

LAWS, MEMORIALS AND RESOLUTIONS

OF THE

TERRITORY

OF

DAKOTA,

PASSED AT THE FIFTH SESSION OF THE

LEGISLATIVE ASSEMBLY,

BEGUN AND HELD AT
YANKTON, THE CAPITAL OF SAID TERRITORY, ON THE
FOURTH DAY OF DECEMBER, A. D. 1865, AND
CONCLUDED JANUARY 12th, A. D. 1866.

PUBLISHED BY AUTHORITY.

YANKTON, DAKOTA TERRITORY,
G. W. KINGSBURY, PRINTER, UNION & DAKOTAIAN OFFICE
1865-66.

TABLE OF CONTENTS.

GENERAL LAWS.

	<i>Page.</i>
CIVIL CODE.	
CHAPTER 1.—An Act to Establish a Civil Code. . . .	1
JUSTICES CODE.	
CHAPTER 2.—An Act to Establish the Courts and Define the Jurisdiction of Justices of the Peace.	377
AMENDMENTS.	
CHAPTER 3.—An Act to Amend Chapter Nineteen of the Session Laws of 1864-5.	449
4.—An Act to Amend Chapter twenty-three of the laws of 1863-4.	450.
5.—An Act to Amend Section seven of Chap- ter twenty-three of Session Laws of 1863-4.	450
6.—An Act to Amend Chapter thirty-five of the Laws of 1862.	451
7.—An act to Amend Chapter thirty-three of the Session Laws of 1864-5.	451
8.—An Act to Amend Chapter thirty-seven, laws of 1862.	452
ATTORNEYS.	
CHAPTER 9.—An Act to Regulate the Admission of At- torneys to the several Courts of this Ter- ritory.	454

COUNTY OFFICERS.

- CHAPTER 10.—An Act Fixing the time of Holding the Regular Meetings of the Boards of County Commissioners. 455.
- 11.—An Act Relative to the Commissioners and Probate Judge of Todd County. . . 456
- 12.—An Act Requiring Justices of the Peace and Constables to Qualify and give Bonds. 457

COURTS.

- CHAPTER 13.—An Act Fixing the time of Holding the District Courts in the First, Second and Third Judicial Districts; and the time of Holding the Courts in the County of Union. 458

ELECTIONS.

- CHAPTER 14.—An Act Providing for Elections and to Prescribe the Canvass and Return of the same. 459

FENCES.

- CHAPTER 15.—An Act to Establish a Fence Law. 472

FERRIES.

- CHAPTER 16.—An Act to Regulate Ferries in the Organized Counties of the Territory of Dakota. 475

FIRING OF PRAIRIES.

- CHAPTER 17.—An Act to Prevent the Firing of Woods, Marshes and Prairies. 479

INDIANS.

- CHAPTER 18.—An Act to Prohibit the Furnishing of Intoxicating Liquors to Indians. 480
- 19.—An Act Prohibiting the Harboring of Indians within the Organized Counties. . . 482

IMMIGRATION.

- CHAPTER 20.—An Act to Authorize the Appointment of
an Immigrant Agent. . . . 483

LAWS AND JOURNALS.

- CHAPTER 21.—An Act to Provide for the Printing and
Distribution of the Laws and Journals. 484

POISONS.

- CHAPTER 22.—An Act to regulate the Sale of Poisons. 487

PRINTERS FEES.

- CHAPTER 23.—An Act regulating the Rates of Printers
Fees. 488

REVENUE.

- CHAPTER 24.—An Act in relation to Territorial and
County Revenue. 489

ROAD SUPERVISORS.

- CHAPTER 25.—An Act to provide for the Appointment of
Road Supervisors and to prescribe the
duties of the same. 504

ROADS.

- CHAPTER 26.—An Act to Establish a Territorial Road
from the Big Sioux River to Yankton, on
the Line recently Surveyed by the Gov-
ernment for the Location of the Sioux
City and Fort Randall Wagon Road . 507
- 27.—An Act to Locate and Establish a Terri-
torial Road from the Missouri River by
way of Elk Point and Brule Creek, to
the North line of Union County . 510
- 28.—An Act to Locate and Establish a Terri-
torial Road Commencing at a point on a
Territorial Road at or near the house of
Charles Chaussee, in Clay County, in
said Territory, thence to the Big Sioux
River, through Union County . . . 511

ROADS.—*Continued.*

- CHAPTER 29.—An Act to Locate and Establish a Territorial Road from Yankton via Smutty Bear Bottom, Bon Homme, Yankton Reservation and Fort Randall . . . 512
- 30.—An Act Locating a Territorial Road in Union County 513

SCHOOLS.

- CHAPTER 31.—An Act to Establish a Public School Law for the Territory of Dakota . . . 514

SHEEP AND SWINE.

- CHAPTER 32.—An Act to Prohibit Sheep and Swine from Running at Large 538

SURVEYORS.

- CHAPTER 33.—An Act in Relation to County Surveyors 542

MEMORIALS AND RESOLUTIONS.

BLOOD HOUNDS.

- CHAPTER 34.—A Memorial and Joint Resolution Relative to the Introduction of Blood Hounds into this Military District 545

CAPITOL BUILDING.

- CHAPTER 35.—A Memorial to Congress, Praying for an Appropriation to erect a Capitol Building in Dakota Territory 546

CODIFICATION OF LAWS.

- CHAPTER 36.—Memorial to Congress Asking for an Appropriation to Codify the Laws of Dakota Territory 547

GEOLOGICAL SURVEY.

- CHAPTER 37.—Memorial to Congress asking for a Geological Survey of the Black Hills and Bad Lands in connection with the Military forces under General Sully, in this District 548

INDIAN AGENT.

- CHAPTER 38.—Memorial and Joint Resolution Relative to the Appointment of an Indian Agent 551

INDEMNIFICATION.

- CHAPTER 39.—A Memorial to the Senate of the United States relative to the Treaty between the Ponca Indians and the United States, pending before said Honorable Body, asking that certain settlers be Indemnified in case it is Ratified 552

LINCOLN AND JOHNSON.

- CHAPTER 40.—Joint Resolution relative to Abraham Lincoln and Andrew Johnson 554

MAIL ROUTES.

- CHAPTER 41.—A Memorial and Joint Resolution asking for the Establishment of a Mail route from Sioux Falls, Dakota Territory, to Ponca Nebraska 555
- 42.—A Memorial to Congress asking for the Continuation of Post Route No. 13,577, from St. Paul, the Capital of Minnesota, to Yankton, the Capitol of Dakota Territory, via Mankato and Sioux Falls City 557
- 43.—Memorial to Congress for the Establishment of a Mail route from Fort Randall, Dakota Territory, to Fort Sully in the same Territory 558
- 44.—A Memorial to Congress for the Establishment of a Mail route from Choteau Post Office, Dakota Territory, to Ponca Agency, D. T. 559

MAIL ROUTES.—*Continued.*

- CHAPTER 45.—Memorial to Congress for a Mail route from Fort Sully, Dakota Territory, to Virginia City, Montana Territory . . . 560

MAIL SERVICE.

- CHAPTER 46.—A Memorial to the Post Master General Requesting service on Mail route No. 15,562 561
- 47.—A Memorial to the Post Master General in relation to the Establishment of a Daily Mail from Sioux City, Iowa, to Yankton, Dakota Territory 562

MILITARY HEAD QUARTERS.

- CHAPTER 48.—A Memorial to the Hon. Secretary of War Praying that the Head Quarters of the Upper Missouri Military District be Established within the Territory of Dakota 563

MILITARY POSTS.

- CHAPTER 49.—A Memorial and Joint Resolution to the Secretary of War, and Commanding Generals Pope and Sully . . . 565
- 50.—A Memorial to the Secretary of War Praying for the erection of a Military Post at the North Base of the Black Hills of Dakota 566
- 51.—Memorial of the Legislative Assembly of Territory of Dakota Praying for the Establishment of a Military Post on the Vermillion River 569

PACIFIC RAIL ROAD.

- CHAPTER 52.—A Memorial to Congress relative to the Location of the North Branch of the Pacific Rail Road 570

S. L. SPINK.

- CHAPTER 53.—Joint Resolution Requesting the Confirmation of the Appointment of Secretary Spink 572

TERRITORIAL COLLEGE.

- CHAPTER 54.—A Memorial to Congress relative to an Endowment of Lands for College purposes 572

W. A. BURLEIGH.

- CHAPTER 55.—Joint Resolution Relative to Walter A. Burleigh 573

SPECIAL AND PRIVATE LAWS.

CITIZENSHIP.

- CHAPTER 1.—An Act to confer the Rights of Citizenship on Antwine Roy and Louis Roy . . . 577

FERRIES.

- CHAPTER 2.—An Act Granting to Barny McGraw a Ferry Charter across the Missouri River 578

INCORPORATIONS.

- CHAPTER 3.—An act Incorporating the North Platte and Green River Bridge and Ferry Company 580

JAIL.

- CHAPTER 4.—An Act to Authorize the County Commissioners of Yankton County to rent a suitable building for a County Jail . . . 582

TAX—CLAY COUNTY.

- CHAPTER 5.—An Act to Authorize the Sheriff of Clay County to levy and collect a direct Tax for the purpose of purchasing Blank Books for keeping County Records . 583

TRANSPORTATION OF BOOKS.

- CHAPTER 6.—An act to provide for defraying certain expenses incident to the Transportation and other charges on Books, Maps and Charts donated to the Territory by Act of Congress or otherwise . . . 584

TERRITORIAL WARRANTS.

- CHAPTER 7.—An Act to Authorize and direct the Territorial Auditor to issue Warrants to certain officers 584

AUTHENTICATION.

DAKOTA TERRITORY, }
Secretary's Office, Yankton. }

I, S. L. SPINK, Secretary of Dakota Territory, do hereby certify that I have delivered to Geo. W. Kingsbury, Public Printer, true and correct copies of all Laws, Joint Resolutions and Memorials, now on file in my office and passed at the Fifth Session of the Legislative Assembly of the Territory of Dakota, begun and held at Yankton, the Capital of said Territory, on the 4th day of December in the year of our Lord one thousand eight hundred and sixty-five.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the great seal of the Territory of Dakota.

{ L. S. }

Done at Yankton, this first day of May, in the year of our Lord one thousand eight hundred and sixty-five.

S. L. SPINK,
Secretary of Dakota Territory.

DAKOTA TERRITORY,
UNION AND DAKOTAIAN OFFICE,
May 1st, 1866. }

I HEREBY certify that the general and private Laws, Memorials and Joint Resolutions herein contained, are true and correct copies of those delivered to me by the Secretary, as stated in the preceding authentication.

GEO. W. KINGSBURY,
Public Printer.

GENERAL LAWS.

GENERAL LAWS
OF THE
TERRITORY OF DAKOTA.

CIVIL CODE.

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** Title of Code.
THE TERRITORY OF DAKOTA.

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

Sec. 3. The will of the sovereign power is expressed : Action of sov-
ereign 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.

Two kinds of law.

Sec. 4. The common law is divided into ;

1. Public law, or the law of nations;
2. Domestic, or municipal law.

Common law.

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

Id.

Sec. 6. In this Territory there is no common law in any case where the law is declared by the CODES.

Two kinds of civil rights.

Sec. 7. All original civil rights are either :

1. Rights of person ; or,
2. Rights of property.

Rights, how modified.

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

Divisions of the Civil Code.

Sec. 9. This CODE has four general divisions :

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.

- SECTION 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 necessaries.
- 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.

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

Sec. 11. All other persons are adults. Definition of an adult.

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. Unborn child.

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, &c.

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.

Nor certain obligations.

Sec. 19. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

Contracts of persons without understanding.

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 other insane persons.

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.

Powers of persons whose incapacity has been adjudged.

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.

Wrongs.

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.

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.

SECTION 30. Slander, what.

31. What communications are privileged.
32. Protection to personal relations
33. Right to use force.

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.

General personal rights.

Sec. 28. Defamation is effected by :

Defamation, what.

1. Libel ; or,
2. Slander.

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.

Libel, what.

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

Slander, what.

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 a 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.

Protection to
personal
relations.

Sec. 32. The rights of personal relation forbid :

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.

Right to use
force.

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.

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.

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. Definition of marriage.

Sec. 35. Consent to a marriage may be manifested in any form, and may be proved like 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 Certain marriages when to be deemed void.

void from the time its nullity is adjudged by a competent tribunal.

Polygamy forbidden.

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 ;

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.

Conjugal rights, &c., not restored by pardon.

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.

Marriages of Indians.

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

Certain parts of Code not applicable.

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 marriages.

46. Form of marriage.

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

SECTION 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.

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.

Mode of authenticating marriages.

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.

Form of marriage.

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

Duties of the officers before whom a marriage is solemnized.

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.

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 to 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.

The certificate. 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 entry thereof. Sec. 51. The entry required by the last section must specify :

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.

Authentication of the certificate.

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

Certificate, entry, &c., evidence.

Sec. 53. 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.

ARTICLE 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.

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

Cases where marriages may be annulled.

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.

Application for
a decision of
nullity.

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

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 an-
nulled 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 chil-
dren.

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.

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. Effect of judgment of nullity

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.

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.

Marriage, how dissolved.

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:

Divorce for adultery.

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:

Cases 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.

Legitimacy of issue.

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.

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.

When re-marriage is forbidden.

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.

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.

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

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.

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

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. Judgment of separation, When revoked.

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.

Residence of wife.

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.

Expense of action.

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.

Orders respecting custody of children.

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.

Support of wife and children on divorce or separation granted to wife.

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.

Security for maintenance and alimony.

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.

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.

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

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. Rights of husband as head of the family.

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. Duties of husband to wife as to support.

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. In other respects their interests separate

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. Husband and wife may make contracts.

Sec. 80. A husband and wife cannot by any contract with each other alter their legal relation, 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. How far may impair their legal relations.

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

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 nor 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 provision 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 an 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 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 acts 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.

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.

Legitimacy of children born out of wedlock.

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.

Who may dispute the legitimacy of a child.

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.

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

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 legitimate child.

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

Custody of an illegitimate child.

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.

Allowance to parent.

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

Parent cannot control the property of child.

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.

Remedy for parental abuse.

Sec. 95. The authority of a parent ceases :

When parental authority ceases.

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

Remedy when a parent dies without providing for the support of his child.

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.

Reciprocal duties of parents and children in maintaining each other.

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.

When a parent is liable for necessaries supplied to a child.

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 not liable for support furnished his 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.

Husband not bound for the support of his wife's children by a former marriage.

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.

Compensation and support of adult child.

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.

Parent may relinquish services and custody of child.

Sec. 102. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

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.

Wages of minors.

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.

Right of parent to determine the residence of child.

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

Parent not liable for acts of child.

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.

Wife in certain cases may obtain custody of minor children.

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,

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

Child may be adopted.

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

Age of person adopting.

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.

Consent of
child's parents.

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.

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

Proceedings on
adoption.

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.

Judge's order.

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.

Effect of
adoption.

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 on former
relations of
child.

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.

Adoption of
illegitimate
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.

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.

Sec. 117. A guardian is a person appointed to take care of Guardian, what. the person or property of another.

Sec. 118. The person over whom, or over whose property, Ward, what. a guardian is appointed, is called his ward.

Sec. 119. Guardians are either : Kinds of guardians.

1. General; or,
2. Special.

Sec. 120. A general guardian is a guardian of the person, General guardian, what. or of all the property of the ward within this Territory, or of both.

Sec. 121. Every other is a special guardian. Special guardian, what.

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: Appointment by parent.

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.

No person guardian of estate without appointment.

Sec. 123. No person, whether a parent or otherwise, has any power as guardian of property, except by appointment as hereinafter provided.

Appointment by court.

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.

14.

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.

Jurisdiction,

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.

Rules for awarding custody of minor.

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:

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 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 the person.

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.

Duties of guardian of estate.

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

Relation confidential.

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.

Guardian under direction of court.

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.

Death of a joint guardian.

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

Removal of guardian.

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.

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

Guardian appointed by parent; how 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.

Release by
ward.

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.

Guardian's
discharge.

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

Insane persons.

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 :

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 alledged 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.

- SECTION 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.

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 may bind themselves as apprentices.

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

Who to consent to such binding.

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 such county, town or city, as effectually 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.

Special provisions as to Indian children.

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.

Age of infants to be inserted in indentures.

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.

Pecuniary consideration to be inserted.

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

Special agreement to be inserted in certain cases.

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.

Certain indentures, where to be deposited.

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.

Indentures by foreigners, being minors-

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.

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.

Sec. 151. The master, under an indenture specified in section 149, may assign it, by writing indorsed thereon, and with the approval, also indorsed, of a magistrate mentioned in section 150.

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

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.

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.

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.

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.

How assigned.

Indentures.
when invalid.

County
superintendents
and overseers
to be guardians
of servants,

Penalty on
apprentices
absenting
themselves
from service.

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

Penalty.

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.

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.

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.

Sec. 162. Property is either :

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

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.

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.

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.

owners. 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. The state may also hold property as a private proprietor.

Property of the state. 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.

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

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.
 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.

Sec. 171. The ownership of property is either :

1. Absolute ; or,
2. Qualified.

Ownership,
absolute or
qualified,

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 absolute

- When qualified.** **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 ownership, 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 partnership purposes, or unless declared in its creation, expressly or by necessary implication, to be a joint interest, with a right of survivorship.
- Interests as to time.** **Sec. 180.** In respect to the time of enjoyment, an interest in property is either:
 1. Present or future; and,
 2. Perpetual or limited.
- Present interest, what.** **Sec. 181.** A present interest entitles the owner to the immediate possession of the property.
- Future interest, what.** **Sec. 182.** A future interest entitles the owner to the possession of the property only at a future period.
- Perpetual interest, what.** **Sec. 183.** A perpetual interest has a duration equal to that of the property.
- Limited interest, what.** **Sec. 184.** A limited interest has a duration less than that of the property.
- Sec. 185.** A future interest is either:

1. Vested; or,
2. Contingent.

Kinds of future interest.

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.

Qualities 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.

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.

Interests in real property.

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.

Id.

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

What future interests are recognized.

ARTICLE II.

CONDITIONS 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 condi-
tions 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 mar-
riage, 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.

How long it
may be sus-
pended.

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.

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 *of* 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.

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

Accumulations, when void.

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:

Accumulation of income.

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 direc-
tions, 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 sup-
port, &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.

In certain
cases who en-
titled to income
of property.

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.

CHAPTER IV.

TERMINATION OF OWNERSHIP.

SECTION 211, 212. Future interests, when defeated.

213, 214. Future interests, when not defeated.

Future interest,
when 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.

Id.

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 or 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.

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. ^{rd.}

TITLE III.

GENERAL DEFINITIONS.

SECTION 215. Income, what.

216. Time of creation, 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. Income, 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. Time of creation, what.

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

SECTION 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 of their enjoyment, are either: Enumerations of estates.

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 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. What estate a fee simple.

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. Estates tail abolished; their nature declared.

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. Certain remainders valid.

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. Freeholds; chattels real; chattels interests.

Sec. 223. An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold only during the Estates for life of a third person, when a freehold, &c.

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

Contingent
remainder in
fee.

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.

Remainders,
future and
contingent
estates, how
created.

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 determi-

nation 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.

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 than 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.

Id.

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

Contingent remainder on a term of years.

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 of estates for life.

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.

Remainder upon a contingency.

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

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

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.

Form and service of notice.

Sec. 241. The notice prescribed by the last section must be 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.

Effect of notice.

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.

Re-entry, when and how to be made.

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 fif-

teen days' previous written notice of intention to re-enter, served in the mode prescribed by section 241.

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 land may be attached to other land as incidents or appurtenances, and are then called easements: Servitudes attached to land.

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 co-terminous 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.

Apportioning easements.

Sec. 251. In case of partition of the dominant tenement, 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.

Rights of owner of future estate.

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.

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.

SECTION 260. Rights of grantees of rents and reversion.

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.

Id.

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.

Rights of grantees of rent and reversion.

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 lessees and their assignees, &c.

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.

Application of last two sections.

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.

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 reversions, &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.

Sec. 266. The owner of land in fee has the right to the surface, and to everything permanently situated beneath or above it. Rights of owner.

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 water.

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

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. Lateral and subjacent support.

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.

Duties of tenant for life.

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.

Monuments and fences.

Sec. 273. Coterminous owners are mutually bound equally to maintain :

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.

- SECTION 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.

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. Executed uses existing.

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. Right to possession of land creates legal ownership.

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. Certain trusts unaffected.

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. Trustees of estate for use of another take no interest.

Sec. 279. The preceding sections of this Title do not extend to trusts arising or resulting by implication of law, nor prevent Preceding sections qualified.

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.

Rights of creditors.

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.

Section 281 qualified.

Sec. 283. Section 281 does not apply :

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.

Purchasers protected.

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.

For what purposes express trusts may be created.

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

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 ascer-

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

Profits of land liable to creditors in certain cases.

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.

Other express trusts to be powers in trust.

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.

Creation of certain powers not prohibited.

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.

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

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.

Trustees of express trusts to have whole estate.

Sec. 292. Notwithstanding anything contained in the last section, the author of a trust may, in its creation, prescribe to

Author of trust may devise, &c.

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.

Id. **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.

Effect of omitted trust in conveyance. **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.

Certain sales, &c., by trustees void. **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.

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

TITLE V.

POWERS.

SECTION 300. What powers exist

301. Application of this title.

SECTION 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.
- 317. Power of sale in mortgage.
- 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.
- 332. Omission to recite power.
- 333. Instruments deemed conveyances.
- 334. Certain dispositions not void.
- 335. Computation of term of suspension.
- 336. What estate may be given.
- 337. Married women, their authority.
- 338. Defective execution.
- 339. Fraud.
- 340. General and beneficial powers to married women.
- 341. Estate of owner for life, &c., when changed into a fee.
- 342, 343. Certain powers create a fee.
- 344. Effect of power to devise inheritance in certain cases.
- 345. Power to dispose of fee.
- 346. Power to revoke.
- 347. Special and beneficial powers, who may take.
- 348. Construction of leasing powers.
- 349. Power to make leases by owner for life.
- 350. Release of such power.

- SECTION 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 a power.

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.

Division of powers.

Sec. 304. Powers are general or special, and beneficial or in trust.

Definition of general 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 special powers.

Sec. 306. A power is special:

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.

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.

Reservation of powers in conveyance.

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 powers irrevocable.

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

When power a lien

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, becomes entitled to the money so secured to be paid.

Beneficial
powers, &c.,
transferred by
insolvent as-
signments, &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.

Id.

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.

How executed.

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.

Execution by
survivors, &c.

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 of
power to dis-
pose by devise.

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.

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. Id.

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 328 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 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. Consent of third person to execution of power.

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. Id.

Sec. 332. Every instrument executed by the holder of a power, conveying an estate or creating a charge which such Omission to recite power.

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.

Fraud.

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

General and beneficial powers to married women.

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.

Estate of owner for life, &c., when changed into a fee.

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, abso-

lute 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.

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.

Id.

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.

Power 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.

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

Special and beneficial powers, who may take.

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.

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.

Construction of leasing powers.

- 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.
- Trust powers imperative.** **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.
- Effect of right of selection.** **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.
- Construction of certain powers.** **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 propor

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.

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. ^{Id.}

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.

TITLE 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 by a judicial proceeding. Things in action defined.

