property.
 1864. Damages of lienor.
 1865. Seduction.
 1866. Injuries to animals.

SEC. 1860. For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not. Breach of obligation other than contract.

SEC. 1861. The detriment caused by the wrongful occupation of real property, in cases not embraced in sections 1862, 1868, 1869, and 1870, is deemed to be the value of the use of the property for the time of such occupation, not exceeding six years next preceding the commencement of the action or proceeding to enforce the right to damages, and the costs, if any, of recovering the possession. Wrongful occupation of real property.

SEC. 1862. For willfully holding over real property, by a person who entered upon the same, as guardian or trustee for an infant, or by right of an estate terminable with any life or lives, after the termination of the trust or particular estate, without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over. Willful holding over.

SEC. 1863. The detriment caused by the wrongful conversion of personal property, is presumed to be: Conversion of personal property.

1. The value of the property at the time of the conversion, with interest from that time, or, where the action has been

prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict, without interest, at the option of the injured party; and,

2. A fair compensation for the time and money properly expended in pursuit of the property.

Same.

SEC. 1864. The presumption declared by the last section cannot be repelled, in favor of one whose possession was wrongful from the beginning, by his subsequent application of the property to the benefit of the owner, without his consent.

Damages of
lienor.

SEC. 1865. One having a mere lien on personal property, cannot recover greater damages for its conversion, from one having a right thereto superior to his, after his lien is discharged, than the amount secured by the lien, and the compensation allowed by section 1863 for loss of time and expenses.

Seduction.

SEC. 1866. The damages for seduction rest in the sound discretion of the jury.

Injuries to
animals.

SEC. 1867. For wrongful injuries to animals, being subjects of property, committed willfully, or by gross negligence, in disregard of humanity, exemplary damages may be given.

ARTICLE III.

PENAL DAMAGES.

- SECTION 1868. Failure to quit, after notice.
 1869. Tenant willfully holding over.
 1870. Forcible exclusion from possession of real property.
 1871. Injuries to trees, &c.

Failure to
quit, after
notice.

SEC. 1868. For the failure of a tenant to give up the premises held by him, when he has given notice of his intention to do so, the measure of damages is double the rent which he ought otherwise to pay.

SEC. 1869. For willfully holding over real property, by a tenant after the end of his term, and after notice to quit has been duly given, and demand of possession made, the measure of damages is double the yearly value of the property, for the time of withholding, in addition to compensation for the detriment occasioned thereby.

Tenant willfully holding over.

SEC. 1870. For forcibly ejecting or excluding a person from the possession of real property, the measure of damages is three times such a sum as would compensate for the detriment caused to him by the act complained of.

Forcible exclusion from possession of real property.

SEC. 1871. For wrongful injuries to timber, trees or under-wood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment, except where the trespass was casual and involuntary, or committed under the belief that the land belonged to the trespasser, or where the wood was taken by the authority of highway officers for the purposes of a highway; in which cases the damages are a sum equal to the actual detriment.

Injuries to trees, &c.

ARTICLE IV.

GENERAL PROVISIONS.

- SECTION 1872. Value, how estimated in favor of seller.
 1873. Value, how estimated in favor of buyer.
 1874. Property of peculiar value.
 1875. Value of thing in action.
 1876. Damages allowed in this chapter, exclusive of others.
 1877. Limitation of damages.
 1878. Damages to be reasonable.
 1879. Nominal damages.

SEC. 1872. In estimating damages, the value of property, to a seller thereof, is deemed to be the price which he could have obtained therefor in the market nearest to the place at which it should have been accepted by the buyer, and at such time after the breach of the contract as would have sufficed, with reasonable diligence, for the seller to effect a resale.

Value, how estimated in favor of seller.

Value, how estimated in favor of buyer.

SEC. 1873. In estimating damages, except as provided by sections 1874 and 1875, the value of property, to a buyer or owner thereof, deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing, in the market nearest to the place where the property ought to have been put into his possession, and at such time after the breach of duty upon which his right to damages is founded as would suffice, with reasonable diligence, for him to make such a purchase.

Property of peculiar value.

SEC. 1874. Where certain property has a peculiar value to a person recovering damages for deprivation thereof, or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof, or against a willfull wrongdoer.

Value of thing in action.

SEC. 1875. For the purpose of estimating damages, the value of a thing in action is presumed to be equal to that of the property to which it entitles its owner.

Damages allowed in this chapter exclusive of others.

SEC. 1876. The damages prescribed by this chapter are exclusive of exemplary damages and interest, except where those are expressly mentioned.

Limitation of damages.

SEC. 1877. Notwithstanding the provisions of this chapter, no person can recover a greater amount in damages for the breach of an obligation, than he could have gained by the full performance thereof on both sides, except in the cases specified in the articles on Exemplary damages and penal damages, and in sections 1859, 1866 and 1867.

Damages to be reasonable.

SEC. 1878. Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

Nominal damages.

SEC. 1879. When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.

TITLE III.

SPECIFIC AND PREVENTIVE RELIEF.

- CHAPTER I. General principles.
 II. Specific relief.
 III. Preventive relief.

CHAPTER I.

GENERAL PRINCIPLES.

- SECTION 1880. Specific relief, &c., when allowed.
 1881. Specific relief, how given.
 1882. Preventive relief, how given.
 1883. Not to enforce penalty, &c.

SEC. 1880. Specific or preventive relief may be given in the cases specified in this Title, and in no others. Specific relief &c., when allowed.

SEC. 1881. Specific relief is given: Specific relief, how given.

1. By taking possession of a thing, and delivering it to a claimant;
2. By compelling a party himself to do that which ought to be done; or,
3. By declaring and determining the rights of parties, otherwise than by an award of damages.

SEC. 1882. Preventive relief is given by prohibiting a party from doing that which ought not to be done. Preventive relief, how given.

SEC. 1883. Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, nor to enforce a penalty or forfeiture in any case. Not to enforce penalty, &c.

CHAPTER II.

SPECIAL RELIEF.

- ARTICLE I. Possession of real property.
- II. Possession of personal property.
 - III. Specific performance of obligations.
 - IV. Revision of contracts.
 - V. Rescission of contracts.
 - VI. Cancellation of instruments.

ARTICLE I.

POSSESSION OF REAL PROPERTY.

SECTION 1884. Judgment for possession or title.

Judgment for
possession
or title.

SEC. 1884. A person entitled to specific real property, by reason either of a perfected title, or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by the Code of Civil Procedure, either by a judgment for its possession, to be executed by the sheriff, or by a judgment requiring the other party to perfect the title, and to deliver possession of the property.

ARTICLE II.

POSSESSION OF PERSONAL PROPERTY.

SECTION 1885. Judgment for delivery.

1886. When holder may be compelled to deliver.

SEC. 1885. A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by the Code of Civil Procedure. ^{Judgment for delivery.}

SEC. 1886. Any person, having the possession or control of a particular article of personal property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in either of the following cases: ^{When holder may be compelled to deliver.}

1. When the thing claimed is held subject to an express trust in favor of the claimant;
2. When pecuniary compensation would not afford adequate relief for the loss of the thing claimed; or,
3. When it would be extremely difficult to ascertain the actual damage caused by its loss.

ARTICLE III.

SPECIFIC PERFORMANCE OF OBLIGATIONS.

SECTION 1887. In what cases compelled.

1888. Remedy mutual.

1889. No remedy unless mutual.

1890. Distinction between real and personal property.

1891. Contract signed by one party only, may be enforced by other.

1892. Liquidation of damages not a bar to specific performance.

1893. What cannot be specifically enforced.

1894. What parties cannot be compelled to perform.

1895. What parties cannot have specific performance in their favor.

1896. Specific performances not required when oppressive.

1897. Agreement to sell property, by one who has no title.

1898. Relief against parties claiming under person bound to perform.

SEC. 1887. Except as otherwise provided in this article, the specific performance of an obligation may be compelled: ^{In what cases compelled.}

1. When the act to be done is in the performance, wholly or partly, of an express trust;

2. When the act to be done is such that pecuniary compensation for its non-performance would not afford adequate relief;

3. When it would be extremely difficult to ascertain the actual damage caused by the non-performance of the act to be done; or,

4. When it has been expressly agreed, in writing, between the parties to the contract, that specific performance thereof may be required by either party, or that damages shall not be considered adequate relief.

Remedy mutual.

SEC. 1888. When either of the parties to an obligation is entitled to a specific performance thereof, according to the provisions of the last section, the other party is also entitled to it, though not within those provisions.

No remedy unless mutual.

SEC. 1889. Neither party to an obligation can be compelled specifically to perform it, unless the other party thereto has performed, or is compellable specifically to perform, everything to which the former is entitled under the same obligation, either completely or nearly so, together with full compensation for any want of entire performance.

Distinction between real and personal property.

SEC. 1890. It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation, and that the breach of an agreement to transfer personal property can be thus relieved.

Contract signed by one party only may be enforced by others.

SEC. 1891. A party, who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform it on his part, and the case is otherwise proper for enforcing specific performance.

Liquidation of damages not a bar to specific performance.

SEC. 1892. A contract otherwise proper to be specifically enforced, may be thus enforced, though a penalty is imposed, or the damages are liquidated for its breach, and the party in default is willing to pay the same.

What cannot be specifically enforced.

SEC. 1893. The following obligations cannot be specifically enforced:

1. An obligation to render personal service;
2. An obligation to employ another in personal service;
3. An agreement to submit a controversy to arbitration;
4. An agreement to perform an act which the party has not power lawfully to perform when required to do so;

5. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or,

6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

SEC. 1894. Specific performance cannot be enforced against a party to a contract, in any of the following cases:

What parties cannot be compelled to perform.

1. If he has not received an adequate consideration for the contract;

2. If it is not, as to him, just and reasonable;

3. If his assent was obtained by the misrepresentation, concealment, circumvention, or unfair practice of any party to whom performance would become due under the contract, or by any promise of such party, which has not been substantially fulfilled; or,

4. If his assent was given under the influence of mistake, misapprehension, or surprise, except that where the contract provides for compensation in case of mistake, a mistake within the scope of such provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced.

SEC. 1895. Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except where his failure to perform is only partial, and either entirely immaterial, or capable of being fully compensated; in which case specific performance may be compelled, upon full compensation being made for the default.

What parties cannot have specific performance in their favor.

SEC. 1896. Specific performance cannot be compelled, when it would operate more harshly upon the party required to perform, than its refusal would operate upon the party seeking it.

Specific performance not required, when oppressive.

SEC. 1897. An agreement for the sale of property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt.

Agreement to sell property by one who has no title.

SEC. 1898. Whenever an obligation in respect to real property would be specifically enforced against a particular person, it may be in like manner enforced against any other person claiming under him by a title created subsequently to the obligation, except a purchaser or incumbrancer in good faith

Relief against parties claiming under person bound to perform.

and for value, and except also, that any such person may exonerate himself by conveying all his estate to the person entitled to enforce the obligation.

ARTICLE IV.

REVISION OF CONTRACTS.

- SECTION 1899. When contract may be revised.
 1900. Presumption as to intent of parties.
 1901. Principles of revision.
 1902. Enforcement of revised contract.

When contract may be revised.

SEC. 1899. When through fraud, or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

Presumption as to intent of parties.

SEC. 1900. For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

Principles of revision.

SEC. 1901. In revising a written instrument, the court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

Enforcement of revised contract.

SEC. 1902. A contract may be first revised, and then specifically enforced.

ARTICLE V.

RESCISSION OF CONTRACTS.

- SECTION 1903. When rescission may be adjudged.
 1904. Rescission for mistake.
 1905. Court may require party rescinding to do equity.

SEC. 1903. The rescission of a written contract may be adjudged, on the application of a party aggrieved: When rescission may be adjudged.

1. In any of the cases mentioned in section 839; or,
2. Where the contract is unlawful, for causes not apparent upon its face, and the parties were not equally in fault; or,
3. When the public interest will be prejudiced by permitting it to stand.

SEC. 1904. Rescission cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made. Rescission for mistake.

SEC. 1905. On adjudging the rescission of a contract, for any other cause than usury, the court may require the party to whom such relief is granted to make any compensation to the other which justice may require. Court may require party rescinding to do equity.

ARTICLE VI.

CANCELLATION OF INSTRUMENTS.

SECTION 1906. When cancellation may be ordered.

1907. Instrument obviously void.

1908. Cancellation in part.

SEC. 1906. A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may upon his application, be so adjudged, and ordered to be delivered up or canceled. When cancellation may be ordered.

SEC. 1907. An instrument, the validity of which is apparent upon its face, or upon the face of another instrument which is necessary to the use of the former in evidence, is not to be deemed capable of causing injury within the provisions of the last section. Instrument obviously void.

SEC. 1908. Where an instrument is evidence of different rights or obligations, it may be canceled in part, and allowed to stand for the residue. Cancellation in part.

CHAPTER III.

PREVENTIVE RELIEF.

SECTION 1909. Preventive relief, how granted.

1910. Provisional injunctions.

1911. Injunction, when allowed.

1912. Injunction, when not allowed.

Preventive relief, how granted.

SEC. 1909. Preventive relief is granted by injunction provisional or final.

Provisional injunction.

SEC. 1910. Provisional injunctions are regulated by the Code of Civil Procedure.

Injunction when allowed.

SEC. 1911. Except where otherwise provided by this Title, a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant:

1. Where pecuniary compensation would not afford adequate relief;
2. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;
3. Where the restraint is necessary to prevent a multiplicity of judicial proceedings; or,
4. Where the obligation arises from a trust.

Injunction when not allowed.

SEC. 1912. An injunction cannot be granted:

1. To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded; unless such restraint is necessary to prevent a multiplicity of such proceedings;
2. To stay proceedings in a court of the United States;
3. To stay proceedings, in another state, upon a judgment of a court of that state;
4. To prevent the execution of a public statute, by officers of the law, for the public benefit;
5. To prevent the breach of a contract, the performance of which would not be specially enforced;

6. To prevent an injury to the person, character, or personal relations of the applicant, not amounting to a nuisance; except that in an action for divorce, an injunction may be granted to prevent interference with a wife or child;

7. To prevent the exercise of a public or private office, in a lawful manner, by the person in possession;

8. To prevent a legislative act by a municipal corporation; or,

9. Where relief, equally efficacious, can be obtained by any other usual mode of proceeding, except in case of breach of trust.

PART II.

SPECIAL RELATIONS OF DEBTOR AND CREDITOR.

TITLE I. General Principles.

II. Fraudulent Instruments and Transfers.

III. Assignments for the Benefit of Creditors.

TITLE I.

GENERAL PRINCIPLES.

SECTION 1913. Who is a debtor.

1914. Who is a creditor.

1915. Contracts of debtor are valid.

1916. Payments in preference.

1917. Relative rights of different creditors.

Who is debtor. SEC. 1913. A debtor, within the meaning of this Title, is one who, by reason of an existing obligation, is or may become liable to pay money to another, whether such liability is certain or contingent.

Who is a creditor. SEC. 1914. A creditor, within the meaning of this Title, is one in whose favor an obligation exists, by reason of which he is, or may become, entitled to the payment of money.

Contracts of debtor are valid. SEC. 1915. In the absence of fraud, every contract of a debtor is valid against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by such contract.

Payments in preference. SEC. 1916. A debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of his demand, in preference to another.

Relative rights of different creditors. SEC. 1917. Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim, and another person has an interest in, or is entitled as a creditor to resort to, some but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction, and without doing injustice to third persons.

TITLE II.

FRAUDULENT INSTRUMENTS AND TRANSFERS.

SECTION 1918. Transfers, &c., with intent to defraud creditors.

1919. Certain transfers presumed fraudulent.

1920. Presumption, how repelled.

1921. Rights of purchasers and mortgagees.

1922. Creditor's right must be judicially ascertained.

1923. Question of fraud, how determined.

Transfers, &c. with intent to defraud creditors. SEC. 1918. Every transfer of property or charge thereon made, every obligation incurred, and every judicial proceeding taken, with intent to delay or defraud any creditor or

other person of his demands, is void against all creditors of the debtor, and their successors in interest, and against any persons upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.

SEC. 1919. Every transfer of personal property, other than a thing in action, or a ship or cargo at sea, or in a foreign port, and every lien thereon, other than a contract of bottomry or respondentia, is presumed, if made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things transferred, to be fraudulent and therefore void, against those who are his creditors while he remains in possession, and the successors in interest of such creditors, and against any person on whom his estate devolves in trust for the benefit of others than himself, and against purchasers or incumbrancers in good faith subsequent to the transfer.

Certain transfers presumed fraudulent.

SEC. 1920. The presumption declared by the last section may be repelled by showing that the transfer was made in good faith and without intent to defraud.

Presumption how repelled.

SEC. 1921. The provisions of this Title do not affect the rights of a purchaser or incumbrancer, in good faith and for value.

Rights of purchasers and mortgagées.

SEC. 1922. A creditor can avoid the act or obligation of his debtor, for fraud, only where the fraud obstructs the enforcement, by legal process, of his right to take the property affected by the transfer or obligation.

Creditor's right must be judicially ascertained.

SEC. 1923. In all cases arising under this Title, or under section 535 of this Code, the question of fraudulent intent is one of fact, and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration.

Questions of fraud, how determined.

TITLE III.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS

- SECTION** 1924. When debtor may execute assignment.
 1925. Insolvency, what.
 1926. Certain transfers not affected.
 1927. What debts may be secured.
 1928. What preferences may be given.
 1929. Preference must be absolute.
 1930. Certain rights not affected by preferences in assignment.
 1931. Joint and separate debts.
 1932. Assignment, when void.
 1933. The instrument of assignment.
 1934. Compliance with provisions of last section necessary to validity of assignment.
 1935. Assignee takes subject to rights of third parties.
 1936. Inventory required.
 1937. Verification of inventory.
 1938, 1939. Recording assignment and filing inventory.
 1940. Effect of omitting to record.
 1941. Assignment of real property.
 1942. Bond of assignees.
 1943. Conditions of disposal and conversion.
 1944. Accountings.
 1945. Property exempt.
 1946. Compensation.
 1947. Assignees protected for acts done in good faith.
 1948. Assent of creditor necessary to modification of assignment.

When debtor
may execute
assignment.

SEC. 1924. An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees, in trust for the satisfaction of his creditors, in conformity to the provisions of this chapter; subject, however, to the provisions of this Code relative to trusts and to fraudulent transfers, and to the restrictions imposed by law upon assignments by special partnerships, by corporations or by other specific classes of persons.

Insolvency,
what.

SEC. 1925. A debtor is insolvent, within the meaning of this Title, when he is unable to pay his debts from his own means, as they become due.

SEC. 1926. The provisions of this Title do not prevent a person residing in another state or country from making there, in good faith, and without intent to evade the laws of this Territory, a transfer of property situated within it, nor do they affect the power of a person, although insolvent and within this Territory, to transfer property to a particular creditor for the purpose of paying or securing the whole or a part of a debt owing to such creditor, whether in his own right or otherwise.

Certain transfers not affected

SEC. 1927. An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent.

What debts may be secured

SEC. 1928. Except as otherwise specially provided by statute, an assignment by an insolvent debtor, for the benefit of creditors, may give a preference to one or more creditors, or classes of creditors, in the following cases, and in no others:

What preferences may be given.

1. Judgments may be preferred to debts not in judgment;
2. Debts which are liens or charges upon the assigned property, or upon some part of it, may be preferred to debts which are not such liens or charges;
3. Debts for money or other property lent without interest, may be preferred to debts for money lent upon interest, or for property sold, or for services rendered;
4. Debts due from the assignor by virtue of a trust, may be preferred to debts which are not thus due; and,
5. Debts for personal services performed within six months next before the assignment, may, to an extent not exceeding fifty dollars to any one person, be preferred to other debts not within any of the preceding classes.

SEC. 1929. A preference, in an assignment for the benefit of creditors, can only be given absolutely, and without reserving any power of revocation.

Preference must be absolute.

SEC. 1930. No provisions in an assignment, giving a preference to a creditor, can affect or impair any right of another creditor to priority of payment, whether created by law, or arising from an obligation or transaction of the parties.

Certain rights not affected by preferences in assignment.

SEC. 1931. Joint, or joint and several debtors can prefer their joint creditors only out of joint property; and can pre-

Joint and separate debts.

fer the individual creditors of each only out of the separate property of each.

Assignment when void.

SEC. 1932. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto, in the following cases:

1. If it gives an unlawful preference of one debt or class of debts over another;
2. If it gives a preference dependent upon any condition or contingency, or with any power of revocation reserved;
3. If it tends to coerce any creditor to release or compromise his demand;
4. If it provides for the payment of any claim known to the assignor to be false or fraudulent; or for the payment of more upon any claim than is justly due from the assignor;
5. If it reserves any interest in the assigned property, or in any part thereof, to the assignor or for his benefit, before all his existing debts are paid;
6. If it confers upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust;
7. If it exempts him from liability for neglect of duty or misconduct; or,
8. If it violates section 1931 of this Code.

The instrument of assignment.

SEC. 1933. An assignment for the benefit of creditors must be in writing, subscribed by the assignor, or by his agent thereto authorized by writing, and, if it embraces a fee or freehold estate in real property, it must be sealed. It must be acknowledged by the person executing it, or proved by a subscribing witness, in the mode prescribed by the article on Proof and Acknowledgment of Instruments, and the acknowledgment or proof must be certified, before its delivery.

Compliance with provisions of last section necessary to validity of assignment.

SEC. 1934. Unless the provisions of the last section are complied with, an assignment for the benefit of creditors is void against every creditor of the assignor not assenting thereto.

Assignee takes subject to rights of third parties.

SEC. 1935. An assignee for the benefit of creditors is not to be regarded as a purchaser for value, and has no greater rights than his assignor had, in respect to things in action transferred by the assignment.

SEC. 1936. Within twenty days after an assignment is made for the benefit of creditors, the assignor must make and file, in the manner prescribed by section 1938, a full and true inventory, showing: Inventory required.

1. All the creditors of the assignor ;
2. The place of residence of each creditor, if known to the assignor, or if not known, that fact must be stated ;
3. The sum owing to each creditor, and the nature of each debt or liability, whether arising on written security, account or otherwise ;
4. The true consideration of the liability in each case, and the place where it arose ;
5. Every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor ;
6. All property of the assignor at the date of the assignment which is exempt by law from execution ; and,
7. All of the assignor's property at the date of the assignment, both real and personal, of every kind not so exempt, and the incumbrances existing thereon, and all vouchers and securities relating thereto, and the value of such property according to the best knowledge of the assignor.

SEC. 1937. An affidavit must be made by every person executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in the last section, to the effect that the same is in all respects just and true, according to the best of such assignor's knowledge and belief. Verification of inventory.

SEC. 1938. An assignment for the benefit of creditors must be recorded, and the inventory required by section 1936 filed, with the register of deeds of the county in which the assignor resided at the date of the assignment ; or, if he did not then reside in this Territory, with the like officer of the county in which his principal place of business was then situated ; or if he had not then a residence or place of business in this Territory, with the like officer of the county in which the principal part of the assigned property was then situated. Recording assignment and filing inventory

SEC. 1939. If an assignment for the benefit of creditors is executed by more than one assignor, it must be recorded, and a copy of the inventory required by section 1936 must be filed, Same.

with the register of deeds of every county in which any of the assignors resided at its date, or in which any of them, not then residing in this Territory, had then a place of business.

Effect of omitting to record.

SEC. 1940. An assignment for the benefit of creditors is void against creditors of the assignor, and against purchasers from him, if the assignment is not recorded, and the inventory required by section 1936 filed, pursuant to section 1938, within twenty days after the date of the assignment.

Assignment of real property

SEC. 1941. Where an assignment for the benefit of creditors embraces real property, it is subject to the provisions of article IV of the chapter on Recording Transfers, as well as to those of this Title.

Bond of assignee.

SEC. 1942. Within thirty days after the date of an assignment for the benefit of creditors, the assignee must enter into a bond to the people of this Territory, in such amount as may be fixed by the probate judge of the county in which the original inventory is filed, with sufficient sureties, to be approved by such judge, and conditioned for the faithful discharge of the trust, and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the original inventory.

Conditions of disposal and conversion.

SEC. 1943. Until the inventory and affidavit required by sections 1936 and 1937 have been made, and the assignment has been duly recorded, and the inventory filed, and the assignee has given a bond as required by the last section, an assignee for the benefit of creditors has no authority to dispose of the estate or convert it to the purposes of the trust.

Accountings.

SEC. 1944. After one year from the date of an assignment for the benefit of creditors, the assignee may be required, on the petition of any creditor, to account before the probate judge of the county where the accompanying inventory was filed, in the manner prescribed by the Code of Civil Procedure.

Property exempt.

SEC. 1945. Property exempt from execution, and insurances upon the life of the assignor, do not pass to the assignee by a general assignment for the benefit of creditors, unless the instrument specially mentions them, and declares an intention that they should pass thereby.

Compensation.

SEC. 1946. In the absence of any provision in the assignment to the contrary, an assignee for the benefit of creditors

is entitled to the same commissions as are allowed by law to executors and guardians, but the assignment cannot grant more, and may restrict the commissions to a less amount, or deny them altogether.

SEC. 1947. An assignee for the benefit of creditors is not to be held liable for his acts done in good faith in the execution of the trust, merely for the reason that the assignment is afterward adjudged void. Assignees protected for acts done in good faith.

SEC. 1948. An assignment for the benefit of creditors, which has been executed and recorded so as to transfer the property to the assignee, cannot afterwards be canceled or modified by the parties thereto, without the consent of every creditor affected thereby. Assent of creditors necessary to modification of assignment.

PART III.

NUISANCE.

- TITLE I. General Principles.
- II. Public Nuisances.
- III. Private Nuisances.

TITLE I.

GENERAL PRINCIPLES.

- SECTION 1949. Nuisance, what.
- 1950. Public nuisance.

1951. Private nuisance.
 1952. What is not deemed a nuisance.
 1953. Successive owners.
 1954. Abatement does not preclude action.

Nuisance,
 what.

SEC. 1949. A nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either:

1. Annoys, injures or endangers the comfort, repose, health or safety of others; or,
2. Offends decency; or,
3. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or,
4. In any way renders other persons insecure in life, or in the use of property.

Public
 nuisance.

SEC. 1950. A public nuisance is one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal.

Private
 nuisance.

SEC. 1951. Every nuisance not included in the definition of the last section is private.

What is not
 deemed a
 nuisance.

SEC. 1952. Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

Successive
 owners.

SEC. 1953. Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

Abatement
 does not pre-
 clude action.

SEC. 1954. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

TITLE II.

PUBLIC NUISANCES.

- SECTION 1955. Lapse of time does not legalize.
 1956. Abatement.

- SECTION 1957. When notice is required.
- 1958. Remedies for public nuisances.
- 1959. Action.
- 1960. How abated.

SEC. 1955. No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right. Lapse of time does not legalize.

SEC. 1956. The remedies against a public nuisance are: Remedies for public nuisance

1. Indictment;
2. A civil action; or,
3. Abatement.

SEC. 1957. The remedy by indictment is regulated by the Penal Code and the Code of Criminal Procedure. Indictment, how regulated.

SEC. 1958. A private person may maintain an action for a public nuisance if it is specially injurious to himself, but not otherwise. Action.

SEC. 1959. A public nuisance may be abated by any public body or officer authorized thereto by law. How abated.

SEC. 1960. Any person may abate a public nuisance which is specially injurious to him, by removing, or, if necessary, destroying the thing, which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. Same.

TITLE III.

PRIVATE NUISANCES.

- SECTION 1961. Remedies for private nuisances.
- 1962. Abatement, when allowed.
- 1963. When notice is required.

SEC. 1961. The remedies against a private nuisance are: Remedies for private nuisances.

1. A civil action; or,
2. Abatement.

Abatement,
when allowed.

SEC. 1962. A person injured by a private nuisance may abate it by removing, or, if necessary, destroying the thing which constitutes the nuisance, without committing a breach of the peace, or doing unnecessary injury.

When notice
is required.

SEC. 1963. Where a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it.

PART IV.

MAXIMS OF JURISPRUDENCE.

SEC. 1964. The maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this Code, but to aid in their just application.

SEC. 1965. When the reason of a rule ceases, so should the rule itself.

SEC. 1966. Where the reason is the same, the rule should be the same.

SEC. 1967. One must not change his purpose to the injury of another.

SEC. 1968. Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

SEC. 1969. One must so use his own rights as not to infringe upon the rights of another.

SEC. 1970. He who consents to an act is not wronged by it.

SEC. 1971. Acquiescence in error takes away the right of objecting to it.

SEC. 1972. No one can take advantage of his own wrong.

SEC. 1973. He who has fraudulently dispossessed himself of a thing may be treated as if he still had possession.

SEC. 1974. He who can and does not forbid that which is done on his behalf, is deemed to have bidden it.

SEC. 1975. No one should suffer by the act of another.

SEC. 1976. He who takes the benefit must bear the burden.

SEC. 1977. One who grants a thing is presumed to grant also whatever is essential to its use.

SEC. 1978. For every wrong there is a remedy.

SEC. 1979. Between those who are equally in the right, or equally in the wrong, the law does not interpose.

SEC. 1980. Between rights otherwise equal, the earliest is preferred.

SEC. 1981. No man is responsible for that which no man can control.

SEC. 1982. The law helps the vigilant, before those who sleep on their rights.

SEC. 1983. The law respects form less than substance.

SEC. 1984. That which ought to have been done, is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.

SEC. 1985. That which does not appear to exist is to be regarded as if it did not exist.

SEC. 1986. The law never requires impossibilities.

SEC. 1987. The law neither does nor requires idle acts.

SEC. 1988. The law disregards trifles.

SEC. 1989. Particular expressions qualify those which are general.

SEC. 1990. Contemporaneous exposition is in general the best.

SEC. 1991. The greater contains the less.

SEC. 1992. Superfluity does not vitiate.

SEC. 1993. That is certain which can be made certain.

SEC. 1994. Time does not confirm a void act.

SEC. 1995. The incident follows the principal, not the principal the incident.

SEC. 1996. An interpretation which gives effect is preferred to one which makes void.

SEC. 1997. Interpretation must be reasonable.

SEC. 1998. Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.

PART V.

DEFINITION AND GENERAL PROVISIONS.

- SECTION 1999.** Words, how used.
- 2000. Sundry words.
 - 2001. Degrees of care and diligence.
 - 2002. Care and diligence.
 - 2003. Degrees of negligence.
 - 2004. Negligence.
 - 2005. Children.
 - 2006. Debtor and creditor.
 - 2007. Good faith.
 - 2008. Notice.
 - 2009. Actual notice.
 - 2010. Constructive notice.
 - 2011. Certain persons deemed to have constructive notice.
 - 2012. Notice, when impossible.
 - 2013. Paper.
 - 2014. Persons.
 - 2015. Several.
 - 2016. Third persons.
 - 2017, 2018. Holidays.
 - 2019. Business days.
 - 2020. Certain acts not to be done on holidays.
 - 2021, 2022. Usage, what.
 - 2023. Value.
 - 2024. Verdict.
 - 2025. Time.
 - 2026. Genders.
 - 2027. Numbers.
 - 2028. Commissioners of deeds.
 - 2029. Compound interest.

SECTION 2030. Writing.

2031. Forms.

2032. Construction of the Code.

2033. Repeal of former statutes.

2034. Time when Code takes effect.

SEC. 1999. Words used in this Code are to be understood in their ordinary sense, except when a contrary intention plainly appears, and except also that the words hereinafter explained are to be understood as thus explained. Words, how used.

SEC. 2000. Whenever the meaning of a word or phrase is defined in any part of this Code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears. Sundry words.

SEC. 2001. There are three degrees of care and of diligence mentioned in this Code, namely, slight, ordinary and great. The latter include the former. Degrees of care and diligence.

SEC. 2002. Slight care or diligence is such as persons of ordinary prudence usually exercise about their own affairs of slight importance; ordinary care or diligence is such as they usually exercise about their own affairs of ordinary importance; and great care or diligence is such as they usually exercise about their own affairs of great importance. Care and diligence.

SEC. 2003. There are three degrees of negligence mentioned in this Code, namely, slight, ordinary and gross. The latter include the former. Degrees of negligence.

SEC. 2004. Slight negligence consists in the want of great care and diligence; ordinary negligence, in the want of ordinary care and diligence; and gross negligence, in the want of slight care and diligence. Negligence.

SEC. 2005. The term "children," as used in this Code, includes children by birth and by adoption. Children.

SEC. 2006. Except in Part III of this Division, every one who owes to another the performance of an obligation is called a debtor, and the one to whom he owes it is called a creditor. Debtor and creditor.

SEC. 2007. Good faith consists in an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of law, together with an absence of all information or belief of facts which would render the transaction unconscientious. Good faith.

- Notice.** SEC. 2008. Notice is either actual or constructive.
- Actual notice.** SEC. 2009. Actual notice consists in express information of a fact.
- Constructive notice.** SEC. 2010. Constructive notice is notice imputed by the law to a person not having actual notice.
- Certain persons deemed to have constructive notice.** SEC. 2011. Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, and who omits to make such inquiry with reasonable diligence, is deemed to have constructive notice of the fact itself.
- Notice when impossible.** SEC. 2012. A notice which is false when given, is not made valid by the subsequent happening of the event.
- Paper.** SEC. 2013. The word "paper," as used in this Code, means any flexible material upon which it is usual to write.
- Person.** SEC. 2014. The word "person," as used in this Code, except when used by way of contrast, includes not only human beings, but bodies politic or corporate.
- Several.** SEC. 2015. The word "several," as used in this Code in relation to number, means two or more.
- Third persons.** SEC. 2016. The words "third persons," as used in this Code, include all who are not parties to the obligation or transaction concerning which the phrase is used.
- Holidays.** SEC. 2017. Holidays, within the meaning of this Code, are, every Sunday, the first day of January, the twenty-second day of February, the fourth day of July, the twenty-fifth day of December, every day on which an election is held throughout the Territory, and every day appointed by the president of the United States, or by the governor of this Territory, for a public fast, thanksgiving, or holiday.
- Same.** SEC. 2018. If the first of January, the twenty-second of February, the fourth of July, or the twenty-fifth of December, falls upon a Sunday, the Monday following is a holiday.
- Business days.** SEC. 2019. All other days than those mentioned in the last two sections, are to be deemed business days, for all purposes.
- Certain acts not to be done on holidays.** SEC. 2020. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the

next business day, with the same effect as if it had been performed upon the day appointed.

SEC. 2021. Usage, within the meaning of this Code, is a reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties, or so well established, general and uniform, that they must be presumed to have acted with reference thereto. Usage, what.

SEC. 2022. The words "usual," and "customary," as used in this Code, mean "according to usage." Same.

SEC. 2023. A valuable consideration, within the meaning of this Code, is a thing of value parted with, or a new obligation assumed, at the time of obtaining a thing, which is a substantial compensation for that which is obtained thereby. It is also called simply "value." Value.

SEC. 2024. The word "verdict," as used in this Code, includes not only the verdict of a jury, but also the finding upon the facts, of a judge, or of a referee appointed to determine the issues in a cause. Verdict.

SEC. 2025. The word "year," as used in this Code, means a calendar year, and "month" a calendar month. Fractions of a year are to be computed by the number of months, thus, half a year is six months. Fractions of a day are to be disregarded in computations which include more than one day, and involve no questions of priority. Time.

SEC. 2026. Words used in this Code in the masculine gender include the feminine, except where a contrary intention plainly appears. Genders.

SEC. 2027. Words used in this Code in the singular number include the plural, and the plural the singular, except where a contrary intention plainly appears. Numbers.

SEC. 2028. Any act required to be done by or before a commissioner of deeds, may be done by or before any officer mentioned in sections 517, 518 and 519 of this Code, subject to the regulations contained in those sections. Commissioner of deeds.

SEC. 2029. The words "compound interest," as used in this Code, mean interest computed with semi-annual rests. Compound interest.

- Writing.** SEC. 2030. The words "writing" and "written," as used in this Code, include "printing" and "printed," except in the case of signatures, and where the words are used by way of contrast to printing. Writing may be made in any manner, except that when a person entitled to require the execution of a writing demands that it be made with ink, it must be so made.
- Forms.** SEC. 2031. The forms contained in the schedule annexed to this Code are to be deemed sufficient for the purposes designated in the caption of each respectively, and whenever any person is entitled to receive an instrument now commonly known by any such designation, he is entitled to receive it in the form given in the schedule, and cannot require it to be given in any other form, unless it has been otherwise expressly agreed.
- Construction of the Code.** SEC. 2032. The rule that statutes in derogation of the common law are to be strictly construed has no application to this Code.
- Repeal of former statutes.** SEC. 2033. All statutes, laws and rules heretofore in force in this Territory, inconsistent with the provisions of this Code are hereby repealed or abrogated; but such repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any proceeding already taken, except as in this Code provided; *Provided:* That the practice and procedure as established by chapter I, of the laws of 1862, entitled "An act to establish a code of civil procedure," approved May, 1862, so far as applicable to this Code, shall remain in full force and effect; and, *Provided further:* That nothing contained in this Code shall be so construed as to abrogate or impair the provisions of any statute exempting property from levy under execution for debt.
- When to take effect.** SEC. 2034. This Code shall take effect from and after the date of its approval.

SCHEDULE OF FORMS.

No. 1.

GRANT OF REAL PROPERTY, WITHOUT COVENANTS.

This grant, made the.....day of.....in the year....., between A. B., of....., of the first part, and C. D., of....., of the second part, witnesseth:

That the party of the first part hereby grants to the party of the second part, in consideration of.....dollars, now received, all the real property situated in....., and bounded....

Witness the hand and seal of the party of the first part.
A. B. [Seal.]

Sealed and delivered in the }
presence of }
E. F.

No. 2.

GRANT OF REAL PROPERTY, WITH COVENANTS.

This grant, made the.....day of....., in the year....., between A. B., of....., of the first part, and C. D., of....., of the second part, witnesseth:

I. That the party of the first part hereby grants to the party of the second part, in consideration of.....dollars, now received, all the real property situated in....., and bounded....

II. That the party of the first part covenants with the party of the second part, that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part, and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same.

Witness the hand and seal of the party of the first part.

A. B. [Seal.]

Sealed and delivered in the }
 presence of }
 E. F.

No. 3.

LEASE.

This lease, made the.....day of....., in the year....., between A. B., of....., of the first part, and C. D., of....., of the second part, witnesseth:

That the party of the first part lets, and the party of the second part hires, th> [describing the property let], for the term of....., at the [annual] rent of.....dollars, to be paid by the party of the second part to the party of the first part [in equal quarterly payments].

[Signatures.]

No. 4.

MORTGAGE OF REAL PROPERTY.

This mortgage, made the.....day of....., in the year....., between A. B., of....., of the first part, and C. D., of....., of the second part, witnesseth:

[I.] That in consideration ofdollars, now received, the party of the first part hereby mortgages to the party of the second part [here describe the property,] as security for the payment to him ofdollars, on [or before] the day of, 18.., with interest thereon [or, as security for the payment of a bond, describing it, &c.]

[If a power of sale is to be given add,] II. That in case of the non-payment of the principal sum, or of any part of the interest thereon, when due, the party of the second part may enter upon and sell the property above described, in the manner prescribed by the Civil Code and the Code of Civil Procedure of this Territory, and apply the proceeds of such sale to the satisfaction of the amount due under this mortgage, and of the expenses of the sale; the residue to be forthwith paid to the party of the first part.

[If the interest clause is to be inserted, add,] III. That, if the interest upon the principal sum mentioned herein is not fully paid as it falls due, the entire principal shall become immediately due and payable, at the option of the party of the second part.

[If the insurance clause is to be inserted, add,] IV. That the party of the first part shall, at his own expense, keep the [buildings] on the said property insured against fire in a reputable insurance office, for the benefit of the party of the second part, to the extent of.....dollars, until this mortgage is paid or otherwise extinguished.

Witness the hand and seal of the party of the first part.

A. B. [Seal.]

Sealed and delivered in the)
presence of)

E. F.

No. 5.

MORTGAGE OF PERSONAL PROPERTY.

This mortgage, made the day of in the year, between A. B. of....., of the first part, and C. D., of, of the second part, witnesseth:

[I.] That in consideration of dollars, now received, the party of the first part hereby mortgages to the party of the second part [here describe the property], as security for the payment to him ofdollars, on [or before] the day of....., 18.., with interest thereon [or, as security for the payment of a bond, describing it, &c.]

[If a power of sale is to be given, add,] II. That in case of the non-payment of the principal sum, or of any part of the interest thereon, when due, the party of the second part may enter upon any place where the said property is situated, and sell the property above described, in the manner prescribed by the Civil Code and the Code of Civil Procedure of this Territory, and apply the proceeds of such sale to the satisfaction of the amount due under this mortgage, and of the expenses of the sale; the residue to be forthwith paid to the party of the first part.

[If the interest clause is to be inserted, add,] III. That, if the interest upon the principal sum mentioned herein is not fully paid as it falls due, the entire principal shall become immediately payable, at the option of the party of the second part.

[If the insurance clause is to be inserted, add,] IV. That the party of the first part shall, at his own expense, keep the said property insured against [fire] in a reputable insurance office, for the benefit of the party of the second part, to the extent of.....dollars, until this mortgage is paid or otherwise extinguished.

[In case the principal obligation is for a term longer than one year, add,] V. That the party of the first part hereby agrees to execute, upon demand, at any time after eleven months from the date hereof, a new mortgage to the same effect, to secure so much of the obligation for which this mortgage is a security as will remain unsatisfied at the end of one year from this date.

Witness the hand and seal of the party of the first part.

A. B. [Seal.]

Sealed and delivered in the }
presence of

E. F.

No. 6.

BOND.

This bond, made theday of....., in the year , between A. B., of , of the first part, and C. D., of....., of the second part, witnesseth:

That the party of the first part, being indebted unto the party of the second part in the sum of.....dollars, hereby binds himself to pay the same to the said party of the second part, or to his order [or, to the bearer], [in.... years from the date hereof, with interest at the rate of....per cent. a year, payable half-yearly on the....day of.....and.....]

Witness the hand and seal of the party of the first part. A. B. [Seal.]

Sealed and delivered in the)
presence of }
E. F.

No. 7.

BILL OF LADING.

Received, in good order [on board the ship....., or, on the.....railway], from A. B. [name of consignor], [one thousand barrels of flour, or otherwise describing the goods], to be delivered at....., to the order of C. D. [or, to the bearer], on payment of.....freightage, [andprimage.]

[Date.]

[Signature.]

No. 8.

CHARTER-PARTY.

This charter-party, made the.....day of....., in the year....., between A. B., of....., of the first part, and C. D., of....., of the second part, witnesseth:

I. That the party of the first part lets to the party of the second part, the [ship], now lying at.....,

of which E. F. is master, for a voyage to be made fromto..... [or, for the term of.....from the date hereof.]

II. That the party of the first part warrants that the said [ship] shall be [kept] seaworthy, and in every respect fit for the voyage [and shall be provided with a sufficient crew and provisions.]

III. That the party of the second part may put on board the said (ship) any goods whatever, except such as are contraband of war.

IV. (If the vessel is chartered for a voyage only) That the party of the second part shall be allowed....days for loading at the port of....., and days for discharging (and reloading) at the port of....., and days for final discharge at the port of.....), exclusive, in each case, of Sundays and legal holidays; and commencing, in each case, from the time that notice is given to the party of the second part, or his proper agent, of the readiness of the vessel to receive or discharge cargo; and that for every day of additional detention of the vessel for these purposes, the party of the second part shall pay to the party of the first part.....dollars.

V. That the party of the second part shall pay to the party of the first part, at....., within.....days after the arrival of the said (ship) at that port,dollars, in full for the hire of the same (and shall also pay, as they fall due, the expenses of victualing and manning the same, and all port charges and pilotage that may be due thereon).

Witness the hands and seals of the parties.

A. B. (Seal.)

C. D. (Seal.)

Sealed and delivered in the)
presence of)

G. H.

No. 9.

BOTTOMRY BOND.

This bottomry bond, made the.....day of
..., in the year....., between A. B., of.....the

(master) of the (ship), now lying at
 , of the first part, and C. D., of, of the
 second part, witnesseth:

I. That whereas [stating the circumstances which render the hypothecation proper], and whereas the party of the second part has lent to the party of the first part, for the use of the said vessel, the sum ofdollars; now therefore, the party of the first part binds himself, the said vessel and her freightage, for the payment to the party of the second part of the said sum, withdollars in addition, as maritime interest, withindays after the arrival of the said vessel uninjured at[or, on theday of, 18 . . . , if the said vessel is not previously lost by perils other than its unseaworthiness at setting out, or the barratry of its master].

II. That, in case of the loss or injury of the said vessel [from any of the above mentioned perils], the party of the first part shall pay to the party of the second part so much only of the said sum and interest as may be equivalent to the net value, to the owner, of any portion or proceeds of the said vessel, saved to him.

Witness the hand and seal of the party of the first part.
A. B. [Seal.]

Sealed and delivered in the }
 presence of }
E. F.

No. 10.

RESPONDENTIA BOND.

This respondentia bond, made theday of, in the year, between A. B., of, the [master] of the [ship], now lying at, of the first part, and C. D., of, of the second part, witnesseth:

I. That whereas [stating the circumstances which render the hypothecation proper], and whereas the party of the second part has lent to the party of the first part, for the use of the said vessel, the sum ofdollars; now therefore, the

party of the first part binds himself, and all the cargo laden and to be laden on board the said vessel, for the repayment to the party of the second part of the said sum, with..... dollars in addition, as maratime interest, within.....days after the arrival of the said cargo uninjured at.....,[or, on the.....day of....., 18...., if the said cargo is not previously lost by perils other than the barratry of the master].

II. That in case of the loss or injury of the said cargo [from any of the above mentioned perils], the party of the first part shall pay to the party of the second part so much only of the said sum and interest as may be equivalent to the net value, to the owner, of any portion or proceeds of the said cargo, saved to him.

Witness the hand and seal of the party of the first part.
A. B. [Seal.]

Sealed and delivered in the)
 presence of)
E. F.

No. 11.

POLICY OF MARINE INSURANCE ON VESSEL.

This policy of marine insurance, made the.....day of, in the year....., between A. B., [name of insurer], of....., and C. D., [name of insured], of....., witnesseth:

That in consideration of the premium of.....dollars, being at the rate of.....per cent. upon the amount of insurance, now received from the said C. D., the said A. B. insures him to the extent of.....dollars, upon his interest [as mortgagee, or otherwise, if he is not the absolute owner] in the [one-fourth part of the ship.....], which interest is hereby valued at.....dollars.

This insurance is made upon the following terms:

I. The period during which this insurance is to continue is from the.....day of....., 18...., at noon, until the.... day of, 18...., at noon (or, at and from the port ofto the port of....., until the said vessel

has been safely moored at the last name port for twenty-four hours).

II. The risks insured against are all perils and losses of every kind, which may happen to the said vessel during the period above specified, except those which are caused by the unseaworthiness of the vessel.

III. In case of any disaster happening to the subject of insurance, the insured must labor for its recovery, and the insurer will contribute to the expense thereof according to the amount insured.

IV. Partial losses, amounting in the aggregate, on a single voyage, to less than (five) per cent. of the value of the subject of insurance, after making the usual deductions, are excepted from this insurance.

V. No act of the insurer or of the insured, in saving or recovering from disaster the property insured, is to be deemed an acceptance or waiver of abandonment.

VI. In adjusting a partial loss, the old materials are to be applied towards payment for the new, and, except in the case of anchors, cannon, and metal sheathing, one-third is to be deducted from the remaining cost of repairs; in the case of metal sheathing, deduction is to be made from the cost of its repair, at the rate of two and a half per cent. for each month during which the old sheathing was on the vessel; in considering a claim for a constructive total loss, similar deductions are to be made from the estimated expenses of repairs, and if, after making such deductions, the expenses would not exceed one-half the value of the vessel, the loss is to be deemed partial only.

VII. The amount of any note given for premium under this policy, if unpaid, is to be deducted from any payment of loss.

VIII. The amount of a loss insured against is payable to, for the benefit of (whom it may concern,) within days after proof of loss and interest is given to the insurer.

IX. If the insured has effected any prior insurance upon the same subject, the insurer herein is liable only for so much of a loss as is not covered by such prior insurance, and must return the premium upon the rest; but if the insured effects a

subsequent insurance, the insurer herein is nevertheless liable to the full amount herein specified, and has no right to contribution from such subsequent insurer.

X. In case the insured is entitled to a return of premium, in whole or in part, the insurer is entitled to retain (one-half of of one per cent.) in all events.

(Signature.)

No. 12.

POLICY OF MARINE INSURANCE ON CARGO.

This policy of marine insurance, made the day of in the year, between A. B. (name of insurer), of, and C. D. (name of insured), of...., witnesseth:

That in consideration of a premium ofdollars, being at the rate of ... per cent. upon the amount of insurance, now received from the said C. D., the said A. B. insures him to the extent of...dollars, upon his interest (as mortgagee, or otherwise, if he is not the absolute owner) in (describing the property), on board the (ship), of....., which interest is hereby valued atdollars.

This insurance is made upon the following terms:

I. The period during which this insurance is to continue is from theday of....., 18...., at noon until theday of....., 18...., at noon (or, from the commencement of loading the cargo insured, at the port of... until it is safely landed at the port of.....).

II. The risks insured against are all perils and losses of every kind which may happen to the cargo insured, during the period above specified, except those which arise from the inherent nature thereof, without external injury.

III. In case of any disaster happening to the subject of insurance, the insured must labor for its recovery, and the insurer will contribute to the expense thereof according to the amount insured.

IV. Partial losses are expected from this insurance in the following cases:

1. (Here specify articles particularly, with the rate of particular average allowed.

2. Losses by dampness, change of flavor, mustiness, or mold, unless caused by actual contact of water with the articles damaged.

3. Leakage of any liquid, unless caused by stranding or collision with another vessel.

V. No act of the insurer or of the insured, in saving or recovering from disaster the property insured, is to be deemed an acceptance or waiver of abandonment.

VI. The amount of any note given for premium under this policy, if unpaid, is to be deducted from any payment of loss.

VII. The amount of a loss insured against is payable to, for the benefit of, within days after proof of loss and interest is given to the insurer.