Sec. 367. A thing in action, arising out of the violation of 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. Transfer and survivorship.

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.

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. Definition of a ship.

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. Appurtenances and equipments.

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. Foreign and domestic navigation.

tion 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.

Several owners.

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

owner for the voyage.

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.

Registry, enrollment and license.

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

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.

Collisions.

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

Rules as to ships meeting each other.

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 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.

Rule for steam vessels on different courses.

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.

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

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.

Breaches of such rules to imply willful default

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

Loss, how apportioned,

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.

Corporations
defined.

Sec. 379. A corporation is a creature of the law, having certain powers and duties of a natural person. Being created 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.

Sec. 384. Corporations are either :

Distinction of corporations.

1. Public; or,
2. Private.

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.

Public corporations defined.

Sec. 386. Private corporations are of three kinds :

Private corporations.

1. Corporations for religion;
2. Corporations for benevolence;
3. Corporations for profit.

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.

Charters.

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 incorporators, or their agents. The acceptance cannot be conditional or qualified.

Acceptance of charter.

Sec. 389. Except when otherwise expressly provided, the acceptance of a grant of corporate authority may be proved like any other fact.

Id.

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 incorporators.

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

Purposes for which corporations 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.

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

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.

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. Subscription and acknowledgments.

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. Banking and insurance companies.

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. Petition.

Sec. 397. A petition for incorporation must declare the truth of the statement of the charter, and must be subscribed by all the persons who subscribed the charter, and verified by their oaths. Id.

Sec. 398. Upon the presentation of a petition for incorporation, the county commissioners must inquire into the facts; and if satisfied that the matters stated in the petition are true, Proceedings on petition

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.

Corporation,
when formed.

Sec. 399. Upon the filing of the order, charter, and petition, 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.

Who are corpo-
rators.

Sec. 400. Except when otherwise provided, a person 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.

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.

Transfers 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.

overissue of
stock.

Sec. 406. Unless otherwise provided, a corporation may purchase, hold and transfer shares of its own stock.

Purchase of
stock by the
corporation.

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.

Dividend.

ARTICLE III.

CORPORATE POWERS.

- SECTION 408. 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 such, has the following powers, unless otherwise specially provided:

General powers.

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 incorporators in general meeting, unless the charter prescribes another body or a different mode.

Id.

Sec. 410. The powers and duties of corporation, the time, place and manner of exercising the corporate powers, the means by which persons 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.

Meetings 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.

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

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. Mode of exercising power.

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. General restriction.

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. Exercise of banking powers prohibited.

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 the 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.

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

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 :

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.

Power of cities to take property.

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 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.

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. Forfeiture for non-user.

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. Trustees in case of dissolution.

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.

Joint
authorship.

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:

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

Transfer.

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

Effect of
publication.

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.

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.

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

Sec. 437. The good-will of a business is property, transfer-^{ra.} able like any other.

Sec. 438. Instruments essential to the title of real proper-^{Title deals.} ty, 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.

Simple occu-
pancy.

Sec. 440. Occupancy for any period confers a title sufficient against all except the Territory and those who have title by prescription, accession, transfer, will or succession.

Prescription.

Sec. 441. Occupancy for the period prescribed by the CODE 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.

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.

Alluvion.

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.

Sudden removal of bank.

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 indemnity, 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.

SECTION 455. Willful trespassers.

456. Owner may elect between the thing and its value.

457. Wrongdoer liable in damages.

Accession by
uniting several
things.

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.

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.

Id.

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 mate-
rials 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.

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. Willful tres passers.

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 elect 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.

- ARTICLE 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.

Transfer, 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 contract. 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.

SECTION 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. Redelivering 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.

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. When voluntary settlement takes effect.

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

ARTICLE V.

EFFECT OF TRANSFER.

- SECTION 479. What title passes.
 480. What interests affected.

SECTION 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 trans- What interests affected. ferrer, 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.

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

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

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. 480. 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.

Livery of Seizin.

Sec. 487. The mode formerly in use, of conveying lands by 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.

SECTION 492. Title to highway.

493. Attornment by tenant unnecessary.

494. Lineal and collateral warranties.

Sec. 488. A transfer of real property passes all easements 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.

What easements pass with property.

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

No implied covenants in grants.

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 to 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 of the highway in front thereof.

Title to highway.

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

Attornment by tenant, when unnecessary.

Liabilities of tenant.

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.

Lineal and collateral warranties.

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.

Transfer of
title under sale.

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
executory
agreement
for 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.

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.

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

Gifts defined.

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.

if, how made.

Sec. 502. A gift, other than a gift in view of death, cannot be revoked by the giver.

Gift not revocable.

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.

Gift in view of death, what.

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.

When gift presumed to be 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.

Instruments affecting real property.

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

Instruments must be acknowledged.

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.

When deed to be recorded.

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.

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.

Sec. 512. Instruments recorded under this chapter, must be recorded with the register of deeds, of the county in which the real property affected thereby is situated. In what office.

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. Books of record.

Sec. 514. The duties of registers of deeds, in respect to recording instruments, are prescribed by statute. Duties of clerk, &c.

Sec. 515. The mode of recording transfers of vessels, registered under the laws of the United States, is regulated by acts of Congress. Transfers of vessels.

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.

SECTION 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
acknowledg-
ments 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.

14.

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.

By whom
taken, without
the territory,

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 :

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 ; or,
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

chargé 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.

Id.

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 by subscribing witness.

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.

Proof of deed when witnesses are dead.

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.

What proof to be made and certified.

Certificate of
acknowledg-
ment.

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
officer's
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.

14.

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.

14.

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.

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.

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.

Letter recorded,
how revoked.

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.

Effect of
recording and
deposit.

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

Certain leases
not affected.

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 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.

Power to revoke, when deemed executed.

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.

Id.

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.

Purchaser in good faith not affected.

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.

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.

- SECTION 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.

Who may
make will.

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.

Monomaniac
incompetent.

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

Will procured
by fraud, &c.

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.

What may pass
by will.

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.

Who may
take 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.

Nuncupative
will.

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

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 Mutual will. revoked by any of the testators, in like manner with any other 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.

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

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.

Sec. 551. A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities. Nuncupative will, how to be executed.

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. Witness to add residence.

Sec. 553. The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil. Republishion by 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.

Wills may be
deposited for
safe keeping.

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.

To whom to be
delivered.

Sec. 558. A will deposited under the provisions of the last section must be delivered only:

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.

Will, when to
be opened by
surrogate.

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.

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.

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. Evidence of revocation.

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 by obliteration on face of will.

Sec. 564. The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates. Revocation of duplicate.

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 by subsequent will.

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 inten- Revocation of subsequent will does not revive the first.

tion to revive the prior 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 revocation.

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 devisees or legatees, as might be had against the testator's successors, if the same had passed by succession.

Charge or incumbrance not a revocation.

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.

Conveyance, when not a revocation.

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.

when it is a revocation.

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.

Revocation of 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.

After-born child, unprovided for, to succeed.

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.

Devises and bequests, in certain cases not to lapse.

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.

Witness to will cannot take under will.

Sec. 577. 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.

When witness may succeed.

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.

Creditor a competent witness.

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 of limitation.
598. To what time words refer.
599. Devise or bequest to a class.
600. When conversion takes effect.
601. When child born after testator's death takes under will.
602. Mistakes and omissions.
603. When devises and bequests 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. Devisees, &c., take as tenant in common.
613. Advancements when ademption.

Testator's
intention to be
carried out.

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.

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.

Harmonising 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.

Id.

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.

Id.

Sec. 586. The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained.

Words taken in ordinary sense.

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.

Words to receive an operative construction.

Sec. 588. Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

Intestacy to be avoided.

Sec. 589. Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention.

Effect of technical words.

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.

Id. **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," "issue," "descendants," &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 property of such person, according to sections 642 and 643 of this Code.

Words of donation and of limitation. **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.

To what time words refer. **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.

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.

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.

Interests in remainder are not affected.

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.

Conditional devises and bequests.

Sec. 608. A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.

Condition precedent, what

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 takes
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 ademp-
tions.

Sec. 613. Advancements or gifts are not to be taken as adempments 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.

615. Order of sale in case of an intestate.

616. Order of sale in case of a testator.

617, 618. Legacies, how charged with debts.

619. Abatement.

620. Specific devises and legacies.

621. Heir's conveyance good, unless will is proved within four years.

622. Possession of legatees.

623. Bequest of interest.

624. Satisfaction.

625. Legacies, when due.

Section 626. Interest.

- 627. Construction of these rules.
- 628. Executor 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: Order of sale in case of intestacy.

- 1. Personal property;
- 2. Real property other than estates of freehold;
- 3. Estates of freehold.

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; Order of sale in case of a testator.

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.

Id.

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 devises and legacies.

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.

Heir's conveyance good unless will is proved within four years.

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 devisor's death.

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. Bequest 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. Power to appoint void.

Sec. 630. No person has any power, as an executor, until he qualifies, except that, before letters have been issued, he may pay funeral charges and take necessary measures for the preservation of the estate. Executor not to act till qualified

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 which 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.

Liability 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.

643. Where there is neither widow nor children.

644. Successor of deceased parent.

645. Relatives in equal degree; in unequal degree.

- SECTION 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 property of one who dies without disposing of it by will. Succession defined.

Sec. 638. The property, both real and personal, of any one who dies without disposing of it by will, passes, in the first instance, to the personal representatives of such person, as trustees: Office of personal representatives.

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 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. Who are personal representatives.

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 dispositions 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 Husband. 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 ;

2. If the decedent leaves a wife and lineal descendants, one-third part goes to the wife, and the other two-thirds to the Widow and child. nearest lineal descendants and the successors of those who are deceased ;

3. If the decedent leaves a wife and no descendants, and Widow and next of kin. 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 ;

4. If the decedent leaves a wife, and no descendant, parent, Widow alone. brother, or sister, the whole surplus goes to the wife ;

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 Where there is neither widow nor children. kin, and the successors of those who are deceased, as follows :

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 Successor of deceased parent. by representation in place of the 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 Relatives in equal degree. of the nearest degree succeeds to the share to which he would In unequal degree.

have been entitled had all those in the same degree, who have died leaving issue, been living; and the issue of 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
curtesy.

Sec. 647. Dower and curtesy are abolished.

Certain
estates, &c.,
not to be
affected.

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 of 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 advance-
ment to be set
off or deducted.

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 purposes 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. ^{13.}

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. ^{14.}

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. ^{14.}

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 decedent may succeed.}

illegitimate child may succeed to mother's property.

Sec. 662. In case of the death of a mother leaving no lawful issue, and no husband, and leaving illegitimate children or 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 Obligation,
what.
 is bound to do or not to do a certain thing.

- Sec. 671. An obligation arises either from:** How created.
- 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.

SECTION 673. Obligation, joint or several, &c.

674. When joint.

675. Contribution between joint parties.

Obligation,
joint or
several, &c.

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.

When joint.

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.

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. Condition 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.

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.

Condition
subsequent.

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

Performance,
&c., of con-
ditions when
essential.

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.

Right of selection, how lost.

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.

Alternatives indivisible.

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.

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 as if they had personally entered into them. Such covenants are said to run with the land.

Covenants running with land, what.

Sec. 692. The only covenants which run with the land, are those specified in this Title, and those which are incidental thereto.

What covenants run with the land.

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.

Id.

14. 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 Obligation extinguished by performance 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.

Sec. 700. Performance of an obligation, by one of several Performance by one of several joint debtors persons who are jointly liable under it, extinguishes the liability of all.

Sec. 701. An obligation in favor of several persons is extinguished by performance rendered to any of them, except in Performance to one of joint creditors the case of a deposit made by owners in common, or in joint ownership, which is regulated by the Title on DEPOSIT.

Sec. 702. If a creditor, or any one of two or more joint Effect of directions by creditors 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.

Sec. 703. A partial performance of an indivisible obligation Partial performance 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.

Sec. 704. Performance of an obligation for the delivery of Payment, what money only, is called payment.

Application of
general per-
formance.

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 706. Obligation extinguished by offer of performance.

707. Offer of partial performance.

708. By whom to be made.

SECTION 709. To whom to be made.

- 710. Where offer may be made.
- 711. When offer must be made.
- 712. Compensation after delay in performance
- 713. Conditional offer.
- 714. Ability and willingness, essential.
- 715. Production of thing to be delivered, not necessary.
- 716. Thing offered, to be kept separate.
- 717. Performance of condition precedent.
- 718. Written receipts.
- 719. Extinction of pecuniary obligation.
- 720. Objections to mode of offer.
- 721. Title to thing offered.
- 722. Custody of thing offered.
- 723. Effect of offer on accessories of obligation.
- 724. Creditor's retention of thing which he refuses to accept.
- 725. Effect of offer on accessories of obligation.
- 726. Creditor's retention of thing which he refuses to accept.

Sec. 706. An obligation is extinguished by an offer of performance, made in conformity to the rules herein prescribed, and with intent to extinguish the obligation. Obligation extinguished by offer of performance.

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.

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. To whom to 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: Where offer may be made.

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.

Id.

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.

Ability and willingness essential.

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.

Production of thing to be delivered, not necessary.

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.

Thing offered to be kept separate.

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.

Performance of condition precedent.

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.

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.

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.

Creditor's retention of thing, which he refuses to accept.

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.

Id.

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.

Id.

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.

Effect of
refusal to
accept perform-
ance before
offer.

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.

CHAPTER IV.

ACCORD AND SATISFACTION.

SECTION 732. Accord, what.

733. Effect of accord.

734. Satisfaction; what.

735. Accord of liquidated debt.

Sec. 732. An accord is an agreement to accept, in extinction Accord what. of an obligation, something to which the person agreeing to accept is not otherwise entitled.

Sec. 733. Though the parties to an accord are bound to ex- Effect of accord. ecute it, yet it does not extinguish the obligation until it is fully executed.

Sec. 734. Acceptance, by the creditor, of the consideration Satisfaction, what. of an accord, extinguishes the obligation, and is called satisfaction.

Sec. 735. Payment of an amount less than that of a liqui- Accord of liquidated debt. dated debt then payable, is not a satisfaction thereof, though accepted as such.

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.

Sec. 736. Novation is the substitution of a new obligation Novation, what. for an existing one.

Sec. 737. Novation is made :

1. By the substitution of a new and higher obligation be- Modes of novation. tween 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 acceptance 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.

Obligation extinguished by release.

Sec. 741. An obligation is extinguished by a release therefrom given to the debtor by the creditor, upon a new consideration, or under seal.

Certain claims not affected by general releases.

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.

Release of several joint debtors.

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.

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 A CONTRACT.

- CHAPTER I. Definition.
 II. Parties.
 III. Consent.
 IV. Object.
 V. Consideration.

CHAPTER I.

DEFINITION.

- Section 744. Contract, what.
 745. Essential elements of contract.

Sec. 744. A contract is an agreement to do or not to do a certain thing. Contract, what.

Sec. 745. It is essential to the existence of a contract that there should be :-

1. Parties capable of contracting ;
2. Their consent ;
3. A lawful object ; and,
4. Sufficient cause or consideration.

Essential
elements of
contract.

CHAPTER II.

PARTIES.

SECTION 746. Who may contract.

747. Minor's, &c.

748. Identification of parties necessary.

749. When contract for benefit of third person may be enforced.

Who may contract.

Sec. 746. All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

Minor's &c.

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.

Identification of parties necessary.

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.

When contract for benefit of third person may be enforced.

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 recind it.

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.

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.

SECTION 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 proposal.

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.

Sec. 750. The consent of the parties to a contract must Essentials of consent.
be:

1. Free;
2. Mutual; and,
3. Communicated by each to the other.

Sec. 751. A consent which is not free is nevertheless not ab- Consent, when voidable.
solutely void, but may be rescinded by the parties, in the manner prescribed by the chapter on RECISSION.

Sec. 752. An apparent consent is not real or free when ob- Apparent consent, when not free,
tained through:

1. Duress;
2. Menace;
3. Fraud;
4. Undue influence; or,
5. Mistake.

Sec. 753. Consent is deemed to have been obtained through When deemed to have been obtained by fraud, &c.
one of the causes mentioned in the last section, only when it would not have been given had such cause not existed.

Sec. 754. Duress consists in: Duress, what.

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.

Menace, what.

Sec. 755. Menace consists in a threat :-

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.

Fraud, actual or constructive.

Sec. 756. Fraud is either actual or constructive.

Actual fraud, what.

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 :-

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.

Constructive fraud, what.

Sec. 758. Constructive fraud consists :

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.

Actual fraud, a question of fact.

Sec. 759. Actual fraud is always a question of fact.

Undue influence.

Sec. 760. Undue influence consists :

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.

Sec. 761. Mistake may be either of fact or of law.

Mistake, what.

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 :

Mistake of fact.

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.

Sec. 763. Mistakes of law constitutes a mistake, within the meaning of this article, only when it arises from :

Mistake of law.

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.

Sec. 764. Mistake of foreign laws is a mistake of fact.

Mistake of foreign laws.

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.

Mutuality 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.

Communication of consent.

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.

Mode of communicating acceptance of proposal.

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.

When communication deemed complete.

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.

Acceptance
must be
absolute.

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 conclude the person accepting. A qualified acceptance is a new proposal.

Revocation of
proposal.

Sec. 771. A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

Revocation,
how made.

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.

Ratification of
contract void
for want of
consent.

Sec. 773. A contract which is voidable solely for want of due consent, may be ratified by a subsequent consent.

Assumption of
obligation by
acceptance of
benefit.

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.

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.

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. Requisites of object.

Sec. 777. Everything is deemed possible, except that which is impossible in the nature of things. Impossibility, what.

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 wholly 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. When contract partially void.

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.

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. Good consideration, what.

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 How far legal or moral obligation is a good consideration.

corresponding with the extent of the obligation, but no further or otherwise.

Consideration lawful.

Sec. 782. The consideration of a contract must be lawful, within the meaning of section 827.

Effect of its legality.

Sec. 783. If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful the entire contract is void.

Consideration executed or executory.

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.

Executory consideration.

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.

How ascertained.

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.

Effect of impossibility of ascertaining consideration.

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.

Id.

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.

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.

SECTION 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.

Sec. 789. A contract is either express or implied.

Contract: express or implied.

Sec. 790. An express contract is one, the terms of which are stated in words.

Express contract, what.

Sec. 791. An implied contract is one, the existence and terms of which are manifested by conduct.

Implied contract, what.

Sec. 792. All contracts may be oral, except such as are specially required by statute to be in writing.

What contracts may be oral.

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.

Contract not in writing through fraud, may be enforced against fraudulent party.

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:

What contracts must be written.

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 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.

Effect of writing.

Sec. 796. A contract in writing takes effect upon its delivery to the party in whose favor it is made, or to his agent.

Contract in writing takes effect, when.

Sec. 797. The provisions of the chapter on TRANSFERS IN GENERAL, concerning the delivery of grants, absolute and conditional, apply to all written contracts.

Provisions of chapter on transfers of real property.

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

Seal, what.

made by writing the word "seal" opposite the name of the person signing or executing the instrument of writing.

Effect of seal.

Sec. 799. A seal is presumptive evidence of a consideration.

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 reconciled.

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.

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 of parties, how ascertained.

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.

Intention to be ascertained from language.

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.

Interpretation of written contract.

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.

Writing, when disregarded.

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.

Effect to be given to every part of contract.

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.

Several contracts when taken together.

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.

Interpretation in favor of contract.

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.

Words to be understood in usual sense.

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.

Contract restricted to its evident object.

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.

Interpretation in sense in which promiser believed promisee to rely.

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.

Particular clause subordinate to general intent.

Sec. 815. Particular clauses of a contract are subordinate to its general intent.

Contract partly written and partly printed.

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.

Repugnancies, how reconciled.

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.

Inconsistent words rejected.

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.

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.

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 of performance of contract.

Sec. 823. Time is never considered as of the essence of a contract, unless by its terms expressly so provided.

Time, when of essence.

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.

When contract joint and several.

Sec. 825. A promise, made in the singular number, but executed by several persons, is presumed to be joint and several.

Id.

Sec. 826. An executed contract is one, the object of which is fully performed. All others are executory.

Executed and executory contracts, what.

TITLE IV.

UNLAWFUL CONTRACTS.

SECTION 827. What is unlawful.

828. Certain contracts unlawful.

829. Penalties void.

830. Contract 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 :

What is unlawful.

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.

Certain con-
tracts 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.

Penalties,
void.

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.

Contract fixing
damages, 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.

Exception.

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.

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.

Sec. 836. Every contract in restraint of the marriage of any person, other than a minor, is void. Contract in restraint of marriage void.

TITLE V.

EXTINCTION OF CONTRACTS.

CHAPTER I. Contracts, how extinguished.

II. Rescission.

III. Alteration and Cancellation.

CHAPTER I.

CONTRACTS 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. Contract, how extinguished.

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.

When stipulations against right to rescind do not defeat it.

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.

Rescission, how effected.

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:

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 consider-

ation; and is extinguished, thereby, to the extent of the alteration.

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. Sealed contracts how modified.

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 cancellation, &c

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. Extinction by unauthorized alteration.

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. Alteration of duplicate not to prejudice.

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.

Deceit, what. **Sec. 849.** A deceit, within the meaning of the last section, is either :

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.

Deceit upon the public, &c.

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.

Restoration of thing wrongfully acquired.

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 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 Divisions of this CODE.

PART IV.

OBLIGATIONS ARISING FROM PARTICULAR TRANS- ACTIONS.

- 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.

Agreement
for sale,

Sec. 857. An agreement for sale is either :

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.

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 on demand.

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. Delivery, where made.

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 reason-
able 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 parties, and as nearly so, at the place of delivery, as can be secured by reasonable care.

Merchandise not in existence.

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.

Manufacturer's warranty against latent defects.

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.

Thing bought for particular purpose.

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.

When thing can not be examined by buyer.

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.

Trade marks

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.

Effect of general warranty.

Sec. 892. A general warranty does not extend to defects inconsistent 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.

Price, when to be paid.

Sec. 893. A buyer must pay the price of the thing sold on 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 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. Right to inspect goods.

Sec. 895. The breach of a warranty entitles the buyer to rescind an agreement for sale, but not an executed sale, unless the warranty was intended by the parties to operate as a condition. Rights in case of breach of warranty.

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.

Sec. 896. A sale by auction is a sale by public outcry to the highest bidder on the spot. Sale by auction, what.

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. Sale, when complete.

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. Withdrawal of bid.

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 their own benefit. Sale under written conditions.

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. Rights of buyer upon sale without reserve.

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.

Exchange, what.

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.

Form of contract.

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.

Parties have rights and obligations of sellers and buyers.

Sec. 905. The provisions of the Title on SALES 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.

Warranty of money.

Sec. 906. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

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.

Sec. 907. A deposit may be voluntary or involuntary; and for safe keeping or for exchange. Deposit, kinds of.

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. Voluntary deposit, how made.

Sec. 909. An involuntary deposit is 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,

Involuntary deposit, how made.

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.

Id. 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.

Deposit for keeping, what. Sec. 911. A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

Deposit for exchange, 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.

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.

Depositary must deliver on demand. 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.

No obligation to deliver without 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.

Place of delivery. Sec. 915. A depositary 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 depositary 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 depositary from delivering the thing to him.

Sec. 917. A depositary, 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 depositary against the claim of the depositor, the depositary 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.

Notice to owner of thing wrongfully detained.

Sec. 918. If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof, if it can be done without injury to the thing.

Delivery of thing owned jointly, &c.

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.

Depositor
must indemnify
depository.

Sec. 919. A depositor must indemnify the depository:

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.

Obligation of
depository of
animals

Sec. 920. A depository of living animals must provide them with suitable food and shelter, and treat them kindly.

Obligations as
to use of thing
deposited.

Sec. 921. A depository 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.

Liability for
damage arising
from wrongful
use.

Sec. 922. A depository 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.

Sale of thing in
danger of
perishing.

Sec. 923. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depository may sell it for the best price obtainable, and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor.

Injury to, or
loss of thing
deposited.

Sec. 924. If a thing is lost or injured during its deposit, and the depository 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 misrepresents the circumstances to him, the depository is presumed to have willfully or by gross negligence permitted the loss or injury to occur.

Service rendered
by depository.

Sec. 925. So far as any service is rendered by a depository, 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 depository 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 deposits.
 929. Degree of care required of gratuitous depositary.
 930. His duties cease, when.

Sec. 927. Gratuitous deposit is a deposit for which the de- Gratuitous deposit, what
 positary receives no consideration beyond the mere possession
 of the thing deposited.

Sec. 928. An involuntary deposit is gratuitous, the deposi- Nature of involuntary deposit.
 tary being entitled to no reward.

Sec. 929. A gratuitous depositary must use at least slight Degree of care required of gratuitous depositary.
 care for the preservation of the thing deposited.

Sec. 930. The duties of a gratuitous depositary cease : His duties cease, when.
 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 Deposit for hire.
 depositary in such case is called a depositary for hire.

Sec. 932. A depositary for hire must use at least ordinary Degree of care required of depositary for hire.
 care for the preservation of the thing deposited!

Rate of compensation for fraction of a week, &c.

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.

Termination of deposit

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.

Id.

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.

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 articles, if not deposited with him, and not required by the guest for present use.

ARTICLE V.

FINDING.

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.

Obligation 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 owner-
ship.

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.

How sale is to be made

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.

Surrender of thing to the finder.

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.

Thing abandoned.

Sec. 946. The provisions of this article have no application to things which have been intentionally abandoned by their owners.

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 of money.

CHAPTER I.

LOAN FOR USE.

SECTION 948. Loan, what.

949. Title to property lent.

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 Loan, what. 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.

Sec. 949. A loan for use does not transfer the title to the Title to property lent. thing; and all its increase during the period of the loan belongs to the lender.

Sec. 950. A borrower for use must use great care for the Care required of borrower. preservation in safety and in good condition of the thing lent.

Sec. 951. One who borrows a living animal for use, must Id. treat it with great kindness, and provide everything necessary and suitable for it.

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 Degree of skill. lender to believe him to possess.

Sec. 953. A borrower for use must repair all deteriorations or injuries to the thing lent, which are occasioned by his negligence, however slight. Borrowed, when to repair injuries.

Sec. 954. The borrower of a thing for use may use it for Use of thing lent. such purposes only as the lender might reasonably anticipate at the time of lending.

**Relending
forbidden.**

Sec. 955. The borrower of a thing for use must not part with it to a third person, without the consent of the lender.

**Borrower, when
to bear ex-
penses.**

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.

**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.

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. Loan for exchange, what.

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. Id.

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.

Loan to be repaid in current 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 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.

Id.

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.

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. Care of 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. Subsequent usury.

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.

Quiet possession.

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.

Degree of care, &c., on part of hirer.

Sec. 982. The hirer of a thing must use ordinary care for its preservation in safety and in good condition.

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.

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.

When terminated by death, &c., of party.

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.

Apportionment of hire.

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.

Hiring of lodgings for indefinite term.

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.

Renewal of lease by lessee's continued possession.

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 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 receives notice 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.

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.

Obligations of letter of personal property

Sec. 1000. A hirer of personal property must bear all such 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.

Ordinary expenses.

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. 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.

Charter-party, what.

TITLE VI

SERVICE.

- CHAPTER I. Service with employment.
 II. Particular employments.
 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.

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. Duties of gratuitous employee.

1d. 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.

1d. 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.

Contracts 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 sk if 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 give them preference according to their relative urgency, or, other things being equal, according to the order in which they were committed to him.

Preference to be given to employers.

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 of employee for substitute.

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.

Employment,
how termi-
nated.

Sec. 1027. Every employment is 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.

Continuance of
service in
certain cases.

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.

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 seryant.

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.

Id. 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.

Renewal of hiring. 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.

Time of service. 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.

Servant to pay over without demand. 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.

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.

Sec. 1041. An agent must not exceed the limits of his actual authority, as defined by the Title on AGENCY. Agent to conform to his authority.

Sec. 1042. An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency. Must keep his principal informed.

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. Collecting agent.

Sec. 1044. A mere agent of an agent is not responsible as such to the principal of the latter. Responsibility of sub-agent.

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.

Sales on
credit.

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.

Liability of
factor under
guaranty
commission

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.

Factor cannot
relieve himself
from liability.

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.

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.

SECTION 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 off freight or passengers, or for any other purpose, and when a vessel has made a landing, it is said to be in port.

When must
be on board.

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.

Pilots.

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 corporal punishment, not prohibited by law, being responsible for the abuse of his power.

Power of
master over
seamen.

Sec. 1054. The master of a ship may confine any person on board, during a voyage, for willful disobedience to his lawful commands.

Power of
master over
passengers.

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.

Impressing
private stores.

Sec. 1056. The master of a ship must not abandon it during the voyage, without the advice of the other officers.

When may
abandon the
ship.

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.

Duties on
abandonment.

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.

When master
cannot trade
on his own
account.

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.

Mate, what.

Sec. 1061. The mate of a ship is the officer next in command to the master.

Seamen, what.

Sec. 1062. All persons, other than the master, mates, pilots, clerks and engineers, employed in and about the navigation of a vessel of any description, and in receiving and discharging freight, supplies or any other thing, are to be deemed seamen within the provisions of this Code.

Mate and
seamen how
engaged and
discharged.

Sec. 1063. The mate and seamen of a ship are engaged by the master, and may be discharged by him at any period of the voyage, for willful and persistent disobedience or gross disqual-

ification, but cannot otherwise be discharged before the termination of the voyage.

Sec. 1064. A mate or seaman is not bound to go on a voyage 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.

Unseaworthy vessel.

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.

Seamen not to lose wages or lien by agreement.

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.

Special agreement with seamen.

Sec. 1067. Except as hereinafter provided, the wages of seamen are due at the end of the voyage.

Wages depends on freightage.

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.

When wages, &c., begin

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.

Wages where voyage is broken up before departure.

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.

Wrongful discharge.

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.

Wages when not lost by wreck.

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.

Certificate.

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 during
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.

Death on the
voyage.

Sec. 1075. If a mate or seaman dies during the voyage, his 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.

Theft, &c.,
forfeits wages.

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 wages due for the voyage to a mate or seaman thus in fault.

Seamen cannot
ship goods.

Sec. 1077. A mate or seaman may not, under any pretext, ship goods on his own account, without permission from the master.

Embezzlement
and injuries.

Sec. 1078. If any part of the cargo or appurtenances of a 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.

Law governing
seamen.

Sec. 1079. The shipment of officers and seamen, and their 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.

Sec. 1082. A managing owner is presumed to have no right Compensation. to compensation for his own services.

CHAPTER III.

SERVICE WITHOUT EMPLOYMENT.

SECTION 1083. Voluntary interference with property.
1084. Salvage.

Sec. 1083. One who officiously, and without the consent of Voluntary interference with property. 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.

Sec. 1084. Any person, other than the master, mate, or a Salvage. 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.

Contract of carriage.

Sec. 1085. The contract of carriage is a contract for the conveyance of property, persons, or messages, from one place to another.

Different kinds of carriers.

Sec. 1086. Carriage is either :

1. Inland; or,
2. Marine.

Marine and inland carriers, what.

Sec. 1087. Carriers upon the ocean, upon arms of the sea, upon the great lakes Ontario, Erie, Huron, Michigan and Superior, and upon the rivers and canals connecting those lakes 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.

Sec. 1089. Rights and duties peculiar to carriers by sea, Carriers by sea.
are defined by acts of congress.

Sec. 1090. Carriers without reward are subject to the same Obligations of gratuitous carriers
rules as employees without reward, except so far as is otherwise provided by this Title.

Sec. 1091. A carrier without reward, who has begun to perform his undertaking, must complete it in like manner as if he Obligations of gratuitous carrier who has begun to carry.
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.

Sec. 1092. A carrier of persons without reward must use Degree of care required.
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 General duties of carrier.
most 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.

Vehicles.

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.

Not to overload his vehicles.

Sec. 1095. A carrier of persons for reward must not overcrowd or overload his vehicle.

Treatment of passengers.

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 given them a reasonable degree of attention.

Rate of speed and delays.

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.

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 consignor, &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.

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 freight.

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 or 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 signor.

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 signor.

1113. Carrier exonerated by delivery according to bill of lading.

1114. Carrier may demand surrender of bill of lading before delivery.

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, what.

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. Bill of lading negotiable.

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. Id.

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.

SECTION 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.

When freightage
is to be paid.

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.

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
freight.

Sec. 1118. No freightage can be charged upon the natural increase of freight.

Apportionment
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.

11.

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.

Apportionment
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 carried
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.

Sec. 1123. A carrier has a lien for freightage, which is regulated by the Title on LIENS. Carrier's lien for freightage.

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 peril it is necessary for the safety of the ship or cargo, throw 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. Jettison and general average, what.

Sec. 1125. A jettison must begin with the most bulky and least valuable articles, so far as possible. Order of jettison.

Sec. 1126. A jettison can be made only by authority of the master of a ship, except in case of his disability, or of an overruling necessity, when it may be made by any other person. By whom made.

Sec. 1127. The loss incurred by a jettison, when lawfully 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. Loss, how borne.

Sec. 1128. The proportions in which a general average loss 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. General average loss, how adjusted.

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 dilligence 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 dilligence
equired.

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 persons, property or messages, is a common carrier of whatever he thus offers to carry. Common carrier
what.

Sec. 1135. A common carrier must, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry. Obligation to
accept freight.

Sec. 1136. A common carrier must not give preference, in time, price, or otherwise, to one person over another, except where expressly authorized by statute. Obligation not
to give
preference.

Sec. 1137. A common carrier must always give a preference in time, and may give a preference in price, to the United States and to this Territory. What prefer-
ences he must
give.

Sec. 1138. A common carrier must start at such a time and place as he announces to the public. Starting.

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. Compensation.

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. Obligations
of carrier
altered only
by agreement.

Certain agree-
ments 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. Carrier's lien.

Obligation to
carry luggage.

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.

Luggage, what.

Sec. 1144. Luggage may consist of any articles intended for the use of a passenger while traveling, or for his personal equipment.

Liability for
luggage.

Sec. 1145. The liability of a carrier for luggage received by him with a passenger, is the same as that of a common carrier of property.

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.

- SECTION 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.

Liability of inland carriers for loss.

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.

When exemptions do not apply.

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.

Liability for delay.

Sec. 1156. A common carrier is liable for delay, only when it is the effect of his ordinary negligence.

Liability of marine carriers.

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.

Id.

Sec. 1158. The liability of a common carrier by sea is further regulated by acts of congress.

Perils of sea. what.

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.

Consignor of valuables to declare their nature.

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.

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.

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 :

Order of transmission of telegraphic messages.

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.

Damages 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.

SECTION 1174. How created as to trustee.

1175. Involuntary trustee, who is.

1176. Involuntary trust resulting from negligence, &c.

Sec. 1167. A trust is either :

Trusts
classified.

1. Voluntary ; or

2. Involuntary.

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.

Voluntary
trust, what.

Sec. 1169. An involuntary trust is one which is created by operation of law.

Involuntary
trust, what.

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.

Parties to the
contract.

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.

What consti-
tutes one a
trustee.

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.

For what pur-
pose a trust
may be created.

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 :

Voluntary
trust, how
created as a
trustor.

1. An intention on the part of the trustor to create a trust ; and,

2. The subject, purpose and beneficiary of the trust.

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 :

As to trustee.

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 wrongful 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.

Trustee's obligation to good faith.

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 not to use property for his own profit.

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.

Certain transactions forbidden.

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:

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.

Sec. 1180. A trustee may not use the influence, which his position gives him, to obtain any advantage from his beneficiary.

Trustee's influence not to be used for his advantage.

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.

Trustee not to assume a trust adverse to interest of beneficiary.

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.

To disclose adverse interest.

Sec. 1183. Every violation of the provisions of the preceding sections of this article, is a fraud against the beneficiary of a trust.

Trustee guilty of fraud, when.

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.

Presumption against trustees.

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.

Trustee mingling trust property with his own.

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

Measure of liability for breach of trust.

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.

Id.

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.

Co-trustees,
how far liable
for each other.

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.

ARTICLE III.

OBLIGATIONS OF THIRD PERSONS.

SECTION 1189. Third person, when involuntary trustee.

1190. When third person must see to application of trust property.

Third person,
when involun-
tary trustee.

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.

when third
person must
see to applica-
tion of trust
property.

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.

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.

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 property is vested in the trustee; not including, however, those of executors, administrators and guardians, as such.

Who are trustees within scope of this chapter.

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.

Creation of trust.

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.

Trustee appointed by court.

Sec. 1194. The nature, extent and object of a trust are expressed in the declaration of trust.

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.

Id.

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,

Trustee must obey declaration of trust.

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.

Degree of care and diligence in execution 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.

Duty of trustee as to appointment of successor.

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.

Investment of money by trustee

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.

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.

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. All must act.

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. Discretionary powers.

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 of 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.

Sec. 1213. The district court may appoint a trustee when-
ever there is a vacancy, and the declaration of trust does not
provide a practicable method of appointment.

Vacant trusts-
teeship filled
by court.

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 trust-
tee, 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.

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.

- SECTION 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.

Ratification of agent's act.

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 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.

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.

Agents power to disobey instructions.

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 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.

SECTION 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 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.

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.

Rights of persons who deal with agent without knowledge of his agency.

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.

Effect of a written instrument by which the agent intends to bind the principal.

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.

Principal's responsibility for agent's negligence or omission.

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.

Obligation of agent to surrender property to third person.

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.

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 sub-agent.

ARTICLE VI.

TERMINATION OF AGENCY.

SECTION 1262, 1263. Termination of agency.

Sec. 1262. An agency is terminated, as to every person having notice thereof, by : Termination
of agency.

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 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 affecting 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.

Factor, what.

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.

Actual author-
ity of factor.

Sec. 1267. In addition to the authority of agents in general, a factor has actual authority from his principal, unless specially restricted :

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 Ostensible authority. having no notice that the property with which he deals is not his own, to deal with it in any manner.

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 him to complete the voyage, and if neither the owner nor his proper agent for such matters can be consulted, without injurious delay. Authority to borrow.

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. Authority on behalf of owners of cargo.

Sec. 1272. The master of a ship may procure all its necessary repairs and supplies, may engage cargo and passengers for carriage, and in a 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 make contracts.

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. Power to hypothecate.

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 navigation, whether appointed by him or not, to the same extent as the owner of the ship.

Responsibility
for negligence
of pilot.

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 so responsible to third persons.

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 ^{What powers manager has.} 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.

Sec. 1282. Without special authority, a ship's manager ^{What powers he has not.} cannot borrow money, or give up the ship for freightage, or purchase a cargo, or bind the owners of the ship to an insurance.

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.

Sec. 1283. Partnership is the association of two or more ^{Partnership, what.} 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 partner.

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.

Partnership property, what. Sec. 1286. The property of a partnership consists of all that is contributed to the common stock at the formation of the partnership, and of all that is subsequently acquired thereby.

Partner's interest in partnership property. Sec. 1287. The interest of each member of a partnership extends to every portion of its property.

Partner's share in profits and losses. Sec. 1288. In the absence of an agreement on the subject, 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.

When division of losses implied. Sec. 1289. An agreement to divide the profits of a business implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated.

Partner may require application of partnership property to payment of debts. Sec. 1290. Each member of a partnership may require its 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.

What property is partnership property. Sec. 1291. Property, whether real or personal, acquired with 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.

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.

Partners,
trustees for
each other.

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 co-partners. He may not obtain any advantage over them in the partnership affairs by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

Good faith to
be observed
between
partners.

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.

Mutual liability
of partners
to account.

Sec. 1295. A partner is not entitled to any compensation for services rendered by him to the partnership.

No compensa-
tion for ser-
vices to firm.

ARTICLE IV.

RENUNCIATION OF PARTNERSHIP.

SECTION 1296. Renunciation of future profits exonerates from liability.

1297. Effect of renunciation.

Renunciation
of future
profits exone-
rates from
liability.

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 ~~in his power~~ he dissolves the partnership, and does not intend to be liable on account thereof for the future.

Effect of
Renunciation.

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.

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.

General part-
nership, 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.

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.

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. Power of majority of partners.

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. Authority of individual partner.

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: What authority partner has not,

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.

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. Partner's acts in bad faith, when ineffectual.

ARTICLE III.

MUTUAL OBLIGATIONS OF PARTNERS.

SECTION 1303. Profits of individual partner.

1304. In what business partner may not engage.

1305. In what he may engage.

1306. Must account to the firm for profits.

Profits of individual partner.

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.

In what business partner may not engage.

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 he may engage.

Sec. 1305. A partner may engage in any separate business, except as otherwise provided by the last two sections.

Must account to the firm for profits.

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.

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.

Sec. 1308. The liability of general partners for each other's acts is defined by the Title on AGENCY.

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, and who on the faith thereof give credit to the partnership.

Liability of one held out as partner.

Sec. 1310. No one is liable as a partner, who is not such in fact, except as provided by the last section.

No one liable as partner, unless held out as such.

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.

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.

Duration of partnership.

Sec. 1312. A general partnership is dissolved, as to all the partners:

Total dissolution of partnership.

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 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.

Partial dissolution.

Partner entitled
to dissolution.

Sec. 1314. A general partner is entitled to a judgment of dissolution :

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.

Notice of
termination,

Sec. 1315. The liability of a general partner for the acts of his copartners 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.

Notice by
change of name.

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.

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.

Sec. 1318. Any member of a general partnership may act in liquidation of its affairs, except as provided by the next section. Who may act in liquidation.

Sec. 1319. If the liquidation of a partnership is committed, by consent of all the partners, to one or more of them, the others have no right to act therein; but their acts are valid in favor of persons parting with value, in good faith, upon the credit thereof. Who may not act 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. Powers of partners in liquidation.

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.

Style of foreign partnership.

Sec. 1323. A commercial partnership, established and transacting business in a place without the United States, may use in this Territory the partnership name used by it there, although fictitious.

Continuation of style of firm having foreign business relations.

Sec. 1324. The name of a partnership, which has had business 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.

Certificates stating names, &c., of persons using such firm name to be filed and published.

Sec. 1325. On every change of the persons continuing the 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.

ARTICLE 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.
 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.

Proof of certificate.

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.

Certificate to be filed and recorded.

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.

Id.

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.

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 suf-

cient if made as nearly in conformity therewith as may be in their power.

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.

Renewal of special partnership to be certified and published.

ARTICLE II.

POWERS, RIGHTS AND DUTIES OF THE PARTNERS.

SECTION 1340. Firm name, how composed.

1341. Authority of special partner.

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.

Special partner need not be joined in suit with general partners.

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.

May not withdraw his capital

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 draw profits, &c.

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.

Capital withdrawn to be restored.

Sec. 1347. If a special partner withdraws capital from the firm, contrary to the provisions of section 1345, he must restore the same with interest.

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 1349. 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.

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

Partnership made general, by omission to notify changes;

by one or more of the partners, is not filed with the clerk with whom the original certificate of the partnership was filed.

Admission of
new special
partners to
be notified.

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 register of deeds with whom the original certificate of the partnership was filed.

Purchaser of
interest of
special partner,
K.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.
- 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,} to indemnify another against loss, damage or liability, arising ^{what.} 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 in- ^{may be insured} ^{against.} terest, 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 mortgagee 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.

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 there-
 to, or liability in respect thereof, of such a nature that a con-
 templated peril might directly damnify the insured, is an insur-
 able interest. Insurable interest, what.

Sec. 1367. An insurable interest in property may consist
 in: In what may consist.

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 in-
 surable interest in a thing held by him as such, to the extent of
 its value. Interest of carrier or depositary.

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.

Sec. 1370. The measure of an insurable interest in property
 is the extent to which the insured might be damnified by loss
 or injury thereof. Measure of interest in property.

Sec. 1371. The sole object of insurance is the indemnity of
 the insured, and if he has no insurable interest the contract is
 void. Insurance without interest, illegal.

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 interest in 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 sub-
jects 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.

1383. Matters which each is bound to know.

1384. Waiver of communication.

1385. Interest of insured.

- SECTION 1386. Fraudulent warranty.
 1387. Matters of opinion.
 1388. Representation, what.
 1389. When made.
 1390. How interpreted.
 1391. Representation as to future.
 1392. How may affect policy.
 1393. When may be withdrawn.
 1394. Time intended by representation.
 1395. Representing information.
 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.

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: Matters which need not be communicated without inquiry

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.

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 Test of materiality.

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 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.

How interpreted.

Sec. 1390. The language of a representation is to be interpreted by the same rules as the language of contracts in general.

Representation as to future.

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.

How may affect policy.

Sec. 1392. A representation cannot be allowed to qualify an express provision in a contract of insurance; but it may qualify an implied warranty.

When may be withdrawn.

Sec. 1393. A representation may be altered or withdrawn before the insurance is effected, but not afterwards.

Time intended by representation.

Sec. 1394. The completion of the contract of insurance is the time to which a representation must be presumed to refer.

Sec. 1395. When a person insured has no personal knowledge of a fact, he may nevertheless repeat information which Representing information. 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.

Sec. 1396. A representation is to be deemed false when the Falsity. facts fail to correspond with its assertions or stipulations.

Sec. 1397. If a representation is false in a material point, Effect of falsity. whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false.

Sec. 1398. The materiality of a representation is deter- Materiality. mined by the same rule as the materiality of a concealment.

Sec. 1399. The provisions of this article apply as well to a Application of provisions of this article. modification of a contract of insurance as to its original formation.

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.

Sec. 1400. The written instrument, in which a contract of Policy, what. 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.

General terms.

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.

Successive owners.

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.

Transfer of the thing insured.

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.

Opened and valued policies

Sec. 1408. A policy is either open or valued.

Open policy, what.

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.

Valued 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.

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.

Sec. 1414. A warranty is either express or implied.

Warranty, express or implied.

Sec. 1415. No particular form of words is necessary to create a warranty.

Form.

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.

Warranty must be in policy.

Sec. 1417. A warranty may relate to the past, the present, the future, or to any or all of these.

Past, present and future warranties.

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 past or present.

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.

What acts
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.

Id.

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.

Breach without
fraud.

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.

ARTICLE 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.

When premium
is earned.

Sec. 1424. An insurer is entitled to payment of the premium, as soon as the thing insured is exposed to the peril insured against.

Return of
premium.

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.

Sec. 1426. A person insured is entitled to a return of the ^{Id.} 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.