VIII. If the insured has effected any prior insurance upon the same subject, the insurer herein is liable only for so much of a loss as is not covered by such prior insurance, and must return the premium upon the rest; but if the insured effects a subsequent insurance, the insurer herein is nevertheless liable to the full amount herein specified, and has no right to contribution from such subsequent insurer.

IX. In case the insured is entitled to a return of premium, in whole or in part, the insurer herein is entitled to retain one-half of one per cent. in all events.

(Signature.)

No. 13.

POLICY OF MARINE INSURANCE ON FREIGHTAGE.

This policy of marine insurance, made the day of, in the year, between A. B. (name of insurer), of, and C. D. (name of insured), of, witnesseth:

That in consideration of a premium of dollars, being at the rate of . . . per cent, upon the amount of insurance,

now received from the said C. D., the said A. B. insures him to the extent of dollars, upon his interest (describing it if not absolute) in the freightage upon all cargo laden or to be laden on board the of, which interest is hereby valued at dollars.

This insurance is made upon the following terms:

I. The period during which this insurance is to continue is from the day of, 18. . ., at noon until the day of 18. . . ., at noon (or, from the commencement of loading cargo on the said vessel, at the port of, until it is safely landed at the port of).

II. The risks insured against are all perils and losses of every kind, which may happen during the period above specified, to prevent the said ship from earning the freightage insured; except losses arising from the neglect of the master to save freightage by procuring other vessels to convey the cargo to its destination, when necessary and practicable, or from his neglect to preserve damaged cargo.

III. In case of any disaster happening to the subject of insurance, the insured must labor for its recovery, and the insurer will contribute to the expense thereof according to the amount insured.

IV. Partial losses, amounting in the aggregate, on a single voyage, to less than (five) per cent. of the value of the subject of insurance, after making the usual deductions, are excepted from this insurance.

V. No act of the insurer or of the insured, in saving or recovering from disaster the property insured, is to be deemed an acceptance or waiver of abandonment.

VI. The amount of any note given for premium under this policy, if unpaid, is to be deducted from any payment of loss.

VII. The amount of a loss insured against is payable to for the benefit of, within days after proof of loss and interest is given to the insurer.

VIII. If the insured has effected any prior insurance upon the same subject, the insurer herein is liable only for so much of a loss as is not covered by such prior insurance, and must return the premium upon the rest; but if the insured effects a subsequent insurance, the insurer herein is nevertheless liable

to the full amount herein specified, and has no right to contribution from such subsequent insurer.

IX. In case the insured is entitled to a return of premium, in whole or in part, the insurer is entitled to retain (one-half of one per cent.) in all events.

(Signature.)

No. 14.

POLICY OF FIRE INSURANCE.

This policy of fire insurance, made the day of....
, in the year, between A. B. (name of insurer),
 of, and C. D. (name of insured), of,
 witnesseth:

That in consideration of a premium of dollars, being at the rate of per cent. upon the amount of insurance, now received from the said C. D. the said A. B. insures him to the extent of dollars, upon his interest (as mortgagee, or otherwise, if he is not the absolute owner), in (describing the property).

This insurance is made upon the following terms:

I. The period during which this insurance is to continue is from the day of, 18.., at noon, until the day of 18.., at noon.

II. The risks insured against are loss or damage by fire.

III. A loss caused by invasion, insurrection, riot, civil commotion, or any military or usurped power, is excepted.

IV. This policy does not cover books of account, written obligations, securities, or evidences of title or of debt, money or bullion, casts, jewelry, medals, musical or scientific instruments (other than a piano forte in a dwelling house), patterns, pictures, plate, precious stones, printed music, sculptures, statuary, or watches, except so far as the same are specially mentioned herein.

V. If any explosive substance is kept upon the premises herein mentioned, in quantities greater than or in a manner different from that allowed by law, this policy is suspended until the law is obeyed.

VI. This policy is suspended during the use of the premises herein mentioned for any of the following purposes, without the written consent of the insurer (specifying the purposes).

VII. In case the property insured is in peril of damages by fire, the insured must use his best efforts to protect it therefrom, the expense of which shall be paid by the insurer to the extent of this insurance.

VIII. The property insured cannot be abandoned to the insurer.

IX. Written notice of loss must be given to the insurer within a reasonable time thereafter, and the insured must deliver to the insurer a statement in writing, verified by his oath or affirmation, showing to the best of his knowledge and belief:

1. The ownership of the thing insured;
2. Its cash value at the time of loss;
3. By whom, and for what purposes, the premises on which the loss occurred were occupied;
4. When and how the fire originated;
5. All other insurance upon the same property, giving a copy of the written portions of each policy.

X. The insurer has a right to enter upon the premises where a loss occurs, and to examine all property insured, after a loss, and all books and papers relating to such property.

XI. The insurer may, at his option, pay for a loss according to the cash value at the time of loss, or replace the thing lost or injured with another thing of the same kind and quality, or repair the injury, if it can be fully repaired; but notice of his election to do must be given within thirty days after notice of loss, or the right thereof is lost.

XII. In case of any other insurance upon the property hereby insured, the insurer herein is liable only for such proportion of the whole loss, as the amount hereby insured bears to the gross amount of insurance effected; and a floating policy, sufficient in terms to cover the property hereby insured, is to be deemed to cover any excess of the value of such property over the amount specifically insured thereon.

(XIII. This policy shall be void if any other insurance now exists, or is hereafter effected upon the same property, without the written consent of the insurer herein.)

XIII. (or XIV.) The amount of a loss insured against is payable to the insured in thirty days after proof of loss and interest is given to the insurer.

XIV. (or XV.) This insurance may be terminated at any time by the insured, on notice to the insurer; in which case the insurer must refund all premium paid in excess of the customary short rates for the time the policy has been in force. It may also be terminated by the insurer, upon giving notice to the insured, and refunding to him a ratable proportion of the premium paid, according to the time that the policy has been in force.

(Signature.)

No. 15.

POLICY OF LIFE INSURANCE.

This policy of life insurance, made the day of....
....., in the year, between A. B. (name of in-
surer), of, and C. D. (name of insured), of.....
witnesseth:

That in consideration of a premium ofdollars,
being at the rate of per cent. upon the amount of insu-
rance, now received from the said C. D. (and of the annual
premium of dollars, to be paid on or before the day
of in every year during the period insured), the said A.
B. insures him to the extent of dollars, upon the life of
(name of person whose life is insured).

This insurance is made upon the following terms:

I. The period during which this insurance is to continue is
the life of..... (or, from to).

II. The amount to be paid in case of the death of the said
..... is dollars (with participation in profits),
which is to be paid to, (his executors, administrators,
or assigns, or if the policy is issued to the wife of the person
whose life is insured, for her sole use, or, in case of her death,

to her children, or their guardian, for their use, or, if she leaves no child, then to her executors or administrators), at, in sixty days after notice and proof of the death of deducting therefrom so much of the premium for the then current year as may be unpaid.

III. If, without the written consent of the insurer, the person whose life is insured passes beyond the boundaries of the United States of America, otherwise than into Canada, Nova Scotia, or New Brunswick; or passes west of the 100th degree of west longitude, or north of the 50th degree of north latitude; or between the 1st of July and the 1st of November passes south of 36 degrees, 30 minutes of north latitude; or enters upon a voyage on the high seas; or becomes personally engaged in blasting, mining, submarine operations, or in the production of highly inflammable or explosive substances, or in working a steam-engine, in any capacity, or in service or labor upon any railroad or in any kind of navigation, or in any military or naval service (other than that of the militia when not actually employed in military operations), the insurer shall not be liable to any payment under this policy, in case of his death while so situated or engaged, or in case of his death from any disease contracted or injury suffered while so situated or engaged, and the insurer may in any such case terminate this policy.

IV. If the person whose life is insured commits suicide, or dies from any injury suffered in a duel in which he is in any way engaged, or suffered in consequence of the violation of a penal law, or if the representations made upon the application for this policy are in any material respect untrue, this policy shall be void.

V. Upon the expiration of this policy, or in case it is now or hereafter becomes void, all payments made thereon shall belong to the insurer.

VI. If this policy is transferred or hypothecated, proof of the right of the holder to receive the amount of insurance must be given to the insurer sixty days before payment can be required.

(Signature.)

Approved, January 12th, 1866.

CONVICTS.

CHAPTER IX.

AN ACT TO PROVIDE FOR THE CUSTODY OF CONVICTS.

Be it enacted by the Legislative Assembly of the Territory of Dakota :

SECTION 1. That the Governor is authorized and it is hereby made his duty to enter into a contract with the proper authorities of the state of Iowa, to keep and maintain any convict or convicts now under conviction or that may hereafter be convicted and sentenced by any of the districts courts of this Territory, for violation of the laws thereof, during the time for which said convict or convicts may have been sentenced by courts or either of them, upon the terms most advantageous to the Territory, that he can obtain.

Governor authorized to contract for custody of convicts.

SEC. 2. That the state prison or penitentiary located at Fort Madison, in the state of Iowa, shall be regarded and recognized as the Territorial prison of the Territory of Dakota, and all persons who are now, or who may be hereafter under conviction for any offense against the laws of the Territory of Dakota, the penalty whereof is punishment by imprisonment in the Territorial prison, shall be sentenced to the state prison of the said state of Iowa, and such sentence shall be as legal in all respects as if such person or persons had been sentenced to a Territorial prison, within the limits of the Territory of Dakota: *Provided, however,* That the Governor may whenever the interests of the Territory require it annul and

State prison at Fort Madison, Iowa, designated as prison of Dakota Territory.

Proviso.

cancel the contract with the said state of Iowa, and enter into a new contract with the authorities of any other neighboring state to keep and maintain the convicts of this Territory: and *Provided, further*, That should the said state of Iowa, annul or cancel the said contract or agreement entered into with this Territory, then in that case the Governor is authorized and it is hereby made his duty to enter into a contract upon the most favorable terms possible with the authorities of some other neighboring state to keep and maintain the convicts from this Territory, and in either case when the Governor shall contract with any other neighboring state to keep and maintain the convicts of this Territory, it shall be his duty to immediately notify the Auditor and the several Judges of the district courts of this Territory, of the nature of said contract, and the location of the prison of said state, and after receiving such notification it shall be lawful for the said district judges to sentence persons convicted in their several courts when the punishment to be inflicted is imprisonment in the Territorial prison to the prison designated by the Governor as the one located in the state with whom he has made such contract, and all the provisions of this act shall in such case apply as fully and completely to the sentence and transportation of convicts to such prison as it does by virtue of this act to the state prison of Iowa.

Sheriffs to convey convicts to penitentiary.

SEC. 3. That the Sheriff of each county within this Territory shall at the close of each term of the district court in such county, convey all persons who may have been convicted of offenses punishable by imprisonment in the Territorial prison and sentenced in accordance with the provisions of this act to the said state prison of the state of Iowa, and he shall receive from the Territorial treasury for services in going to and returning from such prison, including all expenses by him incurred at the rate of ten cents per mile for each and every mile actually and necessarily traveled in going to and returning from said prison: *Provided, however*, That when more than one convict is taken at the same time the Sheriff shall receive in addition to ten cents per mile, all necessary expenses incurred in the way of fare and hiring help for the safe conveyance of said extra convicts.

Proviso.

Penalty of non-performance of duty by sheriff.

SEC. 4. Should any Sheriff fail to take all convicts at the same time to the said prison which may have been convicted

at any one term of court as herein provided, or shall he knowingly demand or receive greater compensation than is expressly given herein by the preceding section, he shall be guilty of a misdemeanor and upon conviction by any court having competent jurisdiction, shall be fined in any sum not less than twenty-five nor more than five hundred dollars for each offense.

SEC. 5. It shall be the duty of every sheriff who shall have conveyed any convict or convicts to the said prison, at Fort Madison, or other prison designated by the Governor in accordance with the provisions of section second of this act to immediately notify the Auditor of the Territory, in writing, of the exact date that said convict or convicts were received by the authorities of said prison, and a neglect of this duty by any Sheriff of this Territory shall render him liable upon conviction before the district court wherein said Sheriff shall reside, to a fine of not less than twenty-five nor more than two hundred dollars for each and every offense.

Sheriff to report removal of convicts to Territorial Auditor.

SEC. 6. It shall be the duty of the Auditor to audit all accounts presented by the Sheriffs of the different counties of this Territory, for services rendered under the provisions of this act in conveying convicts to the state prison, at Fort Madison, Iowa, or other prison designated by the Governor as aforesaid when verified by the affidavit of such Sheriff, that he actually and necessarily traveled the distance and rendered the services stated in his said account, and to draw a warrant on the Territorial Treasurer for the amount found due such Sheriff for such services rendered.

Auditor shall audit accounts of sheriff, &c.

SEC. 7. It shall be the duty of the Auditor to audit all accounts presented by the authorities of the said state of Iowa or other state designated by the Governor, as the one with whom he has contracted for keeping and maintaining the convicts of this Territory, under such regulations as he may prescribe, and to draw his warrant or warrants on the Territorial Treasurer for the amount or amounts found due said state.

Auditor to audit accounts for maintenance of convicts.

SEC. 8. This act shall take effect and be in force from and after its passage and approval.

To take effect, when.

Approved, December 14th, 1870.

COUNTIES.

CHAPTER X.

AN ACT TO DEFINE THE BOUNDARIES OF THE COUNTIES OF THE TERRITORY, AND TO ORGANIZE THE COUNTIES OF TURNER, HUTCHINSON, HANSON AND BUFFALO, AND FOR OTHER PURPOSES.

Be it enacted by the Legislative Assembly of the Territory of Dakota :

Boundaries of Union county.

SECTION 1. The county of Union shall be bounded and described as follows, to-wit: Beginning at a point in the center of the main channel of the Missouri river, opposite the mouth of the Big Sioux river; thence westerly up the center of said main channel to the west boundary of range fifty west of the 5th principal meridian; thence northward along said range line to the northwest corner of township ninety-five north, range fifty west; thence east along the north line of township ninety-five, to the center of the main channel of the Big Sioux river; thence southward along the said main channel to the place of beginning.

Boundaries of Clay county.

SEC. 2. The county of Clay shall be bounded and described as follows: Beginning at the southwest corner of Union county, thence westerly up the center of the main channel of the Missouri river to the west boundary of range fifty-three, thence north along said range line to the northwest corner of town ninety-five, range fifty-three; thence east along the north line of town ninety-five to the northwest corner of Union county; thence south along the west boundary of Union county to the place of beginning.

SEC. 3. The county of Yankton shall be bounded and described as follows: Beginning at the southwest corner of Clay county, thence westerly up the main channel of the Missouri river to the west boundary of range fifty-seven; thence north along the said range line to the northwest corner of town ninety-six north, and range fifty-seven west; thence east along north line of town ninety-six to the northwest corner of said town ninety-six, and range fifty-three; thence south along the west boundary of Lincoln and Clay counties to the place of beginning.

Boundaries of
Yankton
county.

SEC. 4. The county of Bon Homme shall be bounded and described as follows: Beginning at the southwest corner of Yankton county; thence westerly up the main channel of the Missouri river to Choteau Creek, on the eastern boundary of the Yankton Sioux Indian Reservation; thence northward along the eastern boundary of said Reserve to the north line of township ninety-six; thence east along said township line to the northwest corner of Yankton county; thence south along the west boundary of Yankton county to the place of beginning.

Boundaries
of Bon Homme
county.

SEC. 5. The county of Charles Mix shall be bounded and described as follows: Beginning at the southwest corner of Bon Homme county, thence up the center of the main channel of the Missouri river to the north line of township one hundred north; thence east along said township line to the west boundary of range sixty; thence south along said range line to the north boundary of Bon Homme county; thence along the north and west boundary of Bon Homme county to the place of beginning: *Provided*, That these boundaries shall in no wise be construed to interfere with the established limits of the Yankton Sioux Indian Reserve and the county seat of said county shall be established at Felicia Fallas' Ranche.

Boundaries
of Charles Mix
county.

Proviso.

SEC. 6. The county of Buffalo shall be bounded and described as follows: Beginning at the northwest corner of Charles Mix county, thence up the center of the main channel of the Missouri river to the western boundary of the Territory of Dakota; thence north along said western boundary to the British Possessions; thence east along the International boundary to the ninth guide meridian, between range sixty-six and sixty-seven; thence south along said guide meridian

Boundaries
of Buffalo
county.

to the north line of Charles Mix county; thence west along said county boundary to the place of beginning.

**Boundaries
of Hutchinson
county.**

SEC. 7. The county of Hutchinson shall be bounded and described as follows: Beginning at the northwest corner of Charles Mix county; thence south along the east boundary of said Charles Mix county to the north line of Bon Homme county; thence east along the north boundary of said Bon Homme and Yankton counties to the west line of range fifty-five; thence north along said range line to the north boundary of town one hundred; thence west along said township line to the place of beginning.

**Boundaries
of Union
county.**

SEC. 8. The county of Turner shall be bounded and described as follows: Beginning at the southeast corner of Hutchinson county; thence north along the east boundary of said county to the north line of town one hundred; thence east along said township line to the west boundary of range fifty-one; thence south along said range line to the north line of Clay county; thence west along said county line to the east boundary of Yankton county; thence north along said east boundary to the northeast corner of Yankton county; thence west along north boundary of said county to the place of beginning.

**Boundaries of
Lincoln county**

SEC. 9. The county of Lincoln shall be bounded and described as follows: Beginning at the southeast corner of Turner county; thence north along the east line of said Turner county to the north boundary of town one hundred; thence east along said township line to the center of the main channel of the Big Sioux river; thence southerly along the center of said main channel to the northeast corner of Union county; thence west along the north line of Union and Clay counties to the place of beginning.

**Boundaries of
Minnehaha
county.**

SEC. 10. The county of Minnehaha shall be bounded and described as follows: Beginning at the southwest corner of the state of Minnesota; thence north along the west boundary of said state to the north line of township one hundred and six; thence west along said town line to the 7th guide meridian, between ranges fifty-two and fifty-three; thence south along said guide meridian to the north line of town one hundred; thence east along said township line to the place of beginning.

SEC. 11. The county of Brookings shall be bounded and described as follows: Beginning at the northwest corner of Minnehaha county; thence north along the seventh guide meridian to the north line of town one hundred and twelve; thence east along said town line to the western boundary of the state of Minnesota; thence south along said state boundary to the northeast corner of Minnehaha county; thence west along north line of said county to the place of beginning.

Boundaries of
Brookings
county.

SEC. 12. The county of Duel shall be bounded and described as follows: Beginning at the northwest corner of Brookings county; thence north along the seventh guide meridian to the forty-sixth parallel of north latitude; thence east along said 46th parallel to the western boundary of the state of Minnesota; thence southward along the said state boundary to the northeast corner of Brookings county; thence west along the north line of said county to the place of beginning.

Boundaries of
Duel county.

SEC. 13. The county of Pembina shall be bounded and described as follows: Beginning at the northeast corner of Duel county on the 46th parallel of north latitude; thence north along the western boundary of the state of Minnesota to the northeast corner of the Territory of Dakota; thence west along the International boundary to the ninth guide meridian; thence south along said meridian to the forty-sixth parallel of north latitude; thence east along said parallel to the place of beginning.

Boundaries of
Pembina
county.

SEC. 14. The county of Hanson shall be bounded and described as follows: Beginning at the southwest corner of Minnehaha county; thence north along the west boundaries of Minnehaha, Brookings and Duel counties to the south line of Pembina county; thence west along the said county boundary on the 46th parallel to the ninth guide meridian, between ranges sixty-six and sixty-seven; thence south along said ninth guide meridian to the north line of Charles Mix county; thence east along the north boundary of Charles Mix, Hutchinson and Turner counties to the place of beginning.

Boundaries of
Hanson county

SEC. 15. T. J. Maxwell, John Brey, and Henry Maxwell shall be county commissioners, and Chas. H. Greno, register of deeds for Hutchinson county, and the county seat is hereby temporarily located on Sec. —, T. 97, R. 58, and shall be known and designated as Maxwell City.

Officers of
Hutchinson
county
appointed.

Officers of
Hanson county
appointed.

Geo. E. Vernon, G. H. Whetmore, and John Caffrey, shall be county commissioners, and J. Q. Burbank, register of deeds of said Hanson county, and the county seat of said county shall be temporarily located at old Fort James, and shall be known and designated as Rockport.

Officers of
Buffalo county
appointed.

Henry Waller, John Reeves, and George Cheatam shall be county commissioners, and Geo. Timms, register of deeds of Buffalo county, and the county seat is hereby temporarily located at White Earth City, near the mouth of White Earth river.

Officers of
Turner county
appointed, &c.

Wm. W. Aurner, Valentine P. Thielman and Lewis H. Elliott, shall be county commissioners, and C. S. Scott, shall be register of deeds of Turner county, and the county seat is hereby located on the southeast quarter of section nine, T. 97, range 53, and shall be known and designated as Swan Lake City, and the commissioners aforesaid shall qualify as such, on or before the first day of June, 1871; and when so qualified shall have the authority to appoint all other necessary and proper officers for their respective counties, and the said county commissioners and the other officers appointed by them shall hold their respective offices until the next general election, and until their successors shall be duly elected and qualified, and shall possess all the rights and powers and perform all the duties appertaining to their offices respectively. And in case of a failure to qualify as above provided, and within the time aforesaid, then in that case, it shall be the duty of the Governor, and he is hereby authorized to appoint in the stead of such as shall fail to qualify suitable and proper persons, and the persons so appointed shall qualify according to law, and shall possess all the powers and perform all the duties incumbent by law on them as such officers: *Provided*, that this act shall not be construed to interfere in any manner with the present boundaries of Todd and Gregory counties.

Proviso.

Conflicting
acts repealed.

SEC. 16. All acts and parts of acts heretofore enacted, which relate to the boundaries of counties in conflict with this act are hereby repealed.

How certain
words to be
construed.

SEC. 17. Whenever the words "Dakota county" occur in any of the laws passed during this session of the Legislative

Assembly, such words shall be construed in law to mean Han- How certain words to be construed.
 son county in conformity with this act.

SEC. 18. This act shall take effect and be in force from and To take effect, when.
 after its passage and approval by the Governor.

Approved, January 13th, 1871.

CHAPTER XI.

AN ACT CREATING THE OFFICE OF COUNTY CLERK, AND FOR
 OTHER PURPOSES.

*Be it enacted by the Legislative Assembly of the Territory of
 Dakota :*

SECTION 1. The registers of deeds in and for their respective Register of deeds shall be ex-officio county clerks.
 counties, shall be ex-officio county clerks, and shall have the
 power to take the acknowledgments of deeds and other instru-
 ments.

SEC. 2. Section eighty-nine of chapter twenty-five of the act How certain act to be construed.
 entitled, An Act Concerning Revenue, approved January 12th,
 1869, shall apply to the Territory of Dakota, and section
 eighty-eight of said act, to apply to Yankton city only.

SEC. 3. In section ten of the above act, when the words oc- Amendment.
 cur, "second Monday of April" said time shall be changed
 to the first Monday of April.

SEC. 4. This act shall be in force and effect from and after To take effect when.
 its passage and approval.

Approved, December 30th, 1870.

CHAPTER XII.

AN ACT DEFINING THE MANNER OF ORGANIZING UNORGANIZED COUNTIES IN DAKOTA TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

Voters of unorganized county may petition governor for organization.

SECTION 1. Whenever the voters of any unorganized county in this Territory shall be equal to fifty or upwards, and they shall desire to have said county organized, they may petition the Governor of the Territory, that they have the requisite number of voters to form a county organization, and request him to appoint the officers specified in the next section of this act.

Duty of governor to appoint county commissioners.

SEC. 2. Whenever the voters of any unorganized county in the Territory shall petition the Governor, as provided in the first section of this act, and the said Governor shall be satisfied that such county has fifty legal voters, it shall be the duty of the Governor and he is hereby authorized to appoint three county commissioners for such county, who shall hold their office until the first general election thereafter, and until their successors shall be elected and qualified.

Commissioners to appoint certain officers.

SEC. 3. Said county commissioners after having qualified according to law shall appoint all the county officers of said county required by law, who, after having qualified, shall hold their office until the next general election and until their successors shall have been elected and qualified.

Location of county seat.

SEC. 4. The county commissioners appointed under this act shall have the power to locate the county seat of such county temporarily.

Portions of Territory annexed for certain purposes.

SEC. 5. Such portions of the Territory not organized into counties as are annexed to any organized county, shall for judicial and other purposes be deemed to be within the limits and a part of the county to which they are annexed.

When to take effect.

SEC. 6. This act shall take effect and be in force from and after its passage.

Approved, January 11th, 1871.

CHAPTER XIII.

AN ACT TO PROVIDE FOR FILLING VACANCIES IN THE BOARD
OF COUNTY COMMISSIONERS.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota:*

SECTION 1. That when a vacancy occurs in the board of county commissioners of any county in this Territory, it shall be the duty of the chairman of said board of county commissioners, with the judge of probate and register of deeds, at their next regular or special meeting, to appoint some suitable person for the district where the vacancy occurs. And when such person so appointed shall qualify as provided by law, such vacancy shall be considered filled until the next regular election.

Vacancies in
board of county
commission-
ers, how filled.

SEC. 2. All acts and parts of acts conflicting with the provisions of this act, are hereby repealed.

Conflicting
acts repealed.

SEC. 3. This act shall take effect and be in force from and after its passage and approval.

When to
take effect.

Approved, January 13th, 1871.

COURTS.

CHAPTER XIV.

AN ACT FIXING THE TIME OF HOLDING THE SUPREME COURT FOR THE TERRITORY OF DAKOTA.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota:*

**Supreme
court, where
and when held.** SECTION 1. That there shall be held one term of the Supreme
Court each year at Yankton, on the first Tuesday of January,
and shall continue as long as the business may require.

Act repealed. SEC. 2. That chapter 23 of the laws of 1868-69, be and the
same is hereby repealed.

**When to
take effect.** SEC. 3. This act shall take effect and be in force from and
after its passage.

Approved, December 29th, 1870.

CHAPTER XV.

AN ACT AUTHORIZING CLERKS OF COURTS IN CERTAIN
CASES, TO ADJOURN THE SAME.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota :*

SECTION 1. The clerk of any District court in this Territory, <sup>When clerk
may adjourn
court.</sup> whenever the Judge, whose duty it may be, to preside therein, is hindered or delayed from any cause from being at the place of holding the same, on the first, second, or third day of the term thereof, is hereby authorized to adjourn said court from day to day, until the fourth day of said term, then if said Judge does not appear and take his seat to preside therein, the clerk aforesaid shall adjourn said court without day.

SEC. 2. This act shall take effect and be in force from and <sup>When to
take effect.</sup> after its passage and approval.

Approved, December 30th, 1870.

D I V O R C E .

CHAPTER XVI.

AN ACT CONCERNING DIVORCES.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota :*

SEC. 1. Divorces from bed and board, or from the bonds of ^{Divorces.} matrimony, may be granted:

For impo-
tence.

1st. For impotence existing at the time of marriage;

When female
under fourteen.

2d. When the female at the time of the alleged marriage was under the age of fourteen years, and the alleged marriage was without the consent of her parents, or guardian, or other persons having the legal custody or charge of her person; and when such marriage was not voluntarily ratified on her part after she had attained the age of fourteen years;

For adultery.

3d. By an act of adultery by either of the parties; but no divorce shall be granted upon the application of the party guilty of the act of adultery complained of; nor if it appear to the court that the adultery complained of was by collusion of the parties; nor when it shall appear that the parties have lived and voluntarily cohabited together as man and wife after knowledge of the act of adultery complained of;

For extreme
cruelty, &c.

4th. For extreme cruelty in either party (by inflicting upon the other grievous bodily or mental suffering), or for habitual intemperance, or for willful desertion by either party for a period of two years, or when having the ability to provide for the same, and failing so to do by reason of his idleness, profligacy or dissipation, or when from threatening words or acts, the weaker party feels in danger of bodily injury;

When consent
fraudulently
obtained.

5th. When the consent of either of the parties to the marriage, was obtained by force, fraud, intimidation, deception or influence of stronger minds;

When con-
victed for
felony.

6th. In case of the conviction of either party for a felony after marriage.

Either party
can be witness.

SEC. 2. Either party may be a witness on the trial of such action, but no divorce shall be granted on their testimony unless corroborated by other evidence.

When to
take effect.

SEC. 3. This act shall take effect and be in force from and after its approval by the Governor.

Approved, January 13th, 1871.

ELECTIONS.

CHAPTER XVII.

AN ACT PROVIDING FOR ELECTIONS AND TO PRESCRIBE THE CANVASS AND RETURN OF THE SAME.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota:*

SECTION 1. That all elections hereafter to be held for territorial, district, county, precinct, city, and other officers provided by law, shall be held and conducted in the manner prescribed in this act. How elections to be conducted

SEC. 2. A general election shall be held in the several election precincts in this Territory, on the second Tuesday in October in each year, at which there shall be chosen so many of the following named officers as are by law to be elected in each year, that is to say: A delegate to congress, territorial officers, members of the legislative assembly, judges of probate, district attorneys, sheriffs, county commissioners, coroners, registers of deeds, treasurers, justices of the peace, constables, and all other territorial, district, county, precinct and city officers, not herein enumerated, that may by law be provided for. *Provided, however,* That members of both branches of the Legislative Assembly shall be elected at the regular election in October, 1872, and once in two years thereafter, and shall hold their respective offices for the term of two years. General election, when held
What officers to be elected.
Legislature, when elec. ed.

County commissioners to appoint judges of election and establish precincts.

SEC. 3. The several boards of county commissioners shall, respectively, at least thirty days prior to the general election in each year, appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of election at each precinct and for each of the polls of election, as provided for in this act, and when necessary, to set off and establish election precincts or districts, and the register of deeds of the several counties shall make out and deliver to the sheriff, coroner, or other person that may be designated by the board of county commissioners of each county, immediately after the appointment of said judges of election, a notice in writing thereof, directed to the judges of election so appointed; and it shall be the duty of such sheriff, coroner, or other person appointed as provided in this section, within ten days after receiving such notice, to serve the same upon each of the said judges of election.

Duty of registers of deeds.

Duty of sheriff.

Judges of elections to choose clerks.

SEC. 4. The said judges shall choose two persons having similar qualifications with themselves, to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers to be held at their respective precincts, until other judges shall be appointed as hereinbefore directed, and the said clerks of election may continue to act as such during the pleasure of the judges of election, and the county commissioners shall, from time to time, fill all vacancies which may occur in the office of judges of elections, at any election precinct within their respective counties.

Term of office of judges and clerks.

Notice to be posted by register of deeds.

SEC. 5. The registers of deeds of the several counties shall, at least thirty days before any general election, and at least ten days before any special election, make out and deliver to the sheriff, coroner, or other person to be designated by them, of their respective counties; three written notices thereof for each election precinct; said notices to be, as nearly as circumstances will admit, as follows, to-wit: Notice is hereby given, that on the second Tuesday, the day of next, at the house of in the town, district, or precinct of in the county of, an election to be held for territorial, town or district officers, (naming the offices to be filled as the case may be,) which election will be opened at nine o'clock in the morning and will continue open until four o'clock in the afternoon of the same day.

Dated this day of....., A. D. (as the case may be.)

Signed, A. B., Register of Deeds.

SEC. 6. The sheriff, coroner or other person to whom such notice shall be delivered as aforesaid, shall put up in three of the most public places in each town or district, the notice referring to such district, precinct, or town, at least twenty days previous to the time of holding any general election, and at least eight days previous to the time of holding any special election, and in cases where towns or districts may not be set off by law as election precincts, said notices shall be posted as follows: One at the house where the election is authorized to be held, and two others at two of the most public places in that vicinity or settlement.

Officer to post such notices, when and where.

SEC. 7. If any person appointed to act as judge of election, as aforesaid, shall neglect or refuse to be sworn to act in such capacity, or shall not be present, the place of such person shall be filled by the votes of such qualified electors residing within the county, town, district or precinct, as may then be present, at the place of election, and the person or persons so elected to fill the vacancy or vacancies, shall be and are hereby vested, for that election, with the same power as if appointed by the board of county commissioners.

Electors to choose judge of election in certain cases.

SEC. 8. Previous to votes being taken, the judges and the clerks of the election shall severally take an oath, in the following form, to-wit: "I, A. B., do solemnly swear, (or affirm, as the case may be,) that I will perform the duties of judge, (or clerk, as the case may be) according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

Oath of judges and clerks.

SEC. 9. In case there shall be no judge of a court or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered to administer the oath to each other, and to the clerks of the election; and the person administering oaths shall cause an entry thereof to be made and subscribed by him and prefixed to the poll book.

Who to administer oath.

When polls
to be opened,
and closed.

SEC. 10. At all elections to be held under this act, the polls shall be opened at the hour of nine o'clock in the forenoon, and continue open until four o'clock in the afternoon of the same day, at which time the polls shall be closed. Thirty minutes before the closing of the polls, proclamation shall be made, that the poll will be closed in half an hour, but the board may, in their discretion, adjourn the polls at twelve o'clock noon, for one hour, (proclamation of the same being made.)

Adjournment
for dinner.

Penalty for
rejecting legal
vote.

SEC. 11. Any board of judges who shall willfully and knowingly reject any legal vote, shall be subject to a fine of fifty dollars, to be collected before any justice of the peace, for the use of common schools, on the complaint and proof of any person.

Manner of
voting, and
form of ballot.

SEC. 12. Every elector shall vote by ballot, and each person offering to vote shall deliver his ballot to one of the judges of election, in presence of the board. The ballot shall be a paper ticket, which shall contain written or printed, or partly written and partly printed, the names of the persons for whom the electors intend to vote, and shall designate the office to which each person so named is intended by him to be chosen; but no ballot shall contain a greater number of names of persons designated to any office than there are persons to be chosen at the election to fill such office.

All names
voted for to be
on one ticket.

SEC. 13. The names of all persons voted for by any elector at any general election or special election, shall be on one ballot.

Proceedings
in case of chal-
lenge.

SEC. 14. If any person offering to vote shall be challenged as unqualified, by any judge or clerk of election, or by any other person entitled to vote at the same poll, the board of judges shall declare to the person so challenged, the qualifications of an elector; if such person shall then state himself duly qualified, and the challenge shall not be withdrawn, one of the judges shall tender the following oath: "You do solemnly swear, (or affirm, as the case may be,) that you are twenty-one years of age, that you are a citizen of the United States (or that you have declared your intention to become a citizen, conformably to the laws of the United States, and of this Territory on the subject of naturalization) that you have resided in this Territory ninety days, and in this county

Oath of elec-
tor.

twenty days, and in this precinct five days next preceding this election; that you have not voted at this election;" and if any person so challenged shall refuse to take such oath so tendered, his vote shall be rejected, and after taking such oath, if the judges have good reason to believe that the person so offering to vote is not a legal voter, before receiving his vote they shall require him to subscribe the oath, which shall be written out and preserved with the poll books for future reference.

Judges may require oath to be signed.

SEC. 15. If any person so offering such vote shall take such oath, knowing it to be false, he shall be deemed guilty of willful and corrupt perjury, and shall, on conviction, suffer such punishment as now is, or shall hereafter be prescribed by law for persons guilty of perjury. And if any person shall vote at any election who is not a qualified voter, and knows himself to be disqualified, he shall upon conviction thereof, be confined in the county jail of said county, not more than six months nor less than one month, and if there is no jail in said county, he shall be confined in the nearest place kept for such purpose in this Territory; he shall also forfeit and pay into the county treasury of the county in which such action was held, for the use of common schools, a sum not exceeding five hundred dollars, nor less than fifty dollars.

Penalty for perjury.

Penalty for illegal voting.

SEC. 16. There shall be provided and kept by the judges of each election precinct, (at the expense of the county in which such precincts are situated,) a suitable ballot box with lock and key.

Judges to keep ballot box, &c.

SEC. 17. There shall be an opening through the lid of such box, of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls, the ballot box shall be carefully examined by the judges of the election, that nothing may remain therein; it shall then be locked, and the key thereof delivered to one of the judges to be designated by the board, and shall not be opened during the election, except in the manner and for the purposes hereinafter mentioned.

Style of ballot box, and duty of judges.

SEC. 18. When a ballot shall be received, one of the judges without opening the same, or permitting it to be opened or examined (except to ascertain whether it be a single ballot) shall deposit it in the ballot box.

Judges to deposit ballot in box.

Clerk to keep
poll list.

SEC. 19. Each clerk of election shall keep a poll list which shall contain the names of all the persons voting at such election in their numerical order.

Duty of clerks
on adjourn-
ment for
dinner.

SEC. 20. At each adjournment of the polls for dinner, the clerks shall in presence of the judges, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered, according to the decision of the board, until such poll lists shall be made, in all respects, to correspond.

Manner of
protecting box
on adjourn-
ment for
dinner.

SEC. 21. The box shall then be opened and the poll list placed therein; and said box shall then be locked, and a covering with a seal placed on the opening in the lid of such box, so as entirely to cover the same, and the key delivered to one of the judges, and the box to another, to be designated by the board.

Disposition
of key and
box, &c.

SEC. 22. The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the polls; and the person having the box shall carefully keep it without opening it, or suffering it to be opened, or the seal thereof to be broken or removed; and shall publicly in that condition, deliver it to the board of judges at the next opening of the poll, when the seal shall be broken, the box opened, the poll lists taken out, and the box again locked.

Duty of judge
to challenge.

SEC. 23. It shall be the duty of judge of election, to challenge every person offering to vote, whom he shall know or suspect not to be qualified as an elector.

Judges may
appoint special
constables,
and commit
and fine parties
for disorderly
conduct.

SEC. 24. For the preservation of order, as well as to secure the judges and clerks from insult and abuse, it shall be the duty of the constable or constables residing in the town, district or precinct, and should no constable attend at such elections, the judges of elections are hereby authorized and empowered to appoint one or more special constables to assist in preserving order during the election; and the judges are hereby authorized to enforce a fine not exceeding fifty dollars, on any person or persons who shall conduct in a disorderly or riotous manner, and shall persist in such conduct after having been warned of the consequences, and on refusing to pay the same, to commit him or them to the common jail of the county, for any time not exceeding twenty days, or until

the same shall be paid; and the constable to whom the order shall be directed, and the jailer of the county, are hereby required to execute said order, and receive such person or persons so committed as though it had been issued by a magistrate in due form of law. Same.

SEC. 25. As soon as the poll of the election shall be finally closed, the judges shall immediately proceed to canvass the vote given at such election, and the canvass shall be public, and shall be continued without adjournment until completed. Duty of judges after closing polls.

SEC. 26. The canvass shall commence by a comparison of the poll lists from the commencement, and a correction of any mistake that may be found therein, until they shall be found or made to agree. The box shall then be opened and the ballots contained therein be taken out and counted by the judges unopened, except so far as to ascertain whether each ballot is single, and if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot shall be completed; and if upon a comparison of the count with the poll lists, and the appearance of such ballots, a majority of such judges shall be of opinion that the ballots thus folded together were voted by one elector, they shall be destroyed. Manner of conducting the canvass.

SEC. 27. If the ballots in the box shall be found to exceed in number the whole number of votes on the poll lists, they shall be replaced in the box, after being purged as above, and one of the judges shall publicly draw out and destroy therefrom as many ballots, unopened, as shall be equal to such excess. Proceeding where ballots and poll lists disagree.

SEC. 28. The ballot and poll list agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and the clerks shall set down in their poll books the name of every person voted for, written at full length, the office for which such person received such votes, and the number he did receive, the number being expressed at full length, such entry to be made, as nearly as circumstances will admit, in the following form, to-wit: "At an election held at the house of A. B., in the town, district or precinct, in the county of, and Territory of Dakota, on the day of, the following named persons received the number of votes annexed to their respective names, for the Duty of clerks in canvassing the votes.

Form of entry.

Same.

following described offices, to-wit: A. B. had votes for delegate to congress; C. D. had votes for the legislative council; E. F. had votes for member of the house of representatives; G. H. had votes for coroner; I. J. had votes for sheriff; K. L. had votes for county commissioner, (and in like manner for any other persons voted for.) Certified by us, A. B., C. D., E. F., judges of election. Attest: G. H., I. K., clerks of election."

Judge to forward one poll book to register of deeds.

SEC. 29. The judges of election shall then enclose and seal one of the poll books, and, under cover, direct the same to the register of deeds of the county in which such election was held, and the packet thus sealed shall be conveyed by one of the judges or clerks of election, to be determined by lot if they cannot otherwise agree, or by some other person to be agreed upon by the judges, and delivered to said register of deeds, at his office, within three days after the closing of the polls, and the other poll book, together with the ballots and ballot box, deposited with the chairman of the board of county commissioners; and the said poll book shall be subject to inspection at any time thereafter.

Penalty for neglect to deliver poll book to register of deeds.

SEC. 30. If any judge or clerk of election, after being deputed by the judges of election at which he shall have served as judge or clerk, to carry the poll books of such election to the register of deeds, or any other person deputed for that purpose, shall fail or neglect to deliver such poll book to the said register of deeds, within the time specified by law, safe with the seals unbroken, he shall for every such offense, forfeit and pay the sum of five hundred dollars, for the use of the common schools in said county, to be recovered by a civil action in the name of the county commissioners, in the district court, and be confined in the county jail not less than six months.

Register of deeds to make abstracts of votes.

SEC. 31. On the twentieth day after the close of any election, or as soon as all the returns are received, the register of deeds, taking to his assistance a majority of the county commissioners of the county, or the probate judge and one county commissioner, shall proceed to open said returns and make abstracts of the votes in the following manner; the abstract of the votes for delegate to congress shall be on one sheet; the abstract of votes for members of the legislative assembly shall be on one sheet; the abstract of votes for the county and

Form of abstract.

precinct officers shall be on one sheet; and it shall be the duty of the said register of deeds, immediately to make out a certificate of election to each of the persons having the highest number of votes for members of the legislative assembly, county and precinct officers, respectively, and to deliver said certificate to the person entitled to it, on his making application to the register at his office: *Provided*, That when a tie shall exist between two or more persons for the council and house of representatives, the register of deeds shall give notice to the sheriff of the county, who shall immediately advertise another election, giving at least ten days notice; and it shall be the duty of the register of deeds of each county, on the receipt of the returns of any general or special election to make out his certificate, stating therein the compensation to which the judges and clerks of election may be entitled for their services, and lay the same before the board of commissioners at their next session, and the said board shall order the compensation aforesaid to be paid out of the county treasury. And immediately after canvassing the returns and making the abstracts of votes as provided in this section, the register of deeds shall make a certified copy of each abstract, and forward the same to the secretary of the Territory.

Proceedings
in case of tie.

Register to
make certifi-
cate.

Register to
send abstract
to secretary.

SEC. 32. If the requisite number of county officers shall not be elected, by reason of two or more persons having an equal and the highest number of votes for one and the same office, the register whose duty it is to compare the polls, shall give notice to the several persons so having the highest and equal number of votes to attend at the office of the proper register, at the time to be appointed by the said register, who shall then and there proceed publicly to decide by lot, which of the persons so having an equal number of votes, shall be declared duly elected, and the said register shall make and deliver to the person thus declared duly elected a certificate of his election as hereinbefore provided.

Duty of regis-
ter in case of
tie.

SEC. 33. And it shall be the duty of the secretary of the Territory, with the chief justice and the governor, or a majority of them, to proceed within fifty days after the election, to canvass the votes for delegate to congress, and other Territorial officers, and the governor shall grant a certificate of election to the person having the highest number of votes, and shall also issue a proclamation declaring the election of such

Territorial
canvassers,
their duties.

person. In case there shall be no choice by reason of any two or more persons having an equal and the highest number of votes, the governor shall, by proclamation, order a new election: *Provided*, That if either of the persons mentioned in this section as canvassers be a candidate to congress, such person shall take no part in the canvass of said votes.

Candidate
not to be can-
vasser.

Duty of sec-
retary when re-
turns not re-
ceived.

SEC. 34. If the returns of election of any organized county in this Territory shall not be received at the office of the secretary of the Territory within thirty days after the day of election, the said secretary shall forthwith send a messenger to the register of deeds of such county, whose duty it shall be to furnish said messenger with a certified copy of such returns; and the said messenger shall be paid out of the treasury of the Territory the sum of ten cents per mile for each mile he shall necessarily travel in going to and returning from the office of the said register.

Compensation
of messenger.

Resignations
and vacancies.

SEC. 35. Any person who shall receive a certificate of his election as a member of the council or house of representatives of the legislative assembly, sheriff, probate judge, register of deeds, coroner, or county commissioner, shall be at liberty to resign such office, though he may not have entered upon the execution of its duties, or taken the requisite oath of office; and when any vacancy shall happen in the office of the member of the council or house of representatives of the legislative assembly, by death, resignation or otherwise, it shall be the duty of the register of deeds of the county in which the vacancy has occurred, to officially notify the governor thereof; whereupon the governor shall issue a writ of election, directed to the sheriff of the county or district in which such vacancy shall happen, commanding him to notify the several judges of election in his county or district, to hold a special election to fill such vacancy or vacancies, at a time to be appointed by the governor: *Provided*, That if there be no session of the legislative assembly between the happening of such vacancy or vacancies and the time of the general election, it shall not be necessary to order a special election to fill such vacancy; and when any vacancy shall happen in the office of delegate to congress from this Territory, it shall be the duty of the governor to issue his proclamation appointing a day to hold a special election to fill such vacancy.

Governor to
issue writ of
election.

Proviso.

SEC. 36. When two or more counties are united in one council or representative district, the register of deeds of the county last established shall, within thirty days after the day of election, attend at the office of the register of deeds of the senior county, and in conjunction with the register of the senior county, or counties, shall compare the votes given in the several counties comprising such council or representative district, and said registers shall immediately make out a certificate of the person or persons having the highest number of votes in such counties, for member or members of the council or house of representatives of the legislative assembly, which certificate shall be delivered to the person entitled to it, on his application to the register of deeds of the senior county, at his office.

Duty of registers where two counties are attached.

SEC. 37. Should any vacancy happen in the office of members of the council or house of representatives of the legislative assembly, while in session, by death, resignation, removal, or otherwise, it shall be the duty of the governor immediately upon receiving official notification of the same, to proceed in the same manner as is prescribed for other cases in the thirty-fifth section of this act.

Duty of governor in case of vacancy in legislature.

SEC. 38. There shall be allowed out of the county treasury of each county, to the several judges and clerks of election, two dollars per day, and the person carrying the poll books from the place of election to the register's office, the sum of five cents per mile for going and returning.

Compensation of judges, clerks, and messenger.

SEC. 39. If a vacancy shall occur in the council or house of representatives in this Territory, for any cause, and if the county or counties comprising the district in which such vacancy has happened, shall have been divided after the election of the member whose seat is vacant, and before the election to supply the vacancy, such election shall be ordered in every county in which any part of the original county or district may be situated; but no person shall be permitted to vote at such election who does not at the time reside within the limits of the organized county or district in which such vacancy occurred: *Provided*, That nothing herein contained shall be so construed as to permit any person to vote so residing within the limits, who has not the other qualifications of an elector.

Where vacancy occurs in district divided subsequent to election, how to proceed.

Who shall be voters.

Duty of register of deeds in canvassing.

SEC. 40. In cases of elections to fill vacancies, as provided for in this act, immediately after receiving the election returns from the several precincts, the register of deeds shall, as provided in this act, proceed to canvass the votes returned, and without delay forward to the secretary of the Territory the copies of the abstracts of the same.

Register shall receive and canvass all returns regardless of informalities.

SEC. 41. No election returns shall be refused by any register of deeds for the reason that the same may be returned or delivered to him in any other than the manner directed in this act; nor shall he refuse to include any returns in his estimate of votes for any informality in holding an election, or making returns thereof; but all returns shall be received and the votes canvassed by such register, and a certificate given to the person or persons who may, by such returns, have the greatest number of votes.

Penalty where officers violate provisions of this act.

SEC. 42. If any judge or clerk of election, or register of deeds, or any other person, in any manner concerned in conducting the election, shall corruptly violate any of the provisions of this act, he shall forfeit and pay to the county a sum not less than fifty nor more than five hundred dollars, to be recovered by a civil action in the name of the county commissioners of the proper county, which money, when collected, shall be for the support of common schools in said county.

Commencement of regular term of office.

SEC. 43. The regular term of office for all county, town, or precinct officers, when elected for a full term, shall commence on the first day of January next succeeding their election. But if the office to which he was elected be vacant at the time of election, even if he was not elected to fill a vacancy, he shall forthwith qualify, as prescribed by law, and enter upon the duties of his office.

Where elected to fill vacancy.

When officers may qualify whether elected or appointed.

SEC. 44. Any of the Territorial, county, district, or precinct officers that may be elected or appointed to fill vacancies, may qualify and enter upon the duties of their office immediately thereafter, and when elected, they may hold the same during the unexpired term for which they were elected, and until their successors are elected and qualified; if appointed, they shall hold the same until their successors are elected and qualified.

SEC. 45. In all elections for the choice of any officer, unless it is otherwise expressly provided, the person having the highest number of votes for any office, shall be deemed to have been elected to that office.

The person having the highest number of votes elected.

SEC. 46. During the day on which any general, special, town, precinct, or charter election shall be held, no civil process shall be served on any elector entitled to vote at such election.

No civil process served on election day.

SEC. 47. The register of deeds shall not construe the statutes concerning the canvassing of the election returns, so as to decide all matters of law and fact himself, but the register aforesaid, and the persons called to his assistance, shall constitute a board, a majority of whom shall decide all matters of disagreement, and the said board shall disregard technicalities, and misspelling, the use of initial letters, or abbreviations of the name of candidates for office, if it can be ascertained from such votes for whom they are intended, but they shall not count votes polled in any place but at established precincts, and a breach of the provisions of this section shall be deemed a misdemeanor in office, and punished accordingly.

Canvassers, of whom to consist and how to proceed.

Penalty for breach of law.

SEC. 48. It shall be the duty of the register of deeds, of each organized county in this Territory, to provide uniform poll books for the use of his county, each poll book containing a copy of the law prescribing the qualifications of electors, and so much of this act as relates to the duties of judges and clerks of election and the penalties imposed for offenses; also containing blanks for all entries required to be made in the said poll books, at the time the said register delivered notice for an election to the sheriff of his county, as provided for in this act; he shall also deliver to the sheriff two copies of said poll books for an election precinct, and the sheriff shall deliver the same into the hands of one of the judges of election, and the judges of election receiving the said poll books, shall deliver or cause the same to be delivered to the clerks on the day of election.

Register to provide poll books, &c.

Shall deliver said books to sheriff, and he to judges, &c.

SEC. 49. Every male person above the age of twenty-one years, who shall have been a resident of the Territory ninety days, twenty days in the county, and five days in the precinct, next preceding the election, who is a citizen of the United

Who shall be entitled to vote.

Who shall be entitled to vote States, or who has declared upon oath his intention to become such, and shall have taken an oath to support the constitution of the United States, and persons who have been declared by law to be citizens of the Territory, and shall have complied with the provisions of any law which is now or may in future be in force relating to the registration of voters, shall be entitled to vote; and all persons possessing the qualifications mentioned in this section, and who have resided in this Territory nine months, shall be eligible to any office in the said Territory: *Provided, however,* That persons shall vote in the precincts where they reside and not elsewhere.

Who shall be eligible to office.

Where to vote.

Duty of secretary of Territory.

SEC. 50. The secretary of the Territory shall at least thirty days before every general election, transmit to the registers of deeds of the several counties, blank forms and envelopes for all returns of votes required to be made to his office, with such printed directions on the envelopes as he deems necessary for the guidance and direction of such officers in making the returns according to law, and the expense of printing such blanks and envelopes shall be paid by the Territory.

Secretary to make memorandum.

SEC. 51. A memorandum of the date of the reception of all returns of votes at the secretary's office shall be made at said office on the envelope containing them.

Certain acts repealed.

SEC. 52. Chapter nine of the laws of 1866-7, entitled an act to amend an act entitled an act providing for elections and to prescribe the canvass and returns of the same, approved January 6th, 1866, and all laws heretofore passed by the Legislative Assembly of the Territory of Dakota, relating to the manner of conducting elections, are hereby repealed.

When to take effect.

SEC. 53. This act shall take effect and be in force from and after its passage and approval.

Approved, January 13th, 1871.

CHAPTER XVIII.

AN ACT TO PUNISH OFFENSES AGAINST THE RIGHT OF
SUFFRAGE.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota:*

SECTION 1. If any person offer or give a bribe to any elector of this Territory for the purpose of influencing his vote at any election authorized by law; and if any elector entitled to vote at such election takes or receives such bribe, he shall be punished by fine not exceeding one thousand dollars, and not less than one hundred dollars, and be imprisoned in the county jail not exceeding one year and not less than three months.

Penalty for offering bribe to elector, or receiving bribe.

SEC. 2. If any person offer or give or loan to another any money or other thing of value to induce him to influence any elector to vote in a particular way or for any person at any such election, he shall be punished by fine not exceeding five hundred dollars, or be imprisoned in the county jail not exceeding one year, or by both fine and imprisonment in the discretion of the court.

Penalty for offering loan to influence elector.

SEC. 3. If any elector vote more than once at any election which may be held by virtue of any law of this Territory, he shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding one year.

Penalty for repeating.

SEC. 4. If any person knowing himself not to be qualified, vote at any election authorized by law, he shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding six months.

Where voter is unqualified.

SEC. 5. If any person procure, aid or assist, counsel, or advise another to give his vote, knowing that such person is disqualified, he shall be punished by fine not exceeding five hundred dollars nor less than fifty dollars, and be imprisoned in the county jail not exceeding one year.

Penalty for advising voter not qualified.

Penalty for threatening elector.

SEC. 6. If any person unlawfully and by force, or threats, prevents or endeavors to prevent an elector from freely giving his vote at any lawful election in this Territory, he shall be punished by fine not exceeding one thousand dollars and not less than fifty dollars.

Penalty for offering bribe to officers of election.

SEC. 7. If any person give or offer a bribe to any judge, clerk, canvasser or other officer of an election authorized by law, as a consideration for some act done or omitted to be done contrary to his official duty, in relation to such election, such person shall be punished by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding six months.

Penalty for procuring votes by certain influences.

SEC. 8. If any person procures or endeavors to procure the vote of any elector, or the influence of any person or other electors at any election, for himself or for any, or against any, candidate, by means of violence, threats of violence or threats of withdrawing custom or dealing in business or trade, or enforcing the payment of debts, or bringing a suit or criminal prosecution, or any other threat of injury to be inflicted by him, or by his means, he shall be punished by fine not exceeding one thousand dollars and by imprisonment not exceeding six months.

Disfranchisement of guilty parties.

SEC. 9. Any person guilty of either of the offenses mentioned in sections one and two of this act, shall hereafter be forever disfranchised and rendered ineligible to any office of trust or profit within the Territory including that of Delegate in Congress.

Who shall testify.

SEC. 10. No person shall be excused from testifying upon a prosecution for an offense mentioned in section one of this act, upon the ground that his statement might tend to criminate himself, but any person so testifying against the other party, shall thereafter be exempt from punishment for any such offense mentioned in said section one.

When to take effect.

SEC. 11. This act shall take effect and be in force from and after its passage and approval.

Approved, January 13th, 1871.

F E N C E S .

CHAPTER XIX.

AN ACT TO ESTABLISH A DITCH FENCE AS LAWFUL.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota:*

SECTION 1. That a ditch so excavated as to be three feet wide on the surface, three and one-half feet deep, and twelve inches wide on the bottom, with the soil taken therefrom, placed on the edge of one side of the ditch, exclusively, with one post placed firmly in the ground not a greater distance than twelve feet apart, with one rail, pole or board, attached firmly thereto, and said rail, pole, or board, to be not less than twelve inches, nor more than eighteen inches from the surface of the soil as thrown up.

Description
of ditch fence.

SEC. 2. That a ditch fence made as described in section one, shall be deemed a lawful fence when in good repair.

Said fence
shall be lawful.

Approved, January 11th, 1871.

FERRIES.

CHAPTER XX.

AN ACT ALLOWING COUNTY COMMISSIONERS TO EXTEND FERRY LEASES, AND FOR OTHER PURPOSES.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota:*

Certain act
amended.

That section two of chapter sixteen of the laws of 1865-66, approved January 12th, 1866, be amended so as to read as follows:

County com-
missioners to
extend ferry
leases.

SECTION 1. That the board of county commissioners of the county to whom application shall be made for a Ferry, in the manner hereinafter provided, are hereby authorized, and it shall be their duty to grant a lease of such ferry, for a term not exceeding fifteen years, to such person or persons who shall bid and secure the payment of the highest amount of rent for the same, such lease to be executed by the said board of county commissioners as lessors and such highest bidder or bidders as lessees, and the county commissioners of any county in this Territory that have leased to any person or persons, the ferry across any stream or streams in this Territory, shall be empowered to extend to such person or persons the lease so granted to any person or persons putting in a steam ferry at the same rates as previously paid: *Provided,*

That such extended time shall not exceed fifteen years from ^{Time of lease.} the time of the granting of the first lease, and that when in the opinion of the county commissioners of the county where in such lease is granted, the rates fixed by law for crossing such ferry be too low, they shall have the right to fix the rates as in their judgment may seem just.

SEC. 2. This act shall take effect and be in force from and ^{When to take effect.} after its passage and approval by the Governor.

Approved, January 6th, 1871.

FRUIT.

CHAPTER XXI.

AN ACT FOR THE PROTECTION OF FRUIT AND FOR OTHER PURPOSES.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That if any person or persons maliciously or ^{Penalty for injury to fruit and trees.} mischievously enter the inclosure of any person with the intent to knock off, pick, destroy or carry away; or having lawfully entered, do afterwards wrongfully knock off, pick, destroy, or carry away any apples, peaches, pears, plums, grapes, or otherfruit, melons, or flower of any tree, shrub, bush

Penalty for
injury to fruit
and trees.

or vine, he shall be punished for the first offense, by a fine not less than five dollars, nor exceeding one hundred dollars with the costs of conviction, or by imprisonment in the county jail not exceeding thirty days; and should any person be found guilty of a second violation of this act, the fine shall not be less than ten dollars and cost of conviction or imprisonment as above provided.

Same.

SEC. 2. If any person maliciously or mischievously enter the inclosure of any person in the night time, and knock off, pick, destroy, or carry away any apples, peaches, pears, plums, grapes or other fruit, melons or flower of any tree, shrub, bush or vine, or if any person having entered the inclosure of another, in the night-time with the intent to knock off, pick, destroy, or carry away any fruit or flower as aforesaid, be actually found therein, he shall on conviction thereof be punished by a fine not less than twenty-five, nor to exceed one hundred dollars, and costs of conviction; or by imprisonment in the county jail not exceeding thirty days.

Same.

SEC. 3. *Be it further enacted,* That if any person maliciously or mischievously bruise, break, pull up, cut down, carry away, destroy, or in any wise injure any fruit or ornamental tree, shrub, vine, or material for hedge, being, growing, or standing on the land of another, he shall be punished by a fine not less than ten, nor exceeding one hundred dollars and cost of conviction, or by imprisonment in the county jail not exceeding thirty days.

Certain acts
repealed.

SEC. 4. All acts and parts of acts conflicting with this act, are hereby repealed.

When to
take effect.

SEC. 5. This act shall take effect and be in force from and after its passage and approval by the Governor.

Approved, January 12th, 1871.

GUARDIANS.

CHAPTER XXII.

AN ACT TO PROVIDE FOR THE REVOCATION OF THE APPOINTMENT OF GUARDIANS IN CERTAIN CASES.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. When by reason of incompetency of a parent to have the custody and education of his minor child, and another person has been appointed guardian of such minor, such appointment may be afterwards revoked at any time: *Provided*, The probate court shall adjudge the parent to be a competent and fit person to have the care, custody, and education of such minor child.

Appointment of guardian may be revoked

SEC. 2. The application to have such appointment revoked, shall be made in writing, and whenever the parent shall make such application to the court, he shall give such guardian a notice of the time and place of hearing such application, in such manner as the court shall direct, which notice shall be given or served on the guardian at least twelve days before the time set for hearing such application.

How application for revocation shall be made.

SEC. 3. If upon the hearing of such application, the court shall be of the opinion, that such parent is then a competent and fit person to have the care and custody of such child, the court shall revoke such guardianship, and shall order such guardian, to deliver up the custody of such child to the parent, within such time as such court shall deem reasonable and proper.

Duty of court.

Penalty for refusing to obey order of court.

SEC. 4. If said guardian shall neglect to obey such order within the time specified, the court may issue a warrant directed to any sheriff, or constable in the Territory, requiring him to apprehend and imprison such guardian, in some common jail in the Territory, until he shall perform such order, or be delivered in due course of law.

To take effect, when.

SEC. 5. This act shall take effect and be in force from and after its passage and approval.

Approved, January 13th, 1871.

HERD LAW.

CHAPTER XXIII.

AN ACT TO PROTECT CULTIVATED LANDS AND YOUNG TIMBER FROM TRESPASSING ANIMALS IN THE TERRITORY OF DAKOTA.

Be it enacted by the Legislative Assembly of the Territory of Dakota :

Animals restrained from running at large.

SECTION 1. That any person owning, or having in his or their charge, or possession, any horses, mules, cattle, goats, sheep or swine, or any such animals which shall trespass upon any cultivated land, or young timber, either fenced in or not fenced, belonging to any person, or persons, other than

the owners of such animals, within the Territory of Dakota, such person or persons owning or having in charge or possession such trespassing animal or animals, shall be liable to any party or parties sustaining such injury for all damages he, she or they may have sustained by reason of such trespassing aforesaid, to be recovered in a civil action, before any court having jurisdiction thereof, in the county where such damage may have occurred, and the proceedings shall be the same in all respects, as in other civil actions: *Provided*, That no exemption laws shall apply to executions issued on judgments, obtained under, or by virtue of the provisions of this act.

Animals restrained from running at large.

SEC. 2. Any person occupying or cultivating lands shall be considered the owner thereof in any action under the provisions of the last section.

Who is owner of trespassing animals.

SEC. 3. The parties sustaining damage done by animals as mentioned in section one, before commencing an action thereon shall notify the owner or person having in charge such offending animal or animals, of such damage, the probable amount thereof: *Provided*, He knows to whom such animal or animals belong.

Notice to be give to owner of animals of damage done.

SEC. 4. The person suffering damage done by animals as mentioned in section one, may retain and keep in custody such offending animals until the damage and costs are paid or until good and sufficient security be given for the same; and whenever any animal or animals are restrained under this act, the person restraining the same shall forthwith notify the owner or person in whose custody the same was at the time the trespass was committed, of the seizure of said animals, providing the owner or person who had the same in charge is known to the person making said seizure.

Animals doing damage may be kept in custody until damage is paid.

SEC. 5. Upon trial of an action under the provisions of section one of this act, the plaintiff shall prove the amount of damage sustained, and if he has restrained and kept in custody the animals committing such damage, the amount of expense incurred for keeping the offending animals, and any judgment rendered for damages, costs and expenses against the defendant shall be a lien upon the animals committing the damage, but if it shall appear upon the trial that no damage was sustained, judgment shall be rendered against the plaintiff for cost of suit, and damage sustained by defendant.

Upon trial plaintiff shall prove amount of damage.

In certain cases suit may be conducted against unknown defendant.

SEC. 6. If upon the trial it appears that the defendant is not the owner or person in charge of such offending animals, he shall be discharged and the action and the suit may proceed as against a defendant whose name is unknown, and if at the commencement of the action, the plaintiff does not know the name of the owner, or keeper of such offending animals, he may bring suit against a defendant unknown. In such case service shall be made by publishing a copy of the notice, in a weekly newspaper, if there is one published in the county, and if not by posting copies of the notice in three of the most public places within the county, in either case not less than ten days previous to the day of trial.

How notice to defendant shall begin.

When judgment is rendered against unknown defendant, animals shall be sold.

SEC. 7. And after judgment shall have been rendered against the defendant (unknown as aforesaid) the offending animals shall be sold, as in other civil actions, and after the said judgment and costs have been satisfied if there is a surplus of money, it shall be placed in the hands of the county treasurer, and if the defendant does not appear and call for the same, within six months from the day of sale, it shall be placed in the school fund for the use of the public schools of said county.

This act shall govern in all actions instituted thereunder.

SEC. 8. This act shall govern in all actions and proceedings instituted and prosecuted under the provisions thereof.

Repeal.

SEC. 9. All acts and parts of acts in conflict with this act are hereby repealed.

When to take effect.

SEC. 10. This act shall take effect and be in force from and after the first day of April, A. D. 1871.

Approved, January 9th, 1871.

CHAPTER XXIV.

AN ACT TO PREVENT CERTAIN ANIMALS FROM RUNNING AT LARGE.

Be it enacted by the Legislative Assembly of the Territory of Dakota :

SECTION 1. That no bull or stallion over the age of one year, shall be allowed to run at large; and such animals found running at large, the owner thereof shall be liable to a fine of five dollars for the first offense, and ten dollars for any subsequent offense, to be recovered by an action of debt before any justice of the peace in the county. Such fine or fines when collected by any justice of the peace, shall be paid into the county treasury of the county where the same shall have been collected, and the same shall be appropriated for the benefit of common schools.

Bulls and stallions forbidden to run at large.

Penalty.

SEC. 2. Any person finding such animals running at large may take up and secure the same, and shall give public notice of such taking up, and if the animal so taken up be not claimed within fifteen days, and the fines and costs of taking up and keeping paid, may castrate the same: *Provided*, The usual precaution be used, that the life of the animal be not endangered thereby more than is usual, and shall be entitled to recover from the owner of any such animal for castrating the same, the sum of five dollars in addition to a reasonable compensation for taking up and keeping, and shall have a lien upon said animal for the payment of the same.

Such animals found running at large may be taken up and castrated.

SEC. 3. The owner or owners of any such bull or stallion, who shall suffer or permit the same to run at large, contrary to the provisions of this act, shall be further liable for, and pay all damages which any person may sustain in consequence of such animals running at large.

Owner of animal liable for damages.

SEC. 4. This act shall take effect and be in force from and after its passage and approval.

When to take effect.

Approved, January 12th, 1871.

IMMIGRATION.

CHAPTER XXV.

AN ACT ESTABLISHING A BUREAU OF IMMIGRATION FOR THE TERRITORY OF DAKOTA.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

Bureau of immigration created.

SECTION 1. That for the purposes of preparing and circulating information concerning the Territory of Dakota and inducing immigration thereto, there is hereby created a bureau of immigration which shall be under the control of the commissioner of immigration for the Territory of Dakota.

Duty of commissioner of immigration.

SEC. 2. It shall be the duty of the commissioner of immigration, to keep a record of his official acts, and to exert himself faithfully to promote the interests of immigration to Dakota, and report to the legislature during the first week of each session, the result of his labors, together with such suggestions as he may deem proper.

Appropriation for contingent expenses of office of commissioner of immigration.

SEC. 3. That for the purposes of procuring postage stamps, stationery, printed circulars and such other materials as may be necessary for the use of the bureau, the commissioner of immigration shall be allowed to expend two hundred dollars annually, which shall be paid by the Territorial treasurer from any fund in the treasury, upon the warrant of the Territorial auditor.

SEC. 4. That James S. Foster is hereby appointed commissioner of immigration for the Territory of Dakota, and shall hold his office for two years from the first Monday in January, 1871, or until his successor is elected and qualified. James S. Foster appointed commissioner of immigration.

SEC. 5. That at each delegate election hereafter there shall be elected a commissioner of immigration who shall hold his office for two years or until his successor is elected and qualified. When commissioner shall be elected.

SEC. 6. That all laws or parts of laws, or other acts in conflict with the provisions of this act are hereby repealed. Repeal.

SEC. 7. This act shall take effect and be in force from and after its passage and approval. To take effect, when.

Approved, January 6th, 1871.

CHAPTER XXVI.

AN ACT APPROPRIATING MONEY FOR PUBLISHING AND CIRCULATING INFORMATION CONCERNING THE TERRITORY OF DAKOTA, UNDER THE DIRECTION OF THE BUREAU OF IMMIGRATION.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That the sum of three hundred dollars annually be and the same is hereby appropriated for the purpose of publishing and circulating documents, calculated to induce immigration to the Territory of Dakota. Money appropriated to circulate information about Dakota.

SEC. 2. That the commissioner of immigration shall have the disbursement of the same, and the Territorial auditor shall audit the accounts of the bureau of immigration in the manner as other Territorial accounts are allowed. Duty of commissioner of immigration and territorial auditor.

SEC. 3. This act shall take effect from and after its passage and approval. When to take effect.

Approved, January 12th, 1871.

INSURANCE.

CHAPTER XXVII.

AN ACT PROVIDING FOR THE SERVICE OF PROCESS UPON FOREIGN INSURANCE COMPANIES.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota :*

How service
of process upon
foreign insu-
rance compa-
nies may be
made.

SECTION 1. That in addition to the manner now provided by law, service of summons and all other process may be made upon insurance companies, in actions brought against them in this Territory, by serving the same upon any agent of such company in this Territory, in case there be such; and in case there be no such agent then upon the person who signs the policy sued upon, as such agent, and by depositing a copy thereof in the post office, directed to the general agent of such company at the place where such general agency may be situated.

When to
take effect.

SEC. 2. This act shall take effect and be in force from and after its passage and approval.

Approved, January 13th, 1871.

CHAPTER XXVIII.

AN ACT TO REPEAL SECTION 12 OF CHAPTER 15 OF THE LAWS OF 1867-8, RELATING TO FOREIGN INSURANCE COMPANIES.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That section twelve of chapter fifteen of the session laws of 1867-8, be and the same is hereby repealed. Section 12, chapter 15, laws of 1867-8, repealed.

SEC. 2. This act shall take effect and be in force from and after its passage and approval. When to take effect.

Approved, January 12th, 1871.

 JUDICIAL DISTRICTS.

 CHAPTER XXIX.

AN ACT DEFINING THE JUDICIAL DISTRICTS OF THE TERRITORY OF DAKOTA, AND FIXING THE TIME FOR HOLDING THE COURTS IN SAID DISTRICTS.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. The counties of Clay, Union and Lincoln, shall constitute the first judicial district. First judicial district.

JUDICIAL DISTRICTS.

SEC. 2. The district court in and for the county of Clay, shall be held at the county seat of Clay county, on the second Tuesday of February and November in each year.

Time of holding court in Union county.

SEC. 3. The district court in and for the county of Union, shall be held at the county seat of Union county, on the first Tuesday of March and December in each year.

Time of holding court in Lincoln county.

Proviso.

SEC. 4. The district court in and for the county of Lincoln, shall be held at the county seat of Lincoln county, on the first Tuesday of April and October in each year: *Provided*, That the judge shall only hold said terms in the aforesaid Lincoln county, on receiving notice from the register of deeds of said Lincoln county, that the county desires such term of court.

Second judicial district.

SEC. 5. The counties of Yankton, Jayne, Bon Homme, Hutchinson, Charles Mix, Minnehaha and Buffalo, and all that portion of the Territory of Dakota not included in any other district, shall constitute the second judicial district.

Time of holding court in Yankton county.

Jayne county attached.

SEC. 6. The district court in and for the county of Yankton, shall be held at the county seat of Yankton county on the second Tuesday of April and October in each year, and the county of Jayne shall be attached to the county of Yankton for judicial purposes.

Time of holding court in Bon Homme county.

Hutchinson, Charles Mix and Buffalo attached.

SEC. 7. The district court in and for the county of Bon Homme, shall be held at the county seat of Bon Homme county on the third day of March and September in each year, and the counties of Hutchinson, Charles Mix, and Buffalo, shall be attached to the county of Bon Homme for judicial purposes.

Third judicial district.

SEC. 8. The counties of Pembina, Brookings and Duel, shall constitute the third judicial district.

Time of holding court in Pembina county.

SEC. 9. The district court in and for the county of Pembina, shall be held at the county seat of Pembina county, on the first Tuesday in June and September in each year.

Time of holding court in Minnehaha county.

SEC. 10. The district court in and for the county of Minnehaha, shall be held at Sioux Falls, the county seat of Minnehaha county, on the third Tuesday of May in each year.

Attached counties shall pay certain expenses.

SEC. 11. When any county shall be attached to another county for judicial purposes, such attached county shall pay all the expenses of cases originating in said attached counties.

SEC. 12. Chapter five of the laws of 1868-9 is hereby repealed. Repealed.

SEC. 13. The terms of the court provided for in this act, shall continue as long as the business of the court shall require. Duration of terms of court.

SEC. 14. That the judge of each district be and is hereby authorized to appoint a clerk of the court for each county, within his district. Judge shall appoint clerks.

SEC. 15. Whenever the section of country known as the Red River country, shall become detached from the southern portion of the Territory, and constituted by Congress into a separate Territory, then at that time the third judicial district shall be comprised of the counties as is now provided by law, and the district court therein shall be held at such times and at such place as is provided in section 7, of this act. How third district shall be constituted when Red River country is detached.

SEC. 16. The district court in and for the county of Brookings, shall be held at the county seat of Brookings county, on the first Tuesday of July, in each year: *Provided*, That the judge shall only hold such term, on notice from the register of deeds of aforesaid county, that the county desires such term to be held in said Brookings county, and the county of Deuel shall be attached to Brookings county for judicial purposes. Time of holding court in Brookings county.
 Provido.

SEC. 17. All acts and parts of acts in conflict with this act are hereby repealed. Conflicting act, repealed.

SEC. 18. This act shall take effect and be in force from and after its passage. When to take effect.

Approved, January 13th, 1871.

JUSTICES CODE.

CHAPTER XXX.

JOINT RESOLUTION IN RELATION TO THE RE-PUBLICATION OF THE JUSTICES CODE OF 1865-66.

Joint resolution providing for re-publication of justices code.

WHEREAS, The volumes of laws passed by the session of the Legislature, held in 1865-66, have all been drawn from the office of the secretary of the Territory; and,

WHEREAS, There are a number of laws in such volume now in force, but practically of no effect in consequence of the loss and absence of the books containing them; and,

WHEREAS, There is a constant demand for the various volumes of laws of this Territory, from the new county officers and the legal fraternity; therefore,

Be it Resolved, The House concurring, that the secretary of this Territory be requested and authorized to publish in the volume of laws of this present session, the law known and designated as an act to establish the courts, and define the jurisdiction of justices of the peace, from the original law now in his office, passed at the said session of 1865-66.

Approved, January 13th, 1871.

CHAPTER XXXI.

AN ACT TO ESTABLISH THE COURTS AND DEFINE THE JURISDICTION OF JUSTICES OF THE PEACE.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

JURISDICTION OF JUSTICES OF THE PEACE.

SECTION 1. The jurisdiction of justices of the peace in all cases shall, unless otherwise directed by law, be limited to the county wherein they may have been elected, and where they shall reside. Jurisdiction limited to county.

SEC. 2. Justices of the peace within and co-extensive with their respective counties, shall have jurisdiction and authority: Power of justices.

1. To administer an oath or affirmation authorized or required by law to be administered;
2. To take the acknowledgment of deeds, mortgages, and other instruments of writing;
3. To solemnize marriages;
4. To issue subpoena for witnesses and coerce their attendance in causes or matters pending before them, or other cause or matter wherein they may be required to take depositions;
5. To try the action for forcible entry and detention, or detention only, of real property;
6. To proceed against security for costs and bail for the stay of execution on their dockets;
7. To issue attachments, and proceed against the goods and effects of debtors in certain cases;
8. To issue executions on judgments rendered by them;
9. To try the right of the claimant to property taken in execution or on attachment;

10. Of an action arising on contract for the recovery of money only, if the sum claimed does not exceed one hundred dollars;

11. Of an action for damages for an injury to the person or to the real property, or for taking, detaining, or injuring personal property, if the damages claimed do not exceed one hundred dollars;

12. Of an action for a penalty not exceeding one hundred dollars, given by the statutes;

13. Of an action upon a bond, conditioned for the payment of money not exceeding one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due; when the payments are to be made by installments, an action may be brought for such installment as it becomes due;

14. Of an action upon a surety bond or undertaking taken by them, if the penalty do not exceed one hundred dollars;

15. To take and enter judgment on the confession of a defendant when the amount does not exceed one hundred dollars;

16. In all civil actions to be brought against constable or the sureties to his official undertakings, or against both, for the failure of any constable to pay over any money by him collected, to the party thereto entitled, or for any neglect of duty by such constable in his official capacity, when the sum sought to be recovered by the plaintiff in such action, shall not exceed one hundred dollars.

Not to have jurisdiction in certain cases.

SEC. 3. Justices of the peace shall not have cognizance of any action:

1. To recover damages for an assault, or assault and battery where the damages exceed one hundred dollars;

2. In actions for malicious prosecution;

3. In actions against justices of the peace or other officers for misconduct in office, except in cases provided in this act or by statute;

4. In action for slander, verbal or written;

5. In actions on contract for real estate;

6. In actions for false imprisonment;

7. In actions for libel, or criminal conversation, or seduction, or upon a promise to marry, except in cases provided by statute;

8. Nor in actions in which the title to real estate is sought to be recovered, or may properly be drawn in question, except actions for trespass on real estate which are provided for in this act or by statute.

SEC. 4. Every justice of the peace shall keep his office in the precinct for which he may be elected, and not elsewhere; but he may issue process in any place in the county. Justice where to keep his office.

SEC. 5. No justice of the peace shall hold his office in the same room with a practising attorney, unless such attorney shall be his law partner; and in that case, such partner shall not be permitted to appear or practice as an attorney, in any case tried before such justice. Justice not to hold his office with practising attorney.

SEC. 6. Every justice of the peace elected in any precinct in this Territory, after qualifying, is hereby authorized to hold his court for the trial of all actions of which jurisdiction is given him by this act, and to hear, try, and determine the same according to law; and for that purpose, where no special provision is otherwise made law, such court shall be vested with all the necessary powers which are possessed by courts of record in this Territory; and all laws of a general nature are to apply to such justices' court, so far as the same may be applicable, "and not inconsistent with the provisions of this act." Authority and powers of justices.

COMMENCEMENT OF SUITS.—SERVICE AND RETURN OF PROCESS.

SEC. 7. Every justice of the peace shall keep a docket in which he shall enter: Justices to keep a docket and what to contain.

1. The title of all causes commenced before him;
2. The time when the process was issued against the defendant, and the particular nature thereof;
3. The time when the parties appeared before him either without, or upon the return of process;
4. A brief statement of the nature of the plaintiff's demand, and the amount claimed, and if any set-off was pleaded, a similar statement of the set-off, and the amount estimated;
5. Every adjournment, stating at whose request, and for what time;

6. The time when the trial was had, stating whether the same was by the jury or by the justice;

7. The verdict of the jury, and when rendered;

8. The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt, damages and costs, and the fees due to each person separately;

9. The fact of an appeal having been made and allowed, and when made and allowed;

10. Satisfaction of judgment when made;

11. And such other entries as may be material.

Actions commenced by summons when.

SEC. 8. Actions before justices of the peace are commenced by summons, or by the appearance and agreement of the parties without summons. In the former the action is deemed commenced upon delivery of the writ to the constable to be served; and he shall note thereon the time of receiving the same. In the latter case, the action is deemed commenced at the time of docketing the case.

When guardian necessary in suit, how appointed.

SEC. 9. When a guardian to the suit is necessary, he must be appointed by the justice as follows:

1. If the infant be plaintiff, the appointment must be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years or upwards; if under that age, upon the application of some friend. The consent in writing of the guardian to be appointed, and to be responsible for costs if he fail in the action, must be filed with the justice;

Style and contents of summons.

2. If the infant be defendant, the guardian must be appointed before the trial. It is the right of the infant to nominate his own guardian, if the infant be over fourteen years of age, and the proposed guardian be present and consent in writing to be appointed. Otherwise the justice may appoint any suitable person who gives such consent.

SEC. 10. The style of the summons shall be: "The Territory of Dakota, county;" it shall be dated the day it is issued, signed by the justice issuing the same, directed to the constable or sheriff of the proper county (except in case a person is deputed to serve it, in which case it shall be directed to such person), must contain the names of the defendant or defendants, if known; if unknown, give a description of him or them, and command the officer or person serving the same, to summon the defendant or defendants to appear before such

justice, at his office, in county, at a time specified therein, and must describe the plaintiff's cause of action in such general terms as to apprise the defendant of the nature of the claim against him, and there shall be indorsed on the writ the amount for which the plaintiff will take judgment if the defendant fail to appear. If defendant fails to appear. If the defendant fail to appear, judgment shall not be rendered for a larger amount and the costs.

SEC. 11. The summons must be returnable not more than twelve days from its date, and must be served at least three days before the time of appearance; as follows: Summons returnable when, and how delivered.

1. By delivering a copy of this summons with the indorsement thereon (certified by the constable or person serving the same to be a true copy), to the defendant, or leaving the same at his usual place of residence;

2. An acknowledgment on the back of the summons, or the voluntary appearance of a defendant, is equivalent to service.

SEC. 12. A summons against a corporation may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or, if its chief officer be not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office or usual place of business of such corporation, with the person having charge thereof. Summons, how served corporation.

SEC. 13. When the defendant is an incorporated insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency. Summons on agency of insurance company.

SEC. 14. When the defendant is a foreign corporation, having a managing agent in this Territory, the service may be upon such agent. On agency of foreign corporation.

SEC. 15. When the defendant is a minor under the age of fourteen years, the service must be upon him and upon his guardian or father; or if neither of these can be found, then upon his mother or person having the care or control of the infant, or with whom he lives. If neither of these can be found, or if the minor be no more than fourteen years of age, service on him alone shall be sufficient. The manner of service may be the same as in the case of adults. When defendant is a minor.

Justice may empower person to serve process in certain cases.

SEC. 16. Every justice issuing any process authorized by this act, upon being satisfied that such process will not be executed for want of an officer to be had in time to execute the same, may empower any suitable person, not being a party to the suit, to execute the same, by an indorsement on the process, to the following effect; "At the request and risk of the plaintiff, I authorized A. B. to execute and return this writ. E. F., justice of the peace;" and the person so empowered shall thereupon possess all the authority of a constable in relation to the execution of such process, and shall be subject to the same obligations, and shall receive the same fees for his services.

APPEARANCE.

Of appearance.

SEC. 17. The parties are entitled to one hour in which to appear, after the time mentioned in the summons for appearances, but are not bound to remain longer than that time, unless both parties have appeared, and the justice being present, is engaged in the trial of another cause. In such case the justice may postpone the time of appearance until the close of such trial.

PLEADINGS.

Pleadings when to take place.

SEC. 18. The pleadings in justices' courts must take place at the time mentioned in the summons for the appearance of the parties, or at such time thereafter, not exceeding one week, as the justice may appoint, for the convenience of the parties, and by their consent.

Pleading in justices' courts enumerated and defined.

SEC. 19. The pleadings in justices' courts are:

1. The complaint by the plaintiff, stating the cause of action;
2. The answer by defendant, stating the grounds of defense.
3. When the answer sets up a counter claim by way of a set off, the reply by the plaintiff.

Pleadings may be oral or in writing.

SEC. 20. The pleadings may be oral, or they may be in writing; if oral, the substance of them must be entered by the justice in his docket; if in writing, they must be filed in his office, and a reference to them made in his docket; they are not required to be in a particular form, but must be such as to enable a person of common understanding to know what is intended.

SEC. 21. The complaint must state in a plain and direct manner the facts constituting the cause of action. Complaint what to contain

SEC. 22. The answer must contain a denial of all the material facts stated in the complaint which the defendant believes to be untrue, and also a statement in a plain and direct manner of any other facts constituting a defense or a counter claim, by way of set-off, upon which an action might be brought by the defendant against the plaintiff in a justice's court. Answer how made and what contain.

SEC. 23. When the answer contains a counter claim, the plaintiff may reply, denying any of the material allegations relating thereto. Reply of plaintiff when allowed.

SEC. 24. A statement in an answer or reply that the party has not sufficient knowledge or information in respect to a particular allegation in the previous pleading of the adverse party to form a belief, is equivalent to denial. Pleadings how construed in certain cases.

SEC. 25. When the cause of action or counter claim arises upon an account or instrument for the payment of money only, it is sufficient for the party to deliver the account or instrument to the court; and to state that there is due to him thereon from the adverse party, a specified sum which he claims to recover, or set off; the court may at any time of the pleading, require that such writing or account be exhibited to the inspection of the adverse party, with liberty to copy the same; or if not so exhibited, may prohibit its being afterwards given in evidence. Written instrument how pleaded.

SEC. 26. Every complaint, answer or reply must be verified by the oath of the party pleading; or if he be not present, by the oath of his agent or attorney, to the effect that he believes it to be true; the verification must be oral or in writing, in conformity with the pleadings verified. To be exhibited to party.

SEC. 27. Every material allegation in a complaint, or relating to a counter claim in an answer, not denied by the pleading of the adverse party must, on the trial, be taken to be true except that when a defendant who has not been served with a copy of the complaint with the summons fails to appear and answer, the plaintiff cannot recover without proving his case. Pleadings must be verified by oath of party.

SEC. 28. Either party may object to a pleading of his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no Statements in pleadings not denied, to be taken as true.

Defective pleadings how objected to.

cause of action or defense, although it be taken as true. If the court deem the objection well founded, it must order the pleadings to be amended, and if the party refuse to amend, the defective pleading must be disregarded.

Variance between proof and pleadings to be disregarded.

SEC. 29. A variance between the proof on the trial and the allegations in the pleadings, must be disregarded as immaterial, unless the court be satisfied that the adverse party has been biased to his prejudice thereby.

Amendments of pleadings when allowed.

SEC. 30. That pleadings may be amended at any time before the trial, or during the trial, or upon appeal to supply any deficiency or omission in the allegation or denial, necessary to support the action or defense, when, by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court that an adjournment is necessary to the adverse party, in consequence of such an amendment, an adjournment may be granted. The court may also, in its discretion,

Costs allowed when adjournment is necessary.

require as a condition for an amendment, the payment of costs to the adverse party, to be fixed by the court, not more than three dollars; but such payment cannot be required unless an adjournment is made necessary by the amendment; nor can an amendment be allowed after a witness is sworn on a trial, when an adjournment will be made necessary.

Adjournment when and on what terms allowed.

SEC. 31. When the pleadings of the parties shall have taken place, the justice shall, upon the application of either party, if sufficient cause be shown upon oath, adjourn the case for any time not exceeding thirty days; and upon an adjournment all costs for the travel, attendance of witnesses, serving of subpoenas, &c., shall be noted upon the docket to abide the final decision of the case.

When the title to lands come in question, Justices how to proceed.

SEC. 32. If it appear, on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other party, the justice shall immediately make an entry thereof, in his docket, and cease all further proceeding in the cause, and shall certify and return to the district court of the county a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit, in the same manner, and within the same time as upon an appeal; and thereupon the district court shall

proceed in the cause to find judgment and execution, the same as if the said suit had been originally commenced therein, and the costs shall abide the event of the suit.

SEC. 33. Every adjournment after the first, shall be for such reasonable time as will enable the party to procure such absent testimony or witness, as may be necessary and material which the party applying for the adjournment shall not have been able to procure by the use of proper diligence; and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice.

Times of adjournment.

SET-OFFS.

SEC. 34. Counter claims which the defendant may have against the plaintiff, may be set off in the following cases, and under the following circumstances:

When counter claims of defendant may be set off.

1. It must be a demand arising upon a judgment, or upon a contract, express or implied, whether such contract be written or unwritten, sealed, or without a seal, and if it be founded upon a bond or other contract having a penalty, the sum equitably due by virtue of condition only shall be set off.

2. It must be due to him in his own right, either as being the original creditor or payee, or as being the assignee and owner of the demand.

3. It must be for real estate sold, or for money paid, or services done; or if it be not such a demand, the amount must be liquidated, or be capable of being liquidated by calculation.

4. It must have existed at the time of the commencement of the suit, and must then have belonged to the defendant.

5. It can only be allowed in actions founded upon demands which could themselves be the subject of set-off according to law.

6. If there be several defendants, the demands set off must be due to all of them jointly.

7. It must be a demand existing against the plaintiff in the action, unless the suit be brought in the name of a plaintiff who has no real interest in the contract upon which the suit is founded, in which case no set-off of a demand against the plaintiff shall be allowed, unless as hereinafter specified.

8. If the action be founded upon a contract, other than a negotiable promissory note, or bill of exchange, which has been assigned by the plaintiff, a demand against such plaintiff, or any assignee of such contract at the time of assignment thereof, and belonging to the defendant in good faith, before notice of such assignment, may be set off to the amount of the plaintiff's debt, if the demands be such as might have been set off against such plaintiff or assignee, while the contract belonged to him.

Claim against the assignor of note, when may be set off.

SEC. 35. If the action be upon a negotiable promissory note, or bill of exchange which has been assigned to the plaintiff, after it becomes due, a set-off to the amount of the plaintiff's debt may be made of a demand existing against any person or persons, who shall have assigned or transferred such note or bill after it became due, if the demand be such as might have been set off against the assignor, while the note or bill belonged to him.

Set off when suit brought by trustee, when allowed.

SEC. 36. If the plaintiff be a trustee for any other, or if the suit be in the name of the plaintiff who has no real interest in the contract upon which the suit is founded, so much of a demand existing against those whom the plaintiff represents, or for those whose benefit the action is brought may be set off as will satisfy the plaintiff's debt, if the same might have been set off in an action brought by those beneficially interested.

To entitle defendant to set-off, he must allege the same in answer.

SEC. 37. To entitle a defendant to a set-off of any counter-claim he may have against the plaintiff, he must specifically and clearly allege the same in his answer, stating the particular items of such counter claim; but no set off shall be allowed by a justice's court, unless the same shall be alleged in the defendant's answer as required in this section.

Judgment where set off is provided.

SEC. 38. If the amount of the set-off duly established be equal to the plaintiff's debt or demand, judgment shall be entered that plaintiff take nothing by his action, if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only.

Judgment where there is a balance due defendant.

SEC. 39. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered for the defendant for the amount thereof; but no such judgment shall be rendered against the plaintiff where the contract which is the subject of the suit shall have been assigned before the

commencement of such suit, nor for any balance due from any other person than the plaintiff in the action.

BILL OF PARTICULARS.

SEC. 40. In all suits before a justice of the peace, on an account, the plaintiff, his agent or attorney, shall file with such justice a bill of the particulars of his demand; and the defendant, if required by the plaintiff, his agent or attorney, shall file a like bill of the particulars he may claim, as a set-off; and the evidence on the trial shall be confined to the items set forth in said bills. Bill of particulars to be filed by both parties.

SEC. 41. The bill of particulars must state, in a plain and direct manner, the facts constituting the cause of action, or the claim to be set off. State what.

SEC. 42. The bill of particulars may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency, or omission in the items, when, by such amendments, substantial justice will be promoted. If the amendment be made at the time of, or during the trial, and it be made to appear, to the satisfaction of the justice, by oath, that an adjournment is necessary to the adverse party, in consequence of such amendment, an adjournment must be granted. The justice may also, in his discretion require, as a condition of an amendment, the payment of costs to the adverse party, to be fixed by the justice; but such payment cannot be required, unless an adjournment is made necessary by the amendment. Of amendments to bills.

WITNESSES AND DEPOSITIONS.

SEC. 43. Any justice of the peace may issue subpoenas to compel the attendance of witnesses to give evidence on any trial pending before himself, or for the purpose of taking depositions, or to perpetuate testimony. Justice may issue subpoenas to compel attendance of witnesses.

SEC. 44. A subpoena may be served by a sheriff, coroner, constable or any other person, and shall be served by reading the same or stating the contents thereof to the witness, or by leaving a copy thereof at his usual place of residence. How subpoena shall be served.

SEC. 45. When not served by an officer or some person deputed for that purpose by a justice of the peace, no fees shall be charged in the suit for serving it. No fees to be charged in certain cases.

Who to pay fees of witness in certain cases

SEC. 46. If any witness, having been subpœnaed, attend and be not examined by either party, the costs of such witness shall be paid by the party ordering the subpœna, unless the adverse party, by confessing the matter or otherwise, render unnecessary the examination of such witness.

Justice shall have power to issue attachment for witness who fails to appear.

SEC. 47. Whenever it shall appear to the satisfaction of the justice by proof made before him, that any person duly subpœnaed to appear before him in a suit, shall have failed without a just cause to attend as a witness in conformity to such subpœna, and the party in whose behalf such subpœna was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness: *Provided, however,* That no attachment shall issue against a witness unless his mileage and one day's attendance has been tendered or paid in advance.

How attachment shall be executed, and who to pay fees for same.

SEC. 48. Every such attachment shall be executed in the same manner as a warrant, and the fees of the officer for issuing and serving the same, shall be paid by the person against whom the same was issued, unless he show reasonable cause to the satisfaction of the justice, for his omission to attend, in which case the party requiring such attachment, shall pay all costs of such attachment.

Justice may impose fines in certain cases.

SEC. 49. When a person arrested is brought before the justice, or when a person in attendance refuses to testify as a witness, and no valid excuse be shown, the justice may impose a fine on him not exceeding five dollars. An entry of such fine stating the reason therefor, must be made by the justice in his docket, and thereupon shall have the effect of a judgment in favor of the Territory of Dakota against the delinquent, and may be enforced against his person or property. Said money so collected shall be paid into the county treasury, for the support of common schools in said county.

Party liable for damages.

SEC. 50. Every person subpœnaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpœnaed, for damages which such party may have sustained by his non-appearance: *Provided,* That said witness had one day's attendance and his mileage tendered or paid in advance.

SEC. 51. Either party in any civil suit pending before a justice, may, upon notice, cause the deposition of any witness therein, to be taken by any judge or justice of the peace, of any county in this Territory where the said witness may be.

Depositions may be taken.

SEC. 52. The deposition shall be taken, certified and returned according to the law of the Territory concerning depositions.

Same.

SEC. 53. The justice shall allow every deposition taken, certified, and returned according to the provisions of this act to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally in court could have been received; but no such deposition shall be read on the trial unless it appears to the justice that the witness whose deposition is offered:

Conditions under which depositions are to be read in evidence.

1. Is dead or resides out of the county; or,
2. Is unable or cannot easily attend before the justice, on account of sickness, age, or other bodily infirmity;
3. Has gone out of the county, without the consent or collusion of the party offering the deposition.

ISSUING COMMISSIONS TO TAKE TESTIMONY BY JUSTICES OF THE PEACE.

SEC. 54. Whenever an issue of fact shall have been joined, in any action or suit before a justice of the peace, and it shall appear on the application of either party that any witness, not residing within the county where such suit is pending, is material in the prosecution or defense of such action or suit, the said justice may award a commission to one or more competent persons, authorizing them or any of them to examine such witness on oath upon the interrogation settled by the said justice, and certified by his approbation entered or endorsed thereon, or by the written agreement or assent of the parties annexed to such commission, to take and certify the depositions of such witness, and to return the same, according to the directions given, with such commission, in which commission both parties may unite.

Deposition may be taken of witness not residing in county.

SEC. 55. Such commission may be granted at the instance of either party, by such justice of the peace, at any time, upon proof that due notice of such application for such commission has been served on the adverse party at least two days before

How such depositions may be taken.

the time of making such application; and whenever the defendant shall neglect to appear or plead in such action or suit, the justice may award a commission without notice to one or more competent persons, to examine such witness on oath upon interrogations proposed by the plaintiff to be settled by the justice, and certify the depositions, and return the same according to the directions given in such commission.

Deposition to be evidence as near as possible at examination.

SEC. 56. The commission shall be executed and returned as is prescribed by statute when a commission issues out of a court of record, and the deposition and testimony taken in pursuance thereof, shall be received on the trial, as testimony in the case, with the like effect, as if such witness were personally examined at such trial.

Commissioners may issue subpoenas, &c.

SEC. 57. When the commission is executed in this Territory, the commissioner or commissioners, shall have the same power to issue subpoenas, swear witnesses, and compel their attendance as justices of the peace have.

When action not adjourned.

SEC. 58. Whenever such commission shall be issued by any justice of the peace, the action or suit shall not be adjourned for more than ninety days, unless by consent and agreement of the parties of such action or suit.

Fee of Justice

SEC. 59. The justice of the peace shall be entitled to one dollar for every commission issued and approved by him, in addition to the fees now allowed by law.

TRIAL WITHOUT A JURY.

If no jury demanded, justice to try action.

SEC. 60. At the time appointed for trial, if no jury shall have been demanded by either party, the justice shall proceed to try the action, shall hear the proofs, and determine the cause according to law and the right.

Where parties agree to enter without process.

SEC. 61. Where parties agree to enter, without process, before a justice, any action of which such justice has cognizance, such justice shall enter the same on his docket, and proceed to trial, judgment, and execution, in all respects in the same manner as if the summons had been issued, served, and returned.

TRIAL BY JURY.

Parties failing to appear within one hour, what done.

SEC. 62. If either party shall fail to appear within one hour after the time specified for the return of the process, or after

the hour of adjournment, the justice shall dismiss the suit, or proceed to hear the proof of the party present, and render judgment thereon accordingly, as the case may require.

SEC. 63. In every action to be brought by virtue of this act, it shall be lawful for either of the parties to the suit, or for the attorney of either of them, after issue be joined, before the court shall proceed to inquire into the merits of the cause, to demand of said court that the said action be tried by a jury of six persons, on first paying to the justice the jury fees in advance, which shall be taxed against the party losing, and upon such demand the justice shall direct the sheriff or any constable of the county, who may be present, or if no officer be present, the justice may appoint a suitable person to perform the duties required by this section, to whom he shall administer the following oath or affirmation: "You do solemnly swear (or affirm, as the case may be,) that you will perform the duties required of you, according to the best of your abilities, without partiality to either party;" and if in the opinion of the justice the jurors above required cannot appear forthwith, for the trial of the cause, the justice shall adjourn the cause, for such reasonable time as he may think proper, to enable the officer to summon the said jurors, and for them to appear, which time shall be specified in the venire; the person so sworn shall write down the name of twelve persons, being inhabitants of the county, and possessing the qualifications necessary to constitute jurors in a court of record, from which list each party may strike out alternately three names, and in case of the absence of either party, or of his refusal to strike out, the justice shall strike out of the said list three names, and shall thereupon issue a venire requiring the officer to summon the six persons whose names remain upon the above mentioned list, to appear at the time and place therein mentioned, to serve as jurors for the trial of the cause named in said venire: *Provided*, That if any of said jurors shall not attend, at the time so summoned to appear, or in case there should be legal objections raised to any of those who shall appear, it shall be the duty of the officer to summon a sufficient number of talesmen to supply the deficiency. The jury so selected shall take the following oath or affirmation: "You and each of you do solemnly swear (or affirm) that you will well and truly try the matter of difference between ,

Either party may demand a jury.

Fees of jury.

Sheriff or constable to summon jury.

If no officer present, what to be done.

Cause to be adjourned, when.

Jury, how drawn.

Oath of Jurors.

plaintiff, and, defendant, and true verdict give according to law and the evidence given to you in court; so help you God;" and after having been sworn they shall sit together and hear the several proofs and allegations of the parties, which shall be delivered in public in their presence. And to each witness on any trial the justice shall administer the following oath (or affirmation,) to-wit: "You do swear in the presence of Almighty God (or affirm,) that the evidence you shall give in this matter of difference between, plaintiff, and, defendant, shall be the truth, the whole truth, and nothing but the truth, so help you God;" and after hearing the proofs and allegations, the jury shall be kept together in some convenient place, until they all agree upon a verdict, or be discharged by the justice; and for which purpose a proper officer shall be sworn or affirmed, to whom the said justice shall administer the following oath, to-wit: "You do swear in the presence of Almighty God, that you will, to the utmost of your ability, keep every person sworn in this inquest together, in some private convenient place, without drink, except water; you will not suffer any person to speak to them, nor speak to them yourself unless by order of the justice, except it be to ask them whether they have agreed on their verdict, or are discharged by the court, so help you God." And when the jurors have agreed on their verdict, they shall deliver the same to the justice, in the same court, who is hereby required to give judgment thereupon, and to award execution in manner hereinafter directed.

Oath of witness.

Oath of officer having charge of jury.

When jury cannot agree.

SEC. 64. Whenever a justice shall be satisfied that a jury sworn in any civil cause before him, after having been out any reasonable time, cannot agree on their verdict, he may discharge them and issue a new venire, unless the parties consent that the justice may render judgment.

Persons summoned as jurors and failing to appear to be fined.

SEC. 65. Every person who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars.