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. ^{When none allowed.}

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. ^{Over-insurance by several insurers.}

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. ^{Contribution.}

Sec. 1430. When an over-insurance is effected by successive ^{Id.} 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.

Loss incurred
in rescue
from peril.

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.

Excepted
perils.

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.

Negligence
and fraud.

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.

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.

Notice of loss,

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.

Preliminary
proofs.

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.

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 defects in notice, &c.

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. Waiver of delay.

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. Certificate, when dispensed with.

ARTICLE XI.

DOUBLE INSURANCE.

SECTION 1440. Double insurance.

1441. Contribution in case of 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. 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. Contribution in case of double insurance.

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.

Re-insurance,
what.

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.

Disclosure
required.

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.

Re-insurance
presumed to
be against
liability.

Sec. 1444. A re-insurance is presumed to be a contract of indemnity against liability, and not merely against damage.

Original
insured has
no interest.

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.
- 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 insu-
rance, 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.

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. Insurable interest in ship.

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, Id. 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.

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.

Information
must be com-
municated.

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 exact and whole truth in relation to all matters that he represents, or upon inquiry assumes to disclose.

Material in-
formation.

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.

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. Effect of intentional falsity.

Sec. 1459. The eventual falsity of a representation as to expectation does not, in the absence of fraud, avoid a contract of insurance. Representation of expectation.

ARTICLE V.

IMPLIED WARRANTIES.

SECTION 1460. 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.

What things
are required to
constitute
seaworthiness.

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.

Different
degrees of
seaworthiness
at different
stages of the
voyage.

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.

Unseaworthi-
ness during
the voyage.

Sec. 1465. When a ship becomes unseaworthy during the voyage to which an insurance relates, an unreasonable delay in repairing the defect exonerates the insurer from liability for any loss arising therefrom.

Seaworthiness
for purposes
of insurance
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 insured,
how deter-
mined.

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,

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.

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. Deviation, what

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.

Total and partial loss.	Sec. 1474. A loss may be either total or partial.
Partial loss.	Sec. 1475. Every loss which is not total is partial.
Actual and constructive total loss.	Sec. 1476. A total loss may be either actual or constructive.
Total loss, what.	Sec. 1477. An actual total loss is caused by : <ol style="list-style-type: none"> 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 reshipment, &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.

Sec. 1485. An insurance confined in terms to a total loss, ^{Insurance against 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 expense 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 un-qualified.

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.

An 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.

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.

Waiver of formal abandonment.

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.

Agents of the insured become agents of the insurer.

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.

SECTION 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
conclusive.

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 a 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.

Person indem-
nifying, liable
jointly or sever-
ally with person
indemnified.

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 a 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.

- I. 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.

Knowledge of principal not necessary to creation of guaranty.

Sec. 1535. A person may become guarantor even without the knowledge or consent of the principal.

ARTICLE II.

CREATION OF GUARANTY.

SECTION 1536. Necessity of a consideration.

1537. Guaranty to be in writing, &c.

SECTION 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. 1539. 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.

Guaranty that an obligation is good or collectible.

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.

Recovery upon such guaranty.

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.

Guarantor's liability 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.

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.

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. Obligation of guarantor cannot exceed that of the principal.

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. Guarantor not liable on an illegal contract.

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.

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.

What dealings with debtor exonerate 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.

Void promises.

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.

Rescission of alteration.

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.

Part performance.

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.

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.

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.

Surety, what.

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.

Apparent principal may show that he is surety.

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.

Limit of
surety's
obligation.

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.

Rules of
interpretation.

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.

Judgment
against surety
does not alter
the relation.

Sec. 1562. Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety.

Surety exone-
rated by per-
formance or
offer of per-
formance.

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 dis-
charged by
certain acts of
the creditor.

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.

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.

Sec. 1565. A surety has all the rights of a guarantor, whether he becomes personally responsible or not.

Surety has rights of guarantor.

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 require the creditor to proceed against the principal.

Sec. 1567. A surety may compel his principal to perform the obligation when due.

Surety may compel principal to perform obligation when due.

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.

A principal bound to reimburse his surety.

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.

The surety acquires the right of the creditor.

Surety entitled to benefit of securities held by creditor.

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.

The property of principal to be taken first.

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.

ARTICLE. IV.

RIGHTS OF CREDITORS.

SECTION 1572. Creditor entitled to benefit of securities held by surety.

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.

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.
 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.

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. Letter of credit, what.

Sec. 1574. A letter of credit may be addressed to several persons in succession. How addressed.

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. Liability of the writer.

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. Letter of credit either general or special.

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. Nature of general letter of credit.

Sec. 1578. Several persons may successively give credit upon a general letter. Extent of general letter of credit.

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. A letter of credit may be a continuing guaranty.

Sec. 1580. The writer of a letter of credit is liable for credit given upon it without notice to him, unless its terms expressly imply the necessity of giving notice. When notice to the writer necessary.

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. The credit given must agree with 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.

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
special.

Sec. 1583. Liens are either general or special.

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.

General 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.

Special lien,
what.

Sec. 1586. Contracts of mortgage, pledge, bottomry or respondentia, are subject to all the provisions of this chapter.

Contracts
subject to
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.

Sec. 1587. A lien is created:

1. By contract of the parties; or,
2. By operation of law.

Lien how
created.

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.

No lien for
claim not due.

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.

Lien on future
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.

Lien or contract for lien transfers no title.

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.

Certain contracts void.

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.

Creation of lien does not imply personal obligation.

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.

Extent of lien.

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.

Existence of lien does not affect the right of creditor.

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.

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.

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 liens.

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. Priority of mortgage for price.

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 : Order of resort to different funds.

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.

Right to redeem 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.

Rights of inferior lienor. Sec. 1601. One who has a lien, inferior to another upon the same property, has a right :

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.

Redemption from lien, how made.

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.

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.

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.

Extinction by sale or conversion.

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.

Lien, not extinguished by lapse of time under statute of limitations.

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.

Apportionment of 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.

When restoration extinguishes lien.

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.

SECTION 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.

Mortgage, what.

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.

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.

Sec. 1617. A mortgage is a lien upon everything that would pass by a grant of the property, and upon nothing more. On what 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. Against whom a mortgage is a lien.

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. Mortgage of thing held adversely.

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.

Mortgage, how created.

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 not a personal obligation.

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.

Mortgages on lands inherited or devised, by whom to be paid.

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 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, To be in writing renewed, or extended, only by a writing subscribed by the mortgagor.

Sec. 1633. A mortgagee of personal property, when the debt Foreclosure. 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.

Sec. 1634. A mortgage of personal property is void as Mortgage must be filed. 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.

Sec. 1635. The filing of a mortgage of personal property, in Effect of filing. conformity to the provisions of this article, operates as notice thereof to all subsequent purchasers and incumbrancers.

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 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.

14.

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 the 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 of 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.

Sec. 1642. The register of deeds must cause every mortgage filed with him pursuant to the last section, upon receipt thereof, 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.

Duty of register of deeds upon filing.

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.

1652. Real owner cannot defeat pledge of property transferred to apparent owner for purposes of pledge.

1653. Pledge lender, what.

1654. Pledgeholder, what.

- SECTION 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 pledges 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.

Pledge holder, what. 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.

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.

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 notice of sale.

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.

Id.

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.

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.

- SECTION 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 transfer
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.

Purchaser's
lien on real
property.

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.

Lien for
services.

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.

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.

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. Lien on ships.

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. Enforcement of lien.

CHAPTER VII.

STOPPAGE IN TRANSIT.

SECTION 1707. When consigner may stop goods.

1708. What is insolvency of consignee.

1709. Transit, when ended.

1710. Stoppage, how effected.

1711. Effect of stoppage.

When consigner
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 insol-
vency 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.

CHAPTER IV. Cheques.

V. Bank notes and certificates of deposit.

CHAPTER I.

NEGOTIABLE INSTRUMENTS IN GENERAL.

ARTICLE I. General definitions.

- II. Interpretation.
- III. Indorsement.
- IV. Presentment for payment.
- V. Dishonor.
- VI. Excuse of presentment and notice.
- VII. Extinction.

ARTICLE I

GENERAL DEFINITIONS.

- SECTION 1712. To what instruments this Title is applicable.
- 1713. Negotiable instrument, what.
- 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.

Sec. 1712. The provisions of this Title apply only to negotiable instruments, as defined in this article.

To what instruments this Title is applicable.

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.

Negotiable instrument, what.

Sec. 1714. A negotiable instrument must be made payable in money only, and without any condition not certain of fulfillment.

Must be for unconditional payment of money.

Sec. 1715. The person, to whose order a negotiable instrument is made payable, must be ascertainable at the time the instrument is made.

Payee.

- 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.

- Time and place of payment.** **Sec. 1722.** A negotiable instrument which does not specify the time of payment, is payable immediately.

Sec. 1723. A negotiable instrument which does not specify a place of payment, is payable wherever it is held at its maturity. Place of payment not specified.

Sec. 1724. An instrument, otherwise negotiable in form, 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 in the latter case, payable to the bearer. Instruments payable to a person or his order, how construed.

Sec. 1725. A negotiable instrument, made payable to the 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. Unindorsed note, when negotiable.

Sec. 1726. A negotiable instrument, made payable to the order of a person obviously fictitious, is payable to the bearer. Fictitious payee.

Sec. 1727. The signature of every drawer, acceptor and indorser of a negotiable instrument, is presumed to have been made for a valuable consideration, before the maturity of the instrument, and in the ordinary course of business. Presumption of consideration

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.
- Special indorsement, what.** Sec. 1733. A special indorsement specifies the indorsee.
- General indorsement, how made special.** 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.
- Destruction of negotiability by indorser.** 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.
- Implied warranty of indorser.** Sec. 1736. Every indorser of a negotiable instrument warrants to every subsequent holder thereof, who is not liable thereon to him :
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.
- Indorser, when liable to payee.** Sec. 1737. One who indorses a negotiable instrument before it is delivered to the payee, is liable to the payee, thereon, as an indorser.

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.

Id.

Sec. 1740. An indorsee of a 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.

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.

Rights of accommodation indorser.

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.

Effect of want of consideration.

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.

Indorsee in due course, what.

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.

Rights of indorsee in due course.

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 left blank.

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.
 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.

Effect of want of demand on principal debtor.

Sec. 1747. It is not necessary to make a demand of payment upon the principal debtor in a negotiable instrument, in order to charge 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.

Presentment, how made.

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 ;

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 presenter ; 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.

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. Presumptive dishonor of bill, payable after sight.

Sec. 1751. The apparent maturity of a bill of exchange, payable at sight or on demand, is: Apparent maturity of bill, payable at sight.

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.

Sec. 1752. The apparent maturity of a promissory note, payable at sight or on demand, is: Apparent maturity of note

1. If it bears interest, one year after its date; or,

2. If it does not bear interest, six months after its date.

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. id.

Sec. 1754. A party to a negotiable instrument may require, as a condition concurrent to its payment by him: Surrender of instrument, when a condition of payment.

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.

Dishonor, what. 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.

Notice, by whom given Sec. 1756. Notice of the dishonor of a negotiable instrument may be 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.

Form of notice. 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.

Notice, how served. 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,

8. 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 last place of residence, as prescribed by subdivision 3 of the last section.

Notice, how served after indorser's death.

Sec. 1760. A notice of dishonor sent to a party after his death, but in ignorance thereof, and in good faith, is valid.

Notice given in ignorance of death, valid.

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, when to be given.

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 of dishonor, when to be mailed.

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.

Notice, how given by agent.

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.

Additional time for notice by indorser.

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.

Effect of notice of dishonor.

ARTICLE VI.

EXCUSE OF PRESENTMENT AND NOTICE.

SECTION 1766. Notice of dishonor, when excused.

1767, 1768. Presentment and notice, when excused.

1769. Delay, when excused.

1770. Waiver of presentment and notice.

1771. Waiver of protest.

Notice of dishonor, when excused.

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.

Presentment and notice, 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.

Id.

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.

Delay, when excused.

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.

Waiver of presentment and notice.

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 protest.

Sec. 1771. A waiver of protest on any negotiable instrument other than a foreign bill of exchange, waives presentment and notice.

ARTICLE VII.

EXTINCTION OF NEGOTIABLE INSTRUMENTS.

SECTION 1772. Obligation of party, when extinguished.

1773. Revival of obligation.

Sec. 1772. The obligation of a party to a negotiable instrument is extinguished: obligation of party, when 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.

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. Revival of obligation.

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.

1776. Bill in parts of a set.

SECTION 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.

**Bill of exchange,
what.**

Sec. 1774. A bill of exchange is an instrument, negotiable in form, by which one, who is called the drawer, requests another, called the drawee, to pay a specified sum of money.

**Drawee in case
of need.**

Sec. 1775. A bill of exchange may give the name of any person in addition to the drawee, to be resorted to in case of need.

**Bill in parts of
a set.**

Sec. 1776. A bill of exchange may be drawn in any number of parts, each part stating the existence of the others, and all forming one set.

**When must be
in a set.**

Sec. 1777. An agreement to draw a bill of exchange binds the drawer to execute it in three parts, if the other party to the agreement desires it.

**Presentment,
&c., of part
of set.**

Sec. 1778. Presentment, acceptance, or payment, of a single part in a set of a bill of exchange, is sufficient for the whole.

**Bill, where
payable.**

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.

**Rights and
obligations of
drawer.**

Sec. 1780. The rights and obligations of the drawer of a 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.

Sec. 1782. At any time before a bill of exchange is payable, When bill may be presented. the holder may present it to the drawee for acceptance, and if acceptance is refused, the bill is dishonored.

Sec. 1783. Presentment for acceptance must be made in the Presentment, how made. 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.

Sec. 1784. Presentment for acceptance to one of several Presentment to joint drawees. joint drawees, and refusal by him, dispense with presentment to the others.

When present-
ment 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.

Presentment,
when must be
made.

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.

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.

Acceptance,
how made.

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.

Holder entitled
to acceptance
on face of bill.

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.

What accep-
tance sufficient,
with consent
of holder.

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:

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.

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. Acceptance by separate instrument.

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. Promise to accept, when equivalent to 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. Cancellation of 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. What is admitted by acceptance.

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.

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. When bill may be accepted or paid for honor.

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.

Acceptance
for honor,
how made.

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.

How enforced.

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.

Notice of dis-
honor, not ex-
cused by accep-
tance for
honor.

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.

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.

Presentment,
when bill not
accepted,
where made.

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
of bill payable
at particular
place.

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.

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.

Sec. 1803. The presentment of a bill of exchange for acceptance is excused if the drawee has not capacity to accept it. Presentment, 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. Delay, 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. Presentment and notice, when excused.

ARTICLE VIII.

FOREIGN BILLS.

- SECTION 1806. Definitions.
 1807. Protest necessary.
 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.

- Protest necessary.** **Sec. 1807.** Notice of the dishonor of a foreign bill of exchange can be given only by notice of its protest.
- Protest, by whom made.** **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, how 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, where 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, when to be made.** **Sec. 1811.** A protest must be noted on the day of presentment, or on the next business day; but it may be written out at any time thereafter.
- Protest, when excused.** **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.
- Notice of protest, how given.** **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.
- 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.

Sec. 1816. Damages are allowed as hereinafter prescribed, Damages allowed on dishonor of foreign bill. 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.

Sec. 1817. Damages are allowed under the last section upon Rate of damages, 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 other 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.

Sec. 1818. If the amount of a protested bill of exchange is Damages, how estimated. expressed in money of the United States, damages are estimated upon such amount without regard to the rate of exchange.

Sec. 1819. If the amount of a protested bill of exchange is ^{14.} 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 Promissory note, what. in form, whereby the signer promises to pay a specified sum of money.

Sec. 1821. An instrument in the form of a bill of exchange, Certain instruments, promissory notes. but drawn upon and accepted by the drawer himself, is to be deemed a promissory note.

Bill of exchange
when converted
into a note.

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.

Certain
sections ap-
plicable to
notes.

Sec. 1823. Chapter I of this Title, and sections 1781 and 1802, of this Code, apply to promissory notes.

Effect of delay
in presentment.

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.

CHAPTER IV.

CHEQUES.

SECTION 1825. Cheque, what.

1826. Rules applicable to cheques.

Cheque, 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.

Sec. 1827. A bank note remains negotiable, even after it has been paid by the maker. Bank note negotiable after payment.

Sec. 1828. A transferee of a bond, bank note or certificate of deposit, after its apparent maturity or actual dishonor with- Title acquired by indorsee.
in 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 provisions 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.
 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.

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.

Sec. 1841. No damages can be recovered for a breach of contract, which are not clearly ascertainable in both their nature and origin.

Damages must be certain.

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 in-
cumbrances.

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.

Breach of
agreement to
buy real
property.

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.

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 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 of personal property.

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

Breach of warranty of quality for special purpose.

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.

SECTION 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, 1863, 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.

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.

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,

Damages of lienor.

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.

Tenant willfully holding over.

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.

Forcible exclusion from possession of real property.

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.

Injuries to trees, &c.

Sec. 1871. For wrongful injuries to timber, trees or underwood 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.

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, Value, how estimated in favor of seller. 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.

Sec. 1873. In estimating damages, except as provided by Value, how estimated in favor of buyer. 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.

Sec. 1874. Where certain property has a peculiar value to Property of peculiar value. 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.

Sec. 1875. For the purpose of estimating damages, the val- Value of thing in action. ue of a thing in action is presumed to be equal to that of the property to which it entitles its owner.

Sec. 1876. The damages prescribed by this chapter are ex- Damages allowed in this chapter exclusive of others. clusive 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.

Specific relief,
&c. when
allowed.

Sec. 1880. Specific or preventive relief may be given in the cases specified in this Title, and in no others.

Specific relief,
how given.

Sec. 1881. Specific relief is 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.

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. Judgment for possession or title.

ARTICLE II.

POSSESSION OF PERSONAL PROPERTY.

SECTION 1885. Judgment for delivery.

1886. When holder may be compelled to deliver.

Judgment for
delivery.

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.

When holder
may be com-
pelled to
deliver.

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 :

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 performance 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.

In what cases
compelled.

Sec. 1887. Except as otherwise provided in this article, the specific performance of an obligation may be 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.

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.

*Remedy
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.

*No remedy
unless mutual.*

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.

*Distinction
between real
and personal
property.*

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.

*Contract
signed by one
party only may
be enforced
by others.*

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.

*Liquidation
of damages
not a bar to
specific per-
formance.*

Sec. 1893. The following obligations cannot be specifically enforced :

*What 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.

What parties cannot be compelled to perform.

Sec. 1894. Specific performance cannot be enforced against a party to a contract, in any of the following cases :

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 practices 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.

What parties cannot have specific performance in their favor.

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.

Specific performance not required, when oppressive.

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.

Agreement to sell property by one who has no title.

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.

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 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.

Relief against parties claiming under person bound to perform.

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.

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.

When contract may be revised.

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.

Presumption as to intent of parties.

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.

Principles of revision.

Sec. 1902. A contract may be first revised, and then specifically enforced.

Enforcement of revised contract.

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.

When rescission
may be adjudged

Sec. 1903. The rescission of a written contract may be adjudged, on the application of a party aggrieved :

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.

Rescission for
mistake.

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.

Court may
require party
rescinding to
do equity.

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.

ARTICLE VI.

CANCELLATION OF INSTRUMENTS.

SECTION 1906. When cancellation may be ordered.

1907. Instrument obviously void.

1908. Cancellation in part.

When cancella-
tion may be
ordered

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.

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.

Sec. 1909. Preventive relief is granted by injunction provisional or final.

Preventive
relief, how
granted.

Sec. 1910. Provisional injunctions are regulated by the CODE OF CIVIL PROCEDURE.

Provisional
injunction.

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:

Injunction
when allowed.

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.

Sec. 1912. An injunction cannot be granted:

Injunction,
when not
allowed.

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 specifically 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.

Sec. 1913. A debtor, within the meaning of this Title, is who is debtor. 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.

Sec. 1914. A creditor, within the meaning of this Title, is Who is a creditor. one in whose favor an obligation exists, by reason of which he is, or may become, entitled to the payment of money.

Sec. 1915. In the absence of fraud, every contract of a Contracts of debtor are valid, debtor is valid against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by such contract.

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. Payments in preference.

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. Relative rights of different creditors.

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.

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 per- Transfers, &c. with intent to defraud creditors.

sons upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.

Certain transfers presumed fraudulent.

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.

Presumption how repelled.

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.

Rights of purchasers and mortgagees.

Sec. 1921. The provisions of this Title do not affect the rights of a purchaser or incumbrancer, in good faith and for value.

Creditor's right must be judicially ascertained.

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.

Question of fraud, how determined.

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.

TITLE III.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

SECTION 1924. When debtor may execute assignment.

1925. Insolvency, what.

1926. Certain transfers not affected.

- SECTION 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.

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.

When debtor may execute assignment.

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.

Insolvency, What.

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

What debts
may be secured.

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 prefer-
ences may be
given.

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:

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.

Preference
must be
absolute.

Sec. 1929. A preference, in an assignment for the benefit of creditors, can only be given absolutely, and without reserving any power of revocation.

Certain rights
not affected by
preferences
in assignment.

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.

Joint and
separate
debts.

Sec. 1931. Joint, or joint and several debtors can prefer their joint creditors only out of joint property; and can prefer 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.

Sec. 1933. An assignment for the benefit of creditors must be in writing, subscribed by the assignor, or by his agent there-
The instrument of assignment.
 to 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.

Sec. 1934. Unless the provisions of the last section are com-
Compliance with provisions of last section, necessary to validity of assignment.
 plied with, an assignment for the benefit of creditors is void against every creditor of the assignor not assenting thereto.

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.
Assignee takes subject to rights of third parties.

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.

Verification
of inventory.

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.

Recording
assignment and
filing 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.

Id.

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, 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.

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. Bond of assignees.

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. Conditions of disposal and conversion.

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. Accountings.

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. Property exempt.

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. Compensation.

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.

Assent of
creditors
necessary to
modification of
assignment:

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.

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, injuries 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.

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. Public nuisance.

Sec. 1951. Every nuisance not included in the definition of the last section is private. Private nuisance.

Sec. 1952. Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance. What is not deemed a nuisance.

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. Successive owners.

Sec. 1954. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence. Abatement does not preclude action.

TITLE II.

PUBLIC NUISANCES.

SECTION 1955. Lapse of time does not legalize.

1956. Abatement.

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 Indictment, how regulated.
PENAL CODE and the CODE OF CRIMINAL PROCEDURE.

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.

Id. **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.

TITLE III.

PRIVATE NUISANCES.

SECTION 1961. Remedies for private nuisances.

1962. Abatement, when allowed.

1963. When notice is required.

Remedies for
private
nuisances.

Sec. 1961. The remedies against a private nuisance are:

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.

P A R T V.

DEFINITIONS 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.

- SECTION 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. 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.

- Children.** Sec. 2005. The term "children," as used in this Code, includes children by birth and by adoption.
- Debtor and creditor.** 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.
- Good faith.** 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.
- 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.

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. ^{Id.}

Sec. 2019. All other days than those mentioned in the last two sections are to be deemed business days, for all purposes. ^{Business days.}

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. ^{Certain acts not to be done on holidays.}

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." ^{Id.}

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.}

- Gender.** Sec. 2026. Words used in this Code in the masculine gender include the feminine, except where a contrary intention plainly appears.
- Numbers.** 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.
- Commissioner of deeds.** 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.
- Compound interest.** Sec. 2029. The words "compound interest," as used in this Code, mean interest computed with semi-annual rests.
- 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.

Sec. 2034. This Code shall take effect from and after the date of its approval. When to take effect.

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, the [*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 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 of dollars, 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.]

Scaled 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 ofdollars, now received, the party of the first part hereby mortgages to the party of the second part [*here describe the pro perty*], 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 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, 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, [and.....
primage.]

[*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, wit-
nesseth :-

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 from

..... to [*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 of dollars; 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, with dollars in addition, as maritime interest, within days after the arrival of the said vessel uninjured at [or, on the day 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 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 of dollars; 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 maritime interest, withindays 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 of to 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 one per cent.] in all events.

[Signature.]

No. 12.

POLICY OF MARINE INSURANCE ON CARGO.

THIS POLICY OF MARINE INSURANCE, made theday 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 ofdollars, 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 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 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 excepted 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 theday 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 ofdollars, upon his interest [*describe 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 theday of

18..., at noon [0, ...] 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, withindays 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 damage 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 so 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 insurer*], of, and C. D. [*name of insured*], of..... witnesseth :

That in consideration of a premium of.....dollars, being at the rate of $\frac{\quad}{\quad}$ per cent. upon the amount of insurance, 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 saidis.....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.

JUSTICES CODE.

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 coextensive with their respective counties, shall have jurisdiction and authority: Powers 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 subpena 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 actions 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 practicing 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 practicing 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 by 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 ;

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.

Style and contents of summons.

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 be 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

al 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 the defendant fail to appear, judgment shall not be rendered for a larger amount and the costs.

If defendant fails to appear.

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 the 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 on 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 the 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.

Sec. 16. Every justice issuing any process authorized by this act, upon being satisfied that such process will not be executed

Justice may empower person to serve process in certain cases.

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.

Complaint what to contain. Sec. 21. The complaint must state in a plain and direct manner the facts constituting the cause of action.

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 to 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 a 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.

To be exhibited to party.

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.

Pleadings must be verified by oath of 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.

Statements in pleadings not denied, to be taken as true.

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 cause of action or defense, although it be taken as true. If

Defective pleadings how objected to.

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. The 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 allegations 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, 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.

Costs allowed when adjournment is 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, justice 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.

Time 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 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 proved.

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 subpoenas 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.

Sec. 46. If any witness, having been subpoenaed, attend and be not examined by either party, the costs of such witness

Who to pay fees of witness in certain cases.

shall be paid by the party ordering the subpoena, 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 subpoenaed to appear before him in a suit, shall have failed without a just cause to attend as a witness in conformity to such subpoena, and the party in whose behalf such subpoena 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 subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpoenaed, 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.

Id.

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:

Condition 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 the time of making such application; and whenever the de-

How such depositions may be taken.

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 same as personal 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 either to 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 _____, plaintiff, and _____,

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.

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 pannel 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 an 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 execution

Justice allowing set-off shall make an entry.

When trans-
cript to be filed.

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 trans-
cript.

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 cases 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.

New 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 below.

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 the 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 confession;

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. 104. 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 to 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 cause, 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 the district court next after the appeal allowed, shall be determined at such term, unless continued for cause.

Appeals when determined.

If judgment of justice affirmed, judgment to be rendered against party and surety.

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.

When execution to be enforced against 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 satisfy 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 annua 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.

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.

What execution shall command officer to do.

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. An entry of such renewal shall be made in the docket of the justice.

Renewal of execution.

Sec. 122. If there be no property found, or if the goods 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 proceedings 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

Officer shall receive all money tendered him, and indorse same on execution, giving receipt.

the same a receipt therefor, in which shall be specified on what account the same was paid, if demanded.

Original judgment shall remain good in favor of person entered as bail.

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 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 by 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 out of 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.

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.

Constable liable to party in whose favor execution is issued in certain cases.

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, conditioned 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. Stay as to surety.

1. On any judgment for five dollars and under, the stay shall be for thirty days;
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.

No stay to be allowed in certain cases.

Sec. 131. No stay of execution on judgments rendered in the following cases shall be allowed :

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 that 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.

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.

When judgment debtor enters into further undertaking, &c.

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 be 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 de-

When party may have change of venue.

cide 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 proceeding was commenced to have done: *Provided*, That no cause or proceeding shall be removed more than once.

Proviso.

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.

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.

Petition to be filed.

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.

Officer to take possession of property.

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.

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 a 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.

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.

Property to be delivered to plaintiff on payment of costs.

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.

What judgment shall determine.

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.

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.

How writ to be executed.

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 security 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.

Defendant may obtain possession of property how

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.

Form of notice. Sec. 166. The notice may be in the following form :

Territory of Dakota, }
 county of } ss.

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.

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.

When and how attachments dissolved.

Sec. 171. When any attachment shall be dissolved, the property and effects attached shall be released, and the garnishees shall be discharged, and the suit proceed as if it had been commenced by a summons only.

Proceedings when attachment dissolved.

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 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 appraisal of all property attached which shall be signed by the officer and said residents and returned with the writ; when the

Where several writs against same person how executed.

property can be come at, he shall take the same into custody, and hold it subject to the order of the justice.

Order of lien of attachment.

Sec. 176. Different attachments of the same property may be made, and one inventory and appraisement 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.

Summoning person or corporation as garnishee.

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-eight.

How writ and notice served upon garnishee.

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 secretary, 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 defendant, to constable 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 subjected 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.

Sec. 181. If the garnishee do not appear and answer, as required by section 178, the justice may proceed against him by attachment, as for a contempt.

If garnishee do not appear and answer he may be proceeded against for contempt, &c.

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.

Order of justice.

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

As to final judgment against garnishee, costs, and discharge.

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.

When judgment is rendered for defendant attachment shall be discharged.

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.

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. 187. 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.

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.

When several attachments are executed on same property, justice may determine amounts and priorities of same.

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.

Return of officer

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 176; 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.

A writ of attachment binds property from time of service.

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

Justice shall certify proceedings to district court, when.

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.

ADJOURNMENT.

When justice may adjourn trial and how long.

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 :

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 was commenced, and that he expects to procure the evidence at the time stated by him.

ARBITRATIONS.

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.

Who may act
as arbitrators,
how summoned
and their fees.

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 par-
ties 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 ren-
dered on award.

District court may set aside award for fraud, and try cause.

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.

If no fraud, court shall render judgment.

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 costs of suit, and award execution as in other cases.

TRIAL OF THE RIGHT OF PROPERTY.

Proceeding on trial of right of property.

Sec. 204. When a constable shall levy on or attach property, claimed by any person or persons, other than the party 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.

If 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.

Sec. 207. Any justice, within his proper county, shall have Jurisdiction of justice. 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.

Sec. 208. Proceedings under this article may be had in all Whom proceedings may be had against. 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 cases 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 dis- Judgments. trict court, under this act, shall not be a bar to any after action brought by either party.

Sec. 210. It shall be the duty of the party desiring to com- Three days notice given. mence 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.

When summons
is-*is*ue, what to
state.

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.

What summons
shall state and
how served.

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.

If defendant
fails to appear
justice shall
try cause.

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.

When continu-
ance 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.

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. Justice shall enter verdict and render judgment.

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. Exceptions taken by either party.

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: Justice shall issue execution on judgment of restitution.

The Territory of Dakota, } ss: Form of execution.
 _____ county

To any 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 de- Officer shall execute same within ten days, &c.

lay 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.

CONSTABLES AND THEIR DUTIES.

Constables
ministerial
officers.

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.

Duties of con-
stables.

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.

Powers and
duties.

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, 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 (subpenas 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 consta-
ble 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 con-
stable 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.

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.

Authority of constable.

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.

Duty of constable when he commits to jail.

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.

Constable to pay over all money, &c.

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.

Punishment
for contempt.

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.

No person fined
for contempt
until he has an
opportunity to
be heard.

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.

If offender be
present he may
be summarily
arraigned.

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.

Form of warrant
for contempt.

Sec. 235. The warrant for contempt may be in the following form :

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 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.

Sec. 237. The warrant of commitment for any constable, shall set forth the particular circumstances of the offense, or it shall be void. Warrant of commitment.

Sec. 238. The record of conviction may be in the following form : Form of record of conviction.

Territory of Dakota, } ss :
 County of

Whereas, on the day of , A. D. 18 , while we, the undersigned, one of 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, or 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.

Justice adjourn
the case until
witness testify.

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.

Person sub-
penaed not
attending is
guilty of con-
tempt and
subject to fine.

Sec. 242. If any person duly subpenaed, 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.

GENERAL PROVISIONS.

Every summons
and process to
be filled up.

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.

Executive may
issue to enforce
judgment for
costs.

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.

No justice who
is a member of
council or house
of representa-
tives obliged to
act.

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 under the provisions of this act; but he may act therein or not, at his discretion.

Nearest justice
may receive
books &c of de-
ceased 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 pro-
duction 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.

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.

Proceedings in such case.

Sec. 249. If any money shall be collected for any party by a justice of the peace in his official capacity, and he shall have neglected or refused, within a reasonable time after demand, to pay over the same, such neglect or refusal shall be deemed a misdemeanor, and on conviction thereof, such justice shall forfeit his office.

When justice guilty of misdemeanor.

Sec. 250. The courts of justices of the peace shall be public, and every person may freely attend the same.

Justices courts public.

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.

Justice to deposit books and papers with successor.

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

Justice with whom docket of another is deposited, authorized to issue execution, take bail, &c.

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.

Proceedings on bonds, sealed bills, promissory notes, and other instruments of writing.

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 cost 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 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

Provided

Provided

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.

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 offence, 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 offence was committed. Said money so collected and paid in shall be for the support of common schools in said county.

Penalty if justice purchase any judgment.

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.

No imprisonment for debt.

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.

Territory of Dakota, }
 county of } ss.

Form of summons.

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 county, 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 ; 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.

Form of
execution.Territory of Dakota, }
county of } ss.

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.

Form of writ of
replevin.Territory of Dakota, }
county of } ss.

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 SUBPENA.

Territory of Dakota, }
 county of } ss.

Form of
 subpena.

In the name of the territory of Dakota, you are hereby re-
 quired 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 , de-
 fendant, 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.

Territory of Dakota, }
 county of } ss.

Form of venire

To the sheriff or any constable of said county :

In the name of the territory of Dakota, you are hereby com-
 manded to summon to be and appear before the un-
 dersigned, one of the justices of the peace in and for said coun-
 ty, 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 between , 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.

Sec. 257. Justices of the peace shall have power and juris-
 diction throughout their respective counties, as follows :

Jurisdiction of
 justices in crim-
 inal cases.

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 at-
 tempt 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.

Justices power.

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.

Proceedings on complaint in criminal cases.

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.

Form of complaint.

Sec. 260. The complaint mentioned in the last preceding section may be substantially in the following form :

county, The Territory of Dakota, vs. A. B. defendant.	}	Before Justice (here insert the name of the justice).
--	---	--

The defendant is accused of the crime (here name the offence.) 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.

Justice to file complaint.

Sec. 261. The justice must file such complaint, and mark thereon the time of filing the same.

To issue warrant 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.

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.

Officer to arrest accused.

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 object 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.

Charge to be read to accused and ascertain his name.

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.

Defendant to plead same as on an indictment

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.

If defendant do not demand jury justice must try the issue.

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 affidavit verily believes.

Grounds for change of venue

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.

Proceedings when change of venue is 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,

Manner of
procuring 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.

When prosecu-
tor or defendant
do not strike
out names, what
to be done.

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.

Officer receiving
venire must
summon jury.

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.

Names to be
called,
Challenges.

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.

Challenge may
be taken by
either party

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.

If officer do not
return venire,
punished for
contempt.

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 proceeding shall be had as upon the one first issued.

Six jurors con-
stitute jury.

Sec. 276. When six jurors appear and are accepted, they shall constitute the 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."

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.

Duty of Jury.

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 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."

If jury do not immediately agree, &c.

Oath.

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.

Verdict delivered publicly.

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 kept together until agreed.

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.

Jury discharged without agreeing.

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.

When defendant is guilty, justice to impose fine or imprisonment.

Sec. 284. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied.

Judgment may state that defendant be imprisoned until fine is paid.

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.

Certificate of conviction.

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 offence charged and the conviction and judgment thereon, and if any fine has been collected, the amount thereof.

Certificate of conviction to be filed within twenty days with clerk of district court.

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.

Who shall execute judgment.

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.

Fine, to whom paid over, to what use applied.

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.

When defendant committed for not paying fine.

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.

Justice to execute duplicate receipts for fines paid.

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.

Either party may appeal.

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.

Justice to inform defendant of his right of 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 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, }
 } ss.
 } county,

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.

Sec. 296. The bail must possess the qualifications required Qualifications of bail. in cases of appeal from the district to the supreme court of the territory.

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. Bail taken by any magistrate.

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. In case of appeal, material witnesses to enter into undertaking, &c

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 The cause when appealed shall stand for trial de novo.

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.

No appeal in criminal case dismissed.

Sec. 300. No appeal from the judgment of a justice of the peace in a criminal case shall be dismissed.

Certain proceedings had in district court.

Sec. 301. If any proceedings be necessary to carry the judgment upon the appeal into effect, they shall be had in the district court.

MISCELLANEOUS PROVISIONS IN CRIMINAL CASES.

Certain offenses tried in summary manner. Punishment.

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.

Duty of justice when offenses committed in his presence or come to his knowledge.

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.

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.

Sec. 305. If, in the 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.

Duty of justice when he has not final jurisdiction.

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.

Who summoned in criminal case

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.

Justice's duty in case of conviction.

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.

When judgment affirmed in district court.

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.

Continuances as affecting witnesses.

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.

Security for costs.

Sec. 311. 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.

Fines go to school fund.

Proceedings
when party neg-
lects to pay
fines over.

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.

When property
not exempt.]

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.

COURT OF INQUIRY.

Preliminary ex-
amination when
justice has not
final jurisdiction

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.

Shall compel
attendance of
witnesses.

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 inquire
into accusation
publicly.

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.

When justice
shall commit
accused.

Sec. 317. After inquiring into the case as fully as circumstances will admit and justice would seem to require, if the justice believes that the accused has committed a criminal offence

FORM OF CERTIFICATE OF CONVICTION.

Form of
certificate of
conviction.Territory of Dakota, }
county of } ss.

At a justices' court held at my office in said county, for the trial of _____ for the offence hereinafter stated, the said _____ of, &c., was convicted of having on the day of _____, A. D. 18____, at _____ in said county (here state the offence 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.

Form of
execution.Territory of Dakota, }
county of } ss.

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.

Form of order
to bring up
prisoner,Territory of Dakota, }
county of } ss.

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

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.

Form of commitment when justice shall find that he has no jurisdiction.

Territory of Dakota, }
 county of _____ } ss.

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.

Certain acts repealed.

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 cases ;" approved May thirteenth, eighteen hundred and sixty-two ; and an act entitled " An act defining the jurisdiction of justices of

the 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.

Sec. 322. This act shall take effect from and after its passage and approval. When to take effect.

Approved, January 4th, 1866.

AMENDMENTS.

CHAPTER 3.

An Act to amend Chapter XIX of the Session Laws of 1864-5.

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

That Section 1, chapter XIX of session laws of 1864-5, be amended to read as follows:

Section 1. No person shall lay out strychnine or other poison, within the limits of any town or within one mile of any dwelling house, or any barn, stable, or out building, used at the time for the keeping or shelter of horses, cattle, sheep or swine; or within one half mile of any traveled thoroughfare on the ceded lands of this territory. Strychnine or other poison not to be laid, where.

Sec. 2. All persons who shall violate the provisions of this act shall be deemed guilty of a misdemeanor. Penalty.

Sec. 3. This act shall take effect from and after its approval. When to take effect.

Approved, December 21st, 1866.

CHAPTER 4.

An Act to amend Chapter Twenty-three of the Laws of 1863-4

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

All moneys for
licenses &c,
under certain
provisions
used for school
purposes.

Section 1. That all moneys which are required to be paid into the county treasury either for licenses or as fines or penalties, under the provisions of chapter twenty-three, laws of 1863-4, shall be for the use of the public schools of the county.

When to take
effect.

Sec. 2. This act shall take effect and be in force from and after its passage and approval by the Governor.

Approved, January 4th, 1866.

CHAPTER 5.

**An Act to amend section seven (7) of Chapter Twenty-three (23)
of session Laws of 1863-4.**

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

Who excluded
from provisions
of certain act.

Section 1. That section seven, chapter twenty-three, of session laws of 1863-4, be amended so as to read as follows:

That nothing in this act shall be so construed as to extend to the sale of goods, wares and merchandise by merchants who pay an annual tax upon the same assessed according to the revenue laws of this territory, nor to persons who sell commodities manufactured or raised by themselves in this or any adjoining territory.

When to take
effect.

Sec. 2. This act shall take effect and be in force from and after its passage and approval by the Governor.

Approved, December 21st, 1865.

CHAPTER 6.**An Act to amend Chapter Thirty-five of the Laws of 1862.**

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

Section 1. That any person who shall neglect to perform any duty required of him or her, to be performed by any law or statute of this territory in relation to "estrays," shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by a fine not less than the value of the property by him or her taken up, or imprisoned not exceeding six months.

Penalty for neglecting to perform certain duties in relation to estrays.

Sec. 2. All fines collected under the provisions of this act, shall be paid into the school fund of the county in which the stray shall have been taken up.

Fines collected paid into school fund.

Sec. 3. 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, 1866.

CHAPTER 7.**An Act to amend Chapter Thirty three of the Session Laws of 1864-5.**

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

Section 1. That section 2, chapter 33, session laws of 1864-5, be amended so as to read as follows :

Number of pounds per bushel of different articles of produce.

A bushel of wheat, potatoes, beets, turnips, peas, beans and clover seed, shall be deemed each sixty pounds.

A bushel of onions, fifty-two pounds.

A bushel of rye and Indian corn, fifty-six pounds.

A bushel of barley, forty-eight pounds.

A bushel of buck wheat, forty-two pounds.

A bushel of oats, thirty-two pounds.

A bushel of timothy seed, forty-two pounds.

A bushel of unshelled corn, seventy pounds.

A ton of hay shall be deemed two thousand pounds, or by measurement three hundred and forty-three cubic feet, as the standard weight or measurement after the same shall have been stacked thirty days, or such time as may be agreed upon between the parties.

When to take
• act.

Sec. 2. This act shall take effect and be in force from and after its passage and approval by the Governor.

Approved, December 27th, 1865.

CHAPTER 8.

An Act to amend Chapter Thirty seven. Laws of 1862.

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

What property
exempt from
mesne or final
process.

Section 1. That section eight of an act, entitled An act exempting property from execution, writ of attachment, or any other final process of a court, approved, May the twelfth, one thousand eight hundred and sixty-two, be amended so as to read as follows: All property hereinafter mentioned shall be exempt from attachment or mesne process, or levy of execution, or any other final process issued from any court:

1. All family pictures;
2. All miscellaneous books and musical instruments for the use of a family, not exceeding five hundred dollars in value;
3. A seat or pew in any house of worship;
4. A lot or lots in any burial ground;
5. All wearing apparel of the debtor and his family;
6. All household and kitchen furniture, including beds, bedsteads and bedding, used by the debtor, and his family, not to exceed five hundred dollars in value, and in case the debtor shall own more than five hundred dollars worth of such property, he shall select such as may be deemed, by him, most

useful to himself and family, leaving the balance subject to legal process ;

7. Three cows, ten swine, one yoke of cattle and one horse, or two yoke of cattle, or a span of horses or mules. one hundred sheep and their lambs under six months old, and all the wool of the same, and all cloth or yarn manufactured therefrom, the necessary food for the animals hereinbefore mentioned, for one year's support either provided or growing, or both as the deltor may choose ; also, one wagon, one sleigh, two ploughs, one harrow, and farming utensils, including tackle for teams, not exceeding three hundred dollars in value ;

8. The provisions for the debtor and his family necessary for one year's supply, either provided or growing, or both, and fuel necessary for one year ;

9. The tools and instruments of any mechanic, whether a minor or of age, used and kept for the purpose of carrying on his trade or business, and in addition thereto. stock in trade not exceeding two hundred dollars in value. The library and implements of any professional man, not exceeding six hundred dollars in value: all of which articles appropriately exempted by this section shall be chosen by the debtor, his agent or legal representatives, and whenever the articles are limited in value, they shall be appraised at the usual price of such articles at sheriff sale as near as can be determined ; *Provided*, That the debtor may waive the right of returning the particular articles or kinds of property exempted by subdivisions one, two, six, seven and nine of this section, and in lieu thereof he shall be permitted to select any other or any kind of personal property belonging to him, not to exceed in the aggregate, fifteen hundred dollars in value.

Sec. 2. And be it further enacted, that section nine of said act be so amended as to read as follows: Nothing in this act shall be so construed as to exempt any personal property in this territory from execution for clerks, laborers, or mechanics wages, or physicians bills.

In certain cases
no personal
property exempt

Sec. 3. This act shall take effect from and after its passage and approval.

When to take
effect.

Approved, January 9th, 1866.

ATTORNEYS.

CHAPTER 9.

An Act to regulate the admission of Attorneys to the several courts of this Territory.

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

Who admitted to practice in district court.

Section 1. That any district court may grant to any person in this Territory, of good moral character, and of the age of twenty-one years, a license to practice as an attorney and counsellor at law upon an examination at any regular term of such court, in the presence of the district judge, in open court, when satisfied that the applicant possesses sufficient legal learning and ability to discharge the duties of such office.

Shall pass examination in open court.

Sec. 2. No person shall be admitted to, or licensed to practice in any district court of this Territory, unless he shall undergo, and satisfactorily pass a thorough examination in open court, in the presence of the judge thereof, as set forth in the preceding section; *Provided, however,* That any attorney having been previously admitted to practice in any court of record in any other State or Territory, may be admitted to practice in the district courts of this Territory on motion and production of a certificate setting forth said admission in any of the courts of record of said State or Territory, and having the seal of said court attached thereto.

When admitted on motion.

When attorney may be suspended and how.

Sec. 3. Any attorney may be removed or suspended, who shall be guilty of any deceit, malpractice, crime, or misdemeanor, but not until a copy of the charges against him shall have been delivered to him by the clerk of the court in which the proceedings shall be had, and an opportunity shall have been given to him to be heard in his defense.

Acts repealed.

Sec. 4. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Sec. 5. 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 8th, 1866.

COUNTY OFFICERS.

CHAPTER 10.

An Act fixing the time of Holding the Regular Meetings of the Boards of County Commissioners.

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

Section 1. That there shall be four regular meetings of the board of county commissioners, in each of the organized counties of this Territory, in each year, at the county seat of each county, at any one of which meetings the board shall make all necessary and needful provisions for carrying forward and defraying the expenses of the current business of the county. To be four meetings annually.

Sec. 2. The first regular meeting shall commence on the first Monday in January, and may continue three days. When first meeting commence and how long continue.

Sec. 3. The second regular meeting shall commence on the first Monday of April, and may continue four days. Second meeting.

Sec. 4. The third regular meeting shall commence on the first Monday of July, and may continue three days. Third meeting.

Sec. 5. The fourth regular meeting shall commence on the first Monday of October, and may continue three days. Fourth meeting.