If panel be not full, constable to fill same.

SEC. 66. The constable shall be in attendance on the court at and during the progress of the trial; and if from challenge or other cause the panel shall not be full, he may fill the same in the same manner as is done by the sheriff in the district court.

SEC. 67. When a jury shall be in attendance and the cause shall be continued, the jurors must attend at the time and place appointed for the trial without further notice. Jury to attend at time of trial.

SEC. 68. If either party object to the competency of a juror, the question thereon must be tried in a summary manner by the justice, who may examine the juror or other witness under oath. If competency of juror questioned.

SEC. 69. When the jury shall have agreed upon their verdict, they shall deliver it to the justice publicly, who shall enter it upon his docket. Deliver verdict publicly. To be entered on docket.

SEC. 70. It shall be lawful for the justice before whom a cause has been tried, on motion, and being satisfied that the verdict was obtained by fraud, partiality, or undue means, at any time within four days after the entering of judgment, to grant a new trial, and he shall set a time for the new trial, of which the opposite party shall have at least three day's notice. If verdict improper, new trial may be granted.

SEC. 71. The opposite party shall also have a reasonable notice of such motion for a new trial, if the same is not made on the day of the former trial, and in the presence of such party; such notice to be given by the applying party. If the new trial shall be granted, or the jury be unable to agree, the proceedings shall be in all respects as upon the return of the summons. Opposite party to have notice of new trial.

SEC. 72. Upon the verdict being delivered to the justice, and before judgment being rendered thereon, each juror shall be entitled to receive one dollar at the hands of the successful party, which shall be taxed in the cost bill against the losing party. When the jury shall be unable to agree upon a verdict, the same compensation shall be paid them by the party calling the jury, and the same shall be taxed in the cost bill against the losing party. Fees of jury.

SEC. 73. In all cases which shall be tried by a jury before a justice of the peace, either party shall have the right to except to the opinion of the justice upon any question of law arising during the trial of the cause; and when either party shall allege such exception, it shall be the duty of the justice to sign and seal a bill containing such exception, if truly alleged, with the point decided, so that the same may be made part of the record in the cause. When exception alleged, duty of justice.

ENTERING JUDGMENT.

Judgment of dismissal without prejudice in what cases.

SEC. 74. Judgment, that the action be dismissed without prejudice to a new action, may be entered with costs, in the following cases:

1. When the plaintiff voluntarily dismisses the action before it is finally submitted;
2. When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter.

If plaintiff or defendant fail to appear.

SEC. 75. If the plaintiff fail to appear at the return day of the summons, and his bill of particulars be not filed and evidence before the justice, the action must be dismissed. If the defendant fail to appear at the return day of the summons, and if either party fail to attend at the time to which a trial has been adjourned, or fail to make the necessary bill of particulars, or fail in the proof on his part, the cause may proceed at the request of the adverse party, and judgment must be given in conformity with the bill of particulars and proofs.

When judgment against absent defendant set aside.

SEC. 76. When judgment shall have been rendered against a defendant in his absence, the same may be set aside upon the following conditions:

1. That his motion be made within ten days after such judgment was entered;
2. That he pay or confess judgment for the costs awarded against him;
3. That he notify in writing the opposite party, his agent, or attorney, or cause it to be done, of the opening of such judgment and of the time and place of trial at least five days before time, if the party reside in the county, and if he be not a resident of the county, by leaving a written notice thereof at the office of the justice ten days before the trial.

When judgment must be entered.

SEC. 77. Upon a verdict, the justice must immediately render judgment accordingly. When the trial is by the justice, judgment must be entered immediately after the close of the trial, if the property of the defendant has been attached; in other cases it must be entered either at the close of the trial, or if the justice then desire further time to consider, on or by the fourth day thereafter, both days inclusive.

SEC. 78. When the amount due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be entered for the residue. A defendant need not remit such excess, and may withhold setting the same off, and a recovery for the amount set off and allowed, or any part thereof, shall not be a bar to his subsequent action for the amount withheld.

When either party may remit excess.

SEC. 79. If the defendant, any time before trial, offer, in writing, to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor with the costs then accrued. But if he does not accept such offer before the trial, and fail to recover in the action a sum equal to the offer, he cannot recover costs accrued after the offer; but costs must be adjudged against him. But the offer and failure to accept it, cannot be given in evidence, to effect the recovery, otherwise than to costs as above provided.

When defendant offers to allow judgment to be taken against him. Effect of such offer.

JUDGMENT SET OFF AGAINST JUDGMENT.

SEC. 80. If there be mutual justices judgments between the same parties, upon which the time for appealing has elapsed, on which there is no existing execution, one judgment on the application of either party, and reasonable notice given to the adverse party, may be set off against the other, by the justice before whom the judgment against which the set-off is proposed may be.

One judgment may be set-off against another judgment.

SEC. 81. If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off must produce before the justice, a transcript of such judgment, upon which there is a certificate of the justice rendering the judgment, that it is unsatisfied in whole or in part, and that there is no appeal or existing execution thereon, and such transcript was obtained for the purpose of being a set-off against the judgment to which it was offered as a set-off. The justice granting such transcript shall make entry thereof in his docket, and all further proceedings on such judgment shall be stayed, unless such transcript shall be returned with the proper justice's certificate therein, that it has not been allowed in set-off.

When judgment proposed as set-off was rendered before another justice.

SEC. 82. If any justice shall set-off one judgment against another, he shall make an entry thereof in his docket, and ex-

Justice allowing set-off shall make an entry.

When transcript to be filed.

ecution shall issue only for the balance which may be due after such set-off. If a justice shall allow a transcript of a judgment rendered by another justice to be set-off, he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off. If he shall refuse such transcript as a set-off, he shall so certify on the transcript and return the same to the party who offered it.

ENTERING JUDGMENT BY CONFESSION.

Judgment by confession.

SEC. 83. That any justice of the peace in this Territory may enter a judgment by confession, if the defendant or defendants in any case, when the debts or damages shall not exceed one hundred dollars, with such stay of execution as may be agreed on by the parties interested in such judgment.

When judgment by confession may be taken.

SEC. 84. No confession shall be taken or judgment rendered thereon unless the following requisites be complied with:

1. The defendant must personally appear before the justice;
2. The confession shall be in writing, signed by the defendant and verified by his oath, and filed with the justice.
3. If it be for money due or to become due, the confession must state concisely the facts out of which it arose, and must show that the sum confessed therefor is honestly due or to become due. If it is for the purpose of securing a contingent liability, it must state concisely the facts constituting the liability, and must show that the sum confessed therefor does not exceed the same.

Statement and affidavit.

SEC. 85. The statement and affidavit must be filed with the justice of the peace, who must endorse upon it the time of filing, and must enter upon his judgment book a judgment for the amount confessed, with one dollar costs. The statement and affidavit, with the judgment endorsed thereupon, become the judgment roll.

Justice to give certified transcript.

SEC. 86. Every justice, on demand of any person in whose favor a judgment has been confessed, as hereinbefore provided, shall give a certified transcript of such judgment, and the clerk of the district court of the same county in which judgment was rendered, shall, upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in his docket of the district court judgment and decrees, and shall note the time of filing such transcript.

SEC. 87. Every such judgment from the time of filing the transcript thereof, shall have the same lien on the real estate of the defendant or defendants in the county, as may be allowed by law to a judgment of the district court of the same county, shall be equally under the control of the district court, and shall be carried with the execution in the same manner and with like effect as the judgment of such district courts, but no execution shall be in force thereon, out of the district court, until an execution shall have been in force by a justice and returned, that the defendant or defendants have no goods or chattels whereon to levy the same.

Judgment to be lien on real estate.

SEC. 88. In case where the plaintiff shall be non-suited, or withdraw his action, or where judgment shall be confessed, and in all cases where a verdict shall be rendered, the justice shall forthwith render judgment, and shall enter the same in his docket. In all other cases he shall render judgment and enter the same in his docket on or before the fourth day thereafter, both days inclusive.

When judgment to be rendered by justice.

APPEALS.

SEC. 89. In all cases not otherwise especially provided for by law, either party may appeal from the final judgment of any justice of the peace, to the district court of the county where the judgment was rendered.

Appeal.

SEC. 90. If either the plaintiff or defendant, in their bill of particulars, claim more than ten dollars, the case may be appealed to the district court; but if neither party demand a greater sum than ten, and the case is tried by jury there shall be no appeal.

When either party may take appeal.

SEC. 91. The party appealing shall, within ten days from the rendition of judgment, enter into an undertaking to the adverse party with at least one good and sufficient surety to be approved by such justice, in a sum not less than fifty dollars in any case, nor less than double the amount of judgment and costs, conditioned:

Party appealing to give security.

1. That the appellant will prosecute his appeal to effect and without unnecessary delay;

2. That if judgment be adjudged against him on the appeal, he will satisfy such judgment and costs.

How appeal
to be taken.

SEC. 92. And the said justice shall make out a certified transcript of his proceedings, including the undertaking taken for such appeal, and shall, on demand, deliver the same to the appellant, or his agent, who shall deliver the same to the clerk of the court to which appeal may be taken, on or before the second day of the term thereof, next following such appeal; and such justice shall also deliver or transmit the bill or bills of particulars, the depositions and all other original papers, if any used on the trial before him, to such clerk, on or before the second day of such term; and all other proceedings before the justice of the peace, in that case, shall cease and be stayed from the time of entering into such undertaking.

Clerk to file
same.

SEC. 93. The clerk on receiving such transcript and other papers as aforesaid, shall file the same and docket the appeal.

Parties same
as in court be-
low.

SEC. 94. The plaintiff in the court below shall be the plaintiff in the district court; and the parties shall proceed in all respects in the same manner, as though the action had been originally instituted in the said court.

If appellant
fail to deliver
papers to clerk,
court may enter
judgment.

SEC. 95. If the appellant shall fail to deliver the transcript, and other papers, if any, to the clerk, and have his appeal docketed as aforesaid, on or before the second day of the term of the said court next after such appeal, the appellee may, at the same term of said court, file a transcript of the proceedings of such justice, and the said cause shall, on motion of said appellee, be docketed; and the court is authorized and required, on his application, either to enter up a judgment in his favor, similar to that entered by the justice of the peace, and for all the costs that have accrued in the court, and award execution thereon; or such court may, with the consent of such appellee, dismiss the appeal, at the cost of the appellant, and remand the cause to the justice of the peace, to be thereafter proceeded in as if no appeal had been taken; and if the plaintiff in the action before the justice shall appeal from any judgment rendered against such plaintiff, and after having filed his transcript and caused such appeal to be docketed according to the provisions of this act, shall fail to file petition, or otherwise neglect to prosecute the same, to final judgment, so that said plaintiff shall become non-suited, it shall be the duty of said court to render judgment against

such appellant for the amount of the judgment rendered against him by the justice, together with interest accrued thereon and for costs of suit, and to award execution therefor, as in other cases.

SEC. 96. If both parties fail to enter such appeal within the time limited as aforesaid, the justice, on receiving a certificate from the clerk of the court, stating that the appeal was not entered, or being entered, was dismissed as aforesaid, shall thereupon issue execution upon the judgment, in the same manner as if such appeal had never been taken.

Court to issue execution, when.

SEC. 97. If any person, appealing from a judgment rendered in his favor, shall not recover a greater sum than the amount for which judgment was rendered, besides costs and the interest accruing thereon, every such appellant shall pay the costs of such appeal, (including a fee of five dollars to defendant's attorney); and in case the defendant shall demand a greater set-off, before the justice, than shall be allowed him in case he takes an appeal to the district court, he shall in like manner pay all costs in the appellate court, including a like fee to the plaintiff's attorney.

Persons appealing in certain cases shall pay costs, interest and attorney's fees.

SEC. 98. When any appeal shall be dismissed, or when judgment shall be entered in the district court against the appellant, the surety in the undertaking shall be liable to the appellee for the whole amount of the debt, costs, and damages, recovered against the appellant.

When surety liable on undertaking.

SEC. 99. When an appeal, taken to the district court, shall there be quashed, by reason of irregularity in taking or consummating the same, the cause for quashing shall be stated in the order of the court, and a transcript of such order shall be lodged with such justice, who shall thereupon proceed to issue execution, in the same manner as if no appeal had been taken.

When appeal shall be quashed.

SEC. 100. In proceeding on appeal when the surety in the undertaking shall be insufficient, or such undertaking may be insufficient, in form or amount, it shall be lawful for the court, on motion to order a change or renewal of such undertaking.

When undertaking insufficient in form or amount.

SEC. 101. Appeals in the following cases shall not be allowed:

Appeals not allowed in certain cases.

1. On judgments rendered on execution;

2. In jury trials where neither party claim in their bill of particulars a sum exceeding ten dollars;

3. In the action for the forcible entry and detention, or forcible detention of real property;

4. In trials of the right of property, under the statutes, either levied upon by execution or attached.

What to be done when term of office of justice expires between dates of judgment and time limited for appeal.

SEC. 102. When the term of office of a justice shall expire between the dates of judgment and the time limited for appeal, such justice may take the undertaking for appeal at any time before he has delivered his docket to his successor, and give the appealing party a transcript. After the delivery of the docket, the undertaking shall be given to his successor, and it shall be his duty to give the transcript and do and perform all things required of his predecessor.

No appeal allowed unless certain notice is given within ten days.

SEC. 103. No appeal shall be allowed in any case unless the following requirement be complied with, in addition to those before mentioned, viz: Within ten days after judgment is rendered, an affidavit shall be filed with the justice before whom the cause was tried, stating that the appeal is made in good faith and not for the purpose of delay.

Form of undertaking.

SEC. 194. The recognizance or undertaking required by section 90 of this act, may be in the following form:

We and acknowledge ourselves to owe and be indebted unto in the sum of dollars, to be levied of our several goods and chattels, lands and tenements, to the use of or his assigns, if default be made in the condition following, to-wit: Whereas the said has applied for an appeal from the judgment of a justice of the peace of the county of, Territory of Dakota, rendered day of, A. D. 18., in an action between, plaintiff, and defendant; now if the said appellant shall prosecute his appeal to effect and without unnecessary delay, and if judgment be adjudged against him on the appeal, he will satisfy such judgment and costs, and if he shall abide the order the district court may make therein, then this recognizance to be void, otherwise of force.

This day of A. D. 18...

C. D. [SEAL.]

E. F. [SEAL.]

Taken and acknowledged before me this day of....
 A. D. 18...

G. H. Justice of the peace.

SEC. 105. Upon an appeal being made, according to the foregoing provisions, the justice shall allow the same, and make an entry of such allowance in his docket; and all further proceedings on the judgment before the justice shall be suspended by the allowance of the appeal; and if in the mean time execution shall have been issued, the justice shall give the applicant a certificate that such appeal has been allowed.

All proceedings suspended when an appeal is taken.

SEC. 106. On such certificate being presented to the officer holding the execution, he shall forthwith release the property of the defendant that may have been taken on execution.

Officer to release property taken on execution.

SEC. 107. If a justice fail to allow an appeal in a case, when the same ought to have been allowed, the district court, on such fact satisfactorily appearing, may by rule and attachment compel the justice to allow the same, and to return his proceedings in the suit, together with all papers required to be returned by him.

When justice fail to allow an appeal.

SEC. 108. Whenever the court is satisfied that the return of the justice is substantially erroneous or defective, the court may by rule and attachment compel him to amend the same.

When return of justice erroneous or defective.

SEC. 109. No appeal allowed by a justice shall be dismissed on account of there being no recognizance, or that the recognizance given is defective, if the appellant will before the motion to dismiss is determined enter before the district court into such recognizance as he ought to have entered into before the allowance of the appeal, and pay all costs that shall be incurred by reason of such default or omission.

Appeal not to be dismissed in certain cases.

SEC. 110. All appeals allowed, ten days before the first day of the term of district court next after the appeal allowed, shall be determined at such term, unless continued for cause.

Appeals when determined.

SEC. 111. In all cases of appeal from a justices' court, if the judgment of the justice be affirmed, or if on trial anew in the district court, the judgment be against the appellant, such judgment shall be rendered against him and his sureties in the recognizance for the appeal.

If judgment of justice affirmed, judgment to be rendered against party and surety.

SEC. 112. If upon an execution being issued upon such judgment, the principal shall not pay such execution, and the officer cannot find sufficient property of said principal to sat-

When execution to be enforced against surety.

isfy the same, such execution shall be enforced against the sureties, and the officer shall specify on his return, by whom the money was paid, and the time thereof.

When surety to have judgment against principal.

SEC. 113. After the return of an execution satisfied in whole or in part out of the security, such security, shall be entitled to a judgment on motion against the principal for the amount so paid by him, together with interest at twelve per cent. per annum from the time of payment; such motion must be made within one year after the return day of the execution, and the return of the officer shall be evidence upon the hearing of such motion of the facts therein stated.

No appeal allowed until appellant pay costs.

SEC. 114. No appeal shall be allowed by any justice of the peace, until the appellant, in addition to the requirements of section ninety and one hundred and two of this act, shall pay all costs which may have accrued in the justices' court, and one dollar for the return of the justice.

If judgment of justice reversed court to award restitution of amount.

SEC. 115. If a judgment rendered before a justice be collected, and afterwards be reversed by the court above, the court shall award restitution of the amount collected, with interest from the time of collection, and execution may issue thereon.

As to property exempt from execution.

SEC. 116. No officer having an execution shall be allowed to levy the same upon any property of the judgment creditor which by law is exempt from execution for debt; except in cases specified in this act.

EXECUTIONS.

Execution may issue any time within five years, except when, &c.

SEC. 117. Execution for the enforcement of a judgment before a justice of the peace (except where it has been taken to the district court on error or appeal, or docketed therein, or during the time it may be stayed, as provided by this act,) may issue by the justice before whom the judgment was rendered, or by his successor in office, on the application of the party entitled thereto, at any time within five years of entry of the judgment, or the date of the last execution issued thereon.

What execution shall command officer.

SEC. 118. The execution shall command the officer to levy the debt or damages, together with the interest thereon and the costs, upon the goods and chattels of the person against

whom the execution shall be granted, (his arms and accoutrements excepted, and also such other articles as are exempt by law, from execution,) and to pay the money within thirty days from date, to the justice who issued the execution, to render to the party who recovered the same.

SEC. 120. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of his execution, the amount of the debt or damages and costs separately, and the officer receiving such execution, shall indorse thereon the time of the reception of the same.

Amount of debt and costs to be indorsed on execution.

SEC. 121. If any execution be not satisfied, it may, at the request of the plaintiff, be *removed* [renewed] from time to time, by the justice issuing the same, by an indorsement thereon to that effect, signed by him, and dated when the same shall be made; if any part of such execution has been satisfied, the indorsement of renewal shall express the sum due on the execution; every such indorsement shall renew the execution in full force, in all respects for thirty days, and no longer. Any entry of such renewed shall be made in the docket of the justice.

Renewal of execution.

SEC. 122. If there be no property found, or if the good and chattels levied on are not sufficient to satisfy such execution, the officer shall upon the demand of the plaintiff, summon in writing as garnishees, such persons as may be named to him by the plaintiff or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees; and like proceeding shall be had thereon before the justice to final judgment and execution, as suits instituted by attachment in justice's court.

Garnishees.

SEC. 123. The officer who shall hold an execution, shall receive all money tendered to him in payment thereof, and shall indorse the same on the execution, and give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid, if demanded.

Officer shall receive all money tendered him, and indorse same on execution, giving receipt.

SEC. 124. When any judgment shall be obtained against any person who shall have entered himself bail on the docket of any justice of the peace, agreeably to the provisions of this act, the original judgment shall remain good and valid in law, for the use of such bail, who at any time thereafter, may

Original judgment shall remain good in favor of person entered as bail.

sue out execution on such judgment against the goods and chattels of the defendant, for the use of such bail, which shall be so indorsed by the justice; and such bail shall also be entitled to a transcript of such judgment, for his own use; which shall have the same force and effect as transcripts in other cases.

Execution,
what to state.

SEC. 125. The execution must be directed to a constable of the county, and subscribed by the justice by whom the judgment was rendered, or his successor in office, and must bear date the day of its delivery to the officer to be executed. It must intelligibly refer to the judgment, by stating the names of the parties, and the name of the justice before whom, and of the county where, and the time when it was rendered, the amount of the judgment, and, if less than the whole is due, the true amount due thereon. It must require the constable substantially as follows:

1. It must direct the officer to collect the amount of the judgment of out the personal property of the debtor, and pay the same to the party entitled thereto;

2. If it be a case where any of the judgment debtors are certified on the docket as surety, it shall command that the money be made of the personal property of the principal debtor, and for want thereof, of the personal property of the surety. In such cases the personal property of the principal subject to execution within the jurisdiction, shall be exhausted, before any property of the bail shall be taken in execution;

Must direct
officer to make
return within
thirty days.

3. It must in all cases direct the officer to make return of the execution and the certificate thereon, showing the manner in which he has executed the same, in thirty days from the time of his receipt thereof.

As to joint
debtors.

SEC. 126. Upon an execution on a judgment against joint debtors, upon one or more of whom the summons was not served the execution shall contain a direction to collect the amount of the joint property of all the defendants, or the separate property of the persons upon whom the summons was served, to be specified by name.

Constables
liable to party
in whose favor
execution is
issued in cer-
tain cases.

SEC. 127. A constable is liable to the party in whose favor an execution issued to him for the amount thereof, in the following case: when he suffers thirty days to elapse without

making a true return thereof to the justice, and paying to him or to the party entitled, the money collected thereon by him.

SEC. 128. When an execution shall be returned unsatisfied for the want of goods and chattels, the justice shall, unless otherwise directed by the party for whom the execution issued, commence an action on the undertaking for the stay of execution, and, so soon as judgment is obtained thereon, shall issue execution, and if such execution be returned unsatisfied in whole or in part, for want of goods and chattels of the bail whereon to levy, then the plaintiff may demand and have execution on the original judgment, for the amount remaining due.

When an execution returned unsatisfied, justice to commence action on undertaking &c.

STAY OF EXECUTION.

SEC. 129. Any person against whom judgment may be rendered under the provisions of this act, except as hereinafter excepted, may have stay of execution for the several periods hereinafter mentioned, by entering into an undertaking with the adverse party, within ten days after the rendition of such judgment, with good and sufficient surety resident of the county, as the justice shall approve, conditional for the payment of the amount of such judgment, interest, and costs, and costs that may accrue; which undertaking shall be entered on the docket of the justice, and be signed by the surety.

Person against whom judgment is rendered, may have stay by entering into undertaking.

SEC. 130. The stay of execution hereby authorized shall be granted as follows, namely:

When and for what time stay shall be granted

1. On any judgment for five dollars and under, the stay shall be for thirty days;

Stay as to surety.

2. On any judgment exceeding five and under fifty dollars, the stay shall be for sixty days;

3. On any judgment for fifty dollars and over, and under one hundred dollars, the stay shall be for ninety days; and

4. Where judgment is obtained against a surety, and he takes a stay thereon, and he obtains judgment against the principal, stay of execution must be allowed on the judgment against the principal only so long, that the stay will expire one month before that allowed to the surety on the judgment against him.

SEC. 131. No stay of execution on judgments rendered in the following cases shall be allowed:

No stay to be allowed in certain cases.

1. On judgments rendered against justices of the peace for refusing to pay over money by them collected or received in their official capacity;

2. On any judgment rendered against a constable for failing to make return, making a false return, or refusing to pay over money collected in his official capacity;

3. On judgments against bail for the stay of execution;

4. Where judgment is rendered in favor of bail, who have been compelled by judgment to pay over money on account of their principal;

5. On judgments obtained by constables or undertakings executed to them for the delivery of property.

Execution recalled, when.

SEC. 132. If the execution issued before the undertaking for stay, or that required in case of appeal be given, and such undertaking be given afterward, and within the time allowed, the justice shall recall the execution.

When surety removes into another county or state.

SEC. 133. Where any person who has become bail for stay of execution, shall remove before the expiration of such stay, into any other county or state, the justice shall, on demand, issue execution against the goods and chattels of the defendant, or other party against whom the original judgment was rendered, to be proceeded with as in other cases. When any surety for the stay of execution shall become apprehensive that, by delaying the execution until the expiration of the full time of such stay, he or she may be compelled to pay the judgment, it shall be lawful for such surety to make and file affidavit of the fact before the justice on whose docket the judgment is entered; whereupon such justice shall issue execution against the judgment debtor, which shall be proceeded in as in other cases: *Provided*, Such bail shall not thereby be discharged from liability, but may be proceeded against after the expiration of the term of stay, in the same manner as if execution had not issued as aforesaid.

When may file affidavit.

Not to be discharged from liability.

When judgment debtor enters into further undertaking, &c.

SEC. 134. If the judgment debtor shall, within ten days after levying such execution, enter into a further undertaking for the stay of execution, during so much of the first stay as remains then unexpired, and shall pay costs of the execution issued against him as aforesaid, it shall be the duty of the justice to take such further undertaking, and recall the execution; and the person who last became surety shall first be

proceeded against, until it shall appear by the return of the constable, that he or she has no goods whereon to levy, before proceedings shall be instituted on the undertaking first given.

SEC. 135. At any time before the stay shall expire, if the justice taking the surety, or his successor in office, shall become satisfied that the surety is insufficient, it shall be his duty to cause written notice thereof to be given to the defendant, or if he absent, that the same be left at his residence, requiring him to give additional surety, on or by the third day after the giving of such notice; if the surety be not given, such facts shall be entered on the docket, and he shall immediately issue execution against the defendant for the collection of the judgment. If within ten days after the issuing of such execution, surety to the satisfaction of the justice be given, the execution shall be recalled, and stayed until the expiration of the original stay. If at the expiration of such stay, the judgment be not paid, the execution shall issue against the principal and bail; if the principal do not satisfy the execution, and the officer cannot find sufficient property, not exempt by law, belonging to him upon which to levy, he shall levy upon the property, not exempt by law, of the bail, and in his return shall state what amount of the money collected by him on the execution, was collected by him from the bail, and the time when the same was received.

When undertaking is insufficient.

CHANGE OF PLACE OF TRIAL.

SEC. 136. If, on the return of the process, or at any time before trial shall have commenced in any cause or proceeding, civil or criminal, either party, his agent or attorney, shall make affidavit that the justice before whom the same is pending is a material witness for said defendant, without whose testimony he cannot safely proceed to a trial thereof; or that from prejudice, bias, or other cause, he believes such justice will not decide impartially in the matter; or if it shall be proven that the justice is near of kin to the plaintiff, then, in such case, the said justice shall transfer said suit and all other papers appertaining to the same, to some other justice of the same or adjoining precinct, who may thereupon proceed to hear and determine the same in the same manner as it would have been lawful for the justice before whom the said cause or

When party may have change of venue.

Proviso. proceeding was commenced to have done: *Provided*, That no cause or proceeding shall be removed more than once.

Costs paid by party asking for change. SEC. 137. Before any such change shall be allowed, the costs, as specified in the next following section, shall be paid by the party applying for such change.

What costs to be taxed and to whom. SEC. 138. When such change is at the instance of the plaintiff, he shall be taxed with all the costs which have accrued, and which shall accrue in the cause, until such transcript and papers shall be delivered to the justice to whom such cause is removed for trial; and when on the application of the defendant, he shall be taxed for the costs which have accrued for issuing subpoenas for witnesses, and service thereof, witnesses' fees, and costs of the justice for transferring the cause to the docket of the other justice.

SALE OF PROPERTY UNDER EXECUTION.

Officer to give notice of sale. SEC. 139. The officer after taking goods and chattels into his custody by virtue of an execution, shall, without delay, give public notice, by at least three advertisements, put up at three public places in the township or precinct where the property is to be sold, of the time and place when and where the same shall be exposed for sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

Officer to sell to highest bidder. SEC. 140. At the time so appointed, the officer shall expose the goods and chattels to sale at public vendue to the highest bidder. The officer shall, in all cases, return the execution, and have the money before the justice at the time of making such return.

No officer shall purchase. SEC. 141. No officer shall, directly or indirectly, purchase any goods and chattels at any sale made by him upon execution; but every such sale shall be absolutely void.

REPLEVIN OF PROPERTY.

Petition to be filed. SEC. 142. When the object of the action is to recover the possession of personal property, the plaintiff or some other person shall, in all cases, before any writ shall be issued, file with the justice before whom the action is brought, a petition as provided in the following section.

SEC. 143. The petition in replevin must be sworn to, and it must state: Must be sworn to and must state.

1. A particular description of the property claimed;
2. Its actual value, and where there are several articles, the actual value of each;
3. The facts constituting the plaintiff's right to the present possession thereof, and must define the extent of his interest in the property, whether it be full or qualified ownership;
4. That it was neither taken on the order or judgment of a court against him, nor under an execution or attachment against him or against the property. But if it was taken by either of these modes, then it must state the facts constituting an exemption from seizure by such process;
5. The facts constituting the alleged cause of detention thereof according to his best belief;
6. The amount of damages which the affiant believes the plaintiff ought to recover for the detention thereof.

SEC. 144. The plaintiff or his agent shall also execute a bond to the defendant, with sureties, to be approved by the justice, in a penalty at least double the value (as stated in the petition), of the property sought, conditioned that the plaintiff will appear at the return day thereof and prosecute his action to judgment, and return the property to the defendant, if a return thereof be ordered by the court, and also pay all costs and damages that may be adjudged against him; the bond shall be filed with the justice, and shall be for the use of any person injured by the proceeding. Plaintiff to execute bond, Amount of bond. Conditions.

SEC. 145. The justice shall thereupon issue a writ, directed to the sheriff or any constable of the county, commanding him to take the property therein described and deliver the same to the plaintiff, and summon the defendant to appear and answer the same on the return day mentioned in the writ. Justice to issue writ, and what to state.

SEC. 146. In obedience to such writ, the officer must forthwith take possession of the property mentioned in the writ, if the same be in the possession of the defendant or his agent, for which purpose he may break open any dwelling house or other inclosure, having first demanded entrance, and exhibit his authority if required. Officer to take possession of property.

When third person claims property.

SEC. 147. If a third person claim the property, or any part thereof, the plaintiff may amend and bring him in as a co-defendant, or the defendant may obtain his substitution by the proper mode, or the claimant may himself intervene by the process of intervenor.

If property cannot be obtained.

SEC. 148. If the property sought be not obtained, the plaintiff, if he establishes his right thereto, shall recover the value of that right; whether obtained or not, he shall recover the damages he has sustained in consequence of the illegal detention thereof.

When defendant shall recover damages.

SEC. 149. If the plaintiff fail to establish [his right to the property, the defendant shall recover such damages, as under the circumstances he shows himself entitled to; and in addition thereto may have judgment for the return of the property, or the value thereof, if the same has been taken out of his possession, or delivered to the plaintiff.

When property removed to another county, how to proceed.

SEC. 150. When any of the property is removed to another county after the commencement of the action, counterparts of the writ of replevin may issue on the demand of the plaintiff to such other county, and may be executed upon such goods found in such county, and further writs of replevin and the necessary counterparts thereof may issue as often as may be necessary.

When writ cannot be executed, justice may compel attendance of defendant.

SEC. 151. When it appears by affidavit that the property claimed has been disposed of or concealed, so that the writ cannot be executed, the justice of the peace may compel the attendance of the defendant and examine him on oath as to the situation of the property, and punish a willful obstruction or hinderance of the writ, and disobedience of the order of the court in this respect, as in case of contempt.

When officer to return writ and what to state therein.

SEC. 152. The sheriff or constable must return the writ on or before the return day of the notice, and shall state fully what he has done thereunder. If he has taken any property, he shall describe particularly the same.

Property to be delivered to plaintiff on payment of costs.

SEC. 153. The officer having taken the property, or any part thereof, shall forthwith deliver the same to the plaintiff, on the payment of his costs.

What judgment shall determine.

SEC. 154. The judgment shall determine which party is entitled to the possession of the property, and shall designate his right therein, and if such party have not the possession

thereof, shall also determine the value of the right of such party, which right shall be absolute as to an adverse party having no right in such property, and shall also award such damages to either party as he may be entitled to, for illegal detention of such property.

SEC. 155. The party entitled thereto, may have execution for the money found due him, or may, in his discretion, have execution for the delivery of the property, and if the property or any article thereof cannot be obtained on execution, he may have execution for the value of such article.

What party entitled to possession of property may have.

SEC. 156. When it appears by the return of the officer, or by the affidavit of the plaintiff, that any specific property which has been adjudged to belong to one party, has been concealed or removed by the other, the justice of the peace may require him to attend and be examined on oath respecting such matter, and may enforce his order in this respect as in cases of contempt.

When property is concealed or removed.

PROCEEDINGS BY ATTACHMENT.

SEC. 157. Any creditor shall be entitled to proceed by attachment in a justices' court, against the property of his debtor, in the cases, upon the conditions, and in the manner provided in this act.

Who entitled to proceed by attachment.

SEC. 158. Before any such writ of attachment shall be issued, the plaintiff, or some person in his behalf, shall make and file with the justice, an affidavit stating that the defendant therein is indebted to the plaintiff, in a sum exceeding five dollars; and specifying the amount of such indebtedness, as near as may be, over and above all legal set-offs, and that the same is due upon contract, expressed or implied, or upon judgment or decree of some court, and containing a further statement that the deponent has good reason to believe either:

Affidavit to be filed and what to state.

1. That the defendant is a non-resident corporation; or
2. That the defendant is not a resident of this Territory, and has not resided therein for three months immediately preceding the time of making such affidavit;
3. That the defendant has absconded, or is about to abscond from this Territory;
4. That the defendant has removed, or is about to remove any of his property out of the county, with intent to defraud his creditors;

5. That the defendant resides in any other county in this Territory;

6. That the defendant contracted the debt under fraudulent representations.

7. That the defendant so conceals himself that the process of summons cannot be served upon him; or,

8. That the defendant has fraudulently conveyed or disposed of, or is about fraudulently to convey or dispose of any of his property or effects, so as to hinder or delay his creditors.

When writ of attachment returnable.

SEC. 159. In the five first cases mentioned in the preceding section, the writ of attachment shall be returnable in three days; but in all other cases, it shall be returnable as an ordinary summons.

Form of writ

SEC. 160. The writ of attachment may be substantially in the following form:

Territory of Dakota, } ss:
 County of }

To the sheriff or any constable of said county:

In the name of the Territory of Dakota, you are commanded to attach the goods and chattels, moneys, effects and credits of, or so much thereof as shall be sufficient to satisfy the sum of, with interest and costs of suit, in whosoever hands or possession the same may be found in your county, and so provide that the goods and chattels and other things so attached may be subject to further proceedings thereon, as the law requires; and also to summon the said if to be found, to be and appear at my office in said county, on the day of, A. D. 18.., at the hour of o'clock in the noon, to answer to, in a civil action to his damage one hundred dollars or under. Given under my hand, this day of, A. D. 18...

W. P., justice of the peace.

How writ to be executed.

SEC. 161. The officer shall execute a writ of attachment, by summoning the defendant as in case of a summons if to be found within the county, and by attaching the goods and chattels, moneys and credits, of the defendant, not exempt by law.

Defendant may obtain possession of property how.

SEC. 162. When property of the defendant shall be actually seized on attachment, the defendant, or any other person for him, may obtain possession thereof, by giving bond and secur-

ity to the satisfaction of the officers executing the writ, in double the value of the property so attached, conditioned that the same shall be forthcoming, when and where the justice shall direct, and shall abide the judgment of the justice.

SEC. 163. When property shall be seized on attachment, which is likely to perish or depreciate in value before the probable end of the suit, or the keeping of which would be attended with much loss or expense, the justice may order the same to be sold by the officer, in the same manner and on the same notice, as goods are required to be sold on an execution; and the proceeds of such sale shall remain in the hands of the officer, subject to be disposed of as the property would have been if seized upon in specie.

Perishable property what to be done with it.

SEC. 164. When property is seized on attachment, the justice may allow to the officer having charge thereof, such compensation for his trouble and expense in keeping and maintaining the same, as shall be reasonable and just.

Compensation of officer for keeping property.

SEC. 165. When the defendant cannot be summoned, and his property or effects shall be attached, if he do not appear to the action at the return of the writ, the justice shall enter an order in his docket, requiring the plaintiff to give notice to the defendant, by publishing in a newspaper, if there be one printed in the county, or by three written or printed advertisements, set up at three of the most public places in the county, that a writ has been issued against him, and his property attached to satisfy the demand of the plaintiff; and that unless he appear before the justice at some time and place to be mentioned in said notice, not less than twenty nor more than ninety days from the date thereof, judgment will be rendered against him, and his property sold to pay the debt.

Notice to defendant by publication.

SEC. 166. The notice may be in the following form:

Form of notice.

Territory of Dakota, } ss.
County of..... }

To.....

You are hereby notified that a writ of attachment has been issued against you, and your property attached, to satisfy the demand of....., amounting to.....: Now, unless you shall appear before J. P., a justice of the peace in and for said county, at his office, on the..... day of....., A. D., 18... at.....o'clock in

the.....noon, judgment will be rendered against you, and your property sold to pay the debt.

Dated this.....day of....., A. D. 18...

..... Plaintiff.

Fifteen days notice.

SEC. 167. Such notice shall be set up, or published at least fifteen days before the expiration of the time at which the party is required to appear, and the setting up may be proved, either by the return of the officer upon a copy of the notice, or by the affidavit of any person who would be a competent witness in the case.

Defendant failing to appear, default may be entered.

SEC. 168. When the defendant shall be notified as aforesaid, and shall not appear and answer to the action, his default shall be entered by the justice in his docket, and the plaintiff may proceed thereon to final judgment as in actions commenced by summons; but no execution shall be issued on such judgment, either against the defendant, or money paid to the justice thereon, until the plaintiff, or some person in his behalf, shall execute a bond in double the amount of such judgment, to the defendant with security, to be approved by the justice, conditioned that if the defendant shall, within one year from the rendition of such judgment, appear and disprove the debt or damages adjudged against him, or any part thereof, the plaintiff will refund the whole, or such part thereof as may be found not justly due him in a review of the case.

Bond to be executed before execution shall issue.

Proceedings in attachments.

SEC. 169. Like pleadings of the parties and like proceedings shall be had, as far as practicable, in suits commenced by attachment, and suits founded on contracts and commenced by summons.

When and how attachments dissolved.

SEC. 170. Attachments may be dissolved, on motion made in behalf of the defendant, at any time before final judgment, if the defendant shall appear and plead to the action and give bond to the plaintiff, with good and sufficient surety to be approved by the justice, in double the amount of property, effects, and credits attached, conditioned that if judgment be rendered against him in such suit, he will pay the amount thereof, with costs and interest thereon.

Proceedings when attachment dissolved.

SEC. 171. When any attachment shall be dissolved, the property and effects attached shall be released, and the garni-

shees shall be discharged, and the suit proceed as if it had been commenced by a summons only.

SEC. 172. When property of the defendant, found in the hands or possession of any other person than the defendant shall be attached, such person may retain the possession thereof, by giving bond and security to the satisfaction of the officer executing the writ, in double the value of the property so attached, conditioned that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice.

Property attached in hands of third person may be retained by giving security.

SEC. 173. When judgment shall be rendered in any attachment case, execution may issue thereupon, and the property attached may be sold in the same manner as in other cases, except as otherwise provided by this act.

Property sold as in other cases.

SEC. 174. The return day of the writ of attachment, when issued at the commencement of the action, shall be the same as that of the summons; when issued afterwards, it shall be executed and returned forthwith.

Return day of attachment.

SEC. 175. When there are several writs of attachment against the same person, in the hands of the same officer, they shall be executed in the same order in which they are received by said officer; he shall go to the place where the defendant's property may be found, and there, in the presence of two credible persons, declare that by virtue of said writ, he attaches said property at the suit of said plaintiff; and the officer, with two residents of the county, who shall be first sworn or affirmed by the officer, shall make a true inventory and appraisalment of all property attached which shall be signed by the officer and said residents and returned with the writ; when the property can be come at, he shall take the same into custody, and hold it subject to the order of the justice.

Where several writs against same person how executed.

SEC. 176. Different attachments of the same property may be made, and one inventory and appraisalment shall be sufficient. The lien of the attachments shall be in the order in which they are served, and the subsequent attachments shall be served on the property, as in the hands of the officer, and subject to the prior attachments. The justice who issued the attachment having the priority of lien, shall determine all questions as to the priority of liens on the property attached.

Orders of lien of attachment.

Summoning
person or cor-
poration as gar-
nishee:

SEC. 177. When the plaintiff, his agent or attorney, shall make oath, in writing, that he has good reason to and does believe that any person or corporation, to be named, and within the county where the action is brought, has property of the defendant (describing the same) in his possession, if the officer cannot come at such property, he shall leave with such garnishee a copy of the writ of attachment, with a written notice that he appear before the justice at the return of the writ of the attachment, and answer as provided in section one hundred and seventy-nine.

How writ and
notice served
upon garni-
shee.

SEC. 178. The copy of the writ and the notice shall be served upon the garnishee as follows: if he be a person, they shall be served upon him personally, or left at his usual place of residence; if a corporation, they shall be left with the president or other head of the same, or the security, cashier, or managing agent thereof.

Garnishee
shall appear
and answer
under oath.

SEC. 179. The garnishee shall appear before the justice, in accordance with the command of the notice, and shall answer, under oath, all questions put to him touching the property of every description, and credits of the defendant, in his possession or under his control, and he shall disclose truly, the amount owing by him to the defendant, whether due or not; and in case of a corporation, any stock therein held by or for the benefit of the defendant, at or after the service of the notice.

Garnishee
may pay money
owing to defen-
dant, to con-
stable having
writ.

SEC. 180. A garnishee may pay the money owing to the defendant by him, to the constable having the writ of attachment, or into the court. He shall be discharged from liability to the defendant for any money so paid, not exceeding the plaintiff's claim. He shall not be subject to costs beyond those caused by his resistance of the claim against him; and if he disclose the property in his hands, or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs.

If garnishee
do not appear
and answer he
may be pro-
ceeded against
for contempt,
&c.

SEC. 181. If the garnishee do not appear and answer, as required by section 179, the justice may proceed against him by attachment, as for a contempt.

Order of Jus-
tice.

SEC. 182. If the garnishee appear and answer, and it is discovered on his examination, that at or after the service of the writ of attachment and notice upon him, he was possessed of

any property of the defendant, or was indebted to him, the justice may order the delivery of such property and the payment of the amount owing by the garnishee into the court, or may permit the garnishee to retain the property or the amount owing, upon the execution of an undertaking to the plaintiff, by one or more sufficient sureties, to the effect that the amount shall be paid or the property forthcoming, as the court may direct.

SEC. 183. If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure is not satisfactory to the plaintiff; or if he fail to comply with the order of the justice to deliver the property and pay the money owing into court, or give the undertaking required in the preceding section, the plaintiff may proceed against him in an action, in his own name, as in other cases; and thereupon such proceeding may be had as in other actions, and judgment may be rendered in favor of the plaintiff, for the amount of the property and credits of every kind of the defendant in the possession of the garnishee, and for what shall appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, the plaintiff shall pay the costs of such action. The judgment in this action may be enforced as judgments in other cases.

If garnishee fail to comply with order of justice, plaintiff may proceed as in other actions.

SEC. 184. Final judgment shall not be rendered against the garnishee until the action against the defendant in attachment has been determined; and if, in such action, judgment be rendered for the defendant in attachment, the garnishee shall be discharged and recover costs. If the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all property, moneys, and credits of the defendant in possession, and pay all moneys from him due as the court may order, the garnishee shall be discharged, and the costs of the proceedings against him shall be paid out of the property and moneys so surrendered, or as the court may think right and proper.

As to final judgment against garnishee, costs, and discharge.

SEC. 185. If judgment be rendered in the action for the defendant, the attachment shall be discharged, and the property attached or its proceeds shall be returned to him.

When judgment is rendered for defendant attachment shall be discharged.

How judgment satisfied when rendered for plaintiff.

SEC. 186. If judgment be rendered for the plaintiff, it shall be satisfied as follows: so much of the property remaining in the hands of the officer, after applying the moneys arising from the sale of perishable property, if any, whether held by legal or equitable right, as may be necessary to satisfy the judgment, shall be sold by order of the justice, under the same restrictions and regulations as if the same had been levied on by execution; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs. If there be not enough to satisfy the same, the judgment shall stand, and execution may issue thereon for the residue, in all respects as in other cases. Any surplus of the attached property or its proceeds, shall be returned to the defendant.

When justice may order constable to repossess himself of attached property.

SEC. 287. The justice may order the constable to repossess himself, for the purpose of selling it, of any of the attached property which may have passed out of his hands without being sold or converted into money; and the constable shall under such order have the same power to take the property, as he would have under a writ of attachment.

When attached property is claimed by another person validity of claim may be tried.

SEC. 188. If any of the property which has been attached, be claimed by any person other than the defendant, the claimant may have the validity of such claim tried, and such proceedings must be had thereon, with like effect, as in case the property had been seized upon execution issued by the justice and claimed by a third person.

When several attachments are executed on same property, justice may determine amounts and priorities of same.

SEC. 189. Where several attachments are executed on the same property, or the same persons are made garnishees, the justice issuing the first writ, served on the motion of any of the plaintiffs, may determine the amounts and priorities of the several attachments, and the proceeds shall be applied accordingly.

Return of officer.

SEC. 190. The officer shall return upon every writ of attachment what he had done under it. The return must show the property attached, and the time it was attached. When garnishees are served, their names, and the time each was served, must be stated. The officer shall also return, with the writ, all undertakings given under it.

A writ of attachment binds property from time of service.

SEC. 191. A writ of attachment binds the property attached from the time of service, and the garnishee shall stand liable

to the plaintiff in attachment for all property, moneys, and credits in his hands, or due from him to the defendant, from the time he is served with a written notice, mentioned in section 177; but when property is attached in the hands of a consignee or other person having a prior lien, his lien thereon shall not be affected by the attachment.

SEC. 192. If the defendant, or other person in his behalf, at any time before judgment, cause an undertaking to be executed to the plaintiff by one or more sureties resident in the county, to be approved by the justice, in double the amount of the plaintiff's claim, to be stated in his affidavit, to the effect that the defendant shall perform the judgment of the justice, the attachment in such action shall be discharged, and restitution made of any property taken under it, or the proceeds thereof; such undertaking shall also discharge the liability of a garnishee in such action, for any property of the defendant in his hands.

Property to be released, how.

SEC. 193. If in any case where a writ of attachment has been issued by a justice of the peace, it shall appear from the return of the officer, and from examination of the garnishee, that no property, rights, credits, or effects of the defendant have been taken under the attachment, but that the defendant is the owner of an interest in real estate in the county, the justice before whom said action is pending shall, at the request of the plaintiff, forthwith certify his proceedings to the district court of the proper county, and thereupon the clerk of said court shall docket said cause, and the action shall be proceeded with in said court in all respects as if the same had originated therein.

Justice shall certify proceedings to district court, when.

ADJOURNMENT.

SEC. 194. Upon the return day, if a jury be required, or if the justice be actually engaged in other official business, he may adjourn the trial, without the consent of either party, as follows:

When justice may adjourn trial and how long.

1. Where a party is in attendance who is not a resident of the county, the adjournment not to exceed forty-eight hours;
2. In other cases not to exceed eight days, unless by consent of the parties. If the trial be not adjourned, it must take place immediately upon the return of the summons.

How trial may be adjourned upon application of either party.

SEC. 195. The trial may be adjourned upon the application of either party, without the consent of the other, for a period not exceeding thirty days, as follows: the party asking the adjournment must, if required by his adversary, prove, by his own oath, or otherwise, that he cannot for want of material testimony which he expects to procure, safely proceed to trial, he must also state on oath what particular facts he expects to prove by such absent witness, and that there is no person present, to his knowledge, by whom he can prove the facts set forth. Whereupon the opposite party may admit that the person named would, if present, testify as stated in the application for an adjournment, in which case the absence of such witness will cease to be a ground for adjournment.

Adjournment may be had for more than thirty days but not to exceed ninety.

SEC. 196. An adjournment may be had either at the return day, or at any subsequent time to which the cause may stand adjourned, on the application of either party, for a period longer than thirty days, but not to exceed ninety days from the time of the return of the summons, upon compliance with the provisions of the preceding section, and upon proof, by the oath of the party or otherwise, to the satisfaction of the justice, that such party cannot be ready for trial before the time to which he desires an adjournment, for the want of material evidence, describing it; that the delay has not been made necessary by any act or negligence on his part since the action has commenced, and that he expects to procure the evidence at the time stated by him.

ARBITRATIONS.

Who may act as arbitrators, how summoned and their fees.

SEC. 197. At any time before trial and judgment rendered, the plaintiff and defendant consenting thereto, may have the cause submitted to the arbitrament of three disinterested men, who shall be chosen by the parties; and if the arbitrators be present, they shall hear and determine the cause on oath or affirmation, to be administered by the justice. But if the persons chosen as arbitrators be not present, the justice shall issue summons for them to attend at the time and place appointed for the trial, which shall be served by any constable or the parties, as they may agree. The fees of arbitrators shall be the same as that paid to jurors

SEC. 198. When the arbitrators shall convene and be qualified, they shall proceed to hear and determine the cause, and make out their award in writing, which shall be valid when signed by any two of them, and return the same to the justice, who shall thereupon enter such award upon his docket, and thereupon render judgment, and issue execution as in other cases.

Shall hear cause and make award.

SEC. 199. Every judgment rendered on such award, shall conclude the rights of the parties thereto, unless it shall be made to appear to the justice of the peace who rendered such judgment, and within ten days after the rendition of the same, or to the district court, on appeal, that such award was obtained by fraud, corruption, or other undue means.

Judgment rendered on such award shall conclude rights of parties unless, &c.

SEC. 200. Whenever satisfactory proof shall be adduced before such justice, within the period aforesaid, that such award was obtained by fraud, corruption, or other undue means, it shall be competent for such justice to set aside such award and his judgment thereon rendered, and thereupon proceed to such final trial and judgment, as if such award had never been made.

Justice may set aside award for fraud and try the cause de novo.

SEC. 201. But no appeal shall be allowed to the district court from a judgment of a justice of the peace rendered on an award, unless the party praying such appeal shall file with such justice an affidavit, therein stating that he or she does verily believe that such award was obtained by fraud, corruption or other undue means.

When appeal allowed from judgment rendered on award.