Sec. 6. The county commissioners shall not have power to adjourn any regular meeting to a different day, but may call and hold special meetings, not to exceed four days in the year. Commissioners cannot adjourn regular meeting but may call special.

Sec. 7. All acts and parts of acts in conflict with this act, are hereby repealed. Acts repealed.

When to take effect.

Sec. 8. This act shall take effect and be in force from and after the first day of April, A. D., 1866.

Approved, January 12th, 1866.

CHAPTER 11.

An Act relative to the Commissioners and Probate Judge of Todd County.

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

Duties of probate judge in certain cases.

Section 1. That prior to any general or special election, if there be a vacancy in the office of a majority of the board of county commissioners of Todd county, the probate judge of said county is authorized, and it is hereby made his duty, in that case, to do and perform all and every act that the county commissioners are required to do under the election law of this Territory ; and if there also be, at such time, a vacancy in the office of register of deeds, or the office of sheriff, the probate judge of said county shall temporarily fill either or both of said offices by appointing a voter of said county to the office so vacant, and the register of deeds and sheriff, appointed under the provisions of this act shall qualify and give bonds as required by law, and shall perform all the duties of such offices, until a register of deeds or sheriff or both, as the case may be, be elected and qualified into office. .

Who to be canvassers in certain cases.

Sec. 2. And the returns of any election held during the time that the probate judge acts as, and performs, the duties of county commissioners, shall be canvassed by the register of deeds and probate judge of said county.

This act to be the law.

Sec. 3. This act shall be the law upon the matters therein mentioned, any law or laws to the reverse notwithstanding.

When to take effect.

Sec. 4. This act shall take effect from and after its passage and approval.

Approved, January 8th, 1866.

CHAPTER 12.

An Act requiring Justices of the Peace and Constables to Qualify and give Bond.

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

Section 1. That every justice of the peace and constable that shall hereafter be elected or appointed under the laws of this territory, (except special constables) shall, before he enters upon the duties of the office to which he has been so elected or appointed, take and subscribe to the following oath:

I, _____ do solemnly swear (or affirm under the pains and penalties of perjury) that I will support the Constitution of the United States, and the act of congress organizing the territory of Dakota, and that I will truly and faithfully perform the duties of the office of justice of the peace (or constable,) according to law and the best of my ability, so help me God. Which oath may be administered by any officer of his county, who by law is authorized to administer oaths, and said oath, after being subscribed and certified, shall be delivered to the register of deeds of such county, whose duty it shall be to record the same in a book to be kept for that purpose, for which he shall receive from the person taking such oath a fee of twenty-five cents.

Sec. 2. Each justice of the peace and constable, hereafter to be elected or appointed under the laws of this territory (special constables excepted) before entering upon the duties of his office, shall execute to the county commissioners of the county in and for which he has been so elected or appointed, a bond as hereinafter provided: the bond for a justice of the peace shall be in the penal sum of five hundred dollars, and the bond for a constable shall be in the penal sum of two hundred dollars, with surety to be approved by the register of deeds, conditioned that he (the justice or constable) shall faithfully perform the duties of his office according to law; which bond shall be recorded by the register of deeds in the book mentioned in the last section to be kept for the record of offi-

Justices and constables to take oath.

Form of oath.

Register to record oath.

Justices and constables to give bond in sum of \$200.
Bond recorded.

cial oaths, and for recording such bond the register of deeds shall receive a fee of fifty cents from the person executing the same.

Duty of officers heretofore elected.

Sec. 3. That all persons within this territory, elected to the office of justice of the peace or constable at the general election held in October last, who have not, on or before the date of the approval of this act, qualified into office agreeable to the provisions of any law now in force, shall be required to qualify and give bond as provided in this act.

Other acts to conform to this.

Sec. 4. All acts and parts of acts now in force shall be so construed as to conform to the provisions of this act.

When to take effect.

Sec. 5. This act shall take effect and be in force from and after its passage and approval.

Approved, December 27th, 1865.

COURTS.

CHAPTER 13.

An Act Fixing the time of holding the District Courts in the First, Second and Third Judicial Districts; and the time of holding the Courts in the county of Union.

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

Time and place of holding court in third district

Section 1. That the District Court in and for the third judicial district, shall be held at the town of Bon Homme, in the county of Bon Homme, on the second Monday of May and the first Monday of September in each year.

In second district.

Sec. 2. That the District Court in and for the second judicial district, shall be held in the town of Yankton, in the county of Yankton, on the first Monday of June and the first Monday of October in each year.

Sec. 3. That the District Court in and for the first judicial district, shall be held in the town of Vermillion, in the county of Clay, on the fourth Monday of June and the fourth Monday of October in each year. In first district

Sec. 4. That the District Court in and for the county of Union in the first judicial district, shall be held at the county seat of Union county, on the second Tuesday of March and the third Tuesday of November in each year. In county of Union.

Sec. 5. All acts and parts of acts, so far as they conflict with the provisions of this act, are hereby repealed. Acts repealed.

Sec. 6. This act shall take effect and be in force from and after its passage. When to take effect.

Approved, January 8th, 1866.

ELECTIONS

CHAPTER 14.

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. Elections held according to provisions of this act.

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, When general election held and what officers chosen.

and all other territorial, district, county, precinct and city officers, not herein enumerated, that may by law be provided for.

Who to appoint
judges of elec-
tion Election
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.

Clerks of
elections.

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 herein before 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.

Vacancies of
judges, how
filled.

Register to
give notice.

Sec. 5. The registers of deeds of the several counties shall, at least thirty days before any general election, and at least ten days previous to 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 will be held for territorial, town or district officers, (naming the offices to be filled as the case may

Form of notice.

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, 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.

Notices posted twenty days before general, and eight before special election.

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.

When judge fail to act.

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.

Judges and clerks to take oath. Form of oath.

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 adminis-

Who authorized to administer oath.

tering oaths shall cause an entry thereof to be made and subscribed by him and prefixed to the poll book.

When polls to be opened and closed, &c.

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 in like manner, 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.)

Penalty against judges refusing to receive 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.

Ballot and what to contain.

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 elector intends 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.

Ballot at general election.

Sec. 13. The names of all persons voted for by any elector at any general election or special election, shall be on one ballot.

When person challenged.

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

Form of oath.

shall then tender to him 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 twenty 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.

Person refusing to take oath.

When required to sign oath.

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.

Perjury and punishment therefore.

Penalty for illegal voting. Fine to go to school fund.

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.

Ballot box.

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.

Id.

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.

Manner of voting.

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.

Adjournment
and comparing
lists.

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.

Closing ballot
box.

Sec. 21. The ballot box shall then be opened and the poll list replaced 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.

Re-opening
of polls.

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.

When judge to
challenge.

Sec. 23. It shall be the duty of each judge of election, to challenge every person offering to vote, whom he shall know or suspect not to be qualified as an elector.

Preserving the
peace.

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 fine shall

Fine.

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.

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.

Canvassing
votes.

Sec. 26. The canvass shall commence by a comparison of the poll list 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
canvassing.

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.

When ballots
exceed number
on poll lists.

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 num-

Counting votes.

Form of entry
in poll book.

ber of votes annexed to their respective names, for the following described offices, to wit: A. B. had votes for delegate to congress; C. D., had votes for member of 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 person voted for). Certified by us, A. B., C. D., E. F., judges of election. Attest: G. H., I. K., clerks of election."

One poll book to be deposited with register, either with county commissioners.

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 not delivering poll book to register

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.

Who to make abstract, and manner of making it.

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 ab-

abstract of votes for members of the legislative assembly shall be on one sheet; the abstract of votes for the county and 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 or 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.

Register to make certificates,

In case of tie.

Pay of Judges and clerks.

Register to furnish Secretary of Territory.

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.

Register's duty 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

Board of canvassers, their duties.

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 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.

Duty of secretary when returns not received.

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.

What officers receiving certificate may resign.

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

Vacancy in legislature.

Duty of governor and register in such cases.

When special election not to be ordered.

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.

Vacancy in office of delegate.

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 register when two or more counties comprise one district.

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.

Vacancy in legislative while in session.

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.

Pay of officers of elections.

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

Vacancy in council or house in certain cases.

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.

Duty of register
in elections for
vacancies.

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.

No returns re-
fused when.

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.

Informality, &c.

Penalty when
officers violate
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.

When term of
office commence,

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.

When to enter
on duties in case
of vacancy.

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.

Highest number of votes elects.

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.

Civil process not served on elector, when.

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.

How canvassers to construe vot.

Sec. 48. It shall be the duty of the register of deeds, of such 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 books and blanks.

Delivering same

Sec. 49. And all legal voters in this territory, residing in an organized county, shall have the right to vote for delegate to congress, at any election precinct established by law in any

Voting for delegate, where.

organized county in this territory; and all voters living in unorganized counties, shall vote in the organized counties to which their unorganized counties are respectively attached for election purposes.

Who entitled to vote and hold office.

Sec. 50. Every free white male person above the age of twenty-one years, who shall have been a resident of the territory ninety days, and twenty days in the county, next preceding the election, who is a citizen of the United 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, 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.

Acts repealed.

Sec. 51. All acts and parts of acts, conflicting with the provisions of this act, are hereby repealed.

When to take effect.

Sec. 52. This act shall take effect and be in force from and after its passage and approval.

Approved, January 6th, 1866.

FENCES

CHAPTER 15.

An Act to Establish a Fence Law.

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

What deemed a lawful fence.

Section 1. That a fence constructed by placing the end of posts firmly in the ground, not to exceed twelve feet apart, and by firmly securing thereto rails, poles, or boards, either by morticing the posts and inserting the ends of the rails, poles, or boards therein, or by sufficiently nailing, spiking, or pinning them to said posts; *Provided*, That there shall not be less

than three rails, poles, or boards, to each joint or length of fence, and *provided further*, That the bottom tier of such rails, poles, or boards, shall not exceed twenty inches above the average surface of the ground along each joint or length of fence, and that the top of said fence shall be not less than four and one-half feet above the average surface of the ground along each joint or length of fence; or a fence constructed by placing crutches or timbers of suitable size in the ground, and by placing thereon rails or poles of suitable size, not less than three in number, to each joint or length, the bottom tier of such rails or poles not to exceed twenty inches above the average surface of the ground, and the top tier not less than four and one half feet above the average surface of the ground along each joint or length of fence; the top tier to rest securely in stakes set in the ground at the end of each joint. Or any fence constructed in any other manner of rails, timber, boards, walls or embankments, or any combination thereof; and all brooks, creeks, ponds, ditches, rivers and hedges that shall be considered equivalent to the fence described in this section, shall be deemed a lawful fence when in good repair.

Sec. 2. In order to bring a fence to the standard of a "lawful fence," it is not necessary that such fence be deemed sufficient to turn sheep or swine.

Not necessary to turn sheep and swine.

Sec. 3. If two or more persons join in the construction of a partition fence, each party shall thereafter keep in good repair his portion of such fence; and neither party shall abandon his part of such partition fence or remove the same or any part thereof, until after one year's notice to the other party or parties interested therein, of his intention so to do; unless by the consent of all the parties interested.

Where parties join in constructing partition fence.

Sec. 4. Any person or persons owning or having in his, her or their charge or possession any horses, mules, cattle, sheep or swine, or any one of such animals, which shall breach over, under or break into any lawful enclosure belonging to any person or persons other than the owners of such animal or animals, within either of the counties hereinafter named, such person or persons owning or having in charge or possession such breaching animal or animals shall be liable to the party or parties sustaining such injury, for all damages he, she, or

Owners liable for damage done by animals.

they may have sustained by reason of such breaching as aforesaid, to be recovered in a civil action before any court having jurisdiction thereof, in the county where such damage may have accrued, 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 the provisions of this act.

Exemption laws not to apply.

Who considered owners.

Sec. 5. Any person or persons occupying or having the charge or possession of an enclosure, shall be considered the owner thereof in any action under the provisions of the last section.

Party suffering damage shall notify owner before commencing action.

Sec. 6. The party sustaining damage done by animals, as mentioned in section four, before commencing an action thereon, shall notify the owner or person having in charge such offending animal or animals, of such damage and the probable amount thereof, provided he knows to whom such animal or animals belong, and that such owner or keeper resides and is then within the county where the damage was committed.

Party suffering damage may restrain animals

Sec. 7. The person suffering damage done by animals, as mentioned in section four, may restrain and keep in custody such offending animals until the finding of the court be ascertained, unless before such suit, the amount of his claim and the expense of keeping such animals be tendered to him.

Trial.

When it appears that fence is lawful.
Damage.

Sec. 8. If, upon the trial of an action under the provisions of section four, it shall appear by competent testimony that the plaintiff's enclosure is a lawful fence under the provisions of this act, he shall be allowed to prove the amount of damage sustained, and (if he has retained 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 the plaintiff's enclosure is not a lawful fence, or that no damage was sustained, judgment shall be rendered against the plaintiff for costs of suit.

Judgment lien on animals.
When enclosure not lawful.

When it appears defendant not owner.

Sec. 9. If upon the trial it appears that the defendant is not the owner or the person in charge of such offending animals, he shall be discharged from 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 which case service shall be made by posting copies of the summons in three of the most public places within the county not less than ten days previous to the day of trial, which posting may be done by the proper officer, or by any voter of the county.

When owner unknown.

Service in such case.

Sec. 10. This act shall govern in all actions and proceedings instituted and transacted under the provisions thereof, any law to the reverse notwithstanding.

This act to govern in all cases.

Sec. 11. The provisions of this act shall apply only to the counties of Union, Clay, Yankton, and Bon Homme.

What counties, act apply to,

Sec. 12. This act shall take effect from and after its passage and approval.

When to take effect.

Approved, January 11th, 1866.

FERRIES.

CHAPTER 16.

An Act to regulate Ferries in the Organized Counties of the Territory of Dakota.

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

Section 1. That it shall not be lawful for any person or persons to keep a ferry across any stream of water running through the organized counties of this territory, without first having obtained a lease from the board of county commissioners of the proper county, for that purpose, as hereinafter provided.

Persons to obtain ferry lease from county commissioners.

Sec. 2. 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

Lease not to exceed five years, &c.

not exceeding five 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.

Proceedings to obtain lease.

Sec. 3. That when not less than eight citizens of said county shall present to the board of county commissioners of said county a petition, setting forth that a ferry is needed in said county, and designating in said petition the name of the stream and the particular place thereon, on which said ferry is intended to be located, the said board of county commissioners shall give twenty (20) days notice by advertising in at least three (3) public places in said county, of such application, and stating in said notice that on the day therein fixed at the office of said board of county commissioners, they will offer to the highest bidder all the rights, franchises and exclusive privileges of said ferry upon lease for the term of years agreed upon by said county commissioners.

Rates of ferriage on Missouri river.

Sec. 4. That the rates for crossing the Missouri river on ferries, shall not exceed the following, to wit:

For two horses, mules or oxen and wagon, with or without load, one dollar.

For each additional pair of horses, mules or oxen, thirty cents.

For each two horses or mules and buggy, seventy-five cents.

For each one horse or mule with buggy and driver, fifty cents.

For each lead horse or mule, twenty-five cents.

For loose cattle per head, fifteen cents.

For sheep and swine per head, ten cents.

For each one hundred pounds of freight or merchandise unloaded, ten cents.

For each thousand feet of lumber unloaded, one dollar.

Rates on Big Sioux, Vermillion and Dakota rivers.

The rates for crossing the Big Sioux river, Vermillion river and Dakota river, shall be as follows: The rates charged at said ferries shall not exceed the following rates:

For foot passengers, each, ten cents.

For each horse or mule, with or without a rider, ten cents.

For each head of loose cattle, five cents.

For two horses or mules, or cattle team, loaded or without load, with driver, twenty-five cents.

For each horse or mule, or ox over two attached to a team, five cents.

For a single horse or mule to a buggy, fifteen cents.

For each head of sheep or swine, five cents.

All freight not attached to teams, five cents per one hundred thousand.

All lumber in pile, fifty cents per thousand feet.

Said ferryman is requested to keep a bill of his legal rates posted up in a convenient place, at or near said ferry in view of the passing public.

Rates to be posted up.

Sec. 5. That every person obtaining a lease to keep a ferry as aforesaid, shall provide and keep in good repair, a good and sufficient boat for the safe conveyance of persons and property; and when the river and creek over which the ferry is kept is passable, shall, with a sufficient number of hands to work and manage the boat, from sun rise till sun set, and with reasonable care and promptness, convey across said ferry all persons and property presented for transportation across the same. And if any lessee, as aforesaid, shall fail or neglect to perform all or any of the duties enjoined upon him by this act, or shall demand or receive a higher rate of ferriage than shall be allowed by section 4 of this act, the lessee so offending, shall for each offense forfeit and pay the sum of ten (10) dollars to be recovered in the name of the territory of Dakota before any justice of the peace of the proper county.

To keep good boat. Running time. Penalty for neglect, &c.

Sec. 6. That if any person shall keep a ferry in any of the organized counties of this territory, without a lease first obtained from the board of county commissioners as aforesaid, the owner or person so offending shall forfeit and pay a sum of not less than fifty (50) dollars, and not exceeding five hundred (500) dollars for each year, or fractional part of a year such person shall keep such ferry, to be recovered by indictment in the proper county.

Penalty for keeping ferry without lease.

Sec. 7. That all moneys which may be received by the county commissioners upon leases granted for ferries aforesaid, and all forfeitures, collected for violation of the provisions of this act, shall, within thirty (30) days after the receipt thereof, be paid

Moneys arising under this act, for benefit of schools.

to the county treasurer, for the use of the common schools of said county, and the same shall be apportioned among the several school districts of said county, in like manner as other school funds of the county are now apportioned by law.

When act not to apply.

Sec. 8. That nothing in this act shall prevent any person from ferrying persons across a small stream in time of high water, when in the opinion of the board of county commissioners such stream is too small to justify a regular ferry.

Persons heretofore running ferries to comply with this law.

Sec. 9. *And be it further enacted*, That any and all persons, who have heretofore received either permit, lease, grant or charter for the keeping of ferries, who shall neglect or fail during the period of one (1) month at any one time after the passage of this act or any prior act, to keep his or their respective ferries in operation for the safe transportation of persons and property over the same, shall forfeit all the ferry rights, franchises and privileges granted by this act or any former act as aforesaid; and upon due proof before the board of county commissioners of the proper county, of such failure or neglect as aforesaid, the said board of county commissioners are hereby empowered and authorized to declare such forfeiture absolute and thereupon, and thereafter, all the rights, franchises and privileges granted by this act, shall cease and be of no force or effect in law or equity: *Provided*, That no part of this act shall be so construed as to affect the right of Barney McGraw, under a charter granted at this session of the legislature, till at the expiration of six months from the date hereof.

Penalty for not doing so.

Barney McGraw

Acts repealed.

Sec. 10. All acts and parts of acts in conflict with this act, are hereby repealed.

When to take effect.

Sec. 11. This act shall take effect and be in force from and after its passage and approval.

Approved, January 12th, 1866.

FIRING OF PRAIRIES.

CHAPTER 17.

An Act to Prevent the Firing of Woods, Marshes and Prairies.

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

Section 1. If any person shall willfully set on fire any woods, marshes or prairies, so as thereby to occasion any damage to any other person, such person shall, upon conviction thereof, pay a sum not exceeding five hundred dollars, nor less than fifty dollars, and be imprisoned in the county jail not more than six months, nor less than ten days; one half of said fine shall go to the complainant, and the other half to the common school fund of the county in which the offense was committed; and in case of the neglect or refusal of any person so convicted, to pay the fine above specified, he shall be, in addition to the imprisonment above imposed, confined in the county jail one day for every dollar thereof, until said fine be discharged.

Penalty for violating this act.

Who fines to be paid to.

Sec. 2. If any person shall set on fire any woods, marshes, or prairies, so as thereby to occasion any damage to any other person, such person shall make satisfaction for such damages to the party injured, to be recovered in an action.

Person firing prairies, &c., liable for damage done.

Sec. 3. This act shall not extend to any person setting on fire, in the night time, anything on his own farm, as often as occasion may require, if done without intention to set on fire the adjacent woods, marshes, or prairies, not occupied by such person; nor shall the provisions of this act extend to persons firing during the months of March and April.

Who this act not apply to.

Sec. 4. Nothing herein contained shall be so construed as to prevent any person from firing against fire, so as to protect his or her property from being destroyed.

Person may protect his property by firing against fire.

Duties of all officers.

Sec. 5. It shall be the duty of all sheriffs, justices of the peace, constables and other sworn officers, to use all necessary means to convey information to the proper authorities of any violation of 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, 1866.

INDIANS.

CHAPTER 18.

An Act to prohibit the Furnishing of Intoxicating Liquors to Indians.

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

Proceedings in case where Indian is found intoxicated.

Section 1. Whenever any Indian in this Territory, belonging to any tribe under the care or guardianship of the United States, shall be found in a state of intoxication, it shall be the duty of any sheriff, deputy sheriff, constable, justice of the peace, or Indian agent, within this Territory, without warrant, to apprehend such Indian so intoxicated, and take and retain him in custody, at the expense of the county in which he is so found, until, in the opinion of such officer, the Indian so retained shall become sufficiently sober to testify properly in a court of justice, and as soon as may be thereafter bring him before some justice of the county, and such Indian, so found intoxicated, shall, on oath before such justice, disclose the place where, and the person of whom the liquor so producing intoxication was obtained, and all the circumstances attending it, and on the refusal or neglect of such Indian to disclose, he may, by such justice, be committed to the common jail of the county in which he was so found, until he shall so disclose, or by said justice be discharged. And in case said justice shall judge from the evi-

Proceedings against person who furnished liquor to Indian.

dence, that the sale, furnishing or giving away said liquor was an offense against the laws of the United States and of this Territory, in relation to furnishing liquor to Indians, he shall forthwith issue his warrant, and cause the person so selling, furnishing or giving away said liquor to be brought forthwith before him, and such proceedings shall be had in the case as shall disclose the facts in relation thereto, and if from the evidence produced, such justice be satisfied that such person is guilty of the offense charged, he shall hold said person to bail, in the sum of five hundred dollars, to be and appear at the next term of the district court, and there to be tried for such offense, in default of which said person shall be committed to the county jail, if there be one, if not, to the nearest place of confinement to such county, there to await the sitting of the next succeeding term of the district court, when he shall be arraigned and tried, and if found guilty, punished in accordance with the penalties prescribed by existing statutes of this Territory and of the United States. Any person resisting the arrest or detention of such Indian, so found intoxicated, by any of the persons aforesaid, authorized by this act to make such arrest, shall be liable to the same penalties as are provided by law for resisting a sheriff in the execution of a legal process.

Sec. 2. It shall be the duty of the justice before whom any proceedings as aforesaid may be had immediately upon holding to bail, or the commitment of any person charged with the offense of furnishing liquor to Indian or Indians, to notify the clerk of the district court of the district in which such offense has been committed, of the proceedings had before him and the said clerk shall thereupon enter upon the trial docket of the district court, the offense charged in the same manner as in other cases.

Duty of justice upon holding person to bail for furnishing liquor to Indians

Sec. 3. All acts and parts of acts conflicting with this act, are hereby repealed.

Acts repealed.

Sec. 4. This act shall take effect from and after its passage.

When to take effect.

Approved, January 4th, 1866.