SEC. 202. And if, on appeal from the judgment of a justice rendered on any such award, the district court shall be satisfied that the award was obtained by fraud, corruption, or other undue means, such court shall set aside the award, and proceed to hear and determine the cause on the merits, as in other cases of appeal.

District court may set aside award for fraud and try cause.

SEC. 203. But if the court shall be of opinion that the award was not obtained by fraud, corruption, or other undue means, they shall render judgment thereon, for the cost of suit, and award execution as in other cases.

If not fraud, court shall render judgment.

TRIAL OF THE RIGHT OF PROPERTY.

SEC. 204. When a constable shall levy on or attach property, claimed by any person or persons, other than the party

Proceeding on trial of right of property.

against whom the execution or attachment issued, the claimant or claimants shall give three days notice, in writing, to the plaintiff or his agent, or if not found within the county, then such notice shall be served by leaving a copy thereof at his usual place of abode in such county, of the time and place of the trial of the right to such property, which trial shall be had before some justice of the county, at least one day prior to the time appointed for the sale of such property.

How justice proceed when property belongs to claimant.

SEC. 205. If on the trial, the justice shall be satisfied from the proof, that the property or any part thereof, belongs to the claimant or claimants, such justice shall render judgment against the party in whose favor such execution or attachment issued for the costs, and issue execution therefor, and shall, moreover, give a written order to the constable who levied on, or who may be charged with the duty of selling such property, directing him to restore the same, or so much thereof, as may have been found to belong to such claimant or claimants.

Claimant fails to establish right Judgment rendered against him.

SEC. 206. But if the claimant or claimants fail to establish his or their right to such property or any part thereof, the justice shall render judgment against such claimant or claimants for the costs that have accrued on account of such trial, and issue execution therefor; and the constable shall not be liable to the claimant or claimants for the property so taken.

FORCIBLE ENTRY AND DETENTION OF PROPERTY.

Jurisdiction of justice.

SEC. 207. Any justice, within his proper county, shall have power to inquire, in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and detain the same, as against those who having a lawful and peaceable entry into lands or tenements, unlawfully and by force hold the same; and if it be found upon such inquiry that an unlawful and forcible entry has been made, and that the same lands or tenements are held by force, or that the same, after a lawful entry are held unlawfully, then said justice shall cause the party complaining to have restitution thereof.

Whom proceeding may be had against.

SEC. 208. Proceedings under this article may be had in all cases against tenants holding over their terms; in sales of real estate, on executions, orders, or other judicial process, when

the judgment debtor was in possession at the time of the rendition of judgment or decree, by virtue of which such sale was made; in sale by executors, administrators, guardians, and on partition, where any of the parties to the petition were in possession at the commencement of the suit, after such sales, so made on execution or otherwise, shall have been examined by the proper court, and the same by such court adjudged legal; and in case where the defendant is a settler or occupier of the lands or tenements, without color of title, and to which the complainant has the right of possession; this section not to be construed as limiting the provisions of the first section of this act.

SEC. 209. Judgments either before the justice or in the district court, under this act, shall not be a bar to any after action brought by either party. Judgments.

SEC. 210. It shall be the duty of the party desiring to commence an action under this act, to notify the adverse party to leave the premises, for the possession of which the action is about to be brought, which notice shall be served at least three days before commencing the action, by leaving a written copy with the defendant, or at his usual place of abode, if he cannot be found. Three days notice given.

SEC. 211. The summons shall not issue herein, until the plaintiff shall have filed his complaint in writing with the justice, which shall particularly describe the premises so entered upon or detained, and shall set forth either an unlawful and forcible entry and detention, or an unlawful and forcible detention after a peaceable or lawful entry of the described premises. The complaint shall be copied into and made a part of the record. When summons issue, what to state.

SEC. 212. The summons shall be issued and directed; shall state the cause of the complaint, and the time and place of trial, and shall be served and returned as in other cases. Such service shall be three days before the day of trial appointed by the justice. What summons shall state and how served.

SEC. 213. If the defendant does not appear in accordance with the requisitions of the summons, and it shall have been properly served, the justice shall try the cause as though he was present. If defendant fails to appear justice shall try cause.

When continuance granted for more than eight days.

SEC. 214. No continuance shall be granted for a longer period than eight days, unless the defendant applying therefor shall give an undertaking to the adverse party, with good and sufficient surety to be approved by the justice, conditioned for the payment of the rent that may accrue, if judgment be rendered against the defendant.

When justice shall try cause &c.

SEC. 215. If the suit be not continued, place of trial changed, or neither party demand a jury, upon the return day of the summons, the justice shall try the cause; and if, after hearing the evidence, he shall conclude that the complaint is not true, he shall enter judgment against the plaintiff for costs; if he find the complaint true, he shall render a general judgment against the defendant and in favor of the plaintiff for restitution of the premises and costs of suit; if he find the complaint true in part, he shall render a judgment for the restitution of such part only, and the costs shall be taxed as the justice shall deem just and equitable.

Jury.

SEC. 216. If a jury be demanded by either party, the proceedings, until the impanelling thereof, shall be in all respects as in other cases. The jury shall be sworn or affirmed to well and truly try and determine whether the complaint of (naming the plaintiff) about to be laid before them, is true according to the evidence. If the jury shall find the complaint true, they shall render a general verdict of guilty against the defendant; if not true, then a general verdict of not guilty; if true in part, then a verdict setting forth the facts they find true.

Verdict.

Justice shall enter verdict and render judgment.

SEC. 217. The justice shall enter the verdict upon his docket, and shall render such judgment in the action as if the facts, authorizing the finding of such verdict, had been found to be true by himself.

Exceptions taken by either party.

SEC. 218. Exceptions to the opinion of the justice, in cases under this act, upon questions of law and evidence, may be taken by either party, whether tried by a jury or otherwise.

Justice shall issue execution on judgment of restitution.

SEC. 219. When a judgment of restitution shall be entered by a justice, he shall, at the request of the plaintiff, his agent or attorney, issue a writ of execution thereon, which shall be in the following form, as near as practicable:

The Territory of Dakota, }
 county } ss.

Form of execution.

To one constable of county:

Whereas, in a certain action for the forcible entry and detention (or the forcible detention, as the case may be), of the following described premises, to-wit:, lately tried before me, wherein was plaintiff and was defendant, judgment was rendered on the day of, A. D., that the plaintiff have restitution of said premises, and also that he recover costs in the sum of You, therefore, are hereby commanded to cause the defendant to be forthwith removed from said premises, and the said plaintiff to have restitution of the same; also that you levy of the goods and chattels of the said defendant, and make the costs aforesaid, and all accruing costs, and of this writ make legal service and due return.

Witness my hand this day of, A. D.
, Justice of the peace.

SEC. 220. The officer shall, within ten days after receiving the writ, execute the same by restoring the plaintiff to the possession of the premises, and shall levy and collect the costs, and make return as upon other executions. If the officer shall receive a notice from the justice that the proceedings have been stayed by an allowance of an appeal, he shall immediately delay all further proceedings upon the execution; and if the premises have been restored to the plaintiff, he shall immediately place the defendant in the possession thereof, and return the writ with his proceedings and costs taxed thereon.

Officer shall execute same within ten days, &c.

CONSTABLES AND THEIR DUTIES.

SEC. 221. All constables shall be ministerial officers in justices courts, in their respective counties, in civil and criminal cases, and civil and criminal process may be executed by them throughout the county.

Constables ministerial officers.

SEC. 222. It shall be the duty of every constable to serve and execute all warrants, writs, precepts, executions, and other process to him directed and delivered, and in all respects whatever, to do and perform all things pertaining to the office of constable.

Duties of constables.

SEC. 223. In discharging their duties, constables may call to their aid the power of the county, or such assistance as may be necessary. It shall be the duty of every constable to make due return of all process to him directed and delivered,

Powers and duties.

at the proper office and on the proper return day thereof; or if the judgment be docketed in the district court, appealed, or stayed upon which he has an execution, on notice, to return the execution, stating thereon such fact.

Shall note on process the time of receiving.

SEC. 224. It shall be the duty of every constable, on the receipt of any writ or other process (subpœnas excepted), to note thereon the time of receiving the same; he shall also state in his return on the same, the time and manner of executing it.

When constable not to return, not found.

SEC. 225. No constable shall make a return on any process of "not found," as to any defendant, unless he shall have been once at least to the usual place of residence of the defendant, if such defendant have any in the county.

Duties of constable in criminal matters.

SEC. 226. It shall be the duty of every constable to apprehend, on view or warrant, and bring to justice all felons and disturbers and violators of the criminal laws of this Territory, to suppress all riots, affrays, and unlawful assemblies, which may come to his knowledge, and generally to keep the peace in his proper county.

Authority of constables.

SEC. 227. In serving all process, either civil or criminal, and in doing his duties generally, when not otherwise restricted by law, the authority of a constable shall extend throughout the whole county in which he may be elected or appointed, and in executing and serving process issued by a justice of the peace, he shall have and exercise the same authority and powers over goods and chattels, and the persons of parties, as is granted by law to a sheriff, under like process issued from courts of record.

Duty of constable when he commits to jail.

SEC. 228. When it shall become the duty of the constable to take the body of any person to the jail of the county, he shall deliver to the sheriff or jailer a certified copy of the commitment, or other process, whereby he holds such person in custody, and return the original to the justice who issued the same; which copy shall be sufficient authority to the sheriff or jailer to keep the prisoner in jail, until discharged by due course of law.

Constable to pay over all money, &c.

SEC. 229. Constables shall pay over to the party entitled thereto, all money received by them in their official capacity, if demand be made by such party, his agent, or attorney, at any time before he returns the writ upon which he has received

it; if not paid over by that time, he shall pay the same to the justice when he returns the writ.

SEC. 230. Constables shall be liable to twenty per cent. penalty upon the amount of damages for which judgment may be entered against them, for failing to make return, making false return, or failing to pay over money by them collected or received in their official capacity, and such judgment must include, in addition to the damages and costs, the penalty herein provided. When liable to penalty.

PROCEEDINGS FOR CONTEMPTS.

SEC. 231. In the following cases and no others, a justice of the peace may punish for contempt; When justice may punish for contempt.

1. Persons guilty of disorderly, contemptuous and insolent behavior towards such justice, whilst engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which tends to interrupt such proceedings, or to impair the respect due to his authority;

2. Persons guilty of any breach of the peace, noise, or disturbance, tending to interrupt the official proceedings of such justice;

3. Persons guilty of resistance, or disobedience to any lawful order or process made or issued by him.

SEC. 232. Punishment for contempt may be by fine not exceeding twenty dollars, or by imprisonment in the county jail not exceeding two days, unless otherwise provided, at the discretion of the justice. Punishment for contempt.

SEC. 233. No person shall be punished for contempt before a justice of the peace, until an opportunity shall have been given him to be heard in his defense; and for that purpose the justice may issue his warrant to bring the offender before him. No person fined for contempt until he has an opportunity to be heard.

SEC. 234. If the offender be present he may be summarily arraigned by the justice and proceeded against in the same manner as if a warrant had been previously issued, and the offender arrested thereon. If offender be present he may be summarily arraigned.

SEC. 235. The warrant for contempt may be in the following form:

Territory of Dakota, }
County of } ss:

Form of warrant for contempt.

To the sheriff or any constable of said county:

In the name of the Territory of Dakota, you are hereby commanded to apprehend A. B. and bring him before J. P., one of the justices of the peace of said county, at his office in said county, to show cause why he, the said A. B. should not be convicted of a criminal contempt, alleged to have been committed on the.....day of....., A. D. 18..., before the said justice, while engaged as a justice of the peace in judicial proceedings.

Dated this.....day of.....A. D. 18...

J. P., Justice of the peace.

On conviction justice shall make up record

SEC. 236. Upon the conviction of any person for contempt, the justice shall make up a record of the proceedings on the conviction, stating the particular circumstances of the offense, and the judgment rendered thereon, and shall file the same in the office of the clerk of the district court, and shall enter the same in his docket as in civil cases.

Warrant of commitment.

SEC. 237. The warrant of commitment for any constable, shall set forth the particular circumstances of the offense, or it shall be void.

Form of record of conviction.

SEC. 238. The record of conviction may be in the following form:

Territory of Dakota, }
County of..... } ss:

Whereas, on the.....day of.....; A. D. 18..., while we, the undersigned, one of the the justices of the peace of the said county, was engaged in the trial of a cause between C. D., plaintiff, and E. F., defendant, in said county, according to the statute in such case made and provided, A. B. of the said county did interrupt the said proceedings and impair the respect due to the authority of the undersigned, by (here describe the cause particularly); and whereas, the said A. B. was thereupon required, by the undersigned, to answer for the said contempt, and show cause why he should not be convicted thereof; and whereas, the said A. B. did not show any cause against the said charge; be it therefore remembered, that the said A. B. is adjudged to be guilty, and is convicted of the criminal contempt aforesaid, before the undersigned, and is adjudged by the undersigned to pay a fine of.....dollars, or to be imprisoned in the common jail of said county for the

term of two days, or until he be discharged from imprisonment according to law.

Dated this.....day of....., A. D. 18...

J. P., Justice of the peace.

SEC. 239. When any witness attending before a justice of the peace, in any cause, shall refuse to be sworn in some form prescribed by law, to answer any pertinent or proper question, such justice may, by order, commit such witness to the jail of the county.

Witness committed for refusing to be sworn.

SEC. 240. Such order shall specify the cause for which the same issued; and if it be refusing to answer any question, such question shall be specified therein; and such witness shall be closely confined pursuant to such order, until he be sworn, or to answer, as the case may be.

What order shall specify.

SEC. 241. The justice shall thereupon adjourn such case, at the request of the party, for such time as shall be reasonable, or until such witness shall testify in the case.

Justice adjourn the case until witness testify.

SEC. 242. If any person duly subpoenaed, and obliged to attend as a witness, shall fail to do so, he shall be considered guilty of contempt, and shall be fined all the costs for his apprehension, unless he shall show reasonable cause to the satisfaction of the justice, for his omission to attend; in which case the party requiring such appearance, shall pay the costs thereof.

Person subpoenaed not attending is guilty of contempt and subject to fine.

GENERAL PROVISIONS.

SEC. 243. Every summons or process, issued by a justice of the peace, shall be entirely filled up, and shall have no blank either in date, or otherwise, at the time of its delivery to an officer to be executed; every such process which shall be issued and delivered to an officer to be executed, contrary to the foregoing provisions, shall be void.

Every summons and process to be filled up.

SEC. 244. Whenever, by reason of a dismissal, nonsuit, or for any other cause, a judgment shall be rendered against either party, for costs only, by a justice of the peace, execution may issue to enforce such judgment, in the same manner and with the same effect as in every case.

Executive may issue to enforce judgment for costs.

SEC. 245. No justice of the peace, being a member of the council or house of representatives, shall be obliged to take cognizance of any action, or to entertain any proceedings

No justice who is a member of council or house of representatives obliged to act.

under the provisions of this act; but he may act therein or not, at his discretion.

Nearest justice may receive books &c. of deceased justice.

SEC. 246. In case any justice of the peace shall die, or his office shall in any wise become vacant, and any books or papers belonging to such justice in his official capacity, shall come into the hands of any person, the nearest justice may demand and receive such books and papers from the person having the same in his possession.

District court may compel production of books and papers.

SEC. 247. If any books or papers required to be delivered to the nearest justice by the preceding section, be withheld, or if any justice shall refuse to deliver over to his successor any books or papers, in either case the person entitled to receive the said books or papers, may make complaint to the district judge of the United States district court of the proper county, and if such judge be satisfied by the oath of the complainant, or any other person, that any such books or papers are withheld, he may grant an order directing the person so refusing, to show cause before him on a day to be mentioned in said order, why he should not be compelled to deliver the same.

Proceedings in such case.

SEC. 248. At the time so appointed, or at any other time to which the matter may be adjourned, upon due proof being made of the service of such order, such judge shall proceed to inquire into the circumstances; and if it shall appear that the said books and papers are withheld, the officer before whom the proceedings are had, shall by warrant commit the person so withholding, to the jail of the proper county, there to remain until he shall deliver the books and papers, or be otherwise discharged according to law.

When justice guilty of misdemeanor.

SEC. 249. If any money shall be collected for any party by a justice of the peace in his official capacity, and he shall neglected or refused, within a reasonable time after to pay over the same, such neglect or refusal shall be a misdemeanor, and on conviction thereof, such justice forfeit his

Justices courts public.

SEC. 250. The courts of justices of the peace shall be and every person may freely attend the

Justice to deposit books and papers with successor.

SEC. 251. It is the duty of every justice upon the expiration of his term of office, to deposit with his successor his official docket, as well his own, as those of his predecessor which may be in his custody, together with all files and papers, laws

and statutes, pertaining to his office, there to be kept as public records and property. If there be no successor elected and qualified, or if the office become vacant by death, removal from the county, or otherwise, before his successor is elected and qualified, the docket and papers in the possession of such justice must be deposited with the nearest justice in the county, there to be kept until a successor be chosen and qualified, then to be delivered over to such successor on request.

SEC. 252. The justice with whom the docket of another may be deposited, either during a vacancy, or as a successor, is hereby authorized, while having such docket legally in his possession, to issue execution on any judgment there entered and unsatisfied and not docketed in the district court, in the same manner and with the same effect as the justice by whom the judgment was rendered might have done; to take bail in appeals, or for stay of execution, to issue certified transcripts of judgments on such docket, and proceed in all cases in like manner as if the same had been originally had, or instituted before him.

Justice with whom docket of another is deposited, authorized to issue execution, take bail, &c.

SEC. 253. That in all actions instituted before a justice of the peace, founded upon any bond, sealed bill, promissory note or other instrument of writing, for the payment of a sum of money certain, of which the whole amount of money promised therein is due, it shall be the duty of the plaintiff, his agent or attorney, to file a copy of said bond, sealed bill, promissory note, or other written evidence of indebtedness upon which said suit is brought, with such justice of the peace, and upon the trial of the case the original of said bond, sealed bill, promissory note, or other written evidence of indebtedness shall be filed with such justice of the peace; and if, upon the trial, judgment shall be entered thereon, in favor of the plaintiff, such bond, sealed bill, promissory note, or instrument of writing, shall be retained by the justice so rendering judgment who shall indorse the sum for which he shall have entered judgment (provided the same shall in nowise exceed one hundred dollars) and shall subscribe his name thereto. And upon payment, or tender of the amount of such payment, together with the costs accruing thereon, or securing the payment of the same by putting in bail for the stay of execution, it shall not be lawful for the plaintiff to institute any other suit or suits upon such bond, sealed bill, promissory

Proceedings on bonds, sealed bills, promissory notes, and other instruments of writing.

note, or other instrument of writing for the recovery of any other sum or sums, the payment of which is secured by the same bond, sealed bill, promissory note, or other written evidence of indebtedness: *Provided*, That when an appeal shall be taken from the judgment of such justice, it shall be his duty to transmit any bond, sealed bill, promissory note, or other written evidence produced before him on trial to the clerk of the district court, to which such cause shall have been appealed, on or before the second day of the term of the court next after taking such appeal: *Provided, also*, That nothing herein contained shall be construed to lessen or in anywise affect the right which any creditors now have to demand from any justice of the peace, any joint and several obligations for the purpose of prosecuting any party to said obligations, other than the party against whom judgment may have been rendered.

Penalty if justice purchase any judgment.

SEC. 254. It shall not be lawful for any justice of the peace to purchase any judgment, upon any docket in his possession; and for so doing, and for every such offense, such justice shall forfeit and pay a sum not more than fifty dollars, nor less than ten dollars, to be recovered by an action before any court having jurisdiction thereof, and when collected, shall be paid into the treasury of the county where such offense was committed. Said money so collected and paid in shall be for the support of common schools in said county.

No imprisonment for debt.

SEC. 255. Nothing in this act contained shall be so construed as to authorize the arrest or imprisonment of any citizen of this Territory for debt; and nothing in this act shall apply to property, real or personal, goods or chattels, rights or credits, interests or estates, exempt by law from levy, seizure, or sale under execution.

FORMS IN CIVIL ACTIONS.

SEC. 256. The following, or equivalent forms, may be used by justices of the peace in civil proceedings, to be had under this act, to-wit:

FORM OF SUMMONS.

Form of summons.

Territory of Dakota, }
 County of } ss:

To the sheriff or any constable of said county:

In the name of the Territory of Dakota, you are hereby commanded to summon, if he shall be found in your count, , to be and appear before the undersigned, one of the justices of the peace in and for said county, on the . . . day of, 18., at o'clock in the noon at, in said county, to answer to in a civil action for . . . ; and have you then and there this writ.

Given under my hand, this . . . day of . . . A. D. 18...
J. P., Justice of the peace.

FORM OF EXECUTION.

Territory of Dakota, }
County of, } ss.

Form of execution.

To the sheriff or any constable of said county:

Whereas, judgment against, for the sum of lawful money of the United States, and for, cost of suit was recovered the day of before me at the suit of; these are therefore in the name of the Territory of Dakota, to command you to levy distress on the goods and chattels of the said, (excepting such as the law exempts,) and make sale thereof, according to law in such case made and provided, to the amount of the said sum together with twenty-five cents for this execution, and the same return to me within thirty days, to be rendered to the said for said and cost. Hereof fail not under penalty of the law.

Given under my hand this . . . day of . . . A. D. 18...
J. P. Justice of the peace.

FORM OF A WRIT OF REPLEVIN.

Territory of Dakota, }
County of } ss.

Form of writ of replevin.

To the sheriff or any constable of said county:

Whereas, A. B. complains that C. D. has taken and does unjustly detain (as the case may be, particularly describing the goods and chattels to be replevied, and the value thereof,) therefore, in the name of the Territory of Dakota, you are commanded that you cause the same goods and chattels to be replevied without delay; and if the said A. B. shall give security as required by law, that you cause the said goods and

chattels to be delivered to the said A. B., and also that you summon the said C. D. to be and appear before me, one of the justices of the peace in and for said county, on the day of, A. D. 18.., at o'clock in the noon, at, in said county, to answer complaint of.....

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

J. P., Justice of the peace.

FORM OF SUBPOENA.

Form of subpoena.

Territory of Dakota, }
County of..... } ss.

In the name of the Territory of Dakota, you are hereby required to appear before the undersigned, one of the justices of the peace in and for said county, at on the day of, at o'clock, in the noon of said day, to give evidence in a certain cause then and there to be tried between, plaintiff, and, defendant, on the part of the.....

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

J. P., Justice of the peace.

FORM OF A VENIRE FOR A JURY.

Form of venire.

Territory of Dakota, }
County of..... } ss.

To the sheriff or any constable of said county:

In the name of the Territory of Dakota, you are hereby commanded to summon.....to be and appear before the undersigned, one of the justices of the peace in and for said county, on the..... day of....., at..... o'clock in the.....noon of said day, in the town of....., to make a jury for the trial of a civil action betwen....., plaintiff, and....., defendant, and have you then and there this writ.

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

J. P., Justice of the peace.

PROCEEDINGS IN CRIMINAL CASES.

Jurisdiction of justices in criminal cases.

SEC. 257. Justices of the peace shall have power and jurisdiction throughout their respective counties, as follows:

- 1. To cause to be kept all laws made for the preservation of the peace;

2. To cause to come before them, or any of them, persons who shall break the peace, and commit them to jail, or bail them; as the case may require;

3. To arrest and cause to come before them, persons who attempt to break the peace, persons who keep houses of ill-fame or frequenters of the same, or common prostitutes, and compel them to give security for their good behavior and to keep the peace.

4. To cause to come before them persons who are charged with committing any criminal offense, and commit them to jail, or bail them, as the case may require.

SEC. 258. Justices of the peace shall have power to hold a court subject to the provisions hereinafter contained, to hear, try and determine the charges for offenses arising within their respective counties, where jurisdiction is conferred upon by any law of this Territory. Justices power.

SEC. 259. Upon complaint made to any justice of the peace by any constable or other person, that any such offense has been committed within the county, he shall examine the complainant on oath, and the witnesses produced by him, and shall reduce the complaint to writing, and cause the same to be subscribed by the complainant; and if it shall appear that such offense has been committed, the said justice shall issue his warrant, reciting the substance of the complaint, and requiring the officer to whom it is directed, forthwith to arrest the accused and to bring him before such justice or some other justice of the same county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be named therein, to appear and give evidence at the trial. Proceedings on complaint in criminal cases.

SEC. 260. The complaint mentioned in the last preceding section may be substantially in the following form: Form of complaint.

County, The Territory of Dakota, vs. A. B. defendant.	}	Before Justice (here insert name of the justice).
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The defendant is accused of the crime (here name the offense.) For that the defendant on the.....day of..... A. D. 18..., at the (here name the city, village, or township) in the county aforesaid (here state the act or omission constituting the offense, as in an indictment).

Justices to
file complaint.

SEC. 261. The justice must file such complaint, and mark thereon the time of filing the same.

To issue war-
rant for arrest
of accused.

SEC. 262. Immediately upon the filing of such complaint, the justice must, if he deems the grounds of complaint sufficient, issue a warrant for the arrest of the accused, directed in the same manner as a warrant of arrest upon a preliminary information, and may be served in like manner.

Officer to ar-
rest accused.

SEC. 263. The officer who receives the warrant must serve the same by arresting the defendant, if in his power, and bringing him, without unnecessary delay, before the justice who issued the same.

Charge to be
read to accused
and ascertain
his name.

SEC. 264. When the defendant is brought before the justice, the charge against him must be distinctly read to him, and he shall be asked whether he is presented by his right name, and be required to plead. If he objects that he is wrongfully named in the information, he must give his right name; and if he refuse to do so, or does not object to the name used in the complaint, the justice shall make an entry thereof in his docket, and he is thereafter precluded from making any such objection.

Defendant to
plead same as
on an indict-
ment.

SEC. 265. The defendant may plead the same pleas as upon an indictment; his pleas may be either oral or written, and must be entered on the docket of the justice.

If defendant
do not demand
jury justice
must try the
issue.

SEC. 266. Upon a plea other than a plea of guilty, if the defendant do not demand a trial by jury, the justice must proceed to try the issue unless a change of venue be applied for by the defendant.

Grounds for
change of
venue.

SEC. 267. If a change of venue be applied for, an affidavit must be filed stating that the justice is prejudiced against the defendant, or is of near relation to the prosecutor upon the charge, or the party injured or interested, or is a material witness for either party, or that the defendant cannot obtain justice before him, as the affiant verily believes.

Proceedings
when change of
venue is grant-
ed.

SEC. 268. If such affidavit be filed, the change of venue must be allowed, and the justice must immediately transmit all the original papers, and a transcript of all his docket entries in the case, to the next nearest justice in the county, against whom no such objection has been made, who shall proceed to try the case, unless a jury trial be demanded. No more than one change of venue in the same case shall be allowed. And

if there be but one justice in the county, a change of venue cannot be granted.

SEC. 269. Before the justice has heard any testimony upon the trial, the defendant may demand a jury, which in all cases shall be allowed.

Defendant may demand jury.

SEC. 270. If a trial by jury be demanded, the justice shall direct any peace officer of the county, to make a list in writing of the names of twelve inhabitants of the county, having the qualifications of jurors in the district court, from which list the prosecutor and defendant may each strike out three names.

Manner of procuring jury.

SEC. 271. In case the prosecutor or the defendant neglect or refuse to strike out such names, the justice shall direct some disinterested person to strike out the names for either or both of the parties so neglecting or refusing; and upon such names being struck out, the justice must issue a venire directed to any peace officer of the county, requiring him to summons the six persons whose names remain upon the list, to appear before such justice at the time and place named therein, to make a jury for the trial of the cause.

When prosecutor or defendant do not strike out names, what to be done.

SEC. 272. The officer to whom such venire is delivered must forthwith summons such jurors, and return the venire to the justice, within the time therein specified, naming the persons summoned and the manner of service.

Officer receiving venire must summon jury.

SEC. 273. The names of the persons returned as jurors shall be called by the justice, and if upon any such call any of the persons so named do not appear, or are challenged, or set aside for any cause, such further number must be summoned as will make a jury of six, after all legal challenges have been allowed.

Names to be called.

Challenges.

SEC. 274. This same challenge may be taken by either party to any individual juror as on the trial of an indictment for a misdemeanor, but no challenge to the panel is allowed.

Challenge may be taken by either party.

SEC. 275. If the officer by whom the venire is received, do not return it as required, he may be punished by the justice as for a contempt, and the justice shall issue a new venire for the summoning of the same jurors, upon which the same proceedings shall be had as upon the one first issued.

If officer do not return venire, punished for contempt.

SEC. 276. When six jurors appear and are accepted, they shall constitute the jury.

Six jurors constitute jury.

Oath to jurors. SEC. 277. The justice must thereupon administer to them the following oath or affirmation: "You and each of you do swear (or you do solemnly affirm, as the case may be), that you will well and truly try the issue, between the Territory of Dakota and the defendant, and a true verdict give according to the evidence."

Duty of jury. SEC. 278. After the jury are sworn they must sit together and hear the proofs and allegations of the parties, which must be delivered in public, after which they may either decide in open court or retire for consideration.

If jury do not immediately agree, &c.

SEC. 279. If they do not immediately agree upon a verdict, they must retire with the sheriff of the county, or some constable, if either such are in attendance upon the court, or in their absence, with some person appointed by the justice, who shall

Oath.

be sworn to the following effect: "You do swear that you will keep the jury together, in some private place, without food or drink, unless otherwise ordered by the court; that you will not permit any person to speak to them, nor speak to them yourself, unless it be to ask them whether they have agreed upon a verdict, and that you will return them into court when they have so agreed."

Verdict delivered publicly.

SEC. 280. When the jury have agreed on their verdict, they must deliver it publicly to the justice, who shall enter it on his docket.

Jury kept together until agreed.

SEC. 281. The jury must be kept together after the case is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the justice sooner discharge them.

Jury discharged without agreeing.

SEC. 282. If the jury be discharged as provided in the last section, the justice may proceed again to the trial in the same manner as upon the first trial, and so on till a verdict is rendered.

When defendant is guilty, justice to impose fine or imprisonment.

SEC. 283. When the defendant pleads guilty, or is convicted, either by the justice or by a jury, the justice shall render judgment thereon of fine or imprisonment, as the case may require, being governed by the rules prescribed for the district court, as far as the same are applicable, in rendering such judgment.

Judgment may state that defendant be imprisoned until fine is paid.

SEC. 284. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied.

SEC. 285. When the defendant is acquitted, either by the justice or by a jury, he must be immediately discharged. When defendant acquitted, immediately discharged.

SEC. 286. When the defendant is acquitted, the justice shall if he is satisfied that the prosecution was malicious or without probable cause, tax the cost against the prosecuting witness and render judgment therefor. When justice may tax costs against prosecuting witness.

SEC. 287. Whenever a conviction is had upon a plea of guilty or upon trial, the justice must make and sign with his name of office a certificate of such conviction, in which it shall be sufficient briefly to state the offense charged and the conviction and judgment thereon, and if any fine has been collected, the amount thereof. Certificate of conviction.

SEC. 288. Within twenty days after such conviction, the justice must cause such certificate to be filed in the office of the clerk of the district court in and for the county where the conviction was had. Certificate of conviction to be filed within twenty days with clerk of district court.

SEC. 289. The judgment shall be executed by a peace officer of the county where the conviction is had, by virtue of the warrant under the hand of the justice, specifying the particulars of the such judgment. Who shall execute judgment

SEC. 290. If a fine be imposed and paid before commitment, it shall be received by the justice, and by him paid over to the county treasurer, within thirty days after the receipt thereof, for the use of the schools in the county, as provided by law. Fine, to whom paid over to, what use applied.

SEC. 291. If the defendant be committed for not paying a fine, he may pay it to the sheriff of the county, but to no other person, who must, in like manner, within thirty days after the receipt thereof, pay it into the county treasury for the use of the schools in the county, as provided by law. When defendant committed for not paying fine.

SEC. 292. If the fine or any part thereof is paid to the justice or sheriff, he must execute duplicate receipts thereof, one of which he must file without delay with the register of deeds or recorder of deeds in and for the county. Justice to execute duplicate receipts for fine paid.

SEC. 293. Either party may appeal from the judgment to the district court of the county in which the trial was had; the Territory in the same manner as the defendant. Either party may appeal.

SEC. 294. The justice, rendering judgment against the defendant, must inform him of his right to appeal therefrom, and the defendant may thereupon take an appeal by giving notice Justice to inform defendant of his right of appeal.

orally to the justice that he appeals, and the justice must make an entry on his docket of the giving of such notice.

Justice fix bail SEC. 295. The justice must, thereupon, enter an order on his docket, fixing the amount in which bail may be given by the defendant, and the execution of the judgment against the defendant shall not be stayed, unless bail in that amount be put in by an undertaking substantially in the following form:

Form of undertaking. The Territory of Dakota, }
 county, } ss.

A. B. having been convicted before C, D. a justice of the peace of said county, of the crime of (here designate it generally, as in the information,) by a judgment rendered on the day of, A. D. 18.., and having appealed from said judgment to the district court, of said county; we, A. B. and E. F. (or I. E. F.,) or (we, E. F. and H. G.) hereby undertake that the said A. B. will appear in the district court of said county at the next term thereof, and abide the judgment of said court, and not depart without leave of the same, or that we will pay to the Territory of Dakota the sum of ... dollars (the amount of the bail fixed) for the use of common schools of said county.

A. B.
 E. F.

Acknowledged before and accepted by me, at in the county of this day of A. D. 18...,

C. D. Justice of the peace.

Qualifications of bail. SEC. 296. The bail must possess the qualifications required in cases of appeal from the district to the supreme court of the Territory.

Bail taken by any magistrate. SEC. 297. The bail may be taken by the justice who rendered the judgment, or by any magistrate in the county who has authority to admit the bail, or by the district court, or the clerk thereof.

In case of appeal, material witnesses to enter into undertaking, &c. SEC. 298. When an appeal is taken, the justice must cause all material witnesses to enter into an undertaking, as in a case where a defendant is held to answer on a preliminary examination, to appear and testify on the trial of the appeal in the district court, at a term at which it is returnable, and shall as soon as practicable, and at least ten days before the first day of such term of the district court of the county, file in the

office of the clerk thereof, a certified copy of the entries on his docket, together with all the undertakings and papers in the case.

SEC. 299. The cause, when thus appealed, shall stand for trial anew in the district court, in the same manner that it should have been tried before the justice, and as nearly as practicable, as an issue of fact upon an indictment, without regard to technical errors, or defects, which have not prejudiced the substantial rights of either party, and the court has full power over the case, the justice of the peace, his docket entries and his return, to administer the justice of the case, according to the law, and shall give judgment accordingly.

The cause when appealed shall stand for trial de novo.

SEC. 300. No appeal from the judgment of a justice of the peace in a criminal case shall be dismissed.

No appeal in criminal case dismissed.

SEC. 301. If any proceedings be necessary to carry the judgment upon the appeal into effect, they shall be had in the district court.

Certain proceedings had in district court.

MISCELLANEOUS PROVISIONS IN CRIMINAL CASES.

SEC. 302. No assault, battery or affray shall be indictable, but all such offenses shall be prosecuted and determined in a summary manner, by complaint made before a justice of the peace, and on conviction thereof, the offender may be punished by fine not less than five dollars, nor more than one hundred dollars, according to the nature of the offense.

Certain offenses tried in summary manner.

Punishment.

SEC. 303. If any justice of the peace shall have any knowledge that any of the offenses mentioned in the last section, are about to be committed, he shall issue his warrant and proceed as is directed, when complaint has been made; and if any such offense is committed, threatened or attempted in his presence, he shall immediately arrest the offender, or cause it to be done, and for this purpose no warrant or process shall be necessary; but the justice may summon to his assistance any sheriff, coroner or constable, and all other persons there present, whose duty it shall be to aid the justice in preserving the peace, arresting and securing the offenders and all such as obstruct or prevent the justice, or any of his assistants in the performance of their duty; and any person who shall, when summoned to aid in arresting and securing an offender, refuse to give such assistance, shall pay five dollars to the use of the common schools of said county.

Duty of Justice when offenses committed in his presence or come to his knowledge.

Breach of recognizance to be certified to district court.

SEC. 304. In case of the breach of any recognizance entered into in a criminal case, the same shall be certified and returned to the district court, to be proceeded in according to law.

Duty of justice when he has not final jurisdiction.

SEC. 305. If, in progress of any trial before a justice of the peace, under the provisions of this act, it shall appear to the justice that he has not final jurisdiction in the case before him, and the accused ought to be put upon his trial for an offense cognizable before the district court, the justice shall immediately stop all further proceedings before him and proceed as in other criminal cases cognizable before the district court.

Who summoned in criminal case.

SEC. 306. In all criminal cases arising under this act, it shall be the duty of the justice of the peace acting, to summon the injured party, and all others whose testimony may be deemed material, as witnesses at the trial, and to enforce their attendance by attachment, if necessary.

Justice's duty in case of conviction.

SEC. 307. In all cases of conviction under the provisions of this act, the justice shall enter judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution on the judgment to the use of the common schools of said county.

When judgment affirmed in district court

SEC. 308. If the judgment of the justice shall be affirmed, or upon any trial in the district court, the defendant shall be convicted, and any fine assessed, judgment shall be rendered for such fine and costs in both courts against the defendant and his sureties.

Continuance as affecting witnesses.

SEC. 309. When a trial under the provisions of this act shall be continued by the justice it shall not be necessary for the justice to summon any witness who may be present at the continuance, but said justice shall verbally notify such witnesses, as either party may require, to attend before him to testify in the cause on the day set for trial, which verbal notice shall be as valid as the summons.

Security for costs.

SEC. 310. The justice may require of the complainant to give security for costs, as in civil cases security may be required of the plaintiff, and if he refuse, the justice may dismiss the complaint.

Fines go to school fund.

SEC. 211. In all cases under the provisions of this act, where fines, penalties and forfeitures are paid into the county treasury, such money shall be added to the school fund of such county, for the support of common schools.

SEC. 312. If any person who shall have received any such fine, penalty or forfeiture, or any part thereof, shall neglect to pay over the same pursuant to the provisions of this act, it shall be the duty of the district attorney immediately to commence suit therefor, and to prosecute the same diligently to effect. And if the district attorney fail so to do, it shall be the duty of the county superintendent of schools or public instruction, or the judge of probate to institute such suit and to prosecute the same to final judgment, and to collect the same for the uses mentioned in section three hundred and nine.

Proceedings when party neglects to pay fines over.

SEC. 313. No property, either real or personal, shall be exempt from levy, seizure or sale, by virtue of any execution, writ or attachment, or any other final process of a justices' court, or of the district court, issued on a judgment rendered by a justice of the peace, or, if upon an appeal, by the district courts, for costs, fines, penalties, or forfeitures of undertakings and bonds in the courts of justices of the peace, authorized by law, or in the district courts, in actions and proceedings in justices courts, and appealed or certified to the district court, any laws now in force to the reverse notwithstanding.

When property not exempt

COURT OF INQUIRY.

SEC. 314. When it shall be brought to the knowledge of a justice of the peace that a criminal offense, of which he has not final jurisdiction, has been committed within his county, he shall forthwith cause the offending person to be brought before him.

Preliminary examination when justice has not final jurisdiction.

SEC. 315. The justice shall, by the usual process, compel the attendance of witnesses on the part of the Territory, and by the request and at the expense of the accused, he shall in like manner compel the attendance of witnesses on the part of the accused.

Shall compel attendance of witnesses.

SEC. 316. The justice shall diligently inquire into the accusation publicly, and examine under oath such witnesses as may be in attendance, as to the guilt or innocence of the accused.

Shall inquire into accusation publicly.

SEC. 317. After inquiring into the case as fully as circumstances will admit and justice would seem to require, if the

When justice shall commit accused.

justice believes that the accused has committed a criminal offense of which the justice has not final jurisdiction, but which is cognizable by the district court, the justice shall commit the accused to the county jail to await the finding of the grand jury and the action of the district court thereon at the next term thereof.

When receive bail and how.

SEC. 318. If the offense charged be bailable under the statutes of the Territory, the accused shall be admitted to bail in a sum to be fixed by the justice, with good and sufficient surety to be approved by the justice, conditioned that he appear on the first day of the next term of the district court (naming the district) and await the finding of the grand jury and the action of said court thereon, and that he appear before said court from day to day during the term, and that he will not thence depart unless discharged by the court. Upon the tendering and acceptance of such bail, the justice shall order the accused to be set at large.

Accused remain in custody until bail furnished.

SEC. 319. If the offense charged be bailable, and the justice has fixed the amount of penalty, the accused shall remain in custody or confinement until such bail is produced as provided in the last preceding section.

FORMS IN CRIMINAL PROCEDURES.

Form of warrant.

SEC. 320. The following, or equivalent forms may be used by justices of the peace in criminal proceedings, to be had under this act:

FORM OF WARRANT.

Territory of Dakota, }
County of..... } ss.

To the sheriff or any constable of said county:

Whereas,....., has this day complained in writing to me, on oath, that.....did on the.....day ofA. D. 18..., at....., and prayed that the said.....might be arrested and dealt with according to law; now therefore in the name of the Territory of Dakota, you are hereby commanded forthwith to apprehend the said.....and bring him before me, to be dealt with according to law.

Given under my hand, this.....day of.....A. D. 18...
J. P., Justice of the peace.

FORM OF CERTIFICATE OF CONVICTION.

Territory of Dakota, }
County of..... } ss.

Form of certificate of conviction.

At a justices' court held at my office in said county, for the trial of.....for the offence hereinafter stated, the saidof, &c., was convicted of having on the..... day of....., A. D. 18..., at.....in said county (here state the offense as in the warrant), and upon such conviction, the said court did adjudge and determine that the said.....should pay a fine of.....dollars, (and if imprisonment be allowed, add) and be imprisoned in the common jail of the county.....days, (if the fine be paid, add) and the said fine has been paid to me.

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

J. P., Justice of the peace.

FORM OF EXECUTION.

Territory of Dakota, }
County of..... } ss.

Form of execution.

To the sheriff or any constable of said county:

Whereas, at a justice's court held at my office in said county, for the trial of....., for the offense hereinafter stated, the said.....of, &c., was convicted of having, on the.....day of....., A. D. 18... in said county, (here state the offense as in the warrant), and upon conviction the said court did adjudge and determine that the said..... should pay a fine of.....dollars; and whereas, the said fine has not been paid by the said....., these are therefore, in the name of the Territory of Dakota, to command you to levy distress on the goods and chattels, &c., (as in execution against the goods in civil cases).

FORM OF ORDER TO BRING UP PRISONER.

Territory of Dakota, }
County of..... } ss.

Form of order to bring up prisoner.

To the keeper of common jail of said county:

The undersigned, one of the justices of the peace in and for said county, sitting at a court for the trial of.....now in

your custody in the common jail of said county, in the name of the Territory of Dakota, do hereby order and direct you to bring the said forthwith before me, at my office in said county, together with the warrant by which he was committed to your custody, in order that he may be tried.

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

J. P., Justice of the peace.

FORM OF COMMITMENT UPON SENTENCE.

Form of commitment upon sentence.

Territory of Dakota, }
County of } ss.

To any constable and the keeper of any common jail of said county: Whereas, a justice's court held at my office in said county, for the trial of, for the offense hereinafter stated, the said, of &c., was convicted of having, on the . . . day of, A. D. 18 . . ., in the said county; (here state the offense, as in the warrant), and upon conviction the said court did adjudge and determine, that the said . . . should be imprisoned in the common county jail of said county for . . . days; therefore, you the said constable, are commanded in the name of the Territory of Dakota forthwith to convey and deliver the said . . . to the said keeper; and you the said keeper, are hereby commanded to receive the said . . . into your custody, in the said jail, and there safely keep until the expiration of said . . . days, or until he shall be thence discharged by due course of law.

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

J. P., Justice of the peace.

FORM OF COMMITMENT AFTER ARREST, AND BEFORE TRIAL.

Form of commitment after arrest and before trial.

Territory of Dakota, }
County of } ss.

To the sheriff or any constable, and to the keeper of the common jail of said county:

Whereas, has been this day brought before the undersigned, one of the justices of the peace in and for said county, charged on the day of, A. D. 18, in said county (here state the offense, as in the warrant), and the said . . . not having given bail to appear and answer for the said offense, therefore you the said constable, are commanded

in the name of the Territory of Dakota, forthwith to convey, and deliver into the custody of the said keeper the body of the said . . . ; and you the said keeper are hereby commanded to receive the said . . . into your custody in the said jail, and him there safely keep, until he shall be required to be brought before the court to be tried, or shall be otherwise discharged by due course of law.

Given under my hand, this . . . day of . . . , A. D. 18...
 J. P., Justice of the peace.

FORM OF COMMITMENT WHERE JUSTICE ON THE TRIAL SHALL FIND THAT HE HAS NOT JURISDICTION OF THE CASE.

Territory of Dakota, }
 County of . . . } ss.

Form of commitment when justice shall find that he has no jurisdiction.

To the sheriff or any constable of said county:

Whereas, . . . of, &c., has been brought this day before the undersigned, one of the justices of the peace of said county, charged on the oath of . . . , with having, on the . . . day of . . . , A. D. 18.., . . . in said county committed the offense of . . . , (here state the offense charged in the warrant,) and in the progress of the trial on said charge, it appearing to the said justice that the said . . . had been guilty of the offense of . . . , (here state the new offense found on the trial,) committed at the time and place aforesaid, of which offense the said justice has not final jurisdiction; and whereas, after examination had in due form of law, touching the said charge and offense last aforesaid, the said justice did adjudge that the said offense had been committed, and that there was probable cause to believe the said . . . to be guilty thereof; and whereas, the said . . . has not offered sufficient bail for his appearance to answer for said offense, you are therefore commanded forthwith to take the said . . . , and him convey to the common jail of said county, the keeper whereof is hereby required to detain him in custody, in said jail, until he shall be thence discharged according to law.

Given under my hand this . . . day of . . . , A. D. 18...
 J. P., Justice of the peace.

SEC. 321. *And be it further enacted*, That an act entitled "An act defining the jurisdiction and procedure before justices of the peace, and of the duties of constables in civil" Certain acts repealed.

cases;" approved May thirteenth, eighteen hundred and sixty-two; and an act entitled "An act defining the jurisdiction of justices of peace in criminal cases, and of the proceedings therein," approved May thirteenth, eighteen hundred and sixty-two, and also an act entitled "An act defining the courts and jurisdiction of justices of the peace," approved January seventh, eighteen hundred and sixty-three, be and the same are hereby repealed.

When to take effect.

SEC. 322. This act shall take effect from and after its passage and approval.

Approved, January 4th, 1866.

MARRIED WOMEN.

CHAPTER XXXII.

AN ACT RELATING TO MARRIED WOMEN.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

When married woman may make contracts.

SECTION 1. Any married woman whose husband shall desert her, or from intemperance or other cause shall become incapacitated or neglect to provide for his family, may in her own

name make contracts for her own labor, and the labor of her minor children, and in her own name sue for and recover her own and their wages. Any married woman in such case of desertion, incapacity or neglect, may file her petition in the probate or district court in the county in which she resides, alleging the same and making her husband defendant there-to; and upon proof of such desertion, intemperance or incapacity, the court may in its discretion make an order having the force and effect of a judgment vesting such woman with the rights, privileges and liabilities of a *feme sole* as to acquiring, holding and disposing of property real and personal, making contracts and being liable thereon, and suing and being sued thereon in her own name: *Provided*, After such judgment the husband shall not be liable upon any contract so made by her in her own name, or for any tort thereafter committed by her unless such tort be committed by direction, advice or consent of such husband.

Jude of court
to make order.

Proviso.

SEC. 2. This act shall not affect any rights which may have become vested in any person at the time of taking effect thereof.

This act not
to effect vested
rights.

SEC. 3. This act shall take effect and be in force from and after its passage and approval.

When to take
effect.

Approved, January 13th, 1871.

PUBLIC HIGHWAYS.

CHAPTER XXXIII.

AN ACT REGULATING THE LAYING OUT OF PUBLIC HIGHWAYS.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota:*

SECTION 1. That hereafter all section lines in this Territory shall be and are hereby declared public highways as far as

All section
lines to be pub-
lic highways.

practicable: *Provided*, That nothing in this act shall be so construed to interfere with existing highways in the settled portions of the Territory: *Provided*, That the provisions of this act shall not apply to that portion of Pembina county laying between the Red River and Pembina River for a distance of three miles south of the town of Pembina, unless by consent of the commanding officer of Fort Pembina and the owners of property adjoining the military reservation.

When to take effect.

SEC. 2. This act shall take effect from and after its passage and approval.

Approved, January 12th, 1871.

REAL ESTATE OF RELIGIOUS BODIES.

CHAPTER XXXIV.

AN ACT RELATIVE TO THE HOLDING AND TRANSFERRING OF REAL ESTATE BY ANY LEGAL OFFICER OF A RELIGIOUS SOCIETY AND THEIR SUCCESSORS IN OFFICE.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

Title to real estate vested in officer of religious society.

SECTION 1. That all grants or deeds from private individuals, or acts of legislative bodies, transferring, conveying or granting real estate in this Territory to any bishop, dean, rector,

vestryman, deacon, director, minister or any other officer or officers of any church or organized religious society in trust for the use and benefit of such society of which they are such officer or officers which have been or may be made, done or executed, shall vest in their successor or successors in office, or other officer which such society may at any time designate all the legal or other title to the same extent and in all respects the same, as trustee of such trust for the use and benefit of such society which such bishop, dean, rector, vestryman, deacon, director, minister or other officer or officers; had under such grant, deed or act; and all transfers or sales made by such officer or officers so acquiring title by virtue of this act by succession in office shall have all the validity, force and effect that it would have had, had it been made by such bishop, dean, rector, vestryman, deacon, director, minister or other officer or officers, while holding under and by virtue of such grant, deed or act of such legislative body.

All transfers by such officer declared legal.

SEC. 2. This act shall take effect and be in force from and after its passage and approval by the Governor.

When to take effect.

Approved, January 11th, 1871.

SCHOOLS.

CHAPTER XXXV.

AN ACT TO ESTABLISH A PUBLIC SCHOOL LAW FOR THE TERRITORY OF DAKOTA.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. There shall be elected at each regular delegate election in this Territory, a superintendent of public instruction.