CHAPTER 19.**An Act Prohibiting the Harboring of Indians within the Organized Counties.**

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

Unlawful for any person to harbor any Indian.

Section 1. It shall be unlawful for any person or persons within any organized county of this Territory to harbor or keep on or about his or their premises or place of abode any Indian or Indians belonging to an established Indian agency, either within or without this Territory, and under the charge of an Indian Agent, or any Indian or Indians who do not belong to an agency confined to an Indian reservation and who have not adopted the manners and habits of civilized life, and it shall be unlawful for any person or persons within any organized county of this Territory to induce or incourage any such Indian or Indians, who have not adopted the manners and habits of civilized life to camp, remain or hunt, for any time or for any purpose, within any village or settlement of white people, or in the vicinity of such village or settlement within any organized county of this Territory.

Proceedings against person for violating provisions of this law.

Sec. 2. Upon complaint under oath being made before any justice of the peace in an organized county of this Territory that any person or persons have violated within such county the provisions of the first section of this act, such justice shall immediately issue his warrant for the arrest of the person or persons charged in the complaint, which warrant shall be directed to the sheriff or any constable of his county, commanding him in the name of the Territory of Dakota to arrest and forthwith bring before him the person or persons therein named if to be found within his county.

Officer receiving warrant to serve same.

Sec. 3. It shall be the duty of the officer receiving such warrant to serve the same without delay, and to make return as therein commanded.

Justice to try accused same as in criminal cases.

Sec. 4. Upon the delivery of such accused person or persons into court, it shall be the duty of the justice to try and determine the case in the manner provided by law for the trial of

criminal cases in justices courts, and upon conviction the person or persons so found guilty of a violation of all or either of the provisions of the first section of this act he or they shall be fined in a sum not less than twenty-five dollars for each Indian so kept, harbored or induced to remain, as provided in section one of this act, and the costs of the suit; *Provided, however,* That the aggregate of such fine upon one person so convicted, shall not exceed one hundred dollars for one conviction, and the person or persons so convicted shall remain in custody or confinement until such fine and costs be paid.

Penalty on conviction.

Sec. 5. All fines collected under the provisions of this act shall be paid, by the officer collecting the same into the county treasury, for the use and benefit of the school fund of the county in which such conviction was had.

Fines collected for benefit of school fund.

Sec. 6. Any justice of the peace, sheriff, or constable who shall fail to perform the duties required of him by this act, shall forfeit and pay into the Treasury of his county, for the use of the school fund of said county, the sum of one hundred dollars for every such neglect of duty.

Penalty against any officer failing to perform duty under this act.

Sec. 7. All acts and parts of acts, so far as they conflict with the provisions of this act, are hereby repealed.

Acts repealed.

Sec. 8. This act shall take effect from and after its passage and approval.

When to take effect.

Approved, January 8th, 1866.

IMMIGRATION,

CHAPTER 20.

An Act to authorize the appointment of an Immigrant Agent.

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

Section 1. That the Governor of the territory be and he is hereby authorized to appoint an immigrant agent for the territory of Dakota.

Governor authorized to appoint immigrant agent.

Duty of agent.

Sec. 2. It shall be the duty of such immigrant agent, to open correspondence with the national bureau of immigration, with regard to the natural resources of this territory, and the inducements offered to immigrants seeking homes in the west, and he shall be invested with authority to visit the old countries in the name and style of the "Immigrant Agent of Dakota Territory," and there to encourage immigration to this territory by a fair and truthful representation of the agricultural, commercial and mineral resources of the Missouri valley and its tributaries.

Agent to make annual report to legislature.

Sec. 3. The said immigrant agent shall make an annual report of his labors to the legislature.

When to take effect.

Sec. 4. This act shall take effect and be in force from and after its passage and approval.

Approved, January 11th, 1866.

LAWS AND JOURNALS.

CHAPTER 21.

An Act to Provide for the Printing and Distribution of the Laws and Journals.

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

Number of copies of laws secretary of territory requested to have printed.

Section 1. That the Secretary of this Territory, be, and is hereby, requested to procure the printing of one thousand copies of the laws, memorials and resolutions, passed at the present session, and at each subsequent session of the legislative assembly of this Territory; and to have the same bound, as follows: One half or five hundred copies, in law sheep; one fourth, or two hundred and fifty copies, in half binding, with leather backs and corners; and the remaining one-fourth, or two hundred and fifty copies, in durable pamphlet form. The Secretary aforesaid is further requested to procure the print-

Style of binding

ing of three hundred copies of the journals of the present and each subsequent session of the legislative assembly; and to have the same bound, one-half in half binding, and one-half in pamphlet form; *Provided*, That the journals of each house shall be in separate volumes, and shall be correctly and properly indexed, and prefaced by a list of the names of the members of the respective houses, together with their post-office address.

Number copies journals and style of binding.

To be indexed and include names of members,

Sec. 2. The printed volume of the laws shall be prefaced by a table of contents, the Declaration of Independence, the Constitution of the United States, and the act organizing the Territory of Dakota, and shall contain a full and correct index of its contents.

What volume of laws to contain.

Sec. 3. That in arranging the laws, memorials and resolutions for publication, the Secretary aforesaid is hereby authorized to make such corrections in the orthography, grammatical construction and punctuation of the same, as in his judgment shall be deemed essential; *Provided*, That when any words or clauses shall be inserted, the same shall be inclosed in brackets.

What correction secretary authorized to make.

Sec. 4. The Secretary aforesaid is hereby authorized to distribute the laws and journals, after they shall have been printed and bound, in the manner hereinafter specified.

Secretary authorized to distribute.

Sec. 5. It shall be the duty of the register of deeds of each organized county in this Territory, before the first day of May in each year, to make a requisition upon the Secretary aforesaid for as many copies of the laws passed by the last preceding session of the legislative assembly, as there are county officers in their respective counties, upon receipt of which, the said Secretary shall forward to the said register the number of copies specified; *Provided*, That the expense of transportation of said books shall be defrayed by the county to which the said books are sent.

Duty of Register of deeds

Expense of transportation to be defrayed by counties.

Sec. 6. The register of deeds, upon receiving the copies of the laws, pursuant to his requisition, shall immediately forward to the Secretary of this Territory his official receipt for the same; and the said register shall promptly deliver to each county officer one copy of the laws which he has received upon his requisition.

Register to receipt for and deliver books.

To whom
secretary is
authorized
to deliver books

Sec. 7. The Secretary of the Territory is hereby authorized to deliver one copy of the laws of each session of the legislative assembly held on or after the passage of this act, to each federal and territorial officer of this Territory, taking, for each copy so delivered, the official receipt of the officer receiving the same. The Secretary aforesaid is further authorized to furnish to each member of the legislative assembly, hereafter to be held, one copy of the laws and one copy of the journals of both houses of the preceding session, and also to furnish one copy of the journals and laws to each member of the legislative assembly at which the same were enacted, upon application being made to him by said member.

Secretary
authorized to
fix price and
sell laws.

Territorial
library.

Sec. 8. The Secretary aforesaid is further authorized to fix a reasonable price upon all volumes of the territorial statutes of this territory, and to sell the same; *Provided*, That not less than fifty copies of the laws of each session shall be retained by him in his office for the use of the territorial library.

Money received
by secretary
from sale of
books.

Sec. 9. The said Secretary may receive, from all moneys which may come into his hands from the sale of the territorial statutes, ten per centum of the full amount for his own use; but the remainder he shall pay over to the territorial treasurer, taking an official receipt for the same.

Acts repealed.

Sec. 10. That chapter fifty-three of the laws of eighteen hundred and sixty-two of this Territory, and all other acts and parts of acts conflicting with the provisions of this act, are hereby repealed.

When to take
effect.

Sec. 11. That this act shall take effect and be in force from and after its passage.

Approved, January 8th, 1866.

POISONS

CHAPTER 22.

An Act to Regulate the Sale of Poisons.

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

Section 1. No druggist, apothecary, or other person dealing or trafficking in drugs or medicines, shall sell or give away any poison, or poisonous substances hereinafter enumerated, except practicing physicians, in their ordinary practice of medicine, without recording in a book, to be kept for that purpose, the name of the person or persons receiving such poison, and his, her, or their residence, together with the name and residence of some person as witness to such sale, excepting upon the written order or prescription of some practicing physician, whose name must be attached to such order or prescription; and such book shall be kept open for inspection.

Persons disposing of poisons to make an entry in a book.

What to contain.

Sec. 2. No person shall sell, give or dispose of any poison or poisonous substances except upon the order or written prescription of a practicing physician, without attaching to the phial, box or parcel containing such poisonous substance, a label, with the name and residence of such person, with the word "poison" printed or written upon it, together with the name of such poison written or printed thereon, in plain and legible characters.

Package to be labeled.

Sec. 3. These provisions shall apply to the following poisonous substances, excepting when sold in wholesale quantities, of one pound or over, to wit: acidum oxalicum, acidum hydrocyanicum, aconitum napellus, argenti nitras, arsenicum, atropa belladonna, cicuta, cocculus indicus, conium maculatum, digitalis, hydrargyri chloridum corrosivum, hyoscyamus niger, nux vomica, oleum amygdala amara, opium, its tincture and salts, secale cornutum and its preparations, strychnia, veratria and its salts.

What the provisions of the law applies to.

Penalty for
violation of
act.

Sec. 4. Any person violating any of the provisions of this act shall, upon conviction, be deemed guilty of misdemeanor, and shall be punished by a fine not exceeding fifty dollars.

When to take
effect.

Sec. 5. This act shall take effect and be in force from and after its passage.

Approved, January 4th, 1866.

PRINTERS FEES

CHAPTER 23.

An Act Regulating the Rates of Printers Fees.

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

Rates allowed.

Section 1. That for publishing any legal notice or any order, citation, summons, or any other proceeding or advertisement, requiring by law to be published in any newspaper, the cost of publishing such advertisement shall not exceed the rate of two dollars per square of ten lines nonpareil type for the first insertion, and one dollar per square of ten lines nonpareil type for each subsequent insertion.

Where legal
advertisements
to be published.

Sec. 2. All legal advertisements shall be published in a newspaper printed in the county in which the proceedings are commenced, if there be one; and if no newspaper be printed in such county, then such advertisement shall be published in some newspaper printed in the Territory, having general circulation in such county.

When to take
effect.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved, January 12th, 1866.

REVENUE.

CHAPTER 24.

An Act in Relation to Territorial and County Revenue.

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

Section 1. That no territorial or county warrant, issued for the payment of any debt contracted prior to the first of January, 1865, shall be paid in whole or in part, out of the territorial or county revenue created under the provisions of this act; and a sufficient amount of the first territorial tax received under this act, shall be applied by the territorial treasurer to the purchase of suitable blank books for the Territory, not to exceed fifty dollars in value.

Payment of debts contracted prior to Jan. 1, 1865.

Blank books to be purchased.

Sec. 2. That the board of county commissioners of each county in this Territory, shall annually, as hereinafter provided levy the following taxes upon the assessed value of taxable property in the Territory :

Taxes to be levied, for what purpose.

1. For territorial purposes the tax shall be one mill on the dollar when no rate is fixed by the governor, secretary and auditor, as hereinafter specified, and in no case shall a tax for territorial purposes exceed two mills on the dollar ;

Rate of tax.

2. For county revenue, including the support of the poor, the property-tax shall not exceed four mills on the dollar, and a pdl tax of one dollar for county school purposes ;

3. For repairing roads and bridges under direction of the county commissioners, the tax shall not exceed one mill on the dollar ; and the aggregate tax for territorial and county purposes shall in no case exceed three fourths of one per cent per annum.

PROPERTY EXEMPT.

Sec. 3. The following described property is hereby exempt from taxation :

Property exempt from taxation.

1. The property of the United States and that of this terri-

tory; the property of any county, township, incorporated town or school district, when devoted entirely to public use; public grounds, by whomsoever devoted to the public, including all places for the burial of the dead;

2. Fire engines and implements used for extinguishing fires, with the grounds used exclusively for the buildings of a fire company;

3. All grounds and buildings of literary or scientific institutions, incorporated under the laws of this territory; also the grounds and buildings of benevolent, agricultural and religious institutions, and societies devoted solely to the appropriate objects of these institutions;

4. The books, papers and apparatus belonging to the above institutions, and used for the purpose above contemplated, and the like property of students in any such institutions; moneys and credits belonging to said institutions, not exceeding in amount the sum prescribed in their charter;

5. One dog and all other animals not specified in the next section, the wool shorn from twenty sheep belonging to the person giving the list. The provisions for any family, sufficient for the sustenance of the family for one year; private libraries, not exceeding one hundred dollars in value; family pictures, libraries of clergymen; household furniture, not exceeding one hundred dollars in value; the wearing apparel of every person;

6. The polls of persons who, by reason of age or infirmity, may, in the judgment of the assessor, be unable to contribute to the public revenue;

7. The farming utensils of any person who makes his livelihood by farming, and the tools of any mechanic, not in either case to exceed one hundred dollars in value.

TAXABLE PROPERTY.

Property
subject to
taxation.

Sec. 4. All other property, real and personal, within this territory, is subject to taxation in the manner herein directed. This section is intended to embrace lands and lots in towns, including lands bought from the United States, ferries, franchises and toll-bridges, which for the purpose of this act, are considered real property—horses, cattle, mules, asses, sheep and swine and money, whether on deposit or in possession, and

including bank-bills, money or property, due from solvent debtors, on contract, or judgment, property situated in this territory belonging to any bank or company, incorporated or otherwise, public stocks or loans, household furniture, including gold and silver plate, private libraries exceeding one hundred dollars in value, carriages, stages, hacks, wagons, farming utensils, machines and machinery, and mechanic's tools, for their value over one hundred dollars, boats and vessels of every description, wherever registered or licensed, and whether navigating the waters of the territory or not, if owned wholly or in part by persons who are inhabitants of this territory, annuities, but not including pensions from the United States, nor salaries or payment expected for services to be rendered.

Sec. 5. Every inhabitant of this territory, of full age and sound mind, shall assist the assessor in listing all property subject to taxation in this territory of which he is the owner or has the control or management, in the manner hereinafter described. The property of a ward is to be listed by his guardian; of a minor by his father if living, if not, then by his mother if living, and if not, then by the persons having the property in charge; if a married woman, by herself or husband; if a beneficiary for whom property is held in trust, by the trustee; and the personal property of a decedent, by the executor; of a body corporate, company, society, or partnership by its principal accounting officer, agent, or partner. Property under mortgage or lease is to be listed by and taxed to the mortgagor or lessor, unless it be listed by the mortgagor or lessee by special agreement.

Owner of property to assist assessor.

Who may list property.

Mortgagor and lessor.

Sec. 6. Commission merchants and all persons trading on commission and assignees authorized to sell, when the owner of the goods does not reside in the county, are for the purposes of taxation to be deemed the owners of the property in their possession and shall list the average monthly amount of capital in trade, since the last assessment.

Commission merchants and assignees.

Sec. 7. Any person authorized as agent or attorney, to list property belonging to another, shall list it in the same county in which he would be required to if it were his own (except as herein otherwise directed;) but he shall list it separately from his own, giving the assessor the name of the person or estate

Duty of agent or attorney in listing property.

to whom it belongs ; but the individual property of a person deceased, belonging to his heirs, may be listed as belonging to heirs without enumerating them.

Persons doing business in one or more counties

Sec. 8. When a person is doing business in more than one county, the property and credits existing in any one of the counties, shall be listed and taxed in that county, and the credits not existing in or pertaining especially to the business in any one county, shall be listed and taxed in that where the principal place of business may be. Any individual of a partnership is liable for the taxes due from the firm.

Partners.

Insurance companies and agents,

Sec. 9. Insurance companies of every description, existing in other territories and states, and operating in this territory shall be taxed for county and territorial purposes, upon the amount of the premiums taken by them during the year previous to the listing in the county where the agent conducts that business, and the agent shall render the list and shall be personally liable for the tax ; and if he refuses to render the list or to swear as herein required, the amount may be assessed according to the best knowledge and discretion of the assessor.

Property to be listed in name of owner.

When owner lives out of county.

To be assessed according to value.

Sec. 10. All real and personal property shall be listed, assessed, and taxed in the name of the owner thereof ; but if the owner resides out of the county, it shall be listed by the agent or person having charge of the same. All real property shall be assessed according to its true cash value, having regard to its quality, location, natural advantages and the general improvement in the vicinity.

Bank notes, stocks, &c.

Sec. 11. Bank-notes, and the stocks of corporations and companies shall be assessed at their cash value ; credits shall be listed at such sum as the person listing them believes will be received or can be collected thereon, and annuities at the value which the person listing believes them to be worth in money.

What owner entitled to deduct.

Exception.

Sec. 12. In making up the amount of money and credits which any person is required to list or have listed and assessed, he will be entitled to deduct from the gross amount all bona fide debts owing by him, but no acknowledgment of indebtedness not founded on actual consideration, and no such acknowledgment made for the purpose of being so deducted, shall be

considered a debt within the intention of this section, and so much only of any liability of such person as security for another shall be deducted, as the person making the list believes he is equitable or legally bound to pay, and so much only as he believes he will be compelled to pay on account of the inability of the principal debtor, and if there are other sureties able to contribute, then so much only as he in whose name the list is made, will be bound to contribute; but no person will be entitled to any deduction on account of any obligation of any kind given to any insurance company for the premiums of insurance, nor on account of any unpaid subscription to any institution, society, corporation, or company.

Sec. 13. Any person owning or having in his possession or under his control within this territory, with authority to sell the same, any personal property purchased either in or out of this territory, with a view of its being sold at an advanced price or profit, or which has been assigned to him from any place out of this territory, for the purpose of being sold within the same, shall be listed for taxation, and in estimating the value thereof, the merchant shall take the average monthly value of such property in his possession or under his control during the last year, previous to the time of assessing, and if he has not been engaged in the business one year, then he shall take the average monthly value for the number of months he shall have been engaged, and he shall be assessed for the average amount of capital in trade for one month, but if he be commencing, he shall take the value of the property at the assessment.

How certain property to be assessed in certain cases.

Sec. 14. The sheriff of each county shall be *ex-officio* assessor and collector, and shall be allowed three dollars for each day he shall have been faithfully employed in discharging the duties of assessor, to be paid out of the county treasury.

Sheriff ex-officio assessor. compensation.

TIME AND MANNER OF ASSESSING.

Sec. 15. On or before the first Monday of January in each year, the board of county commissioners shall furnish each assessor with suitable books in duplicate, properly ruled and headed, in which to enter the following items:

Time of assessing.

Duplicate books furnished to assessor.

1. The name of the individual, corporation, company, society, partnership, or firm, to whom any property shall be taxable;

What to contain

2. His or their lands by township, range, section, or part of section, and when such part is not a legal division or subdivision, some other description sufficient to identify it, and town lots, naming the town in which they are situated and their proper description by number and block, or otherwise, according to the system of numbering in the town ;

3. Personal property as follows: number of cattle, horses, mules, sheep, swine, carriages, capital employed in trade or manufacture, amount of money and credits, amount of taxable furniture, amount of stock in any corporation, amount of taxable farming utensils, mechanics tools, amount of all other personal property, and the number of polls, and a column for remarks. Whenever the owner of any real property is "unknown," this fact shall be noted, in the proper column, and the property assessed as other real estate in the same county.

When assessor
to enter on
duties.

What he shall
enter in books.

To assess all
property in
county.

Penalty for
refusing to
assist assessor.

Duty of assessor
in such cases.

Sec. 16. Each assessor shall enter upon the discharge of the duties of his office, as soon as furnished with the assessment roll by the county commissioners, and shall, with the assistance of each person assessed, or who may be required by law to list property belonging to another, enter in the books furnished him for that purpose in the several items specified in the preceding section, entering the names of the persons assessed, in alphabetical order, so far as practicable, by allotting to each letter its requisite number of pages in each of said books. He shall also enter in a separate column the number of adult persons male and female, and the number of children male and female, under the age of twenty-one years in his county.

Sec. 17. It shall be the duty of the assessor to list each and every person in his county, and to assess all the property, real and personal, therein, and any person who shall refuse to assist in making out a list of his property or of any property of which he is required by law to assist in listing, or refuse to make the oath or affirmation required by this act, shall forfeit the sum of one hundred dollars, to be recovered in the name of the county for the use of common schools therein ; and when any person refuses to make out a list of his property which, by law, he is required to do, the assessor shall assess such person according to the best information he can get, as to the amount of taxable property which such person has.

Sec. 18. The assessor is hereby required to administer an oath or affirmation to each person assessed, to the effect that he has given in a full and correct inventory of all the taxable property owned by him, and all property held by him as agent, guardian, or otherwise, which he is required by law to list to the best of his knowledge and belief; and in case any one refuses to take such oath, the assessor shall note the fact in the column of remarks opposite to such person's name, and should it afterwards appear that such person has not given a full list of his property or that under his control, any property so omitted shall be entered on the book at double the ordinary assessable value, and taxed accordingly.

To administer oath.

When full amount of property not given.

Sec. 19. Each assessor shall, on or before the first Monday of February of each year, return the assessment book, properly footed up, to the clerk of the board of county commissioners, and to assist him in the discharge of his duties, he may appoint one or more deputies, for whose acts he shall be officially responsible.

When to return assessment book.

May appoint deputies.

Sec. 20. If any assessor shall fail or neglect to perform any of the duties required of him by this act at the time and in the manner specified, he shall be liable to a fine not less than twenty nor more than five hundred dollars, to be recovered in an action brought in the district court by the board of county commissioners; the judgment shall be against him and his bondsmen, and the proceeds of such fine shall go to the school fund of the county.

Assessor failing to perform duties.

Penalty.

EQUALIZATION OF TAXES.

Sec. 21. The board of county commissioners of each county shall constitute a board for the equalization of the assessment of the several persons in the county substantially in the same manner as is required by the territorial board of equalization to equalize among the several counties of the territory, and they shall hold a special meeting on the first Monday of February in each year, and at such meeting they shall add to said assessment any taxable property in the county not included in the assessment as returned by the assessor, and shall assess the value thereof.

County board of equalization.

Special meeting.

Sec. 22. Any person who may feel aggrieved at anything in the assessment of his property, may appear before the board of equalization, either in person or by agent, at the time men-

Person aggrieved may appear before board, when

tioned in the preceding section, and have the same corrected in such manner as to said board shall seem just and equitable.

Duty of clerk of county commissioners.

Sec. 23. Each clerk of the board of the county commissioners shall, on or before the second Monday of February of each year, make out and transmit to the secretary of the territory, by mail or otherwise, an abstract of the real property in his county, in which he shall set forth ;

1. The number of acres of land in his county and the aggregate value of the same, exclusive of town lots returned by the assessors as corrected by the county commissioners ;

2. The aggregate value of real property in each town in the county, according to the valuation of the board of county commissioners ;

3. The aggregate value of personal property in his county.

Territorial board of equalization.

When to meet and their duties

Sec. 24. The governor, secretary, and auditor of the territory shall constitute a board of equalization, and shall, on or before the third Monday of February in each year and as soon thereafter as the abstract from any one county is received equalize the valuation of real property among the several counties and towns in the territory in the following manner ;

1. They shall add to the aggregate valuation of real property, of each county, which they shall believe to be valued below its proper valuation, such per centum in each case as will raise the same to its proper valuation ;

2. They shall deduct from the aggregate valuation of real property of each county which they shall believe to be valued above its proper valuation, such per centum in each case as will reduce the same to its valuation.