Superintendent of public instruction, when elected and for what term.

tion, who shall hold his office for two years and until his successor is elected and qualified. And if a vacancy shall occur in said office of superintendent by death, resignation, or otherwise, it shall be the duty of the governor to appoint some suitable person to fill such vacancy.

Superintendent to take oath and file same.

SEC. 2. The superintendent of public instruction, shall, before entering upon the discharge of the duties of his office, take and subscribe an oath to support the constitution of the United States, and the organic act of this Territory, and to faithfully discharge the duties of his office, which oath shall be filed with the clerk of the supreme court of the Territory of Dakota.

Duties of superintendent.

SEC. 3. It shall be the duty of the superintendent of public instruction to keep a record of his official acts, and to exert himself constantly and faithfully to promote the interests of education in the Territory, and to this end he shall confer with county superintendents and visit schools in company with them and furnish to them blank forms for collecting statistics of the various schools in the Territory. He shall prepare and present to the legislature during the first week of the session, in each year, a report of his official doings for the preceding year with a full statement of the condition of common schools in the Territory, and the expenditure of the public school moneys and shall make such suggestions for the improvement and support of common schools together with such other information in regard to the modes of instruction and systems of the organization of schools in other states and countries as he shall deem proper.

Shall make report to the legislature.

May grant certificates.

SEC. 4. The superintendent of public instruction, shall also have power to grant certificates of qualification to teachers of proper learning and ability to teach in any public school in the Territory, and to regulate the grade of county certificates. The superintendent of public instruction shall have power to appoint a deputy, for the performance of any special work, who shall receive the same pay for such service as the superintendent would be by law entitled to receive.

Appoint deputy.

Superintendent's compensation and allowances.

SEC. 5. The compensation of superintendent of public instruction for his services shall be the sum of four dollars per day for the time spent in the discharge of his official duties, and the expense of procuring blank forms, postage, station-

ery and such books as are necessary for the use of his office, and publication of his annual report, all of which allowances shall be paid by the Territorial treasurer on the certificate of the Territorial auditor.

SEC. 6. It shall be the duty of the Territorial superintendent of public instruction to select a set of text books for the use of the public schools of this Territory, and when he shall have made such selection he shall cause due notice thereof to be published and after the publication of such notice it shall not be lawful to use in the public schools of this Territory any text books not recommended by him. The superintendent of public instruction shall discourage the use of sectarian books, and sectarian instruction in the schools; to advise in the selection of books for school district libraries, and to open such correspondence abroad as may enable him to obtain, so far as practicable, information relative to the system of common schools and their improvements in other states and countries, which he shall embody in his annual report to the legislature, or so much thereof as shall be deemed of sufficient importance; he shall prescribe rules and regulations for the management of school district libraries, and the penalties which shall be imposed by the district boards for any violation of such rule and regulations. He shall prepare for the use of the common school officers, suitable forms for making reports and contracting all necessary proceedings, and he shall cause the laws relating to common schools, with the rules, regulations, and forms aforesaid, and such instructions as he shall deem necessary to be printed, together with a suitable index, in pamphlet form, at the expense of the Territory; and he shall cause the same to be distributed among the several school districts, and other officers having the care of common schools throughout the Territory. He shall examine and determine all appeals duly made to him from the decision of any county superintendent, informing or altering any school district, or concerning any other matter under the common school law of this Territory, and his decision shall be final. The superintendent of public instruction shall prepare a sufficient number of his annual report to be distributed as follows: One copy to each member of the legislature; one copy to each county superintendent of schools; one copy to each school district officer; and one copy to each teacher in the Territory whose

Duties of superintendent

Shall prepare forms.

Shall hear appeals.

Annual report, how distributed.

certificate of qualification has not expired, and such other of the county and Territorial officers as may be by him deemed proper, not to exceed five hundred copies in one year.

Superintendent to hold
teachers institute.

SEC. 7. The Territorial superintendent of public instruction with the several county superintendents shall hold annually, at some convenient place, a Territorial teachers' institute for the instruction and advancement of teachers; said institute not to continue less than four days and not to exceed ten days, which institute shall be free to all teachers and those preparing to teach in this Territory.

County superintendent to be
elected. Term
of office.

SEC. 8. The several counties of this Territory shall at the same time and in the same manner as other county officers are elected, elect a suitable person to be superintendent of public schools within such county, who shall hold his office for two years, and from the first of January next succeeding his election, unless he shall be elected to fill a vacancy, in which case he may immediately qualify into office, and shall hold his office until his successor is elected and qualified, and

Compensation

who shall receive three dollars for each day spent in the discharge of his official duties, and a reasonable compensation for his annual report to the superintendent of public instruction, and every superintendent of schools shall make out in detail his account for official service, stating the date and time spent as well as the kind of service rendered, and make oath or affirmation to the correctness of the same before some justice of the peace in the county in which he resides, which oath or affirmation shall be certified by said justice before such superintendent's account shall be presented to the county commissioners for allowance, who shall audit and allow the same, or so much thereof as is just and reasonable, and the same shall be paid out of the county treasury upon the order of the county commissioners who are empowered to draw orders for the same; but no order shall be drawn to any superintendent until he shall have filed with the auditor the receipt of the superintendent of public instruction for the statistical returns of the preceding school year, in pursuance of the requirements of section twenty of this act.

County superintendent's
duties.

SEC. 9. The county superintendent of public schools shall have charge of the common school interest of the county. He shall, before he enters upon the discharge of the duties of his

office, take and subscribe an oath or affirmation to support the constitution of the United States and the act organizing this Territory, and faithfully to discharge the duties of his office, which oath or affirmation shall be filed in the county clerk's office. He shall also execute a bond with approved security, payable to the board of county commissioners for the use of common schools in said county, in the penal sum of five hundred dollars. Said bond must be approved by the county commissioners, and filed in the register of deeds' office.

Take oath and give bond.

SEC. 10. That it shall be the duty of the county superintendent of schools, in addition to the other duties required of him, to divide his county into school districts when necessary, and sub-divide the same when petitioned by a majority of the citizens thereof, and to furnish the county commissioners of such county with a written description of the boundaries of each district, which description must be filed in the register of deeds' office, before such district shall be entitled to proceed with its organization by the election of school district officers, and it shall be his duty to keep on file in his office all petitions and remonstrances, which shall show the date of reception, and the action had thereon, and it shall be his further duty on the division of, or change of district boundaries, to notify the clerk of the districts interested of the change made. Whenever it shall be deemed necessary to form a school district from parts of two or more counties, it shall be the duty of the county superintendent of each county in which any part of the proposed joint district shall be situated, to unite in laying out such joint district; and each county superintendent so assisting shall file a description of said joint district in the register of deeds' office of his county.

County superintendent to divide county into school districts.

Joint district.

SEC. 11. It shall be the duty of the judge of probate, on the first Monday of March, in each year, to furnish the county superintendent of public schools with a statement of the amount of money in the county treasury, belonging to the school fund, and he shall pay the same upon the order of said superintendent, to the proper district officers.

Judge of probate to furnish certain statement.

SEC. 12. It shall be the duty of the county superintendent of public schools, on the second Monday of March in each year, or as soon thereafter as he shall receive the statement of

County superintendent to apportion school moneys.

the judge of probate, certifying the amount of money in the county treasury for the use of common schools for the current year, to apportion such amount to the several districts or parts of districts within the county in proportion to the number of children residing in each, over the age of five and under the of twenty-one years, as the same shall appear from the last annual reports of the clerks of the respective districts, and he shall immediately notify by mail or otherwise the district clerks of each district of the amount of money due to his district, and he shall draw his order on the county treasurer in favor of the several district treasurers for the amount apportioned to each district: *Provided*, No district shall be entitled to receive any portion of the common school fund in which the text books selected by the Territorial superintendent shall not be used, and which shall not have held a school meeting at the time appointed by law for holding annual school meetings in this Territory, or within thirty days thereafter, and made out and forwarded to the county superintendent of public instruction their annual report within sixty days of the time fixed by law for the holding of the annual school meetings of this Territory.

Proviso.

Duty to visit schools.

SEC. 13. It shall be the duty of the superintendent to visit such common schools within their respective counties as shall be organized according to law, at least once in each year, or oftener if they shall deem necessary. At such visitation the superintendent shall examine into the state and condition of such schools as respects the progress in learning and the order and government of the schools; and they may give advice to the teacher of such schools as to the government thereof, and the course of study to be pursued therein, and shall adopt all requisite measures for the inspection, examination and regulation of the schools, and for the improvement of the schools in learning. Every superintendent of common schools shall also make out his account for official services in the manner hereinbefore required, and deliver a copy of the same to the county commissioners of the county in which such superintendent was elected or appointed, on or before the day previous to the annual county election next after the election or appointment of such superintendent, and the same shall be filed and kept in the office of register of deeds.

Account for services.

SEC. 14. He shall see that the annual reports of the clerks of the several school districts in his county are made correctly and in due time, and shall hear and determine all appeals from the decision of district boards.

SEC. 15. He shall hold public examination of all persons offering themselves as teachers of common schools, at the county seat of his county, on the last Saturdays of April and October of each year, notice of which shall be given as publicly as possible, at which time he shall grant certificates for not less than three months, or more than one year, to such persons as he may find qualified as to moral character, learning and ability; and any person receiving such certificate shall be deemed a qualified teacher within the meaning of this act. Persons applying to the county superintendent for a certificate at any other time than at the public examination shall pay to the said superintendent the sum of one dollar for his services.

SEC. 16. Whenever a school district shall be formed in any county, the county superintendent of schools of such county shall, within fifteen days thereafter, prepare a notice of the formation of such district, describing its boundaries and stating the number thereof, and appointing a time and place for the district meeting. He shall cause the notice thus prepared to be posted in at least five public places in the district, at least ten days before the time appointed for such meeting; and when a joint district is derived from portions of two or more counties, the county superintendents of each county, from which any portion of the new district is taken, shall unite in giving the customary notices, and the new district shall be numbered by the superintendent of the county having the highest number of districts. A majority of the voters in any school district being dissatisfied with the formation of their district, or of the action of their county superintendent, shall have the right of appeal from the decision to the Territorial superintendent, if an appeal be taken within sixty days.

SEC. 17. The county superintendent of public schools shall perform all other duties of said office that now are or hereafter may be prescribed by law; and he shall deliver to his successor, within ten days after the expiration of his term of office, all the books appertaining to his office.

Where vacancy occurs in office of county superintendent

SEC. 18. If a vacancy occur in the office of county superintendent of public schools, by death, resignation or otherwise, notice thereof shall be given by the register of deeds to the county commissioners, who shall, as soon as practicable, appoint some suitable person to fill the vacancy, and the person receiving such appointment shall, before entering upon the discharge of the duties of his office, file his oath or affirmation in the county clerk's office, as hereinbefore provided, and shall discharge all the duties of the office of county superintendent of public schools until a successor is elected and qualified. He shall also give a like bond to that required by this act to be given by the county superintendent of schools.

County superintendent shall make annual returns.

SEC. 19. The county superintendent shall make full and complete annual returns to the superintendent of public instruction, between the first and tenth days of November of each year, of the number of children between the ages of five and twenty, in the school districts within their respective counties: also, the number of qualified teachers employed, the length of time each district school has been taught during the year, the kind of text books used, and the amounts expended in each district out of any money raised for educational purposes, and for what purpose such amount was expended; the amounts raised in each county and district by taxation or otherwise for educational interests, and any other items that may be of service to the superintendent of public instruction in preparing his annual report. The district clerk shall report to the county superintendent the names of the school district officers with their post office address, which shall also be reported to the Territorial superintendent by the county superintendent.

Duty of district clerk.

SCHOOL DISTRICT MEETINGS.

Power of inhabitants of school district.

SEC. 20. The inhabitants qualified to vote at a school district meeting, lawfully assembled, shall have power:

1. To appoint a chairman to preside at said meeting in the absence of the director;
2. To adjourn from time to time;
3. To choose a director, clerk, and treasurer, who shall possess the qualifications of voters as prescribed in the next section of this act, at the first and each annual meeting thereafter;
4. To designate by vote a site for a district school house;

Same.

5. To vote a tax annually, not exceeding one per cent. on taxable property in the district, as the meeting shall deem sufficient to purchase or lease a site, and to build, hire or purchase a school house, and to keep in repair and furnish the same with necessary fuel, stoves and benches;

Power of inhabitants of school district.

6. To vote a direct tax annually, not exceeding one-half of one per cent. on taxable property in the district, for pay of teacher's wages in the district;

7. To authorize and direct the sale of any school house, site, or other property belonging to the district, when the same shall no longer be needful for the district;

Same.

8. To vote such a tax as may be necessary to furnish the school house with blackboards, outline maps, and apparatus necessary for illustrating the principles of science, or to discharge any debts or liabilities of the district, lawfully incurred; *Provided*, That said tax shall not exceed one per cent. per annum, and may be applied to any other purpose by a vote of the district at any regularly called meeting;

9. To give such direction and make such provision as may be deemed necessary in relation to the prosecution or defense of any suit or proceeding in which the district may be a party;

Same.

10. To alter or repeal their proceedings from time to time as occasion may require, and to do any other business contemplated in this act;

11. To vote a tax not exceeding \$25 in any one year, to procure a district library consisting of such books as they may direct any person to procure.

SEC. 21. The following persons shall be entitled to vote at any district meeting; all persons possessing the qualifications of electors, as defined by the laws of the Territory, and who shall be actual residents of the district at the time of offering to vote at such election.

Who shall vote at district meetings.

SEC. 22. If any person offering to vote at a school district meeting shall be challenged as unqualified by any legal voter, the chairman presiding shall declare to the person challenged the qualifications of a voter, and if such challenge be not withdrawn, the chairman, who is hereby authorized, shall tender to the person offering to vote, the following oath or affirmation: "You do solemnly swear, (or affirm) that you are an actual resident of this district, and that you are qualified

When person offering to vote shall be challenged.

by law to vote at this meeting." Any person taking such oath or affirmation, shall be entitled to vote on all questions voted upon at such meeting.

ORGANIZATION OF DISTRICTS.

When school district considered organized.

SEC. 23. Every school district shall be deemed duly organized when the officers constituting the district board shall be elected and qualified. Every school district officer shall signify his acceptance of his office to the county superintendent, in writing, within twenty days after he shall be notified of his election by any person voting at such meeting, which acceptance shall be filed with such superintendent, and upon filing such acceptance, said party shall be deemed to have duly qualified. The officers of joint districts shall signify their acceptance to the superintendents of the several counties which form a part of the joint districts. Every person duly elected to the office of director, clerk, or treasurer of any school district, who shall refuse or neglect, without sufficient cause, to accept of such office and serve therein, or who having entered upon the duties of his office shall neglect or refuse to perform any duty required of him by the provisions of this act, shall forfeit the sum of ten dollars to the school district fund.

Duty of officers of joint districts.

The officers of a school district.

SEC. 24. The officers of each school district shall be a director, clerk, and treasurer, who shall constitute the district board, and who shall hold their respective offices until the annual meeting next following their election or appointment, and until their successors are elected and qualified.

Powers of school district.

SEC. 25. Every school district, organized in pursuance of this act, shall be a body corporate, and shall possess the usual powers of a corporation for public purposes, by the name and style of school district No. . . . , (such number as may be designated by the county superintendent,) county (the name of the county in which the district is situated,) Territory of Dakota, and in that name may sue and be sued, and be capable of contracting and being contracted with, and hold such real and personal estate as it may come in possession of by will or otherwise, or is authorized to be purchased by the provisions of this act.

Annual meeting, when held.

SEC. 26. An annual school meeting for each district shall be held at the school house or at the place usually occupied for school purposes, or at some central place in the dis-

trict, on the first Saturday in September, at such hour as the district board may direct. Annual school meetings shall be called by the district clerk ten days previous to the time of meeting, who shall post five notices of the time and place of holding such meeting. But if the district clerk shall neglect or refuse to notify an annual school meeting, a special meeting may be called as provided in section 27, at which time it shall be lawful to elect school district officers and transact any other business usually done at the annual school meetings. Special school meetings may be held at any time by giving notice for ten days of the time and place of said meeting and the business to be acted upon at said meeting, no school district meeting shall be legal unless written or printed notice of said meeting shall be posted for ten days previous to said meeting.

Annual school meetings, how called.

Special meetings.

SEC. 27. Whenever the time for holding annual meeting in any district shall pass without such meeting being held, the clerk, or in his absence, any member of the district board, within fifty days after the time for holding said annual meeting shall have passed, may give notice of a special meeting by putting up written notices thereof in three public places within the district, at least ten days previous to the time of meeting. But if such meeting shall not be notified within sixty days aforesaid, the county superintendent may give notice of such meeting in the manner provided for forming new districts, and the officers chosen at such special meeting shall hold their respective offices until the next annual meeting, and until their successors are elected and qualified.

Duty of school officers when time for annual meeting passes without election.

SEC. 28. The qualified voters at each annual meeting or at any special meeting, duly called, may determine the length of time a school shall be taught in their district for the then ensuing year; and whether such school shall be taught by a male or female teacher, or both, and whether the school money to which the district may be entitled, shall be applied to the support of the summer or winter term of school, or a certain portion to each; but if such matters shall not be determined at the annual or special meeting, it shall be the duty of the district board to determine the same.

Powers of qualified voters

SEC. 29. The director of each district shall preside at all district meetings, and shall sign orders drawn by the clerk

Director to preside, &c.

authorized by the district meeting, or by the district board, upon the treasurer of the district for moneys collected or received by him to be disbursed therein. He shall appear for and in behalf of the district in all suits brought by or against the district, unless other direction shall be given by the voters of such district at a district meeting.

DISTRICT CLERK.

Duties of district clerk. SEC. 30. The clerk of each district shall record the proceedings of his district in a book provided by the district for that purpose; and enter therein copies of all the reports made by him to the county superintendent, and he shall keep and preserve all records, books and papers belonging to his office, and deliver the same to his successor in office.

Same. SEC. 31. The said clerk shall be clerk of all district meetings; but if such clerk shall not be present at such district meeting, the voters present may appoint a clerk for such meeting, who shall certify the proceedings thereof, and the same shall be recorded by the clerk of the district.

Clerk shall give notice of meetings. SEC. 32. It shall be the duty of the clerk to give at least ten days notice previous to any annual or special district meeting, by posting up notices thereof at three or more public places in the district, one of which notices shall be affixed to the outer door of the school house, if there be one in the district, and said clerk shall give the like notice of every adjourned meeting, when such meeting shall have been adjourned for a longer period than one month. Every notice for special district meeting shall specify the objects for which such meeting is called, and no business shall be acted upon at any special meeting, not specified in said notice.

Clerk shall draw all orders. SEC. 33. The clerk of the district shall draw orders on the treasurer of the district for moneys in the hands of such treasurer, which have been appropriated to or raised by the district to be applied to the payment of teacher's wages, and apply such money to the payment of teacher's wages, as shall have been employed by the board, or by the citizens of the district, and the said clerk shall draw orders on the said treasurer for moneys in the hands of such treasurer to be disbursed for any other purpose ordered by a district meeting, or by a district board, agreeable to the provisions of this act.

SEC. 34. It shall be the duty of the assessor to deliver (by mail or otherwise) to the clerk of each school district between the 1st and 15th of April in each year, a list of persons owning or holding property in their respective districts, on the 1st of January preceding, and to make out a tax list of all taxes legally authorized by the district, and annex to such tax lists a warrant under the hand of said clerk, directed to the district treasurer, to collect the sums therein named, except in such cases as the district shall by vote direct the clerk to notify the county clerk of the rate of tax and request him to enter their district tax on the county tax list for collection.

Duty of
county assess-
ors.

SEC. 35. The clerk of each district shall, between the first and fifteenth days of September in each year, make out and transmit a report in writing to the county superintendent of public schools for each county in which part of his district may lie; showing,

Report to be
rendered by
clerk to county
superinten-
dent.

1. The number of children, male and female, designated separately, residing in the district or parts of districts, on the last day of August previous to the date of such report, over the age of five and under the age of twenty-one years;

2. The number and sex of children attending school during the year, and branches studied;

3. The length of time a school has been taught in the district by a qualified teacher, the name of the teacher, the length of time taught, and the wages paid;

4. The amount of money received from the county treasurer within the year, and the manner in which the same has been applied;

5. The amount of money raised by the district, in such year, and the purposes for which it was raised;

6. The kind of books used in the school, and such other facts and statistics in regard to the district schools as the county superintendent may require.

SEC. 36. Whenever a school district shall lie partly in two or more counties, the clerk of such district in making his annual report, shall carefully designate the number of children resident in the parts of the counties composing the district, and shall report to the county superintendent of common schools of each of the counties in which such district may be situated.

When school
district lies in
two counties.

SEC. 37. The treasurer shall execute to the district a bond in double the amount of money, as near as can be ascertained,

Treasurer to
execute bonds.

to come into his hands as treasurer of the district, with sufficient securities to be approved by the director and clerk, conditioned to the faithful discharge of the duties of said office. Such bond shall be filed with the district clerk, and in case of the breach of any condition thereof, the director shall cause a suit to be commenced thereon, in the name of the district, and the money collected shall be applied by such director to the use of the district as the same should have been applied by the treasurer, and if such director shall neglect or refuse to prosecute, then any householder of the district may cause such prosecution to be instituted.

When treasurer fails to give bond.

SEC. 38. If the treasurer shall fail to give bonds as required in this act, or from sickness or any other cause shall be unable to attend to the duties of said office, the district board shall appoint a treasurer, who shall possess all the powers of the district treasurer, and shall before entering upon the duties of said office, give bonds as the district treasurer is required to give.

Duties of treasurers.

SEC. 39. The treasurer of each district shall apply for and receive from the county treasurers all school moneys appropriated to his district, and shall collect all district taxes assessed in pursuance of the provisions of this act and pay over on the order of the clerk, signed by the director of such district, all money so received or collected by the said treasurer. But when the district shall by vote request the collection of any district tax by the county treasurer, the district treasurer shall not be entitled to collect the same.

Where treasurer is defaulter.

SEC. 40. If any district treasurer shall refuse or neglect to pay over any money in the hands of such treasurer belonging to the district, it shall be the duty of his successor in office to prosecute, without delay, the official bond of such treasurer, for the recovery of such money.

Treasurer responsible for school moneys.

SEC. 41. If by neglect of any treasurer any school moneys shall be lost to any school district, which might have been received from the county treasurer, or collected from the district tax assessed, said treasurer shall forfeit to such district the full amount of money so lost.

Treasurer to make report.

SEC. 42. The treasurer shall present to the district at each annual meeting, a report in writing containing a statement of all moneys collected by him from the county treasurer during

the year from assessments in the district, and the disbursements made, and exhibit the vouchers therefor, which report shall be recorded by the clerk, and if it shall appear that any balance of money is in his hands at the time of making such report, he shall immediately pay such balance to his successor.

DISTRICT BOARD.

SEC. 43. The district board shall purchase or lease such site for a school house as shall have been designated by voters at a district meeting, in the corporate name thereof, and shall build, hire or purchase such school house as the voters of the district in a district meeting shall have agreed upon, out of the funds provided for that purpose, and make sale of any school house, site or other property of the district, and if necessary, execute a conveyance of the same in the name of their office, when lawfully directed by the voters of such district at any regular or special meeting, and shall carry into effect all lawful orders of the district.

Duties of district board.

SEC. 44. The district board shall have the care and keeping of the school house and other property belonging to the district. They shall have power to make such rules and regulations relating to the district library, as they may deem proper, and to appoint some suitable person to act as librarian, and to take charge of the school apparatus belonging to the district.

Same.

SEC. 45. The district board shall have power to admit scholars from adjoining districts, and remove scholars for disorderly conduct, and when scholars are admitted from other districts the district board may in their discretion require a tuition fee from such scholars.

Same.

SEC. 46. The district board in each district shall contract with and hire qualified teachers for and in the name of the district, which contract shall be in writing, and shall specify the wages per week or month, as agreed upon by the parties, and such contract shall be filed in the district clerk's office.

Shall hire teachers.

SEC. 47. The district board shall provide the necessary appendages for the school house, during the time school is taught therein, and present the same for allowance at any regular district meeting.

Other duties.

District schools accessible to whom.

SEC. 48. The district schools established under the provisions of this act, shall at all times be equally free and accessible to all children resident therein, over five and under the age of twenty-one years, subject to such regulations as the district board in each may prescribe.

Branches taught.

SEC. 49. In every school district there shall be taught orthography, reading, writing, English grammar, geography and arithmetic, if desired, during the time the school shall be kept and such other branches of education as may be determined by the district board.

In case of vacancy in district board.

SEC. 50. If a vacancy should occur in the district board, in any district, the county superintendent shall appoint some suitable person to fill such vacancy, upon the recommendation of the remaining members of the district board, or upon the petition of residents of the district.

REVENUE.

County taxes for support of schools.

SEC. 51. It shall be the duty of the county or town assessor of each county or town, at the time of making the annual assessment, to levy a tax of one dollar on each elector in the county or town, for the support of district schools; and a further tax of two mills on the dollar, upon the taxable property of the county or town, to be applied to the same purpose, to be collected at the time and in the manner prescribed by law for the collection of taxes; which tax, when collected shall be distributed to the several school districts, in proportion to the number of children over five and under twenty-one years of age therein; and shall be drawn from the county treasury upon the order of the superintendent of schools.

School taxes on what assessed.

SEC. 52. All taxes raised and collected in any school district for any of the purposes authorized in this act, shall be assessed on the same kind of property as taxes for county purposes are assessed.

Duty of district clerk.

SEC. 53. The clerk of the school district, in making out any tax list shall enter therein the names of all persons liable to pay a school tax, the amount of personal property to be taxed to each person, and a description of all taxable real estate in the district, distinguishing that owned by non-residents of the district, and he shall set opposite to each description of taxable property, the valuation of the same, and the

amount of tax charged upon such property, and to each person respectively, or tract of land owned by non-residents, and such description and valuation of taxable property shall be ascertained as far as possible from the last assessment roll of the county or town: *Provided*, That in any case any person or persons are residing in and holding property in any district, at the time when a tax shall have been voted at any meeting in said district, and their names do not appear on the last assessment roll, the district board shall have power to assess such persons. Provided.

SEC. 54. Whenever any real estate in any school district shall not have been separately valued in the assessment roll of the county, and the value of such real estate cannot be definitely ascertained from such assessment roll, the board of such district shall estimate the value of the same, and apportion the taxes thereon. District board to value certain real estate.

SEC. 55. The warrant annexed to any tax list shall be under the hand of the clerk of the district, and shall command the treasurer of such district to collect from each of the persons and corporations named in said tax list, and of the owner of the real estate described therein, the several sums set opposite the persons and corporations so named, and to the several tracts of land owned by non-residents, within forty days from the date thereof; and within twenty days from the date of such warrants to personally demand such tax of the persons charged therewith; and that if any tax shall not be paid within ten days thereafter, to collect the same by distress and sale of property in the same manner as county taxes, and the said treasurer shall execute the said warrant and return the same to the clerk at the expiration of the time limited therein for the collection of such tax list. The warrant to tax list, what to command.

SEC. 56. The warrant issued by the clerk of any school district for the collection of any district tax authorized by any of the provisions of this act may be executed any where within the limits of the county, and such warrants shall have the like force and effect as a warrant issued for the collection of county taxes; and the treasurer of the district to whom any such warrant may be delivered for collection of a tax list, shall possess the like powers in the execution of the same as are provided by law for the collection of county taxes. If Warrant for collection of tax, where executed.

Duties of
treasurer of
district.

any tax in any tax list delivered to the treasurer of any district shall remain unpaid at the time he is required by law to return his warrant to the clerk of the district, such treasurer shall within ten days make out and deliver to the county treasurer a statement in writing, containing the amount of the personal property and a description of lots and pieces of land upon which such taxes remain unpaid, together with the amount of tax assessed on each, and he shall attach thereto an affidavit that the taxes mentioned in such statement remain unpaid, and after diligent efforts he has been unable to collect the same, and whenever any school district shall embrace parts of more than one county, such treasurer shall make his return as aforesaid to the county treasurer of both counties in which the parts of such district shall be situated. The county treasurer upon delivery to him of such statement shall give a certificate to the treasurer of the district of the amount of taxes so remaining unpaid as the same shall appear from such statement, which certificate shall be deposited by the district treasurer with the district clerk, and shall be filed by such clerk, and such county treasurer shall immediately add such delinquent taxes to the delinquent tax list received by him from the county collector and collect the same within thirty days from date of such statement with fee and cost of collecting, and when so collected shall pay over the same (less his fees for the collection thereof) to the district in which said taxes were levied, upon the order of the district board.

Duty of
county treas-
urer.

District board
may correct
errors.

SEC. 57. Whenever any error may be discovered in any district tax list, the district board may order any money which may have been improperly collected on such tax list, to be refunded, and may authorize the clerk of the district to amend and correct such error in said tax list.

Where tenant
pays taxes.

SEC. 58. Whenever any district tax, lawfully assessed, shall be paid by any person on account of any real estate whereof he is only a tenant, such tenant may charge and collect of the owner of such estate the amount of tax so paid by him, unless some agreement to the contrary shall have been made by the tenant.

Duty of regis-
ter of deeds to
make tax list.

SEC. 59. It shall be the duty of the register of deeds of each county, as soon as the annual assessment roll shall be collected in each year, to make out for each district in such county,

a description of all taxable property therein, with the valuations affixed thereto, as the same shall appear in the last assessment roll, which shall be certified by him and delivered by mail or otherwise, to the clerk of each school district in the county.

SEC. 60. Whenever the inhabitants of two or more school districts may wish to unite for the purpose of establishing a ^{Proceedings for forming a graded school.} a graded school in which instruction shall be given in the higher branches of education, the clerks of the several districts shall upon written application of five voters of their respective districts, call a meeting of the voters of such district at some convenient place, by posting up notices thereof in like manner as provided for calling district meeting, and if a majority of the voters of each of the two or more districts shall vote to unite for the purpose herein stated, they shall at a meeting or at an adjourned meeting, elect a board of directors consisting of a director, clerk and treasurer.

SEC. 61. The board of directors provided in the preceding ^{Powers of directors.} section shall, in all matters relating to the graded schools, possess all the powers and discharge all the like duties of the district board as prescribed in this act.

SEC. 62. The union district thus formed shall be entitled to ^{Union district entitled to school funds.} an equitable share of the school funds, to be drawn from the treasurer of each district so uniting, in proportion to the number of children attending the said graded school for each district.

SEC. 63. The said union district may levy taxes for the ^{Union district may levy taxes.} purpose of purchasing a building, or furnishing proper building for the accommodation of the school, or for the purpose of defraying necessary expenses and paying teachers, but shall be governed, in all respects, by the law herein provided for levying and collecting district taxes.

SEC. 64. The clerk of the union district shall report in writing to the treasurer of each school district uniting in the ^{Clerk of union district to make report.} union district, the number of scholars attending the graded schools from his district, their sex and the branches studied; and the said district treasurer shall apportion the amount of school money due the union district, and pay the same over to the treasurer of the union district on order of the clerk thereof.

Same.

SEC. 65. The clerk of the union district shall make a report to the county superintendent of schools and discharge all the duties of the clerk, in like manner as the clerk of the district.

Treasurer of union district.

SEC. 66. The treasurer of the union district shall perform all duties of treasurer, and give the bonds as prescribed in this act, in like manner as the district treasurer.

Public schools of cities &c. entitled to school moneys.

SEC. 67. The public schools of any city, town or village, which may be regulated by special law set forth in the charter of such city, town or village, shall be entitled to receive their proportion of the public fund; *Provided*, That the clerk of the board of education in such city or village, shall make due report within the time and manner prescribed in this act, to the superintendent of schools.

Single district may establish graded schools.

SEC. 68. Any single district shall possess power to establish graded schools, subject to the provisions of this act in like manner as two or more districts united.

Duties of county treasurer.

SEC. 69. The county treasurer shall collect all moneys due the county for school purposes, from fines, forfeitures or proceeds from the sale of estrays, and all moneys paid by persons as equivalent for exemption from military duty, and he shall pay the same to the said district treasurer, as prescribed in this act. He shall also collect the delinquent taxes on real estate in any district, whenever such delinquent tax list shall have been lawfully reported and returned to him within thirty days from date of such return with fees and cost of collecting; and he shall pay the same over to the treasurer of said district to which delinquent taxes are due less his fees and cost of collecting; and if any county treasurer shall refuse to deliver over to the order of the county superintendent any money in his possession, or shall use, or permit to be used for any other purposes than is specified in this act, any school money in his possession, he shall on conviction thereof, be adjudged guilty of a misdemeanor, and punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding one year.

Penalty where treasurer refuses to deliver over money.

MISCELLANEOUS.

Teacher to make report.

SEC. 70. It shall be the duty of the teacher of every district school or graded school, to make out and file with the district clerk, at the expiration of each term of school, a full report

of the whole number of scholars admitted to the school during such term, distinguishing between male and female, the text books used, the branches taught and the number of pupils engaged in the study of said branches. Any teacher who shall neglect or refuse to comply with the requirements of this section, shall forfeit his or her wages for teaching such school at the discretion of the district board.

SEC. 71. Every clerk of a district board who shall willfully sign a false report to the county superintendent of his county, shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding three months.

Penalty for clerks signing false report.

SEC. 72. Every school district clerk or treasurer who shall neglect or refuse to deliver to their successors in office all records and books belonging severally to their offices, shall be subject to a fine not exceeding fifty dollars.

Penalty for clerk's refusal to deliver books

SEC. 73. Whenever any final judgment shall be obtained against any school district, the district board shall levy a tax on the taxable property in the district, for the payment thereof; such tax shall be collected as other school district taxes; but no execution shall issue on judgment against a school district.

Proceedings of district board when judgment obtained against district.

SEC. 74. Justices of the peace shall have jurisdiction in all cases in which a school district is a party interested, when the amount claimed by the plaintiff shall not exceed one hundred dollars, and the parties shall have the right of appeals in other cases.

Jurisdiction of justices.

SEC. 75. No school district officer mentioned in this act shall receive any compensation for his services out of the Territorial or county school fund. But a regularly convened district meeting, may by vote, allow the district board such compensation as they shall deem proper: *Provided*, The amount so allowed does not exceed two per cent. of the money collected by said board for school purposes.

Compensation of district officers.

SEC. 76. Any person duly elected at the annual district school meeting, to either of the district offices mentioned in this act, who shall omit or refuse to serve as such officer, without substantial cause, shall forfeit the sum of ten dollars for such omission or refusal, which amount may be recovered by the district in civil action before any justice of the peace in

Penalty for refusing to serve as school officer.

the county where such district is located; and shall be appropriated to the support of schools in his district by whom such action was prosecuted.

Collection of fines and penalties.

SEC. 77. All fines and penalties not otherwise provided for in this act, shall be collected by action in any court of competent jurisdiction.

Disposition of money donated to school.

SEC. 78. Whenever any sum of money shall be paid into the county treasury, by any educational aid society, or benevolent person or persons, for the cause of education, the county treasurer shall issue to such society or person a certificate of deposit, stating the amount of money received, from what source, and for what purpose the same is applied, whether to the payment of teachers' wages, the building or leasing of a school house, or the purchase of a site of land, and the particular school district or districts to which the said money is donated. And the said educational fund may thereafter be drawn from the county treasury, by order of the county superintendent of schools, and applied by the district board of the proper district, to the objects specified in the certificate of donation. And the county superintendent of public schools shall make a statement of the expenditures of said fund in his annual report.

FORMS.

Form of notice of first district meeting.

SEC. 79. The form of notice of the first school district meeting may be substantially as follows:

To, a householder in school district number ...,

The county commissioners have formed school district number, in the county of, of which the following is a description, and you are hereby directed to post this notice in at least five public places in the said district, notifying the voters of said district to attend to the first meeting thereof, which is appointed to be held at the house of, in said district, on the day of, 18.., at o'clock,

.....,

County Sup't of Public Instruction.

This day of 18...

SEC. 80. The form of notice for annual district meeting may be as follows: Form of notice for annual district meeting.

Notice is hereby given to the voters of school district number , of county, that the annual meeting of said district will be held at , on day of , 18. . . . , at o'clock,

This day of , 18. . . .

. ,
District Clerk.

SEC. 81. The form of order on district treasurer may be as follows: Form of order on district treasurer.

To , treasurer of school district number , county of ,

Pay to the order of , the sum of dollars out of any money in your hands, not otherwise appropriated belonging to said district.

This day of , 18. . . .

. , District Clerk.
. , Director.

SEC. 82. The form of bond of district treasurer may read as follows: Form of bond of district treasurer.

Know all men by these presents, that we, treasurer of school district number , county , and his surety are held and firmly bound unto school district No. in the sum of dollars, for the payment of which we bind ourselves severally and jointly, our heirs, executors and administrators firmly by these presents. Sealed with our seals and dated this day of A. D. 18. . . .

The conditions of the above obligations is such, if said treasurer as aforesaid shall faithfully discharge the duties of his office as treasurer of school district number , county , as prescribed by law, then this obligation to be void, otherwise to remain in full force.

Signed, sealed and delivered }
in presence of }
. [SEAL.]
. [SEAL.]
.

Form of warrant for collection of tax.

SEC. 83. The form of warrant for the collection of district tax may be as follows:

To....., treasurer of school district number....., county of.....,

This is to authorize and require you to demand, within twenty days from the date of this warrant of every person or corporation named in the annexed duplicate of school tax of said district, the sum wherewith such person or corporation stands charged, and if any such tax be not paid within thirty days from the date of this warrant, you are required to proceed to collect the same as authorized by law, by distress and sale of property, and make due return according to law. Given under my hand this.....day of.....A. D. 18...

....., District Clerk.

Form of voucher.

SEC. 84. Vouchers may be in the following form:

Received....., 18..., of..... treasurer of school district number....., county of....., dollars for services rendered as teacher in the said district, for the term of..... months.

....., Teacher.

Form of teachers contract.

SEC. 85. The form of contracts between district and teacher may read as follows:

It is hereby agreed between school district number..... county of..... and.....teacher, that the said.....is to teach the common school of said district for the term of.... months, for the sum of....dollars, per....., commencing on the.....day of.....18...; and for such services properly rendered, the said school district is to pay.....the amount that may be due, according to this contract, on or before the.....day of....., 18...

....., District Clerk.

This....day of....., 18...

....., Teacher.

Form of report of treasurer.

SEC. 86. The form of annual report of district treasurer may be substantially as follows:

I,....., treasurer of school district number....., county of....., submit the following report of all moneys received and disbursed by me since the last annual meeting:

Amount received from my predecessor, \$_____

Amount received from county treasurer, \$_____

Amount raised by tax in the district and collected, \$ _____
 Total amount received, \$ _____
 Paid out on order of district clerk (date of order,) \$ _____
 On order of district clerk; \$ _____
 Balance on hand, \$ _____
 This day of, A. D. 18..,

.....,
 Treasurer.

SEC. 87. The form of report of district clerk to the county superintendent of public instruction may read as follows: Form of report of district clerk.

School district number, county of

Number of children residing in the district over five and under the age of twenty-one years. _____

Males, _____

Females, _____

Total number, _____

Number of months a school has been taught, _____

.... months by Mr., _____

.... months by Miss, _____

Wages paid Mr., \$ _____

Amount of school money received, \$ _____

..... county treasurer, \$ _____

Amount raised by district tax for teacher's wages, \$ _____

Amount raised by district tax for public school house, \$ _____

Amount raised by district tax for furnishing school house, \$ _____

Amount paid for teacher's wages, \$ _____

Amount expended for building school house, \$ _____

Amount expended for furnishing school house, \$ _____

This day of, 18...

.....
 District Clerk

To which may be added a copy of teachers' report, giving the names, age, and total number of male and female pupils, number of days taught, the kind of text books used, the number of scholars in each branch of study, and the greatest number of miles to be traveled by scholars living on the borders of the district.

Form of teachers certi-

SEC. 88. A school teachers' certificate may be in the following form:

Dakota Territory, }
..... county. }

....., A. D. 18...

This is to certify that..... has been examined and found competent to give instruction in orthography, writing, arithmetic, English grammar, geography, and, and having exhibited satisfactory testimonials of good moral character, is authorized to teach these branches in any common school within this county.

.....,

Superintendent of Public Schools of.....county.

Form of deed of school property.

SEC. 89. Form of deed of school property may be as follows:

This indenture, made the day of, one thousand eight hundred and, between....., and his wife, of the county of....., Dakota Territory, parties of the first part, and..... of district board of district number...., county and Territory aforesaid, parties of the second part, witnesseth, that the said parties of the first part, in consideration of...dollars to them duly paid before the delivery thereof, have bargained and sold and by these presents do grant and convey to the said parties of the second part, their successors in office, and assigns forever, (here describe the property) with the appurtenances and all the estate, title, and interest of the said parties of the first part therein, and the said parties of the first part do hereby covenant and agree with the said parties of the second part, that at the time of the delivery hereof, the said parties of the first part were the lawful owners of the premises above granted, and seized thereof in fee simple absolute, and they will warrant and defend the above granted premises, in the peaceful possession of the said parties of the second part, their successors and assigns forever.

.....[SEAL.]

.....[SEAL.]

Sealed and delivered in presence of

.....,
.....

The Territory of Dakota, }
 county: }

Personally appeared before me a, within and for the county above named and his wife, to me known to be the persons whose names are affixed to the above deed as grantors, and acknowledged the same to be their voluntary act and deed; and the said being at the same time, by me made acquainted with the contents of the above deed, apart from her husband, acknowledged that she executed the same voluntarily and that she is still satisfied therewith.

Witness my hand and seal this....day of, A. D. 18...

SEC. 90. It shall be the duty of the county superintendent of schools for each county in the Territory previous to July 1, 1871 to re-district their respective counties, whenever by so doing the districts of such county will be benefited thereby, assigning new numbers to districts if necessary, and making as many new districts as may be required to accommodate the people of the county. Respect shall in all cases be had to the present boundaries of districts unless by a change some district shall be benefited thereby. When the county has been re-districted, a plat of the county with the boundaries, and numbers of school districts distinctly marked thereon, shall be filed with the county clerk and county superintendent of schools. If any person or persons are aggrieved by the action of the county superintendent in re-districting the county, they shall have the right of appeal within thirty days of the time of the publication of the notice of the county superintendent that he has re-districted the county. The county superintendent of each county is hereby required to post a notice in each school district within ten days of the time of the completion of the re-districting of the county, giving the boundaries of each district. If any new school districts are formed by re-districting the county, or any districts deprived of a majority of their school officers then it shall be lawful for the district to call a special school meeting and elect officers to fill all vacancies in their school board, which officers so elected shall hold their offices until the next annual meeting or until their successors are elected and qualified. If a vacancy occurs at any time in the school board of any district, the

County super-
intendents to
re-district
counties.

county superintendent may upon the petition of a respectable number of electors in said district appoint a suitable person to the vacancy.

Teachers institute to be held annually.

SEC. 91. The Territorial superintendent of public instruction in connection with the county superintendents of each county, may annually hold a session of the teachers' institute of not more than ten days in length, and the sum of one hundred dollars is hereby appropriated from any funds in the Territorial treasury for the purpose of employing experienced teachers to assist in conducting the same and defraying other expenses; The several county superintendents are hereby required to aid in conducting said institute, and it may be required by county superintendents, of teachers applying for certificates to teach, that they shall, if consistent with their other duties, attend the session of the teachers' institutes.

District clerk to notify county clerk of rate of tax voted.

SEC. 92. It shall be lawful for any school district to authorize the district clerk to notify the county clerk of the county in which such district is located, of the rate of tax voted at any annual or special school meeting, and the county clerk shall insert in a separate column in the tax list the amount of school district tax, for which any person or property is liable, which tax shall be collected by the county treasurer, in the same manner as other taxes, and when collected paid over by the treasurer to the school district treasurer entitled to receive the same.

Certain acts repealed.

SEC. 93. Chapter 32, of the session laws of 1867-8, and all acts and parts of acts heretofore passed in relation to common schools are hereby repealed: *Provided*, That such repeal shall not effect any rights or liabilities that have accrued under and by virtue of said act or acts: and, *Provided, further*, That all officers, that have been duly elected and qualified in accordance with the provisions of said act, shall continue to hold and discharge the duties of their respective offices until their successors are duly elected and qualified.

When to take effect.

SEC. 94. This act shall take effect from and after its passage and approval.

Approved, January 13th, 1871.

SURVEYING.

CHAPTER XXXVI

A BILL FOR AN ACT RELATING TO SURVEYING AND COUNTY SURVEYORS.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That in all future surveys made by county surveyors in the Territory of Dakota, the "surveyors mark," patented by Carl C. P. Meyer, December 21, 1869, shall be used by placing the same at all corners where any mark may be necessary: *Provided*, That the cost of each mark shall not exceed thirty cents, or the cost of the right to make and use the same shall not exceed two cents each, and can be had at the said price of thirty cents each, and shall be fire-proof.

Certain mark shall be used by all county surveyors.

SEC. 2. This act shall take effect and be in force from and after its passage and approval.

Approved, January 13, 1871.

TERRITORIAL LIBRARY.

CHAPTER XXXVII.

AN ACT TO TRANSFER THE TERRITORIAL LIBRARY TO THE CUSTODY OF THE SECRETARY OF THE TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION. 1. That the Territorial Library of Dakota be and Transfer of library.

the same is hereby transferred to the charge of the Secretary of the Territory.

Repeal of
acts.

SEC. 2. All acts in conflict with this act are hereby repealed.

When to take
effect.

SEC. 3. This act shall take effect and be in force from and after its passage and approval.

Approved, January 13th, 1871.

TREASURER AND AUDITOR.

CHAPTER XXXVIII.

AN ACT PRESCRIBING CERTAIN DUTIES FOR THE TERRITORIAL TREASURER AND AUDITOR.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota :*

Treasurer and
auditor where
to hold offices.

SECTION 1. The Territorial Treasurer and Auditor shall keep their respective offices at such convenient places as they may designate in some organized county or counties of this Territory, and shall at the time of entering upon the duties of their respective offices designate where the same will be held by publishing a notice thereof in each of the newspapers now published in this Territory.

Conflicting
acts repealed.

SEC. 2. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

When to take
effect.

SEC. 3. This act shall take effect and be in force from and after its passage and approval by the Governor.

Approved, January 9th, 1871.

TELEGRAPH LINES.

CHAPTER XXXIX.

AN ACT RELATING TO TELEGRAPH LINES IN DAKOTA TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. Any person who shall cut, throw or pull down any telegraph pole or break or attempt to break any insulator, wire or any thing necessary in the working of any telegraph line in this Territory, or in any way to injure or interfere with the same to the detriment of public or private business passing over such line shall subject the offender upon conviction before any magistrate to a fine of not less than five or more than fifty dollars, or imprisonment not to exceed thirty days, or both such fine and imprisonment, besides damages and costs arising from such misdemeanor.

Penalty for
injuring tele-
graph lines.

SEC. 2. This act shall take effect and be in force from and after its passage and approval.

When to take
effect.

Approved, January 6th, 1871.

TERRITORIAL ROADS.

CHAPTER XL.

AN ACT TO LOCATE AND ESTABLISH A TERRITORIAL ROAD
FROM YANKTON TO FORT THOMPSON.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota:*

SECTION 1. That Joseph Ellis, Ogden Marsh, Bruno Con-
Names of oger, O. B. Orton and H. G. Anderson be, and they are here-
commissioners. by appointed commissioners to locate and establish a Terri-
 torial road from Yankton to Fort Thompson, via Starrs
 Ranche, Choteau creek, at or near the ranche of Charles
 Brazeau; ranche of Joseph Ellis and Cathbert Du Chene
 (Pappina); ranche of Felicia Dallas, and thence by the most
 direct and practicable route to Fort Thompson.

SEC. 2. It shall be the duty of said commissioners, or a ma-
Duty and jority of them, to meet at the city of Yankton on the first day
powers of com- of June next, and proceed to locate said road. But in case a
missioners. majority of said commissioners do not meet as herein provid-
 ed, it shall be the duty of those present at such meeting, and
 they shall have full power to file said commission, and shall

proceed without delay to locate the same, and make and plot and file the same in the office of the register of deeds of the several counties through which said road passes, or to which the same may be attached for election purposes, and said commissioners shall have from the first day of June aforesaid to the first day of August thereafter to complete the location and establishment of said road.

SEC. 3. The said commissioners shall have full power to appoint substitutes who shall in all respects possess the same powers, rights and privileges, and whose duties shall be the same as the commissioners herein named. Commissioners may appoint substitutes.

SEC. 4. Said commissioners shall have power to employ all necessary help for the location and establishment of said road, and shall be paid at the rate of three dollars per day and expenses while necessarily employed in making said location. Commissioners may employ help.

SEC. 5. The expenses incurred in locating, surveying, marking and staking and filing as aforesaid, shall be paid by the respective counties through which such road shall pass, in proportion to the amount incurred within the same. By whom expenses shall be paid.

SEC. 6. This act shall take effect immediately upon its passage and approval by the Governor. To take effect.

Approved, January 13th, 1871.

CHAPTER XLI.

AN ACT TO LOCATE AND ESTABLISH A TERRITORIAL ROAD FROM THE TOWN OF CANTON, IN LINCOLN COUNTY, TO THE CITY OF YANKTON, DAKOTA TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That J. Q. Fitzgerald, J. W. Turner and B. S. Names of commissioner.

Gillespie be, and they are hereby appointed commissioners to locate a Territorial road as follows, to wit: Commencing at the west end of the street between blocks thirteen (13) and twenty (20) in the town of Canton, Lincoln county, Dakota Territory; thence running west and south to a point on the Vermillion river about two miles below the mouth of Turkey Ridge creek; from thence on the nearest practical route to the bridge on the Dakota river, four miles northeast of Yankton, to intersect the Territorial road from the town of Vermillion to Yankton.

When and where commissioners shall meet.

SEC. 2. It shall be the duty of said commissioners, or a majority of them to meet at the house of J. Q. Fitzgerald on or before the first Monday of June, A. D. 1871, and proceed with a competent surveyor and other necessary help to locate said road.

By whom expenses shall be paid

SEC. 3. The expenses incurred in surveying, marking and establishing the said road shall be paid by the several counties through which said road shall pass in proportion to the distance and time employed in locating said road through such counties respectively.

Compensation of Commissioners.

SEC. 4. The surveyor shall be entitled to receive three dollars per day, and the commissioners shall each be entitled to receive three dollars per day while necessarily engaged in surveying and locating the same.

Commissioners to report, when and how.

SEC. 5. Said commissioners shall make report of the location and cost of said road and cause a copy of the same to be filed in the office of the Secretary of the Territory on or before the first day of July, A. D. 1871, and it shall be the duty also of said commissioners to file in the office of register of deeds in each county through which said road shall pass, a plat of so much of said road as is contained within the boundaries of the respective counties.

To take effect when.

SEC. 6. This act shall take effect and be in force from and after its passage and approval by the Governor.

Approved, January 11th, 1871.

CHAPTER XLII.

AN ACT CHANGING, VACATING AND ESTABLISHING A TERRITORIAL ROAD IN UNION COUNTY.

Be it enacted by the Legislative Assembly of the Territory of Dakota :

SECTION 1. That W. S. Sargent, Thomas Robinson and P. X. Oriley be and they to survey, mark and establish a Territorial road from the north line of Union county to the Big Sioux river, established under act of 1864 and 1865 at a point, where said Territorial road crosses the section line between sections twenty-five (25) and twenty-six (26) in township ninety-three north of range forty-nine; thence south on section line to the north boundary of township 79, range 49; thence in a southwesterly direction to a point on said Territorial road, one-half mile south of the north boundary line of township 93, range 49. Names of commissioners.

SEC. 2. That so much of said Territorial road located under the act mentioned in section one of this act as is hereinafter described, is hereby declared vacated, to wit: Commencing at a point where said Territorial road crosses the section line between sections 25 and 26 in township 93, range 49, to a point on said road one-half mile south of the north boundary line of township 93, range 49. Part of territorial road vacated.

SEC. 3. It shall be the duty of the commissioners mentioned in section one of this act, or a majority of them, to meet at the house of W. S. Sargent on or before the first day of March, A. D. 1871, and proceed with a competent surveyor to locate said road. Duty of commissioners.

SEC. 4. The county of Union shall pay the expenses incurred in locating, surveying, marking and staking the same. That the surveyor shall receive three (3) dollars per day while engaged in locating said road, and the commissioners two (2) dollars per day. Expenses to be paid by Union county.

Commissioners shall file plat.

SEC. 5. It shall be the duty of the commissioners to file in the office of the register of deeds of Union county a plat of the Territorial road provided for in this act.

When to take effect.

SEC. 6. This act shall take effect and be in force from and after its passage and approval.

Approved, January 12th, 1871.

CHAPTER XLIII.

AN ACT TO PROVIDE FOR KEEPING IN REPAIR A TERRITORIAL ROAD FROM YANKTON TO SIOUX FALLS, D. T.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

Names of commissioners to locate Sioux Falls & Yankton road.

SECTION 1. That Amos O. Bursem, W. W. Aurner and John McClellan, be and are hereby appointed commissioners to keep in repair a Territorial road from Yankton *via* Swan Lake to Sioux Falls.

When to repair road.

SEC. 2. It shall be the duty of the said commissioners before the first day of July A. D. 1871, to repair said road and to construct a bridge across Clay creek or any other streams or slough where it shall be necessary to make the said road practicable.

Compensation

SEC. 3. Said commissioners shall receive a compensation of two dollars for each day actually employed in repairing said road and constructing bridges thereon, and shall have authority to employ such help as they may deem necessary.

County to pay expenses.

SEC. 4. That the expense incurred thereby shall be paid out of the county treasury of each county through which said road passes, in proportion to the time employed in each.

When to take effect.

SEC. 5. This act shall take effect and be in force from and after its passage and approval.

Approved, January 12th, 1871.

CHAPTER XLIV.

AN ACT TO LOCATE A TERRITORIAL ROAD FROM OPPOSITE
THE MOUTH OF THE ROCK RIVER, IN UNION COUNTY, TO
YANKTON, DAKOTA TERRITORY.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota:*

SECTION 1. That N. Hickson, Edward Monday, and Adam Scott, be and are hereby appointed commissioners to locate, mark, survey and establish a Territorial road starting from opposite or near where the Rock river of Iowa flows into the Big Sioux river; thence across the county west and south to Bloomingdale, and then by the most practicable route to Yankton.

SEC. 2. The said commissioners or a majority of them shall have until the first day of November next, to locate, survey, mark, and establish the said road.

SEC. 3. Should any of the above commissioners fail to serve, those serving shall have power to appoint substitutes whose duties shall be the same as herein given to the other commissioners.

SEC. 4. The expenses incurred in the surveying, marking, and establishing of said road shall be paid by the several counties through which the road may pass in proportion to the distance and time in locating said road through such counties respectively.

SEC. 5. The commissioners and surveyor of said road shall each receive three dollars per day for every day actually and necessarily employed in surveying and establishing said road.

SEC. 6. After the said road shall have been located it shall be the duty of the surveyor of said road on or before the 15th day of December next, to file in the office of register of deeds in each county through which said road passes, a plat of so much of said road as is contained within the boundaries of the respective counties.

Approved, January 13th, 1871.

SPECIAL AND PRIVATE LAWS.

ASSESSORS OF YANKTON COUNTY.

CHAPTER 1.

AN ACT PROVIDING FOR THE APPOINTMENT AND ELECTION OF ASSESSORS IN YANKTON COUNTY, DAKOTA TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

County commissioners of Yankton county to appoint an assessor.

SECTION 1. That it shall be the duty of the county commissioners of Yankton county, at their next special or regular meeting, to appoint an assessor, whose duty it shall be to proceed according to law, to assess all the taxable property in said county of Yankton, liable to taxation; and the assessor so appointed shall have the power to appoint, not to exceed one deputy in each commissioner district, to assist him in the performance of his duty; and the assessor appointed as herein provided, shall hold his term of office until his successor is elected and qualified, and shall receive for his services two dollars for each day actually spent in taking such assessment, to be paid out of any money in the treasury of said county, not otherwise appropriated.

Assessor to be elected.

Compensation of assessor

SEC. 2. That at the next regular election of each year, there shall be one assessor elected for the term of one year as in other cases of county officers.

SEC. 3. All acts and parts of acts in conflict with this act ^{Conflicting acts repealed.} are hereby repealed.

SEC. 4. This act shall take effect and be in force from and ^{When to take effect.} after its passage and approval.

Approved, January 13th, 1871.

BROOKINGS COUNTY.

CHAPTER 2.

AN ACT TO ORGANIZE THE COUNTY OF BROOKINGS.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That Martin Trygstadt, L. M. Hewlet, and Elias ^{Commissioners of Brookings county.} Thompson be and are hereby appointed county commissioners of Brookings county, and the said county commissioners shall have full power and authority to appoint all other officers to complete the organization of said county.

SEC. 2. That Wm. H. Packard be and he is hereby appointed ^{Register of deeds.} register of deeds of said county of Brookings. The county seat of Brookings county, be and the same is hereby located at Medary.

SEC. 94. This act shall take effect and be in force from and ^{When to take effect.} after its passage and approval.

Approved, January 13th, 1871.

BON HOMME INCORPORATION ACT.

CHAPTER 3.

AN ACT TO INCORPORATE THE CITY OF BON HOMME, DAKOTA TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

Boundaries of
City of Bon
Homme.

SECTION 1. That all that portion of Territory contained in lots numbers one and two, of the northwest quarter of section number eighteen, and lots numbers three and four, of the southwest quarter of section number eighteen, all being in township number ninety-three north, range number fifty-eight west; and also the northeast quarter of section number thirteen, and the northeast quarter of the northwest quarter of section number thirteen, and lots numbers two, three, and four, in said section number thirteen, in township number ninety-three north, of range number fifty nine west, all in the county of Bon Homme, Dakota Territory, is hereby declared to be a corporation by the name of the "CITY OF BON HOMME."

Powers of
said city.

SEC. 2. The said city of Bon Homme is hereby made a body corporate and politic, and is invested with all the powers and attributes of a municipal corporation, and by that name may sue and be sued, plead and be impleaded, complain and defend in any court of record, and any other place whatsoever: may have a common seal, and may alter the same at pleasure, and may take, hold, purchase, lease, convey and dispose of any real, personal, or mixed estate, for the use of said corporation.

Legislative
authority.

SEC. 3. The legislative authority of said city is hereby vested in a city council, composed of a mayor, and board of aldermen consisting of six members.

SEC. 4. Every legal voter of the Territory of Dakota who shall have been a resident of the city of Bon Homme, thirty days next preceding a city election, is declared a citizen of said city, and is entitled to vote at all the elections thereof.

Who entitled to vote.

SEC. 5. The election of city officers shall be in a manner similar to county elections, as near as the nature of the case admits.

Manner of election.

SEC. 6. A person offering to vote may be challenged as in other elections in the county, and an oath may be administered to him in like manner, naming the qualifications herein prescribed.

Voter may be challenged.

SEC. 7. No person shall be eligible to any elective office mentioned in this act, unless he be a legal voter of the city,

Who eligible to office.

SEC. 8. The annual election for city officers shall be held on the first Monday in April in each and every year, and the officers elect shall qualify and enter upon the discharge of their duties on the second Monday in April thereafter.

Election, where held.

SEC. 9. That Benton Fraley, D. P. Bradford, and Timothy B. Burleigh, are hereby appointed commissioners to conduct the first election under this act, who, or a majority of whom, are to canvass the votes and to issue certificates of election to the several officers elect, and whose duty it shall also be to fix the place for holding the first election of officers under this act, by giving at least five days notice of such election, by printed or written notices.

Names and duty of commissioners of election.

SEC. 10. In all elections for city officers, after the first election, the Mayor shall issue a proclamation to the voters of the city, naming the time and place of such election, and the officers to be chosen, and cause at least one copy to be posted in each ward, in case the city shall have been subdivided into wards, and if not so subdivided, as many as the case may require, which notice or notices shall be so posted, at least ten days previous to the day of election. The polls shall be open between the hours of eight and ten o'clock in the forenoon, and continue open until four o'clock in the afternoon. Within two days from the day of the election, the judges of election shall make out their returns to the president of the city council, who shall examine them at the next meeting, and cause an abstract of the votes to be recorded in a book kept for that purpose.

Proceedings in all subsequent elections

Other officers
to be elected.

SEC. 11. In addition to a mayor and board of aldermen, there shall be elected at the general election in each year, a marshal, treasurer, and city clerk, who shall in like manner hold their respective offices for one year, and until their successors are elected and qualified.

Duty of
mayor.

SEC. 12. It shall be the duty of the mayor to see that the laws and ordinances of the city are executed, and their violation punished; to superintend and direct the official conduct of subordinate officers; to sign and seal all commissions, licenses and permits, granted by the city council, and to perform such duties and exercise such powers as pertain to the office of the mayor of the city, and such as may be granted or imposed by the ordinances of the city, consistent with law.

Jurisdiction
of mayor.

SEC. 13. The mayor shall be a conservator of the peace within the city, and ex-officio a justice of the peace, and is invested with the original jurisdiction for the violation of the city ordinances; he shall not be disqualified from acting in such judicial capacity by any proceedings being in the name, or in behalf of the city.

Powers vest-
ed in the city
council.

SEC. 14. The city council is invested with the power to make ordinances to secure the inhabitants against fire, against violations of the public peace, to suppress riots, gambling, drunkenness and indecent behavior in public places; and in general to provide for the safety, prosperity and good order of the city, and the health, morals and convenience of the inhabitants, and to impose penalties for the violation of its ordinances, not exceeding one hundred dollars for each offense, which may be recovered in a civil action in the name of the city, or by complaint before a justice of the peace; and the laws of the Territory relative to the carrying into effect a judgment of a justice of the peace, imposing a fine, shall be applied to judgments in the above cases.

Penalties for
violation of
ordinances.

Fire compan-
ies, &c.

SEC. 15. The city council is authorized to establish and organize fire companies, and provide them with fire engines, hose and other apparatus pertaining thereto.

Sale of gun-
powder.

SEC. 16. The city council may regulate the keeping and sale of gunpowder within the city.

City council
provide for li-
censing exhibi-
tions.

SEC. 17. The city council shall have exclusive authority to provide for the licensing and prohibition of all exhibitions, shows, theatrical performances, and billiard table halls, ten

pin alleys, and other saloons; but the above authority extends to no exhibition of a purely scientific character. The city council shall also have the power to license and regulate the retailing of intoxicating liquors, and also the sale of all goods, wares and merchandise, and all other property, sold at auction within the limits of the city.

SEC. 18. The city council shall be the judge of the qualification and election of its own members; it may determine the rules of its own proceedings, and shall keep a record thereof, which shall be open to the inspection of every citizen of the city, and may compel the attendance of its members in such manner and by such penalties as it may adopt.

City council shall be judge of qualification of its members.

SEC. 19. The mayor shall preside at all meetings of the city council, and in case of his death, resignation, or inability to serve, from any cause, a majority of the aldermen shall elect a mayor *pro tem.* to preside at said meetings, and may designate a justice of the peace to take cognizance of offenses arising under the ordinances of the city.

Mayor shall preside at all meetings of city council.

SEC. 20. No member of the city council shall be eligible to any office within the gift of the city council during the term of office for which he is elected, nor shall he be interested, directly or indirectly in the profits of any contract, job, or work, or services to be performed for the city.

Members of council shall be ineligible to certain offices.

SEC. 21. All ordinances passed by the council shall be recorded in a book to be kept for that purpose, and shall be signed therein by the mayor and be attested by the clerk.

Ordinances shall be recorded.

SEC. 22. It is the duty of the clerk to keep a true record of all the proceedings of the city council, and such record shall be open in all business hours for the inspection of any citizen.

Clerk shall keep record of proceedings.

SEC. 23. The mayor, aldermen, marshal, treasurer, clerk, assessor and collector shall respectively take an oath to support the constitution of the United States, and the laws of the Territory, and faithful and impartially to perform their duty to the best of their knowledge and ability. Other officers shall qualify in such manner as may be prescribed by the city council. The oath of office may be administered by the mayor, or clerk of the council, when he is qualified, or by any person duly authorized to administer oaths; and in the transaction of the business of the corporation, those officers and the

Oath of officers.

president for the time being, may administer oaths, which shall have the same effect as if administered by the officers authorized therefor.

Salary of mayor and aldermen.

SEC. 24. The mayor shall receive for his services an annual salary not exceeding ten dollars; each of the aldermen shall receive a salary not exceeding three dollars per annum, said salaries to be fixed by the council, within the limits aforesaid. It is however, *Provided*, That when the city shall contain a population of 6,000 inhabitants additional to its present population, the salaries of the mayor and aldermen may be increased to any sum not exceeding five times the amount herein designated, such sums of money to be fixed by the council aforementioned. It shall be the duty of the council to allow such fees for the services of other city officers, not provided for in this act, as it shall deem right.

Proviso.

What officers shall give bonds.

SEC. 25. The treasurer, clerk of the council, assessor, collector and marshal, shall give such bonds, perform such duties, and exercise such powers as may be required of them by ordinance, not inconsistent with law, which bonds shall be approved by the council and filed with the mayor.

Treasurer and collector.

SEC. 26. The treasurer shall be ex-officio collector, and the marshal ex-officio assessor of said city.

Duty and powers of marshal.

SEC. 27. The marshal shall be a conservator of the peace within said city, shall serve all process directed to him by the mayor or any justice of the peace exercising jurisdiction under the ordinances of the city, and shall possess the powers usually exercised by sheriffs and constables in making arrests, suppressing riots, and breaches of the peace, and executing process.

When council shall cause financial statement to be made.

SEC. 28. On the third Monday in December in each year, it shall be the duty of the council to cause a full, complete and detailed statement of the financial condition of the city to be made out, which statement shall be signed by the mayor, clerk, and a majority of the members of the council, and open to inspection.

This act declared to be a public act, and admissible as evidence.

SEC. 29. This act is hereby declared to be a public act and may be read in evidence in all courts of law and equity in this Territory, without proof; and all ordinances of the city council may be proved by the book referred to in this act; and

when printed and published in book form, and purporting to have been printed by authority of the city council, said ordinances shall be received in all courts and places without further proof.

SEC. 30. The council shall provide by ordinance for the keeping of the public money of the city, and the manner of disbursing the same; and shall cause all just claims against the city to be audited, and all city officers are accountable to said council in such manner as it may direct. Council shall provide for keeping public money.

SEC. 31. All acts and parts of acts conflicting with this act are hereby repealed. Conflicting acts repealed.

SEC. 32. This act shall take effect and be in force from and after its passage. Take effect when.

Approved, January 13, 1871.

CANTON, LINCOLN COUNTY.

CHAPTER 4.

AN ACT TO CHANGE THE NAME OF THE TOWN SITE OF LINCOLN, IN THE COUNTY OF LINCOLN, TERRITORY OF DAKOTA.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That the Township of Lincoln, situated on the southeast quarter of section fourteen (14), township ninety-eight (98), of range forty-nine (49), of Lincoln county, Dakota Territory, be, and the same is hereby changed to the name of Canton. Township of Lincoln, in Lincoln county, changed to Canton.

SEC. 2. This act shall take effect and be in force from and after its passage and approval by the Governor. To take effect when.

Approved, December 23, 1870.

COURTS IN YANKTON COUNTY.

CHAPTER 5.

AN ACT PROVIDING FOR THE HOLDING OF SPECIAL TERMS
OF THE DISTRICT COURT IN YANKTON COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota:*

Time of hold-
ing special
terms of dis-
trict court held
in Yankton
county.

SECTION 1. That there shall be held each year special terms of the District Court, in and for Yankton county, as follows: On the first Mondays of January, March, May, July, September and November.

What issues
may be tried at
said terms.

Proviso.

SEC. 2. All issues of law or of fact not requiring the intervention of a jury, and all motions may be tried and heard at either a special or general term: *Provided, however,* That nothing in this act contained shall interfere with the existing provisions of law, relating to the holding of general terms of the District Court, or to the hearing of motions or applications at chambers, nor with the authority of any Judge to appoint special terms additional to those herein provided, or whenever in his judgment necessity may require.

Where held
and how long
to continue.

SEC. 3. Said special terms shall be held at the court room, in the city of Yankton, and continue as long as the business may require.

When to take
effect.

SEC. 4. This act shall take effect and be in force from and after its passage and approval.

Approved, January 13th, 1871.

EMMERSONVILLE—INCORPORATION ACT.

CHAPTER 6.

AN ACT TO INCORPORATE THE CITY OF EMMERSONVILLE, DAKOTA TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That all that portion of territory contained in the northeast quarter of section number thirty-three, and the southeast half of the southeast quarter of section twenty-eight, all being in township number ninety-five north, range number fifty-four west, all in the county of Yankton, Dakota Territory, is hereby declared to be a corporation by the name of the "City of Emmersonville."

Boundaries of City of Emmersonville.

SEC. 2. The said city of Emmersonville is hereby made a body corporate and politic, and is invested with all the powers and attributes of a municipal corporation, and by that name may sue and be sued, plead and be impleaded, complain and defend in any court of record, and any other place whatsoever; may have a common seal, and may alter the same at pleasure, and may take, hold, purchase, lease, convey and dispose of any real, personal or mixed estate, for the use of said corporation.

Powers of said city.

SEC. 3. The legislative authority of said city is hereby vested in a city council, composed of a mayor and board of aldermen consisting of six members.

Legislative authority.

SEC. 4. Every legal voter of the Territory of Dakota who shall have been a resident of the city of Emmersonville thirty days next preceding a city election, is declared a citizen of said city, and is entitled to vote at all the elections thereof.

Who entitled to vote.

Manner of election.

SEC. 5. The election of city officers shall be in a manner similar to county elections, as near as the nature of the case admits.

Voter may be challenged.

SEC. 6. A person offering to vote may be challenged as in other elections in the county, and an oath may be administered to him in like manner, naming the qualifications herein prescribed.

Who eligible to office.

SEC. 7. No person shall be eligible to any elective office mentioned in this act, unless he be a legal voter of the city.

Elections, where held.

SEC. 8. The annual election of city officers shall be held on the first Monday in April in each and every year, and the officers elect shall qualify and enter upon the discharge of their duties on the second Monday in April thereafter.

Names and duty of commissioners of election.

SEC. 9. That Bartlett Tripp, Joseph Emmerson and John Lawrence are hereby appointed commissioners to conduct the first election under this act, who, or a majority of whom, are to canvass the votes and to issue certificates of election to the several officers elect, and whose duty it shall also be to fix the place for holding the first election of officers under this act, by giving at least five days' notice of such election, by printed or written notices.

Proceedings in all subsequent elections.

SEC. 10. In all elections for city officers, after the first election, the mayor shall issue a proclamation to the voters of the city, naming the time and place of such election, and the officers to be chosen, and cause at least one copy to be posted in each ward, in case the city shall have been subdivided into wards, and if not so subdivided, as many as the case may require, which notice or notices shall be so posted, at least ten days previous to the day of election. The polls shall be open between the hours of eight and ten o'clock in the forenoon, and continue open until four o'clock in the afternoon. Within two days from the day of election, the judges of election shall make out their returns to the president of the city council, who shall examine them at the next meeting, and cause an abstract of the votes to be recorded in a book kept for that purpose.

Other officers to be elected.

SEC. 11. In addition to a mayor and board of aldermen, there shall be elected at the general election in each year, a marshal, treasurer and city clerk, who shall in like manner hold their respective offices for one year, and until their successors are elected and qualified.

SEC. 12. It shall be the duty of the mayor to see that the laws and ordinances of the city are executed, and their violation punished; to superintend and direct the official conduct of subordinate officers; to sign and seal all commissions, licenses and permits, granted by the city council, and to perform such duties and exercise such powers as pertain to the office of mayor of the city, and such as may be granted or imposed by the ordinances of the city, consistent with law.

Duty of mayor.

SEC. 12. The mayor shall be a conservator of the peace within the city, and ex-officio a justice of the peace, and is invested with original jurisdiction for the violation of the city ordinances; he shall not be disqualified from acting in such judicial capacity by any proceedings being in the name or in behalf of the city.

Jurisdiction of mayor.

SEC. 14. The city council is invested with the power to make ordinances to secure the inhabitants against fire, against violations of the public peace, to suppress riots, gambling, drunkenness and indecent behavior in public places, and in general to provide for the safety, prosperity and good order of the city, and the health, morals and convenience of the inhabitants, and to impose penalties for the violation of its ordinances, not exceeding one hundred dollars for each offense, which may be recovered in a civil action in the name of the city, or by complaint before a justice of the peace; and the laws of the Territory relative to the carrying into effect a judgment of a justice of the peace imposing a fine shall be applied to judgments in the above cases.

Powers vested in the city council

Penalties for violation of ordinances.

SEC. 15. The city council is authorized to establish and organize fire companies, and provide them with fire engines, hose and other apparatus pertaining thereto.

Fire companies, &c.

SEC. 16. The city council may regulate the keeping and sale of gunpowder within the city.

Sale of gunpowder.

SEC. 17. The city council shall have exclusive authority to provide for the licensing and prohibition of all exhibition, shows, theatrical performances, and billiard table halls, ten pin alleys, and other saloons; but the above authority extends to no exhibition of a purely scientific character. The city council shall also have the power to license and regulate the retailing of intoxicating liquors, and also the sale of all goods, wares and merchandise, and other property, sold at auction within the limits of the city.

City council provide for licensing exhibitions.

City council shall be judge of qualification of its members.

SEC. 18. The city council shall be the judge of the qualification and election of its own members; may determine the rules of its own proceedings, and shall keep a record thereof, which shall be open to the inspection of every citizen of the city, and may compel the attendance of its members in such manner and by such penalties as it may adopt.

Mayor shall preside at all meetings of city council.

SEC. 19. The mayor shall preside at all meetings of the city council, and in case of his death, resignation or inability to serve, from any cause, a majority of the aldermen shall elect a mayor pro tem. to preside at said meetings, and may designate a justice of the peace to take cognizance of offenses arising under the ordinances of the city.

Members of council shall be ineligible to certain offices.

SEC. 20. No member of the city council shall be eligible to any office within the gift of the city council during the term of office for which he is elected, nor shall he be interested, directly or indirectly in the profits of any contracts, job, or work, or services to be performed for the city.

Ordinances shall be recorded.

SEC. 21. All ordinances passed by the city council shall be recorded in a book to be kept for that purpose, and shall be signed therein by the mayor and be attested by the clerk.

Clerk shall keep record of proceedings.

SEC. 22. It is the duty of clerk to keep a true record of all the proceedings of the city council, and such record shall be open in all business hours for the inspection of any citizen.

Oath of officers.

SEC. 23. The mayor, aldermen, marshal, treasurer, clerk, assessor and collector shall respectively take an oath to support the constitution of the United States, and the laws of the Territory, and faithfully and impartially to perform their duty to the best of their knowledge and ability. Other officers shall qualify in such manner as may be prescribed by the city council. The oath of office may be administered by the mayor or clerk of the council, when he is qualified, or by any person duly authorized to administer oaths; and in the transaction of the business of the corporation, those officers and the president for the time being, may administer oaths, which shall have the same effect as if administered by the officers authorized therefor.

Salary of mayor and aldermen.

SEC. 24. The mayor shall receive for his services an annual salary not exceeding ten dollars; each of the aldermen shall receive a salary not exceeding three dollars per annum, said salaries to be fixed by the council, within the limits aforesaid.

It is, however, provided that when the city shall contain a population of 6,000 inhabitants additional to its present population, the salaries of the mayor and aldermen may be increased to any sum not exceeding five times the amount here in designated, such sums of money to be fixed by the council aforementioned. It shall be the duty of the council to allow such fees for the services of other city officers, not provided for in this act, as it shall deem right.

SEC. 25. The treasurer, clerk of the council, assessor, collector and marshal, shall give such bonds, perform such duties, and exercise such power as may be required of them by ordinance, not inconsistent with law, which bond shall be approved by the council and filed with the mayor.

Proviso.
What officers shall give bonds.

SEC. 26. The treasurer shall be ex-officio collector, and the marshal ex-officio assessor of said city.

Treasurer and collector.

SEC. 27. The marshal shall be a conservator of the peace within said city, shall serve all process directed to him by the mayor or any justice of the peace exercising jurisdiction under the ordinances of the city, and shall possess the powers usually exercised by sheriffs and constables in making arrests, suppressing riots and breaches of the peace, and executing process.

Duty and powers of marshal.

SEC. 28. On the third Monday in December in each year, it shall be the duty of the council to cause a full, complete and detailed statement of the financial condition of the city to be made out, which statement shall be signed by the mayor, clerk, and a majority of the members of the council, and open to inspection.

When council shall cause financial statement to be made.

SEC. 29. This act is hereby declared to be a public act and may be read in evidence in all courts of law and equity in this Territory, without proof; and all ordinances of the city council may be proved by the book referred to in this act; and when printed and published in book form, and purporting to have been printed by authority of the city council, said ordinances shall be received in all courts and places without further proof.

This act declared to be a public act, and admissible as evidence.

SEC. 30. The council shall provide by ordinance for the keeping of the public money of the city, and the manner of disbursing the same; and shall cause all just claims against the city to be audited, and all city officers are accountable to said council in such manner as it may direct.

Council shall provide for keeping public money.

Conflicting
acts repealed.

SEC. 31. All acts and parts of acts conflicting with this act are hereby repealed.

Take effect
when.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved, January 13, 1871.

JAIL—PEMBINA COUNTY.

CHAPTER 7.

AN ACT TO AUTHORIZE THE COUNTY COMMISSIONERS OF PEMBINA COUNTY TO RAISE MONEY FOR THE ERECTION OF A JAIL IN SAID COUNEY.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

Commission-
ers of Pembina
county may
levy special
tax, &c.

SECTION 1. That the county commissioners of Pembina are hereby authorized to raise by special tax on all taxable property in the county for the year 1870-1, the sum of four thousand dollars, to be levied and collected in like manner as the general tax. And said county commissioners are hereby further authorized to raise by loan the sum of six thousand dollars. They shall also have power to raise the whole sum if they deem it advisable by taxation or by loan: *Provided*, That the provisions of an act to authorize the county commissioners of Yankton county to raise money for the erection of a jail, approved December 25th, 1868, not inconsistent with section first of this act shall apply, be in force, and considered part of this act.

Proviso.

To take effect
when.

SEC. 3. This act shall take effect and be in force from and after its passage and approval.

Approved, January 12, 1871.

MINNEHAHA COUNTY—OFFICIAL ACTS
LEGALIZED.

CHAPTER 8.

AN ACT FOR LEGALIZING THE OFFICIAL ACTS OF CERTAIN
COUNTY OFFICERS OF MINNEHAHA COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota :*

SECTION 1. That the official acts of John Thompson, John Nelson and William Meloin, county commissioners, E. D. Broughton, register of deeds, and Ole Bergerson, justice of the peace of Minnehaha county, be and are hereby declared legal.

Official acts
of certain offi-
cers legalized.

SEC. 2. This act shall take effect and be in force from and after its passage and approval.

When to take
effect.

Approved, December 31, 1871.

MILITARY BRIDGE—CLAY COUNTY.

CHAPTER 9.

AN ACT TO AUTHORIZE THE BOARD OF COUNTY COMMISSIONERS OF CLAY COUNTY, DAKOTA TERRITORY, TO KEEP IN REPAIR THE MILITARY BRIDGE ACROSS THE VERMILLION RIVER. ALSO, TO LEGALIZE THE ACTS OF THE BOARD OF COUNTY COMMISSIONERS OF SAID COUNTY IN MAKING REPAIRS ON SAID BRIDGE HERETOFORE.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota :*

SECTION 1. The board of county commissioners of Clay county, Dakota Territory, are authorized to keep in repair and in good condition the military bridge across the Vermillion river.

Commissioners of Clay county to keep military bridge in repair.

Certain acts legalized. SEC. 2. That the acts of the board of county commissioners of said county in making repairs on said bridge heretofore, be and are hereby declared legal.

To take effect when. SEC. 3. This act shall take effect and be in force from and after its passage and approval: *Provided*, That said commissioners shall have authority to keep in repair the town line bridge between township ninety-two and ninety-three, range fifty-two west of the fifth principal meridian.

Proviso.

Approved, January 13th, 1871.

ST. PAUL & PACIFIC RAILROAD COMPANY.

CHAPTER 10.

AN ACT RELATIVE TO THE ST. PAUL AND PACIFIC RAILROAD COMPANY.

Preamble. WHEREAS, The Legislative Assembly of the Territory of Minnesota did confer on and grant to the St. Paul and Pacific Railroad Company the right and authority to locate, build, operate and extend the said road to the Missouri river, and

Whereas, The said St. Paul and Pacific Railroad Company have transferred the privilege, right and authority to the first division of the St. Paul and Pacific Railroad Company, and

Whereas, The Territory of Minnesota then comprised that portion of Territory now known as and organized into the Territory of Dakota; therefore,

Be it enacted by the Legislative Assembly of the Territory of Dakota:

Action of Minnesota legislature relative to St. Paul and Pacific Railroad com- SECTION 1. That the right, powers, privileges and authority given the said St. Paul and Pacific Railroad Company by the Legislative Assembly of the Territory of Minnesota, to lay

out, construct, build and operate a railroad running to the Missouri river at such point as they may select, is hereby recognized and affirmed by this Legislative Assembly, so far as it now relates to the Territory of Dakota, and that the action of the said St. Paul and Pacific Railroad Company, in transferring the rights, powers and privileges to the first division of the St. Paul and Pacific Railroad Company, is hereby authorized, recognized, ratified and confirmed.

SEC. 2. This act shall be in force from and after its passage ^{Take effect} and approval. _{when.}

Approved, January 12th, 1871.

TELEGRAPH LINES—YANKTON COUNTY.

CHAPTER 11.

AN ACT GRANTING CERTAIN POWERS TO THE COUNTY COMMISSIONERS OF YANKTON COUNTY RELATING TO TELEGRAPH LINES.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That the county commissioners of Yankton county be and they are hereby authorized and empowered to lease to the highest bidder at their office in said county, on the first day of February, A. D. 1871, at ten o'clock, A. M., of said day the exclusive right of way for a telegraph line running between the James River and the city of Yankton in said county, upon and along the public highway now opened

Commissioners of Yankton county authorized to lease right of way for telegraph line.

between the points last named for the term and period of five years, providing said right of way shall not interfere with the right of the public in and to said highway; and that said highest bidder and lessee shall keep and maintain a telegraph line in good condition and working order.

Commissioners shall execute and deliver lease. SEC. 2. That said commissioners after receiving all the bids as aforesaid shall execute and deliver to the highest bidder as lessee, in the name of said county, and signed by said commissioners, a good and sufficient lease, granting the exclusive right of way as aforesaid, and for and during the term aforesaid: *Provided*, That the right of way herein conferred shall not exceed the power to confer said right, vested in the board of county commissioners.

Proviso.

To take effect when. SEC. 3. This act shall take effect and be in force from and after its passage and approval.

Approved, January 13th, 1871.

TOWNSHIPS IN UNION COUNTY.

CHAPTER 12.

AN ACT CREATING THE TOWNSHIPS OF VIRGINIA, PRAIRIE AND SPINK, IN THE COUNTY OF UNION, DAKOTA TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

Virginia township, in Union county—boundaries defined. SECTION 1. Virginia township shall be known and described by the following boundaries, to wit: Beginning at the north-east corner of the county of Union; thence running west on north line of Union county to the northwest corner of section 4 in township 95, of range 49 west; thence south on section line the southwest corner of section 16 in township 94, range 49

west; thence due east on section line to the Big Sioux river; thence along the main channel of said stream to the place of beginning, thus forming a township to be known as Virginia.

SEC. 2. Prairie township shall be known and described as follows, to wit: Beginning at the northwest corner of the township of Virginia; thence running west on the north line of Union county to the northwest corner of said county; thence south on the west line of Union county to the southwest corner of section 18, township 94, of range 50; thence east on the section line to the southwest corner of Virginia township; thence north to the place of beginning, thus forming a township to be known as Prairie township.

Boundaries of
Prairie town-
ship.

SEC. 3. Spink township shall be known and described as follows, to wit: Beginning at the northeast corner of section 24, in township 94, of range 50; thence due west to the west line of Union county; thence south along said county line to township line between townships 92 and 93; thence east along said line to the southeast corner of township 93 of range 50 west; thence north to place of beginning, thus forming township to be known as Spink township.

Boundaries of
Spink town-
ship.

SEC. 4. At the next general election there shall be elected in each of these townships the following officers, to wit: One county commissioner, two justices of the peace, two constables and one assessor, who shall hold their respective offices for the term of two years; and there shall also be elected one road supervisor in each of said townships who shall hold their respective offices for the term of one year.

Officers to be
elected, when.

SEC. 5. Nothing in this act shall be so construed as to impair the rights and authority of Eugene Lyon to assess the township of Sioux Valley for the year 1871. Neither shall this act affect the rights and authority of any of the present officers of Sioux Valley township.

This act not
to impair cer-
tain rights.

SEC. 6. This act shall take effect from and after its passage and approval.

When to take
effect.

Approved, January 13th, 1871.

JOINT RESOLUTIONS.

NO. 1.

JOINT RESOLUTION PROVIDING FOR THE PAYMENT OF AN ADDITIONAL ENROLLING CLERK.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

Joint resolution providing for the payment of an additional enrolling clerk.

SECTION 1. That there is hereby appropriated out of any moneys not otherwise appropriated the sum of five dollars to pay George W. Black for services rendered to the House of Representatives, as additional enrolling clerks, and that the auditor is hereby authorized to draw a warrant for that amount.

SEC. 2. This act shall be in force and take effect from and after its passage and approval.

Approved, January 13th, 1871.

NO. 2.

JOINT RESOLUTION FOR AN APPROPRIATION FOR THE ENROLLING CLERKS.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

Joint resolution for an appropriation for the enrolling clerk.

SECTION 1. That there be allowed A. W. Howard and Carl Christenson one hundred and twenty dollars (\$120.00) each for

their services as enrolling clerks for the Council and House of Representatives.

SEC. 2. That the Territorial auditor is hereby instructed to issue Territorial warrants to said A. W. Howard and Carl Christenson for the amount above specified.

Approved, January 12, 1871.

NO. 3.

JOINT RESOLUTION APPROPRIATING MONEYS TO SECRETARY AND ASSISTANT SECRETARY OF THE COUNCIL, AND CLERK AND ASSISTANT CLERK OF THE HOUSE.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

Joint resolution appropriating moneys to the secretaries of the council, and clerks of the house.

Resolved, The House concurring therein that the sum of \$30 each be and the same is hereby appropriated out of any moneys in Territorial Treasury not otherwise appropriated for services to the Secretary and assistant Secretary of the Council, and chief clerk and the assistant clerk of the House; and the auditor is hereby directed to audit and draw warrants for the same.

Approved, January 13th, 1871.

NO. 4

JOINT RESOLUTION RELATIVE TO THE DAKOTA AND NORTH-WESTERN RAILROAD.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

WHEREAS, Congress has heretofore given magnificent grants of public lands to the State of Iowa to aid in the con-

Joint resolution relative to the Dakota and northwestern railroad.

Joint resolution relative to the Dakota and northwestern railroad.

struction of railroads in that State, two of which roads, the Sioux City and Pacific, and Milwaukee and McGregor lines are projected toward and near the southwestern boundary of this Territory, one of which is now very nearly completed. It seems to have been the evident intent of Congress in the encouragement and projection of these roads to assist in developing the natural wealth of the great Missouri Valley. That even a temporary suspension of the enterprise thus projected would greatly retard the growth and prosperity of the whole Territory, which is rich in agricultural and mineral wealth. That while liberal grants of lands have been given by Congress to the States of Iowa and Minnesota to aid in the building of roads terminating on the boundary of Dakota, no practical aid has ever been bestowed by the Government toward extending these several lines of roads through this Territory to the Missouri River and the mines of the Rocky Mountains; and regarding the matter of absolute general benefit, tending to greatly increase the revenue of the country; Therefore, This Legislative Assembly does most respectfully and earnestly pray your Honorable bodies to grant such aid for the extension of railroads through Dakota Territory as has heretofore been given to roads in Iowa and Minnesota; and more especially immediate aid is solicited for the construction of one main line of road leading from Sioux City up the Missouri Valley *via* Elk Point, Vermillion and Yankton, and from thence on to the intersection of the northern line of the Territory.

Approved, January 3d, 1871.

NO. 5.

A JOINT RESOLUTION OF INQUIRY RELATIVE TO CHARGES OF FRAUD AT THE LATE ELECTION.

A joint resolution of inquiry relative to charges of fraud at the late election.

WHEREAS, This Legislature has learned with regret that W. A. Burleigh, one of the defeated candidates for Congress in the late election in this Territory, has filed a notice of con-

test upon M. K. Armstrong, who received the highest number of votes, and has been awarded the certificate of election by the board of Territorial canvassers.

Joint resolution of inquiry of charges of fraud relative to the late election.

WHEREAS, The said W. A. Burleigh, contestant, alleges gross fraud and illegality upon every county in the Territory, which, if true, is not only disgraceful to the people of Dakota, but damaging to every interest of the Territory at home and abroad; and as there are members holding seats in both branches of the present legislature who were elected by the same votes charged by said contestant as illegal; therefore,

Be it Resolved by the Legislative Assembly of the Territory of Dakota:

That the standing committee on elections in the Council and House of Representatives are hereby instructed to make a careful and complete investigation into the legality of the elections recently held in this Territory, and to report at the earliest possible day, their opinion as to the validity of the said elections in the several counties of the Territory.

Be it further Resolved, That the joint standing committee on elections are hereby empowered to send for persons and papers, and such other information as may be necessary to aid them in a complete and impartial investigation of the whole matter.

Approved, January 3d, 1871.

NO. 6.

JOINT RESOLUTION REQUESTING THE DIFFERENT RAILROAD COMPANIES NOW ORGANIZED UNDER AND BY VIRTUE OF THE LAWS OF THIS TERRITORY TO REPORT TO THE LEGISLATURE.

Be it Resolved by Legislative Assembly of the Territory of Dakota.

That all railroad companies now organized under and by virtue of the laws of Dakota Territory are hereby requested

Joint resolution requesting the different railroad compa-

nie now organized under and by virtue of the laws of this Territory to report to the legislature.

to report to the present session of the Ninth Legislative Assembly a full and complete statement of the affairs and conditions of their respective lines of road, in order that the Legislature may act advisedly in memorializing Congress for grants of lands to aid in the construction of railroads in the Territory.

Approved, December 30th, 1870.

NO. 7.

JOINT RESOLUTION INSTRUCTING THE COMMISSIONER OF IMMIGRATION OF DAKOTA TERRITORY TO PROCURE TRANSPORTATION FOR EMIGRANTS TO THIS TERRITORY UPON THE MOST FAVORABLE TERMS, AND TO ADVERTISE THE MOST PRACTICABLE ROUTE FOR THE BENEFIT OF EMIGRANTS.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

Joint resolution instructing the commissioner of immigration of Dakota Territory to procure transportation for emigrants, and for other purposes.

SECTION 1. That James S. Foster, commissioner of immigration for Dakota Territory, be requested to ascertain what reduction, if any, will be made by railroad and steamboat companies in the price of first-class passenger tickets to parties of twenty-five or more, who may desire to remove to Dakota.

SEC. 2. That the commissioner of immigration ascertain the most practicable route by which emigrants from the old country can reach Dakota, and the most favorable terms of transportation for emigrant passengers and their baggage.

SEC. 3. That when the commissioner shall ascertain the most practicable route for emigrants to reach the Territory of Dakota he shall publish the same for the benefit of emigrants and colonies proposing to locate in this Territory.

Approved, January 12th, 1871.

NO 8.

JOINT RESOLUTION REQUESTING THE SECRETARY OF THE TERRITORY TO REPUBLISH CERTAIN LAWS.

WHEREAS, The laws enacted at the Fifth Session of the Legislative Assembly of Dakota Territory are now nearly out of print, and it is almost impossible to procure the volume containing the laws passed at said session; and whereas many of said laws are of great consequence to the people, constant reference being made to them; Therefore,

Joint resolution requesting the secretary of the Territory to republish certain laws.

Be it Resolved by the House of Representatives (the Council Concurring).

That the Honorable Secretary of the Territory be and he is hereby respectfully requested to have republished with the laws enacted by this Legislative Assembly, an act entitled "An act to establish a Civil Code," approved January 12th, 1866; and an Act entitled an act to amend chapter thirty-seven, laws of 1862, approved January 9th, 1866, which were enacted at the Fifth Session of the Legislative Assembly of Dakota Territory.

Approved, January 12th, 1871.

MEMORIALS.

NO. 1.

A MEMORIAL TO CONGRESS PRAYING FOR AN APPROPRIATION
TO ERECT A CAPITOL BUILDING IN DAKOTA TERRITORY.

A memorial
to congress
praying for an
appropriation
to erect a capitol
building in
Dakota Territory.

Your memorialists, the Legislative Assembly of Dakota Territory, would again respectfully ask for an appropriation to erect a Capitol building at the seat of government of said Territory, and urge in support of their request, the following among other reasons:

That the various federal offices are now located at different places at the Capital, and are all in cheap wooden tenement buildings, liable at any time to be destroyed by fire, together with the executive, legislative and judicial records, which records are of course of vital importance to the people of our Territory.

That the amount now being paid annually for offices for the Executive, Secretary, Surveyor-General, Marshal, Internal Revenue officers and for U. S. Court Rooms and Legislative Halls, would in a very few years pay the expense of erecting suitable buildings for the accommodation of all the federal officers residing at the Capital, and the expenditure of a sum sufficient to erect this needed building, would be a matter of absolute economy.

And your memorialists would call the attention of your Honorable Body to the fact that Congress has heretofore made large appropriations to erect Capitol buildings for other Territories, among which may be mentioned the present thriving states of Iowa, Wisconsin, Minnesota, Kansas and

Nebraska; and your memorialists know of no reason why Dakota should be made an exception to other Territories, or why those states while in a territorial condition should be entitled to better treatment than your memorialists.

And your memorialists, as in duty bound, will ever pray.

Approved, December 31st, 1870.

NO. 2.

A MEMORIAL TO THE PRESIDENT OF THE UNITED STATES RELATIVE TO THE REMOVAL OF THE PEMBINA BAND OF CHIPPEWA INDIANS TO WHITE EARTH AGENCY.

To his Excellency the President of the United States.

Your memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully represent that the Pembina Band of Chippewa Indians are still upon the lands on the Dakota side of the Red River of the North, which was ceded by the said Band, and the Red Lake Band Indians in their treaty with the United States in 1863, and that the occupation of said land by said Band of Chippewa Indians is a great nuisance to the settlements on the Pembina and Red rivers; and also retards the establishment and growth of new settlements on the ceded land.

A memorial to the President of the United States relative to the removal of the Pembina band of Chippewa Indians to White Earth Agency.

Your memorialists therefore pray that said last named band of Indians be removed from ceded land, and settled upon a reservation according to the provisions of said treaty.

And your memorialists, as in duty bound, will ever pray.

Approved, December 31st, 1870.

NO. 3.

A MEMORIAL TO CONGRESS FOR THE CONSTRUCTION OF A MILITARY ROAD FROM FORT ABERCROMBIE TO FORT PEMBINA, AND THE INTERNATIONAL BOUNDARY LINE IN DAKOTA TERRITORY.

To the Honorable Senate and House of Representatives of the United States in Congress Assembled.

A memorial to congress for the construction of a military road from Ft. Abercrombie to Ft. Pembina, and the international boundary line in Dakota Territory.

Your memorialists, the Legislative Assembly of the Territory of Dakota, represent that the interest of that portion of our Territory being on the west side of the Red River of the North would be greatly advanced by the construction of a military road commencing at Fort Abercrombie running to Fort Pembina, and thence to parallel of latitude 49° north.

That said road will run through a great portion of public lands, a distance of one hundred and eighty miles, and across numerous streams, important in size; and the construction of said road will thereby tend to develop the resources of that section of our rapidly improving Territory, and at the same time confer a great boon on the hardy pioneers who have already settled thereon. That the mails to Pembina and the Red River settlements are carried over said roads.

That the difference in the cost of transportation of government stores and supplies would in a few years repay the Government for an expenditure of money in the construction of said road.

That the construction of a military road would tend to open to settlement a very large tract of valuable agricultural land along the line of said road, and thus by the increased value of the government lands, contribute largely toward refunding to the National Treasury any expenditure in constructing such road.

That according to the official reports of the collector of customs at the port of Pembina, merchandize passing annually over this route is inspected at said port amounting to hundreds of thousand of dollars, from which the United States derives a large revenue, probably amounting annually to over

§50,000; besides supplies for the American settlements, with a population of over two thousand two years ago. All the supplies of the British, containing, at the same time, a population of from twelve to fifteen thousand, as well as supplies for the Hudson Bay Company, and the numerous Free Traders, are received at or by way of the city of St. Paul, Minnesota, and pass over the route above mentioned. And all the vast amount of furs, &c., imported from said British settlements for consumption or in bond for transshipment, are freighted over said route.

That this great thoroughfare between Fort Abercrombie and Fort Pembina, and the United States boundary line crosses at least ten streams, varying in width from fifty to two hundred feet, over which the freighters annually have to throw, at a great expense and loss of time, temporary bridges which are carried off by the first freshet, and hence the same streams are so bridged several times during one season.

That the entire route passes over a level valley, and as nature has provided an excellent road, no appropriation will be required for any other purpose than to survey the road and bridge the streams.

Your memorialists, therefore, do most earnestly pray that an appropriation of twenty-five thousand dollars, or so much as you may in your wisdom deem sufficient to construct said military road; and that the expenditure of said sum may be placed in charge of the War Department to be used for the above named purpose, under the direction of said Department.

And in duty bound your memorialists will ever pray, &c.

Approved, December 31, 1870.

NO. 4.

A MEMORIAL TO THE POSTMASTER GENERAL REQUESTING
: MAIL SERVICE ON A MAIL ROUTE FROM LE MARS, IOWA, TO
: SIOUX FALLS, DAKOTA TERRITORY.

Your memorialists, the Legislative Assembly of the Terri-
: tory of Dakota, would respectively represent, that by an act
: of Congress, a mail route was established from Le Mars,
: of Congress, a mail route was established from Le Mars, Dakota Terri-
: tory.

A memorial
: requesting mail
: service on mail
: route from Le
: Mars, Iowa, to
: Sioux Falls,
: Dakota Terri-
: tory.

Iowa, to Sioux Falls, Dakota Territory. That said route is the great thoroughfare wherever the produce and merchandise to and from Sioux City, the western metropolis, and the upper country, viz: Sioux and Lyon counties, Iowa, Lincoln, Minnehaha, Brookings, and Deuel, Dakota, is transported.

That the aforesaid counties are the best agricultural lands in the great northwest, and are densely populated near the established mail routes; and settlements, towns and villages are springing up 10, 20 miles from any mail route in operation. That the said mail route is at least 30 miles nearer the railroad than any other route to Sioux Falls, hence mail arrives one or more days earlier over that than any other route. That the same route is the most direct and practicable, crossing only one stream of any importance, across a high, level and dry country, and will supply the parts hitherto very much neglected and at the same time be greatly instrumental in aiding the development and prosperity of this rich and beautiful yet imperfectly developed country.

Your memorialists therefore pray that mail service be ordered on said route at an early day, to supply the postoffices, Farmers, Louisville, Gibraltar or any other postoffice that is or may be established on or near said route.

Resolved, That a copy of this memorial be sent to our delegate in congress Hon. S. L. Spink, and one copy to Hon. Chas. Pomeroy, M. C. from Iowa.

Approved, December 31, 1870.

NO 5.

A MEMORIAL TO CONGRESS ASKING THAT A MAIL ROUTE MAY BE ESTABLISHED BETWEEN LE MARS, IOWA, AND YANKTON, DAKOTA TERRITORY.

To the Honorable Senate and House of Representatives of the United States in Congress Assembled:

A memorial
to Congress,
asking that a
mail route may

Your memorialists, the Legislative Assembly of the Territory of Dakota, respectfully ask that a weekly mail route may be established by your Honorable bodies between Le

Mars, Iowa, and Yankton, Dakota Territory, by way of Richland, Lodi and Thomasville, Dakota Territory.

to be established
between Le
Mars, Iowa, and
Yankton, Da-
kota Territory.

Your memorialists, as reasons for said request and prayer, would respectfully represent and make known to your Honorable bodies, among other things that there is at present, a postoffice established with a postmaster appointed, commissioned and qualified at each of said points, through which your memorialists pray that said route as above may be established.

That the nearest mail route, at present established by law, is at a distance varying from six to twenty miles from said offices so established, by reason of which a numerous and growing population are compelled to depend wholly upon uncertain and private sources to obtain their mail, or any of the facilities or benefits of the postal laws of the United States.

That the distance of said route, which your memorialists pray may be established, will not exceed sixty-five miles; and the road between and through said points is in no good condition at all seasons of the year, having been established and improved the greater part of the way for many years, and all streams on said route, including the Big Sioux river, have either bridges already built or ferries already established at the points where said route would cross them.

That at all points along said route is a dense and permanent population of enterprising and industrious citizens: having already at Lodi and other points, flouring mills and other manufacturing establishments, around which there is a dense and increasing population; and that the whole region of country through which said route is established is of the most productive and fertile in the State of Iowa and the Territory of Dakota, the settlement and cultivation of which is greatly impeded by reason of there being no mail facilities within practicable or available distance.

And your memorialists will, as in duty bound, ever pray.

Resolved, That our Delegate in Congress be requested to call the attention of the proper committees of Congress to the object of this memorial.

Approved, December 30, 1870.

NO. 6.

A MEMORIAL TO CONGRESS ASKING FOR AN APPROPRIATION
TO REMOVE OBSTRUCTIONS IN THE RED RIVER OF THE
NORTH.

*To the Honorable the Senate and House of Representatives in
Congress Assembled:*

A Memorial
to Congress
asking for an
appropriation
to remove ob-
structions in
the Red River
of the North.

Your memorialists, the Legislative Assembly of the Territory of Dakota, respectfully ask your honorable bodies for an appropriation to remove an obstruction commonly known as "Goose Rapids" and such other obstructions as may exist in the Red River of the North. On account of said obstruction steamboat navigation during certain seasons of the year has been much impeded. After a thorough examination by those interested in the navigation thereof they have come to the conclusion that fifteen thousand dollars will be ample to remove said obstruction and render the navigation of said river practicable at all times.

Your memorialists therefore request that an appropriation for fifteen thousand dollars be made to accomplish that desirable object.

And your memorialists as in duty bound will ever pray.

Approved, December 28, 1870.

NO. 7.

TO THE SECRETARY OF THE INTERIOR REQUESTING THAT THE
SUPPLIES FOR THE INDIANS ON THE UPPER MISSOURI RIVER
BE PURCHASED OF THE FARMERS AND PRODUCERS IN THE
TERRITORY OF DAKOTA.

A memorial
to the Secretary
of the Interior
requesting that
the supplies for
the Indians on
the Upper Mis

Your memorialists, the Legislative Assembly of the Territory of Dakota, most respectfully represent that the Territory of Dakota is already becoming one of the largest stock-raising and grain growing regions of the west; and that our fertile

valleys and boundless pastures are producing annually a large surplus of grain and cattle, which, for the want of railroad communication with eastern markets, are being sold in the Territory at prices much below the figures paid by the U. S. Government for the same to supply our home Indians in Dakota.

souri river be purchased of the farmers and producers in the Territory of Dakota.

Your memorialists would further represent that the farmers and producers of Dakota are a worthy, needy, and industrious class of people, who have immigrated to the west under the protection and promises of the general government, and they feel that it is unjust to be robbed of the benefits of their home market, by permitting eastern contractors to furnish these supplies at prices much higher than the same can be furnished in the Territory.

Your memorialists would further represent that out of the one-half million dollars expended annually for cattle alone to supply the Indians, over one hundred thousand dollars could have been saved to the national treasury, by making these purchases of the stock-growers in Dakota.

Under the existing system of contracts the eight thousand head of beef cattle furnished the Indians last year, cost the department nearly sixty dollars per head, or six and a half cents per pound on hoof, whereas the same could have been purchased of the Dakota farmers for four cents per pound.

Twenty-five thousand sacks of flour were also furnished these Indians at a cost of nearly two hundred thousand dollars, or \$8 per one hundred pounds, while the farmers of this Territory were unable to sell their wheat for more than 60 cents per bushel, and their flour for \$2 per sack; but under the present system of bidding for supplies, the producers of the Territory had no opportunity to offer proposals for contracts.

Your memorialists would further represent that by the purchase of these Indian supplies, such as flour, grain, beef and pork, within the Territory, a great benefit would be conferred upon the industrious husbandmen of Dakota, the Indians would be more readily and generously supplied, and the national treasury would be guarded in expenditures.

By establishing this system of home purchases, the poor but industrious pioneers of the west would become encouraged

to renewed exertions, and would enlarge their fields and increase their herds, would erect flouring mills and improve their thoroughfares, establish schools and churches for their own advancement, and would help to befriend and civilize the red people of the plains.

One hundred thousand dollars thus annually expended among our people for home products, would not only soon transform Dakota in to a rich and populous State, but would establish a more permanent peace and contentment among the Indians.

Therefore your memorialists most respectfully request that hereafter a fair proportion of the supplies for the Upper Missouri Indians, be ordered purchased within the Territory of Dakota.

And your memorialists will ever pray.

Approved, December 30, 1870.

NO. 8.

A MEMORIAL TO THE POSTMASTER-GENERAL REQUESTING SERVICES ON MAIL ROUTE NO., FROM VERMILLION, DAKOTA TERRITORY, VIA BLOOMINGDALE, LODI, AND EUREKA, TO SWAN LAKE, DAKOTA TERRITORY.

To the Honorable Postmaster-General of the United States.

A memorial
to the Postmas-
ter-General re-
questing serv-
ices on mail
route No. —
from Vermil-
lion, Dakota
Territory, via
Bloomington,
Lodi and Eureka
to Swan
Lake, D. T.

Your memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully represent that it is very important to the interests of the inhabitants of the Territory of Dakota that a mail service be established between Vermillion and Swan Lake, Dakota Territory, and that the distance is about fifty (50) miles.

During the past year nearly all the land has been taken, and that the majority of settlers are without any direct mail communications, and the settlers along the said route have lost valuable mail matter by trusting to irregular and irresponsible parties.

Your memorialists would further ask that a postoffice be established at Bloomingdale, it being a central and desirable point.

Your memorialists would therefore pray that service at least one time per week, be ordered upon mail route No., from Vermillion, D. T., *via* Bloomingdale, Lodi and Eureka to Swan Lake, D. T., on the line established by act of Congress approved March 5, 1870, A. D. And that this request may be promptly granted, your memorialists, as in duty bound, will ever pray.

Approved, December 31, 1870.

NO. 9.

A MEMORIAL TO THE CONGRESS OF THE UNITED STATES, PRAYING FOR A GRANT OF LAND IN DAKOTA TERRITORY TO AID IN THE CONSTRUCTION OF THE MCGREGOR AND MISSOURI RIVER RAILROAD.

Your memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully pray your Honorable bodies to grant alternate sections of land to the amount of not more than ten miles of the unoccupied lands on each side of the McGregor and Missouri River Railroad, now being built through the northern part of Iowa to Yankton, Dakota Territory. The distance from our eastern border is about seventy-five miles, over an excellent agricultural country now being densely populated, and the completion of said railroad would add much to the development and wealth of northern Iowa as well as southern Dakota.

Your memorialists would further represent that said railroad is now completed to Algona, Iowa, distance about one hundred miles from the boundary line of Iowa and Dakota; and its early completion would be greatly facilitated by a grant of land in said Territory.

A memorial to the Congress of the United States, praying for a grant of land in Dakota Territory to aid in the construction of the McGregor and Missouri river railroad.

Your memorialists would further call the attention of your Honorable bodies to the fact that this railroad would give the settlers of this Territory direct communication with the lumber regions of Minnesota and Wisconsin, thereby greatly advancing the growth and prosperity of the Territory.

Your memorialists would further represent that the Territory of Dakota is almost entirely destitute of timber and much suffering and great hardships have been and will have to be endured by the settlers in consequence of their being unable to procure suitable material for building comfortable and substantial homes.

Your memorialists would further call the attention of your Honorable bodies to the fact that the States around us have received the benefit of your generosity to an unusually great extent, the state of Iowa has, by the support of lands granted by Congress, been enabled to construct nearly three thousand miles of railroads; and the States of Nebraska and Kansas nearly as much more, and no person will deny that but for land grants, the railroads would not have been constructed, nor the aforesaid States have held anything like the population they now possess. In the examples before us it is obvious that the effect of lands granted for the purpose of encouraging the building of railroads is no detriment to a prairie country, but on the contrary it is the only method that will induce capitalists to invest in our far western roads, and thereby give us that communication with the markets pinneries and manufactories of the east, which must be established before the thousand and thousands of acres of prairies land hitherto of no value to the government, can be completely within the reach of the honest and hardy pioneer of the great northwest. And your memorialists, as in duty bound, will ever pray.

Resolved, That our Delegate in Congress is respectfully requested to call the attention of the proper committees of Congress to the object of this memorial.

Approved, January 12th, 1871.

NO. 10.

A MEMORIAL AND JOINT RESOLUTION ASKING FOR THE ESTABLISHMENT OF A MAIL ROUTE FROM ELK POINT, DAKOTA TERRITORY TO PONCA, DIXON COUNTY, NEBRASKA.

To the Honorable Senate and House of Representatives of the United States in Congress Assembled:

SECTION 1. Your memorialists the Legislative Assembly of the Territory of Dakota would most respectfully represent that the distance from Elk Point, in Union county D. T., to Ponca, Dixon county, Nebraska, is about ten miles running through a densely populated part of Union county, crossing the Missouri river at Ponca ferry (which is a horse ferry) running at all times of the year and in all kinds of weather, when the ice in the river does not prevent, and that the people of the two sections of this country have no direct way of communicating with each other; that at this present time (as it always has been) mail from Elk Point, Union Co., D. T., to Ponca, Dixon county, Neb., goes by stage to Sioux City, Iowa, the distance of twenty-two miles, crosses the Missouri river at that point to Neb.; thence by stage to Ponca, Dixon county, Neb., distance about thirty miles, total distance about fifty-two miles.

A memorial and joint resolution asking for the establishment of a mail route from Elk Point, Dakota Territory to Ponca, Dixon county, Nebraska.

SEC. 2. We therefore pray your honorable bodies to establish the route herein named with tri-weekly service thereon, and we your memorialists will as in duty bound ever pray.

SEC. 3. *Be it Resolved*, That a copy of this memorial and joint resolution be forwarded to our delegate in congress, S. L. Spink, and he is hereby requested to use all proper means to bring the subject to the favorable consideration of congress.

Approved, January 12, 1871.

NO. 11.

A MEMORIAL TO THE CONGRESS OF THE UNITED STATES ASKING AN APPROPRIATION OF MONEY TO BUILD A BRIDGE ACROSS THE BIG SIOUX RIVER BELOW AND NEAR THE MOUTH OF THE ROCK RIVER.

To the Honorable Senate and House of Representatives.

A memorial to the congress of the United States praying for an appropriation to build a bridge across the Big Sioux below and near the mouth of the Rock river of Iowa.

Your memorialists, the Legislative Assembly of the Territory of Dakota would most respectfully represent that it is no longer a matter of convenience, but is now absolutely necessary that the people of southeastern Dakota living near the Big Sioux river be furnished with a bridge across said Big Sioux river just below the mouth of the Rock river in Iowa. The country in this section contains a very large population, and is daily increasing. A large trade is carried on between this section and Le Mars, Iowa—a railroad point on the Dubuque and Sioux City Railroad; and it is very important that communication with that point should not be disturbed, as it is during high water, and when the winters are so mild as to make it dangerous to cross the ice. A Territorial road has been established from the point in question to the city of Yankton, and the United States mail crosses at this point. The large immigration which is always greater in the spring (when the water is high) is obliged to go around by the way of Sioux City and cross into the Territory at that point by the only bridge into Dakota, and in fact the only way to get here except by fording the river.

Your memorialists would further represent that the communication with Le Mars, which would be one of the results of the building of the bridge would fill up the country back of the settled districts, and the money obtained in selling the lands of one township even under the pre-emption act would nearly double the amount of the appropriation asked.

Your memorialists therefore pray that an appropriation of fifteen thousand dollars be granted for the purpose of building a bridge across the Big Sioux river at the above named point; and your memorialists, as in duty bound, will ever pray.

Approved, January 13, 1871.

NO. 12.

A MEMORIAL TO CONGRESS ASKING FOR THE ORGANIZATION OF
A NEW TERRITORY OUT OF THE NORTHERN PORTION OF DA-
KOTA TERRITORY.

*To the Honorable Senate and House of Representatives of the
United States in Congress Assembled.*

Your memorialists, the Legislative Assembly of the Territory of Dakota, most respectfully represent that all that portion of Dakota Territory described as follows, to wit: Beginning at a point commencing at the intersection of the forty-sixth parallel north latitude with the boundary line between the State of Minnesota and the Territory of Dakota, and running thence due west on said parallel to the 27th degree of longitude west from Washington, thence north on said 27th degree of longitude to the parallel of 49 degree of north latitude; thence east on said parallel of 49 degrees of north latitude to centre of the Red River of the North; thence in a southerly direction along the western boundary of the State of Minnesota to the place of beginning, would be greatly benefited by being detached from the remaining and southern portion of said Territory of Dakota, and erected by Congress into a new Territory with a separate organization.

A memorial
to congress
asking for the
organization of
a new Territory
out of the nor-
thern portion
of Dakota
Territory.

Your memorialists would further represent in evidence of the necessity of this our petition, that while the said new Territory is remote from the main line of travel in southern Dakota, and is separated therefrom by a broad extent of unoccupied and wild country; yet the Northern Pacific and St. Paul and Pacific railroads will traverse the entire length of the proposed new Territory, giving it direct and easy communication with Minnesota and other States, by means of which several thousand people have already settled in the valley of Red River of the North and other portions of the proposed new Territory, in which are established towns, at a distance of fifteen hundred miles by the nearest traveled route from the Capital and Courts of the Territory of Dakota.

Your memorialists would further represent that the interests of said portion of Territory are not in any way identical, and that no direct line of travel or communication is now, or will for many years, be opened across the plains, connecting these two remote sections of Dakota, so long as the Pacific Railroad give to the proposed new Territory such advantages of trade and travel with Minnesota, the lakes, and the East, as is now possessed by that section of the northwest.

Your memorialists would further represent that said portion of Dakota comprises an area of Territory equal to about fifty millions of square acres, or about one-half the present Territory of Dakota, and that the present illy proportioned and extensive area of Dakota, demonstrates that a division of the Territory by Congress is inevitable and only a question of time and sound policy would seem to dictate; that all the guards of law and courts afforded by a separate Territorial government should be extended to the already populous settlements of the proposed new Territory. As in duty bound your memorialists will ever pray.

Approved, January 12, 1871.

NO. 13.

A MEMORIAL TO CONGRESS ASKING FOR THE CONSTRUCTION OF GOVERNMENT WAGON ROADS, AND APPROPRIATIONS FOR BRIDGING STREAMS ON SAID ROADS.

A memorial to congress asking for the construction of government wagon roads and appropriations for bridging streams on said roads.

Your memorialists, the Legislative Assembly of the Territory of Dakota, in ninth session convened, respectfully represent to the Congress of the United States, as follows:

That part of our Territory north of the Missouri river, embraced in the northern tier of counties known as Minnehaha, Jayne, Hutchinson and Charles Mix, is now well peopled by an industrious and hard working class who have very recently made their homes on these lands. These settlers, like nearly all who seek homesteads in the West are poor, having brought with them barely sufficient to make the necessary improvements on their farms, and support their families for the first one or two years.

These counties being almost wholly destitute of timber, settlers are compelled to haul fuel, fencing and building material, as well as family supplies from the Missouri river, a distance of forty to seventy miles; therefore, to aid in the construction of a wagon road, and for bridging the intermediate streams from Yankton, the Capital of the Territory, to a point on the Dakota river, at or near the mouth of Fire Steel Creek, your memorialists respectfully ask an appropriation of five thousand dollars (\$5,000).

A memorial to congress asking for the construction of government wagon roads and appropriations for bridging streams on said roads.

Your memorialists would further represent that a large portion of the immigration into the interior of Dakota, will hereafter strike our eastern boundary near Sioux Falls City on the Big Sioux river. Between this point and the mouth of White river, on the Missouri, a distance of about one hundred and forty miles in about a due westerly course, there are the important rivers of Big Sioux, Vermillion and Dakota, and several smaller streams that must be bridged before that section of our Territory can be traversed; therefore your memorialists respectfully ask an appropriation of ten thousand dollars (\$10,000) to aid in the construction of a wagon road from Sioux Falls City on the Big Sioux river to a point on the Missouri river, opposite the mouth of White river; and for bridging the Big Sioux river, at or near Sioux Falls City, and the Vermillion river, at a point about due west from Sioux Falls City, and the Dakota river at or near old Fort James, and the smaller intermediate streams between the Big Sioux and Missouri rivers.

And your memorialists further represent that there is great need of an appropriation of ten thousand dollars to build bridges and grade the road leading up the Missouri river through the counties of Yankton, Bon Homme, Chas. Mix and Buffalo, inasmuch as a vast amount of supplies for the Indians, Military and growing settlements are being constantly freighted over said road; and towns and colonies are already being established near the western terminus of this thoroughfare, demanding that the route be made more passable for the tide of immigration. And your memorialists, as in duty bound, will ever pray.

Approved, December 30, 1870.

NO. 14.

A MEMORIAL TO CONGRESS PRAYING FOR AN APPROPRIATION
TO BRIDGE THE BIG SIOUX RIVER AT THE CROSSING OF THE
SIOUX FALLS AND BLUE EARTH CITY MAIL ROAD.

A memorial
to congress
praying for an
appropriation
to bridge the
Big Sioux river
at the crossing
of the Sioux
Falls and Blue
Earth City
mail road.

Your memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully represent the necessity of constructing a bridge across the Big Sioux river, at or near Gibraltar, near where the Sioux Falls and Blue Earth City road crosses the same. The immigration from the East destined to Dakota pass over said road, and trains of immigrants pass almost daily westward. The Sioux Falls and Jackson and Blue Earth City mail, and the mail on mail route No. 11215, from Sioux City, Iowa, and from Le Mars, Iowa, *via* Gibraltar, cross the stream at or near the same place. The stream being so rapid that it is almost impracticable to ferry across it in high water; the mail on said routes is laid up some times for several weeks, and by reason thereof Sioux Falls City is cut off from mail communication from the East, and hundreds of immigrants seeking homes in Dakota are losing much valuable time and sometimes property, in attempting to cross the stream.

Your memorialists deem the construction of a bridge at the place aforesaid absolutely necessary for the welfare of the people and for the traveling public, and would therefore most earnestly pray that an appropriation be made of not less than fifteen thousand dollars to construct a bridge at or near Gibraltar aforesaid, and for a bridge across the Split Rock creek. And your memorialists, as in duty bound, will ever pray.

Approved, January 12, 1871.

NO. 15.

A MEMORIAL TO THE CONGRESS OF THE UNITED STATES PRAYING FOR THE ESTABLISHMENT OF A MAIL ROUTE FROM FLANDREAU TO A POINT AT OR NEAR MEDARY, D. T.

Your memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully represent that the mail facilities afforded to the counties of Brookings and Deuel are entirely insufficient to meet their wants; that there is no mail route in said counties, and that at present the people of those counties are totally destitute of any communication with the rest of the civilized world by mail.

A memorial to the congress of the United States praying for the establishment of a mail route from Flandreau to a point at or near Medary, D. T.

We would further represent that the commercial and social interest of a very large portion of the inhabitants of this part of the Territory demand that a mail route be established from Flandreau to a point at or near Medary, a distance of about twenty miles over a dry, level country, without any streams to cross, and that the mail be transferred over said route at least once a week. And your memorialists, as in duty bound, will ever pray.

Approved, December 31, 1870.

NO. 16.

A MEMORIAL TO THE HONORABLE POSTMASTER-GENERAL OF THE UNITED STATES PRAYING THAT THE MAIL SERVICE ON ROUTE No., FROM FORT ABERCROMBIE TO PEMBINA, BE INCREASED TO SIX TIMES A WEEK.

HON. SIR:

Your memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully represent that the Red River Valley is becoming densely populated, and conse-

A memorial to the Postmaster-General of the United States praying that the mail

service on route
No.—, from
Fort Abercrom-
bie to Pembina,
be increased to
six times a
week.

quently the mail facilities afforded are entirely insufficient to meet their wants.

At Pembina, the county seat of Pembina county, there is located the principal custom-house of the Dakota and Minnesota revenue district. A large bonded warehouse through which the people of the province of Manitoba, B. P., receive their merchandise, besides a number of persons doing a merchandizing business. A new Fort (Fort Pembina) has been established during the past summer. A new land office, known as the Pembina land district, has just been opened. All the travel to the British possessions from Canada and the United States, passing from Abercrombie along the Red river and through the town of Pembina, and mail matters to the same. The population along the Red river of the North in the British possessions amounts to some twelve or fifteen thousand. The population of Pembina county through which this route runs is now believed to be not less than five thousand, with the prospect of increasing from ten to fifteen thousand more during the coming year. The Northern Pacific Railroad, and the St. Paul and Pacific Railroad run through this county from east to west, from fifty to seventy miles apart; and there are already projected two or three running north and south through this county, one of which we are assured will certainly be built within eighteen months from this time. There are towns and villages springing up along said route, which, for the want of greater mail facilities retards the growth and prosperity of the same. The land office at Pembina has just been opened, and with that office alone the business will be sufficient to justify the increase asked for, not to say anything of the military business, or that with the new province of Manitoba, B. P.

In consideration of the above, your memorialists would therefore earnestly request that service be increased to six times a week. And your memorialists, as in duty bound, will ever pray.

Approved, December 31, 1870.

NO. 17.

A MEMORIAL TO CONGRESS ASKING FOR A GEOLOGICAL SURVEY OF THE TERRITORY OF DAKOTA.

To the Honorable the Senate and House of Representatives in Congress Assembled:

Your memorialists, the Legislative Assembly of the Territory of Dakota, most respectfully represent, that the Black Hills and Bad Lands of Dakota Territory, lying near the 102 degrees meridian of longitude, and between the Niobrara and Yellow Stone rivers, is a region which has always excited the interest of geologists and explorers, but remains at the present time a mysterious, untraversed belt of the continent, where none but the wild beasts and red man hold dominion.

A memorial to congress asking for a geological survey of the Territory of Dakota.

The Black Hills, says Lieut. Warren who visited their base, are composed of the same formations of stratified rocks as are found in the gold bearing gulches of the Wind river and Big Horn Mountains, these Hills in his opinion, being but an out-cropping spur of the great Rocky Mountain range, in the vicinity of the Bannock and Virginia City mines.

Dr. Hayden the geologist, says the lowest member of the salurian period, or gold bearing strata, are quite well developed in the Black Hills, and the recent discoveries made by Gen. Sully's Indian expedition which crossed the northern trend of the Bad Lands, in 1864, clearly indicates that the next succeeding formation, known as the Devonian system, is brought to light in the floor of the Bad Land basin, and

WHEREAS, This system is known in geology as the period in the earth's formation which corresponds with the fourth day of creation, when the great coal measures of the earth commenced their slow formation with the first appearance of vegetation upon the globe, and

WHEREAS, It is an established geological fact that the most extensive coal deposits are met with in all countries next above the Devonian series, and that the petroleum or oil bear-

A memorial
to congress
asking for a
geological sur-
vey of the Ter-
ritory of Da-
kota.

ing rocks are to be found in this and the lower salurian period, which Dr. Hayden affirms are quite well developed in the Black Hills, and

WHEREAS, It is now the prevailing opinion among geologists, based upon scientific reasoning, that the basin of the "Bad Lands" is the ancient bed of a great coal-field, which became self-ignited at some period, and like many of the coal fields of England, has been slowly burned out by its own bituminous fuel, and

WHEREAS, Colter and others in 1804-5, crossed the northern trend of this great fire land, where, at that early day they represent the whole country as being on fire, emitting a carboniferous smoke, and the sound of rumbling thunder from the heated earth, and as these phenomena were mentioned by Lewis and Clark in 1806, and by Hunt, McKenzie and Crooks in their fur expedition to the mountains in 1811, there is conclusive evidence to sustain the statement made by Gen. Sully in his official report of 1864, that "coal exists in all the country from the Missouri to the Yellowstone.

Humboldt and Lafond make mention of mountain reports being heard in the vicinity of these Hills in the early part of the present century, which the wild and superstitious natives of that region believed to be the bursting of rich mineral deposits, the locality of which were revealed only to the red man. But modern discovery and science account for these strange phenomena by attributing the cause to an escape of hydrogen from subterraneous beds of burning coal.

Later travelers inform us that since the year 1830, these strange "fires and explosions" have ceased. Capt Bonnevillie in 1834, and Parker in 1835, found nothing but the silent, dismal and mysterious ruins of this great subterraneous conflagration, heaped in charred and crumbling towers and castles standing in the midst of a solitary valley of ashes, bones and petrifications.

This theory in the origin of the "Bad Lands" being sustained by both history and geology, it is confidently believed by the people of the northwest, that coal oil reservoirs will yet be found in great abundance at the north and east base of the Black Hills. Here in the upheaval of this mountain range, geology points to the oil bearing rocks of the Devonian and

salurian formations, which have been thrown up through and above the surrounding coal fields which border immediately upon the base of these mountainous hills.

A Memorial to Congress asking for a geological survey of the Territory of Dakota.

Prof. Owens, U. S. geologist, in his report of 1852, in speaking of this mysterious region, compares the Bad Lands to "some magnificent city of the dead, where the labor and the genius of forgotten nations had left behind them a multitude of monuments of art and skill. At every step objects of the highest interest present themselves. Imbedded in the debris, lie strewn, in the greatest profusion organic relics of extinct animals. All speak of the former existence of the most remarkable races that roamed about in bygone ages high up in the valley of the Missouri towards the sources of the western tributaries."

This eminent geologist demonstrates that all the strata composing the formation in the vicinity of the Black Hills and Bad Lands "have been a succession of sediments or precipitates at the bottom of the ocean." "Thus," says he "the geologist is able to prove, as satisfactorily as can be demonstrated a mathematical problem, that at the time these fossil mamalia of the Bad Lands lived, the ocean still ebbed and flowed over Switzerland, including its present site of the Alps, whose highest summits then reached only above the surface of the sea, constituting a small archipelago of a few distant islands in the great expanse of the ocean."

The same geologists informs us that the Black Hills of Dakota, the silver bearing placers of the Amazon, the rich Cordilleras of South America, the Himilayha range of India, the Alps of Switzerland and the volcanic Etna of Sicily, have all emerged from the sea at the same geological period, and the same formation of mineral bearing strata can be traced in each.

The actual discovery of Astor's fur parties in 1811, and of Capt. Bonneville in 1834, of Harney in 1855, Warren in 1856-7, of Dr. Hayden in 1858-9, and Gen Sully in 1864, proves conclusively that the Black Hill region abounds not only in the precious metals, but in iron, coal, salt and petroleum, aside from its vast forests of pine.

Your memorialists would further represent that there has been established at the forks of the White river, near the base

of the Black Hills and agency for the chief Spotted Tail's band of Indians, which will be the means of opening a road for the transportation of supplies, and as Todd Randall, a very experienced explorer in the west, who is well acquainted with the Indian tribes in that vicinity has been appointed agent of said bands, your memorialists would recommend that said Agent Randall be selected to provide guides, interpreters and transportation for the geologist and assistants in prosecuting their scientific researches in said region. Your memorialists would therefore pray that a sufficient appropriation be made to prosecute said geological survey at an early day.

Approved, January 6, 1871.

NO. 18.

A MEMORIAL TO CONGRESS ASKING FOR AN APPROPRIATION TO ERECT A SUITABLE BUILDING FOR A CUSTOM HOUSE, POST OFFICE AND UNITED STATES COURTS AT THE PORT OF PEMBINA, DAKOTA TERRITORY.

A memorial to Congress asking for an appropriation to erect a suitable building for a custom house, post-office and United States courts at the port of Pembina, Dakota Territory.

Your memorialists, the Legislative Assembly of the Territory of Dakota respectfully ask that an appropriation be made by your honorable bodies for the erection of a suitable building at the Port of Pembina, for a custom house, to accommodate also the post office and United States court and urge in support of the memorial:

That the building now used and occupied as a custom house is unsuitable and unfit for such a purpose.

That said building, and that used by the post office are wooden tenements, in all respects unsafe, and liable at any time to be destroyed by fire together with their valuable contents.

That the rent now paid (which must increase enormously as the value of property increases) for the several departments and offices, would in a very few years pay the expense of

erecting a suitable building for the accommodation of the various federal officers and therefore the expenditure of a sum sufficient for that purpose would be absolute economy.

That the official reports of the collection of customs of the Port of Pembina, District of Dakota and Minnesota, show that the merchandise passing annually over this route, is inspected at said port, amounting to hundreds of thousands of dollars from which the government derives a large revenue, (say \$60,000 per year) and which your memorialists are of the opinion will be doubled within the next two years.

That this is the only custom house located on or near the International boundary line for a distance of two hundred and fifty miles east, and over a thousand miles west of said town of Pembina, and through which the entire business of the British Possessions with the United States and Canada must pass.

That with the Northern Pacific, St. Paul and Pacific railroads and branch from the Pacific R. R. through Dakota Territory to Pembina and the St. Cloud and Pembina railroad through Minnesota, besides other projected lines to the same point, this is destined to be a most important place, and a custom house of considerable magnitude required.

Your memorialists regard this matter of great importance and would therefore most earnestly pray that an appropriation of not less than twenty-five thousand dollars be made for the purpose above stated.

And your memorialists will as in duty bound ever pray.

Approved, January 3d, 1871.

NO. 19.

A MEMORIAL TO THE POSTMASTER-GENERAL PRAYING FOR MAIL SERVICE ON MAIL ROUTE No. . . , FROM SIOUX FALLS TO FLANDREAU, DAKOTA TERRITORY.

Your memorialists, the Legislative Assembly of the Territory of Dakota, most respectfully represent that the interests

A memorial
to the postma-
ster-general
praying for

mail service on
mail route No. . .
from Sioux
Falls to Fland-
reau, D. T.

of the Big Sioux Valley demands mail service on mail route from Sioux Falls to Flandreau, Dakota Territory.

That the valley along the said route is densely populated a distance of thirty-five miles, and it is our belief that the postal revenue on said route will exceed the expense.

That the route is very direct and practicable, and the main thoroughfare between the two cities.

That the country along said route is destitute of mail communication, and valuable mail matter has been and is liable to be lost by careless private carriers.

That we deem that mail service on said route is absolutely necessary for the welfare and prosperity of the people of that country; and we therefore pray that mail service be ordered on said route, and that it be transferred one time per week.

And your memorialists, as in duty bound, will ever pray.

Approved, January 3d, 1871.

NO. 20.

A MEMORIAL TO THE POSTMASTER GENERAL REQUESTING SERVICES ON A MAIL ROUTE NO. . . . FROM ALGONA, IOWA, *via* CANTON, D. T., TO YANKTON, DAKOTA TERRITORY.

To the Honorable Postmaster-General of the United States.

A memorial
to the post-
master-general
requesting ser-
vices on a mail
route No. . . .
from Algona,
Iowa, *via* Can-
ton, D. T., to
Yankton, D. T.

Your memorialist, the Legislative Assembly of the Territory of Dakota, would most respectfully represent, that it is important to the interests of the inhabitants of the northwestern portion of the State of Iowa, and the Territory of Dakota, that a direct mail communication be established between Algona, Iowa, *via* Canton, D. T., to Yankton, Dakota Territory.

That during the past year a great amount of emigration has settled on the said mail route, and that the majority of these settlers are without any direct mail communication. That at the present time Algona is the terminus of the McGregor and

Yankton railroad, which we have reason to believe will be brought to a speedy completion; that the distance from Algona, Iowa, to Yankton is about one hundred and eighty-five miles, and that said route is a practical one.

A memorial to the post-master-general requesting services on a mail route No. from Algona, Iowa, via Canton, D. T., to Yankton, D. T.

Your memorialists would therefore pray that services at least two times per week be ordered upon mail route No. from Algona, Iowa *via* Canton to Yankton, Dakota Territory, on the route established by act of Congress, approved, July 14th, 1870.

And that this request may be promptly granted, your memorialists as in duty bound, will ever pray.

Resolved by the Legislative Assembly of the Territory of Dakota.

That copies of this memorial be forwarded to the Hon. C. C. Pomeroy, Member of Congress from Iowa, and the Hon. S. L. Spink, Delegate in Congress from Dakota Territory, who are hereby requested to lay the same before the Hon. Post-master-General.

Approved, December 23, 1870.

NO. 21.

A MEMORIAL TO THE CONGRESS OF THE UNITED STATES PRAYING FOR AN APPROPRIATION OF MONEY TO BUILD A PENITENTIARY IN DAKOTA TERRITORY.

Your memorialists, the Legislative Assembly of Dakota Territory, would most respectfully represent that there exists at the present time a great and pressing necessity for the erection of a suitable prison or penitentiary, in which to confine and keep secure, persons held for trial in the courts of said Territory for criminal offences; and in which to hold securely those who may be convicted and sentenced to undergo imprisonment.

A memorial to the congress of the United States praying for an appropriation of money to build a penitentiary in Dakota Territory.

Your memorialists further represent that, in view of the annual expense incurred by the United States marshal of said Territory in guarding and securing prisoners, it would be an act of absolute economy and reform in the disbursement and management of the public funds to cause to be at once erected a substantial building for the purposes above mentioned.

Your memorialists further represent that by the provisions of an act of Congress, approved January 22, 1867, the net proceeds of the internal revenue of said Territory for the three fiscal years ending June 30, 1868, were to be set apart for this purpose, but the expense of collecting said revenue during the period named exceeded the amount of collections; therefore,

Resolved, That our delegate in Congress be requested to call the attention of the proper committees of Congress to the object of this memorial, and urge the early appropriation of funds for said purpose.

Approved, December 30, 1870.

NO. 22.

A MEMORIAL TO THE POSTMASTER-GENERAL OF THE UNITED STATES PRAYING THAT THE MAIL SERVICE ON ROUTE NO. 13903, FROM ELK POINT TO SIOUX FALLS, DAKOTA TERRITORY, BE INCREASED.

A memorial to the postmaster-general praying that the mail service on route No. 13903, from Elk Point to Sioux Falls, D. T., be increased.

SIR:—Your memorialists, the Legislative Assembly of Dakota Territory, would most respectfully represent that an increase of mail service on route No. 13903, from Elk Point to Sioux Falls, Dakota Territory, is necessary for the public good. That the said route runs along the valley of the Big Sioux river a distance of seventy-five miles, which country is becoming densely populated for a distance of ten miles on each side of the valley.

Several towns and villages are springing up along said route, and for the want of greater mail facilities, the growth and prosperity of the same is retarded, and that an increase of service would do much to advance the future prosperity of the country.

Your memorialists would therefore request that service be increased to six times per week. And as in duty bound your memorialists will ever pray.

Approved, December 30, 1870.

NO. 23.

A MEMORIAL TO CONGRESS ASKING FOR THE ESTABLISHMENT OF A MAIL ROUTE FROM YANKTON TO OLD FORT JAMES, DAKOTA TERRITORY.

Your memorialists, the Legislative Assembly of Dakota Territory, in ninth session convened, respectfully represent that the interest of the inhabitants along the valley of Dakota river, through the northern tier of counties, require the establishment of a mail route from Yankton, the Capital of the Territory, to old Fort James on the Dakota river, a distance of about sixty miles.

A memorial to congress asking for the establishment of a mail route from Yankton to Old Fort James, D. T.

That section of our Territory lying between these points is already considerably settled the entire distance, and during the next year the population will, without doubt, more than treble.

The people along the whole route are without any mail facilities whatever: Therefore your memorialists respectfully ask for the establishment of a mail route as above indicated.

And your memorialists, as in duty bound, will ever pray.

Approved, December 30, 1870.

NO. 24.

A MEMORIAL FOR A MAIL ROUTE FROM YANKTON, DAKOTA TERRITORY, TO NIOBRARA, NEBRASKA.

To the Congress of the United States:

A memorial
for a mail route
from Yankton,
Dakota Territory,
to Niobrara,
Nebraska.

Your memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully represent that the interest of the people living in the valley of the Missouri river between Yankton, Dakota Territory, and Niobrara, Nebraska a distance of forty-five miles, demand the early establishment of postal connection between the two places, by way of Elm Grove, Nebraska, and the Santee Indian Agency. Yankton is now recognized as the commercial centre for this whole section of country; but owing to the present postal facilities, no direct connection exists between the points heretofore named; but letters destined to Yankton pass on the Nebraska side of the Missouri river, within one mile of their destination, and thence to Sioux City, a distance of sixty-five miles, where they are again changed and forwarded to Yankton. As by far the greater portion of the business of the country west of Yankton along the route named is connected with people and merchants of Yankton, the establishment of the route asked for would be a great benefit, and would save forty-eight hours time in the transmission of letters, besides the extra labor of changing the mails at different points on the present route, considering that the present route passes at so short a distance from Yankton.

Your memorialists feel sanguine that your honorable bodies will see the propriety of granting this petition, inasmuch as the expense to the government will be quite small and the benefit to the people very great.

And your memorialists as in duty bound will ever pray.

Approved, January 13, 1871.

NO. 25.

A MEMORIAL TO THE CONGRESS OF THE UNITED STATES REQUESTING THE ADOPTION OF THE "SURVEYORS MARK," PATENTED BY CARL C. P. MEYER, DEC. 21, 1869, IN ALL FUTURE GOVERNMENT SURVEYS.

Your memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully request the adoption of the "surveyors mark," patented by Carl C. P. Meyer, December 21, 1869, in all future government surveys of public lands.

A memorial to the Congress of the United States requesting the adoption of "surveyors mark," patented by Carl C. P. Meyer, Dec. 21, 1869, in all future government surveys.

Your memorialists represent that the corner marks used in the present government surveys very soon become destroyed or removed, thus putting settlers to the trouble and expense of re-surveying and re-establishing corners, which, in the opinion of your memorialists would be obviated by adopting this mark, on account of its superiority in plainness and durability over those now in use.

And as in duty bound your memorialists will ever pray.

Approved, January 13, 1871.

NO. 26.

A MEMORIAL TO THE PRESIDENT OF THE UNITED STATES, REQUESTING THAT AN ORDER FOR THE REMOVAL OF CERTAIN PERSONS RESIDING UPON THE FORT RANDALL MILITARY RESERVATION, DAKOTA TERRITORY, MAY BE SUSPENDED.

To the President of the United States:

Your memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully represent that an order has been issued from the War Department of the United States declaring the authority of the military over that por-

A memorial to the president of the United States, requesting that an order for the removal of certain persons

residing upon
the Fort. Ran-
dall military
reservation, D.
T., may be sus-
pended.

tion of the Fort Randall reservation described as "lying along the left bank of the Missouri river, extending from the west line of the Yankton Indian reservation to a line intersecting the Missouri river near Whetstone Agency, and including all lands between those two boundary lines which is within five miles of the said river," and that under authority of this order the commander at Fort Randall is issuing orders directing the removal of certain persons residing upon lands within the bounds described.

Your memorialists would further represent that this reservation was surveyed in the year 1860, by Lieut. J. C. Clark, 4th Artillery, and was declared by the President in June of that year; that upon a portion of this reservation a number of persons settled as far back as 1858, over two years before the reservation was made; that in September, 1867, an order was issued by Lieutenant-General Grant vacating this reservation, and that since that time a number of bona fide settlements have been made there, having been informed of the vacation of the reservation and notified by the former commander of Fort Randall, that the military had no claim upon or control over said lands.

The men who have settled upon these lands have made improvements, in good faith thereon, varying in value from two hundred to five thousand dollars. Their homes, their families, and all that they have in the world are there, and to remove them upon any terms would be disastrous to many of them, and in some cases ruinous.

It is claimed that a necessity existed for taking military possession of this reservation for the purpose of suppressing the sale of intoxicating liquors by persons residing thereon, especially to Indians located at Whetstone Agency.

Your memorialists would represent, however, that the reservation referred to does not extend as far north as a point opposite the Whetstone Agency, by one or two miles, and that there is nothing to prevent the location of such evil disposed persons at points beyond the limits of the reservation, and yet within a short distance of the Indian Agency.

Your memorialists represent that while the end aimed at can not, in their opinion be reached by the course pursued, a great hardship will be imposed upon innocent parties, includ-

ing women and children, by the enforcement of this order, and that even if certain persons are permitted for the time being, to remain upon their lands, they can have no assurance of being allowed to reside there permanently, but are liable, at any moment, upon mere suspicion attaching to them, to be forcibly removed.

A memorial to the president of the United States, requesting that an order for the removal of certain persons residing upon the Ft. Randall Military Reservation, D. T., may be suspended.

Your memorialists would further represent that while the laws relating to illegal traffic are stringent and severe, no person questions the right of the proper officers to enforce them, whether laws of the United States or of the Territory of Dakota, and that upon the persons residing there taxes are levied and collected the same as in other portions of the Territory. They state that while they know of no reason why the civil laws of the Territory and of the United States should not be enforced there as elsewhere in the Territory, they most respectfully protest against the enforcement of a military order against a few offenders against such civil laws which must, at the same time result in the infliction of a positive hardship and injury upon innocent persons.

Your memorialists would further represent that the tract of land is not required for military use or occupation, since Fort Randall is upon the opposite, or west bank of the Missouri river, and that no military post exists upon the eastern bank within seventy-five miles of the same. They further represent that the settlement by white persons is rapidly extending up the east bank of the river, and thence back into the interior, and that this reservation lies in the direct path of such settlement; that if it continues to be held as such reservation it will be a serious impediment in the way of such settlement which must otherwise move rapidly forward over and beyond it.

For these reasons, your memorialists respectfully ask that the order above referred to may be suspended, and that the lands described may be opened to permanent settlement the same as other government lands in this Territory.

And your memorialists as in duty bound will every pray.

Approved, January 10, 1871.

NO. 27.

A MEMORIAL REQUESTING THE REMOVAL OF THE QUARTERMASTER'S DEPARTMENT FROM SIOUX CITY, IOWA, TO YANKTON, DAKOTA TERRITORY.

To the Hon. Secretary of War:

A memorial requesting the removal of the quartermaster's department from Sioux City, Iowa, to Yankton, D. T.

Your memorialists, the Legislative Assembly of the Territory of Dakota, respectfully petition you for the removal of the office of the Quartermaster's Department now located at Sioux City, Iowa, to Yankton, Dakota Territory.

Your memorialists represent that the reasons which have heretofore existed for the location of said office at Sioux City no longer prevail; that Yankton is now in direct communication by telegraph with Washington and other portions of the country; possesses daily mail facilities, and will soon have a railroad completed to this place, while freights by river may be as readily delivered at Yankton as at Sioux City, and will then be much nearer to the up-river forts; that all of the forts and military posts which look to Sioux City for their supplies are located on the Missouri river in Dakota Territory, and that all such supplies must necessarily pass through Yankton on their way to such forts and posts; that many of the contracts for supplies can be let to much better advantage to the Government at Yankton than at Sioux City, since grain, flour and beef-cattle can be furnished at lower rates by the farmers and stock-raisers of the Territory, than they can be at points where the local demand is heavier. They further represent that warehouse room for the storage of supplies can be furnished to an ample extent at Yankton.

For these reasons your memorialists represent that it would be to the manifest advantage of the Government to remove said office to Yankton; and to this end your memorialists, as in duty bound, will ever pray.

Approved, January 13, 1871.

NO. 28.

A MEMORIAL TO CONGRESS ASKING AN APPROPRIATION TO ENABLE MESSRS. DAGGETT, CLEVINGER & PERCY TO EXTEND THE SIOUX CITY AND MISSOURI RIVER TELEGRAPH LINE TO FORT RANDALL.

Your memorialists, the Legislative Assembly of the Territory of Dakota, would respectfully state that Daggett, Clevenger and Percy, the owners of the Sioux City and Missouri River Telegraph line, from Sioux City, Iowa, to Yankton, Dakota Territory, are desirous of extending their telegraph from Yankton to Fort Randall, Dakota Territory, at as early an opportunity as possible.

A memorial to Congress asking an appropriation to enable Messrs. Daggett, Clevenger & Percy to extend the Sioux City and Missouri River telegraph line to Fort Randall.

That the said telegraph company, in building their line to the city of Yankton, have incurred an outlay hardly warranted by present receipts, but nevertheless are willing to look to the future for remuneration.

The advantages to the general government in being at all times instantaneously able to communicate with military posts on the frontier, are so evident as to need no mention, particularly during the present unsettled condition of Indian affairs in the Territory.

Your memorialists would therefore, in behalf of the people of this Territory as well as the United States garisons who would be inestimably benefitted thereby, respectfully ask the endeavors of Daggett, Clevenger and Percy, be aided and assisted by the general Government in extending their line from Yankton to Fort Randall, Dakota Territory, by granting a subsidy to the said company for said purpose, and extending such other aid as the Government may deem warrantable and right.

And as in duty bound your memorialists will ever pray.

Approved, December 30, 1870.

NO. 29.

A MEMORIAL TO THE CONGRESS OF THE UNITED STATES ASKING FOR AN APPROPRIATION OF MONEY TO BRIDGE THE SIOUX RIVER AT OR NEAR CANTON, DAKOTA TERRITORY.

A memorial to the Congress of the United States asking for an appropriation of money to bridge the Sioux river at or near Canton, Dakota Territory.

Your memorialists, the Legislative Assembly of the Territory of Dakota, respectfully ask your Honorable body for an appropriation to construct a bridge across the Big Sioux river at or near Canton, Lincoln county, Dakota Territory. The construction of such a bridge would greatly assist and accommodate a large immigration that is now and will continue to flow from the northwestern States to this Territory.

Your memorialists would further represent that the United States mail that is carried from Sioux City, Iowa, to Sioux Falls, Dakota Territory, crosses the said river at this point; and at certain seasons of the year said mail is detained several weeks on account of the high water. Also, there is on the opposite side of the river, in Iowa, a mill which supplies the inhabitants of several counties of the Territory with lumber, and for the want of a bridge as aforesaid, these people are frequently forced to go to the Missouri river to obtain lumber for the construction of dwelling houses, &c., &c.

Your memorialists are of the opinion that an appropriation of eight thousand dollars would accomplish the object so much desired.

And your memorialists as in duty bound will ever pray.

Approved, December 30, 1870.

NO. 30.

A MEMORIAL TO CONGRESS ASKING FOR A GRANT OF LANDS FOR COLLEGE PURPOSES IN THE TERRITORY OF DAKOTA.

A memorial to congress asking for a grant of lands for college purposes in the Territory of Dakota.

WHEREAS, On the 2d day of July, 1862, the Congress of the United States did enact a law donating lands to the several States and Territories which may provide colleges for the benefit of agricultural and mechanic arts, which said act, according to the construction of the commissioner of the general land office does not apply to the Territory; therefore,

Your memorialists, the Legislative Assembly of the Territory of Dakota would pray your Honorable body to so amend said act that the benefit therein conferred upon the States may be extended to the Territories.

Your memorialists would respectfully represent that the Territory of Dakota is rapidly settling, with an enterprising, intelligent and industrious class of immigrants, and every possible exertion is being made, consistent with the circumstances of the inhabitants, to advance the cause of education in the Territory.

Your memorialists would therefore pray that said act may be amended as aforesaid, in order that the youth of the Territories may receive the benefit of a collegiate education at home; especially that they may be educated in such branches of learning as are related to agriculture and the mechanic arts, and that the citizens of the Territories, equal with those of the States, may receive the benefit of the provisions of said act.

Be it Resolved, That a duly authenticated copy of this memorial be forwarded to our delegate in Congress, S. L. Spink.

Approved, December 30, 1870.

NO. 31.

A MEMORIAL TO THE CONGRESS OF THE UNITED STATES PRAYING FOR THE LOCATION OF A MAIL ROUTE FROM THE TOWN OF ELK POINT, TO THE TOWN OF SWAN LAKE, IN THE TERRITORY OF DAKOTA.

To the Congress of the United States:

Your memorialists, the Legislative Assembly of the Territory of Dakota, on behalf of many citizens whose petitions have been laid before us, would most respectfully represent that there are a large number of citizens in the northwestern part of Union county, who have to go a distance of ten to fifteen miles to reach the nearest postoffice; therefore, in view of these facts we would recommend that a mail route be established, running from Elk Point, in said county, in a north-

A memorial to the congress of the United States praying for the location of a mail route from the town of Elk Point to the town of Swan Lake, in the Territory of Dakota.

westerly direction across the towns of Elk Point, Brule Creek and Sioux Valley, to intersect the Yankton and Sioux Falls route at Swan Lake, in Lincoln county.

And your memorialists, as in duty bound, will ever pray.
Approved, January 13, 1871.

NO. 32.

JOINT RESOLUTION RELATIVE TO HON. S. L. SPINK.

Joint Resolu-
tion relative to
Hon. S. L.
Spink.

WHEREAS, Certain persons are endeavoring to create the impression here and abroad that there is a serious division in the ranks of the Republican party of Dakota, thereby hoping to secure the recognition of and favors from a Republican Administration, and are claiming in the city of Washington to speak for the Republican party of Dakota; therefore,

Be it Resolved by the Legislative Assembly of the Territory of Dakota,

That Hon. S. L. Spink, our present delegate to Congress, was the nominee of the Republicans of this Territory in the late election; that he was sustained by and received the votes of a large majority of those who have heretofore acted and voted with the Republican party of Dakota, and who have sympathized with and sustained the policy and principles of the administration of President Grant from its commencement; that he still has the confidence of that party, who look to him to represent the Republicans of this Territory in the city of Washington, in all matters of a political nature, as well as to guard the general interests of the Territory; and we ask the President of the United States, the heads of the departments and the Republicans of Congress to sustain Mr. Spink as the proper representative of the Republican party of Dakota.

Be it further Resolved, That the Speaker of the House of Representatives, be instructed to forward to the President of the United States and to the head of each department a copy of these resolutions.

Approved, December 28, 1870.

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