Same.

Sec. 25. Said governor, secretary and auditor, shall keep a full record of their doings of such meeting and immediately after which the secretary of the territory shall transmit to the clerk of the county commissioners of each county a statement of the per centum to be added to or deducted from the valuation of real property in his county. The clerk of the county commissioners shall add to or deduct from the valuation of each tract or parcel of real property in his county the required per centum on the same, and in each year the governor, secretary and auditor shall determine the rate of tax to be levied and collected, which shall not exceed two mills on the dollar, and

the secretary of the territory shall notify the clerks of the county commissioners of the several counties of the rate of such tax, and the said clerk shall immediately deliver the equalized assessment roll with his warrant attached thereto to the sheriff of the county for collection.

Clerk to deliver roll to sheriff.

Sec. 26. If any clerk of the county commissioners shall neglect or refuse to transmit to the secretary of the territory the abstract of the assessment of the real property in the county, or to add or deduct the per centum fixed by the territorial board of equalization as required by this act, such clerk shall be deemed guilty of a misdemeanor for which he shall be prosecuted in the district court by indictment, and if found guilty, shall be fined in any sum, not more than one thousand dollars, and shall also be liable on his official bond to any person who may have suffered damage thereby.

Clerk failing to transmit to secretary or add or deduct per centum.

Penalty.

COLLECTION OF TAXES.

Sec. 27. The sheriff immediately upon the receipt of the equalized assessment roll, shall proceed to collect the taxes, and the list and warrant of the clerk shall be his authority and justification, and he is required to call upon every tax payer in his county before the last Monday in March following, and he is also authorized and required to collect so far as practicable the taxes unpaid on the tax books of previous years.

Sheriff to collect tax.

Sec. 28. It shall be the duty of every person subject to taxation at some time before the time mentioned in the previous section of this act, to pay his or her taxes, and if any one neglects to pay them before the said last Monday of March following the levy of the tax, the collector is directed to make the same by distress and sale of his or her personal property excepting such as is exempt from taxation, and the tax list alone shall be a sufficient warrant for such distress.

Persons failing to pay taxes at certain time.

Distress,

Sec. 29. When the collector distrains goods, he may keep them at the expense of the owner, and shall give notice of the time and place of their sale within five days after the taking, in the manner usually required to give notice of the sale of personal property under execution, and the time of sale shall not be more than ten days from the day of the taking; but he may adjourn the day of sale from time to time, not exceeding five

Proceedings after distraining

days, and shall adjourn at least once when there are no bidders; and in case of adjournment he shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges of keeping, and fees of sale, shall be returned to the owner, and the collector shall, on demand, render an account in writing of the sale and charges.

When unpaid taxes to draw interest.

Sec. 30. On the first Monday of April the unpaid taxes for the year shall draw interest as hereinafter provided; and taxes upon real property are hereby made a perpetual lien thereon against all persons; and taxes due from any person on personal property shall be a lien on any real property owned by such person.

Liens.

Collector to receive taxes until collected by distress.

Sec. 31. The collector shall continue to receive taxes after they have become delinquent, on the last Monday of March until collected by distress, but if they are not paid before the first Monday of April he shall collect as a penalty for non-payment, from each tax payer so delinquent, one per cent. of the amount of his tax additional and if not paid before the first of May, he shall collect another one per cent. additional, and so on for each full month which shall expire before the tax shall have been paid. The collector shall in all cases make out and deliver to the tax payer a receipt for taxes paid, stating the time of payment, the description of the land, the amount of any kind of tax, the interest on each, and costs, if any, and shall make the proper entries of such payment in the books of his office; *Provided*, That it shall be the duty of each county collector to receive the full amount of any county, territorial, or school tax, whenever the same shall be tendered, and give a separate receipt therefor.

Penalty for non payment.

Receipt for taxes paid, what to state.

To receive full amount when tendered.

When collector to make final settlement.

Sec. 32. On the first Monday of September the county collector shall make a final settlement with the county treasurer, and shall return a list of all unpaid taxes, and the taxes collected, after deducting four per cent. thereof, for his services in collecting the same; and thereafter all delinquent taxes shall be payable to the county treasurer, together with interest at the rate of one per cent. a month until paid.

Compensation.

Delinquent taxes afterward to whom paid.

Erroneous taxes

Sec. 33. In all cases where any person shall pay any tax or any portion thereof that shall thereafter be found to be erroneous or illegal, whether the same be owing to clerical or other

errors, the board of county commissioners shall direct the treasurer to refund the same to the tax payer, or in case any real property, subject to taxation, shall be sold for the payment of such erroneous tax, the error in tax may at any time be corrected as above provided, and shall not affect the validity of the sale.

DELINQUENT TAXES.

Sec. 34. On the first Monday in January, in each year, the county treasurer is required to offer at public sale at the court house, or if there is no court house, at the office of the county treasurer, all lands on which taxes of any description for the preceding year shall have been delinquent and remain due, and such sale shall be made for and in payment of the total amount of taxes, interest, and cost, due and unpaid on such real property.

Treasurer offer delinquent lands for sale, When-

Sec. 35. The county treasurer is required to give notice of the sale by publishing an advertisement thereof in some newspaper printed in his county if any such there be, and if there be no such paper printed in his county, then in the newspaper printed in this territory nearest the county seat, and by posting a copy of said notice on the door of the court house in said county, but if there is no court house, then upon the door of the county treasurer's office, at least four weeks before the day of the sale. Such advertisement shall state the time and place of sale, and contain a description of the several parcels of real property to be sold, as the same are recorded on the tax list, the amount of tax, interest, and costs due on each tract, and the names of owners when known, to whom taxed. The treasurer is directed to charge and collect, in addition to the taxes and interest the sum of twenty cents, on each tract of land advertised for sale, when the same is included in one line of such single column width of the paper in which the publication is made, but if the description occupies more than one line of such single column width, then the same shall be thirty cents for each, which sum shall go into the county treasury.

How treasurer to give notice.

What to state.

What treasurer to collect.

Sec. 36. The county treasurer shall attend at the court house or at his own office as herein provided, on the day of sale, and then and there, at the hour of ten o'clock in the forenoon, proceed to offer for sale separately, each tract or parcel of

Treasurer offer land for sale.

real property advertised for sale, on which taxes and costs have not been paid.

Who considered purchaser.

Homestead.

Sale continued not more than fifteen days.

Purchaser to pay taxes and costs.

Failure to do so

Informality in advertisement not affect sale.

Certificate of publisher, when filed.

Certain officers not to be concerned in purchase.

Penalty.

When portion of property remains unsold.

Sec. 37. The purchaser who offers to pay the amount of taxes due on any parcel of land for the smallest portion of the same, is to be considered the purchaser. The homestead is liable to be sold for no tax, save that which is due on itself exclusively, and to that end the quantity of land bid may be obtained by drawing the division line in any direction so as to avoid the homestead.

Sec. 38. The treasurer shall continue the sale from day to day as long as there are any bidders, or until the taxes are paid, but in no case shall the sale be kept open for more than fifteen days.

Sec. 39. The person purchasing any lot or parcel of land shall forthwith pay to the treasurer the amount of taxes and costs on said lot or parcel of land, and on failure to do so, said land shall at once be sold again in the same manner as if no sale had been made.

Sec. 40. No irregularity or informality in the advertisements shall affect in any manner the legality of the sale or the title to any real property conveyed by the treasurer's deed under this act, but in all cases the provisions of this act shall be deemed sufficient notice to the owners, of the sale of their property.

Sec. 41. The treasurer shall file in the office of the clerk of county commissioners the certificate of the publisher.

Sec. 42. If any county treasurer, or clerk, or collector, shall be hereafter, either directly or indirectly, concerned in the purchase of any real property sold for the payment of any tax, he shall be liable to a penalty of not more than one thousand dollars, to be recovered by an action in the district court, brought by the board of county commissioners; the judgment shall be against such treasurer or collector, as the case may be, and his bondsmen, and the proceeds shall go to the school fund, and such sale shall be void.

Sec. 43. When all the parcels of real property advertised for sale, shall have been offered for sale as provided for in this act, and a portion thereof shall remain unsold for the want of

bidders on the fifteenth day of the sale, it shall be the duty of the treasurer to adjourn the sale to the first Monday of January of the next ensuing year.

Sec. 44. The county treasurer shall make out, sign and deliver to the purchaser of any real property sold for the payment of taxes as aforesaid, a certificate of purchase, describing the property on which the taxes and costs were paid by the purchaser as the same are described in the record of sales, and also how much and what of each lot was sold. If any person shall become the purchaser of more than one parcel of land, he may have the whole put in one certificate. For each certificate the purchaser shall pay a fee of fifty cents to the treasurer.

Treasurer to make out certificate of purchase

Fee therefor.

Sec. 45. Such certificate shall be assignable by indorsement.

Certificate assignable.

Sec. 46. Real property sold under this act may be redeemed at any time before the expiration of three years from the date of the sale, by the payment to the treasurer, to be held by him subject to the order of the purchaser, the amount for which the same was sold together with twenty per cent. of the amount in addition thereto, and ten per cent. interest per annum on the whole amount from the last day of sale, and the amount of all taxes accruing on the same property after such sale with ten per cent. interest per annum on such subsequent taxes, unless such subsequent taxes have been paid by the person for whose benefit the redemption was made; *Provided*, That if real property of any minor, married woman, or lunatic, be sold for taxes, the same may be redeemed at any time within one year after such disability be removed, upon the terms specified in this section, which redemption may be made by the guardian or legal representatives.

Redemption of real property.

Proviso.

Sec. 47. The county treasurer shall, upon application of any party to redeem any real property sold under the provisions of this act, and being satisfied that such party has a right to redeem the same, and upon the payment of the proper amount, issue to such party a certificate of redemption, setting forth the facts of the sale substantially as contained in the certificate of sale, the date of the redemption, the amount paid, and by whom redeemed; and he shall make the proper entries in the book of sales in his office, and shall immediately give notice of such redemption to the person holding the certificate of purchase.

When treasurer to issue certificate of redemption.

What to contain

Shall make entries and give notice to purchaser.

When treasurer
makes out deeds.

Sec. 48. Immediately after the expiration of the term of three years from date of the sale of any land for taxes under the provisions of this act, which has not been redeemed, the treasurer then in office shall make out a deed for each lot of land sold and remaining unredeemed, and deliver the same to the purchaser upon the return of the certificate of purchase.

Compensation.

Sec. 49. The treasurer is authorized to demand fifteen cents for each folio in each deed made by him on such sales, but any number of parcels of land bought by any person may be included in one deed, as may be desired by the purchaser.

When deed
prima facie evi-
dence of certain
facts

Sec. 50. The deed, when duly executed, acknowledged and recorded, shall be prima facie evidence in all courts of this territory of the following facts :

Relative to
suits involving
title claimed
under deed.

1. That the real property conveyed was subject to taxation for the year or years stated in the deed ;

2. That the taxes were not paid at any time before the sale ;

3. That the property conveyed had not been redeemed from the sale at the date of the deed ; and in all suits involving the title to property claimed by virtue of a deed executed substantially as aforesaid by the treasurer, the person claiming title adverse shall be required to prove, in order to defeat the said title, either that the said property was not subject to taxation for the year or years named in the deed, that the taxes had been paid before the sale, or that the property had been redeemed from the sale according to the provisions of this act, and that such redemption was made for the use of persons having the right of redemption under the laws of this territory ; but no person shall be permitted to question the title acquired by a treasurer's deed, without first showing that he or she, or the person under whom he or she claims title, had title to the property at the time of the sale, or that the title was obtained from the United States after the sale ; but in any case where any person had paid his taxes, and by any mistake of the treasurer such payment does not appear upon his books, and the land upon which the taxes were paid was afterwards sold, the treasurer's deed shall not convey the title ; *Provided*, That in all cases where the owner of lands sold for taxes shall resist the validity of such tax title, he may show fraud committed by the officer selling the same, or in the purchase, to defeat the same ; and if fraud is so established such sale shall be void.

Sec. 51. When, by mistake or unlawful act of the treasurer, land has been sold on which no tax was due at the time, or whenever land is sold unlawfully in consequence of any other mistake or irregularity rendering the sale void, the county shall hold the purchaser harmless by paying him the amount of the principal and interest and costs to which he would have been entitled had the land been rightfully sold, and the treasurer and his sureties will be liable to the county for the amount of his official bond; *Provided*, That the treasurer or his sureties shall be liable only for his own or his deputy's acts.

When land sold by mistake or unlawful act of treasurer.

Liability in such cases.

Sec. 52. The books and records belonging to the offices of the clerk of the board of county commissioners and the county treasurer, or copies thereof duly certified, shall be deemed sufficient evidence to prove the sale of any real property for taxes, the redemption thereof, or the payment of taxes thereon.

Books, &c., of treasurer sufficient evidence of what.

Sec. 53. No action for the recovery of real property sold for non-payment of taxes shall be [maintained] unless the same be brought within six years after the date of the sale for taxes aforesaid.

Actions to be brought within six years.

Sec. 54. Each county is responsible to the Territory for the amount of tax levied for Territorial purposes, excepting such amounts as are certified to be unavoidable, double, or erroneous assessments.

What amounts counties responsible for to Territory.

Sec. 55. If any county treasurer prove to be a defaulter for Territorial revenue, such amount shall be made up to the Territory within the next three years, in such manner as the county commissioners may direct; in such cases, the county can have recourse to the official bond of the treasurer for indemnity.

When treasurer proves defaulter

Sec. 56. If any county treasurer shall loan out or in any way use county funds for private purposes, he shall be liable to a fine not exceeding one thousand dollars, for the benefit of common schools of the county, to be procured as other fines.

Treasurer not to use county funds
Penalty.

Sec. 57. The county treasurer shall in January of each year make a full and complete settlement with the county commissioners and immediately thereafter, the county treasurer shall make a full and complete settlement with the Territorial treasurer [for the] preceding year; in which settlement he shall be

When treasurer to make settlement and what allowed to deduct.

When treasurer
makes out deeds.

Sec. 48. If
three years
the proxy
treas shall
of other

When land sold
by mistake or
willful act of
treasurer.

503

Compensat'

nt. of the territorial and county tax
ices [as county treasurer.]
surer goes out of office, he shall
attlement with the county commis-
all books, papers, moneys, and all
g to his office, to his successor, ta-

glecting or refusing to comply with
nce no other penalty is provided by
a fine not exceeding one thousand
oy the district attorney for the benefit

of common schools.

*Sec. 60. All acts inconsistent with this act are hereby re-
pealed.*

*Sec. 61. This act shall take effect and be in force from and
after its passage and approval.*

Dates mention-
ed in act extend-
ed three
months.

Sec. 60. That for the purpose of bringing this act into im-
mediate practical operation for the present year, the dates herein
specified for the performance of any duty by the proper officers
shall be extended, each, three months throughout the year 1866.

Acts repealed.

Sec. 61. All acts and parts of acts in conflict with this
act, are hereby repealed.

When to take
effect.

Sec. 62. This act shall take effect and be in force from and
after its passage and approval.

Approved, January 12th, 1866.

ROAD SUPERVISORS.

CHAPTER 25.

**An Act to Provide for the Appointment of Road Supervisors,
and to Prescribe the Duties of the Same.**

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

Commissioners
to apportion
counties into
road districts.

Section 1. That at the annual meeting of the county com-
missioners in January or as soon thereafter as practicable, it

shall be the duty of the board of county commissioners of each of the organized counties of this territory, to apportion their respective counties into one or more road districts, and to appoint a road supervisor for each of said districts, who shall hold his office for one year from the date of his appointment, and shall take an oath and give a bond to the county in the sum of one hundred dollars for the discharge of his duties.

To appoint road supervisor.

Shall take oath and give bond.

Sec. 2. It shall be the duty of each supervisor of roads to obtain the names and make out a list of all male persons between the ages of twenty-one and fifty years, residing within his road district, which list shall be completed on or before the first day of April in each year, and in case any person as aforesaid shall locate in his road district after the said first day of April, the supervisor shall enroll his name and he shall be liable to labor on the road at the same time and in the same manner that those originally enrolled *or* [are] liable to labor; but any person who has labored in one year in any road district and has a certificate thereof, shall be credited with the labor as performed in the same manner as though the labor had been performed in the district in which he resides.

Duties of supervisor.

Sec. 3. Every male person between the age of twenty-one and fifty years, who is able to perform manual labor shall be subject to labor, or furnish some person to labor two days in each year on the roads within his road district at a time and place directed by the supervisor of roads.

Who liable to labor on roads.

Sec. 4. The said supervisor of roads, shall order out every person subject to road labor as aforesaid, between the first days of April and December annually to perform the work necessary on the public roads within his road district, and if any person subject to labor on the roads as aforesaid shall after being notified by the supervisor either personally or by leaving a written notice at his usual place of residence, refuse or neglect, having had three days previous notice to attend by himself or suitable substitute, on the day and at the hour and the place mentioned, or having attended shall refuse to obey the direction of the supervisor or shall pass time in idleness and inattention to the duties assigned him, every such delinquent shall forfeit and pay for each day he shall so refuse or neglect to attend or labor, the sum of two dollars to be recovered in a

Supervisor to order out persons liable to labor, when.

Persons refusing to comply after notification by supervisor.

Penalty therefor.

civil action before any justice of the peace having competent jurisdiction, at the suit of the road supervisor within whose road district such delinquent may reside, together with the costs of suit, and all moneys thus collected shall be paid over to the county treasurer and credited with road fund of said district.

When supervisor or authorized to receive commutation for labor.

Sec. 5. Whenever it shall happen that in consequence of sickness, absent from home, press of business or other good cause, a person cannot or does not attend to labor at the time or place appointed and the person is willing to perform or cause to be performed the labor required, the supervisor is authorized to raise as commutation from such person, the sum of two dollars for each day's labor required, and to employ a substitute with the said sum or pay the same into the county treasury for the district road fund, as in his judgment shall seem best.

Supervisor to make annual report to commissioners. What to contain

Sec. 6. On or before the first Monday of January of each year the road supervisor shall make report to the board of county commissioners of his doings the preceding year, the amount of labor performed, the number of delinquents, the amount of money collected for fines and commutation, the amount of funds remaining in his hands to the credit of said road district, the number of days labor necessarily performed by himself in the discharge of his duties, and the county commissioners shall thereupon issue a county warrant to the supervisor for such services at two dollars a day, payable from the common road fund in the county treasury, belonging to said road district. And the said treasurer before paying said warrants, shall receive from the said supervisor the amount of road fund found remaining in his hands, by his settlement with the county commissioners, and he shall file with said treasurer the approval of his report by the said board of county commissioners.

Compensation to supervisor.

To file approval of report with treasurer.

Persons petitioning for county road, to give notice. Manner of giving notice.

Sec. 7. Any person petitioning to the county commissioners for a county road or for a change in an established county road shall at least twenty days prior to the meeting of said commissioners, give notice of his intention so to petition by posting up in not less than three of the most public places within the county where such application is to be made, at

least one of which notices so posted shall be in each road district in which the proposed road or any part thereof is to be situated or where such change is to be made ; said notices shall state the time at which said petition will be presented and describe the road or change of road prayed for.

Sec. 8. This act shall take effect and be in force from and after its passage and approval. When to take effect.

Approved, January 11th, 1866.

ROADS

CHAPTER 26.

An Act to Establish a Territorial Road from the Big Sioux River to Yankton, on the Line recently surveyed by the Government for the Location of the Sioux City and Fort Randall Wagon Road.

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

Section 1. That the following field notes of the survey of the Government wagon road from Sioux City to Fort Randall, be and the same are hereby adopted and established as the survey of a territorial road in the counties of Union, Clay and Yankton, which shall be eighty feet in width throughout its entire length, and shall be opened, worked and repaired as provided for other territorial roads under the direction of the board of county commissioners in the said respective counties of Union, Clay and Yankton. Road designated by field notes.
To be eighty feet wide.
Under direction of county commissioners.

Sec. 2. Beginning at a post in mound on west bank of Big Sioux river, fixed for the location of the Government bridge over said stream, thence as follows by the magnetic meridian : Field notes in Union county.

UNION COUNTY.

Station 1 north, 49° west—1309 feet to a post in mound of earth.

“ 2 north, 43° 30' west—5 miles and 1684 feet to post in mound.

“ 3 north, 47° 15' west—1 mile and 315 feet to post in mound.

- " 4 north, 55° 45' west—2 miles to post in mound.
- " 5 north, 57° west—3960 feet to post in mound.
- " 6 north, 61° 45' west—4 miles to post in mound.
- " 7 north, 56° 30' west—1900 feet to post in mound.
- " 8 north, 52° 45' west—1320 feet to post in mound.
- " 9 north, 59° 30' west—2472 feet to post in mound.
- " 10 north, 61° 15' west—1378 feet to post in mound.
- " 11 north, 70° 30' west—1 mile and 3410 feet to post in mound.
- " 12 north, 71° west— 3 miles and 4620 feet to post in mound.
- " 13 north, 74° west—2 miles and 3300 feet to post in mound.

Sec. 3. Thence as follows in CLAY COUNTY :

Field notes in
Clay county.

- Station 14 north, 80° west—5 miles and 1320 feet to post in mound.
- " 15 north, 78° 30' west—1960 feet to post in mound.
- " 16 north, 74° 30' west—1320 feet to post in mound.
- " 17 north, 69° 45' west—1795 feet to post in mound.
- " 18 south, 81° 30' west—960 feet to post in mound.
- " 19 north, 81° west—1495 feet to post in mound.
- " 20 south, 86° west—530 feet to post in mound.
- " 21 south, 81° 30' west—1810 feet to post in mound.
- " 22 south, 87° 15' west—433 feet to post in mound.
- " 23 south, 41° 15' west—769 feet to Vermillion river.
- " 24 south, 19° 30' west—245 feet over river.
- " 25 south, 52° 15' west—112 feet to post in mound.
- " 26 north, 89° west—2 miles, 1080 feet to post in mound.
- " 27 north, 84° 30' west—660 feet to post in mound.
- " 28 north, 86° 48' west—660 feet to post in mound.
- " 29 north, 87° 15' west—4 miles and 3550 feet to post in mound.
- " 30 north, 73° 30' west—3 miles and 1730 feet to post in mound.
- " 31 north, 73° 45' west— 660 feet to post in mound.
- " 32 north, 77° 45' west—275 feet to post in mound.
- " 33 north, 49° 30' west—389 feet to post in mound.

Sec. 4. Thence as follows in YANKTON COUNTY :

Field notes in
Yankton county.

- Station 34 north, 35° 30' west—660 feet to post in mound.
- " 35 north, 59° west—1670 feet to post in mound.
- " 36 north, 47° 45' west—660 feet to post in mound.
- " 37 north, 72° west—1735 feet to post in mound.
- " 38 north, 75° 30' west—2 miles and 2590 feet to post in mound.
- " 39 north, 54° 30' west—1 mile and 683 feet to post in mound.
- " 40 north, 47° 30' west—1184 feet to post in mound.
- " 41 north, 72° 15' west—1269 feet to post in mound.
- " 42 north, 79° west—837 feet to post in mound.
- " 43 south, 76° west—1127 feet to post in mound.
- " 44 south, 61° 30' west—1190 feet to post in mound.
- " 45 south, 50° west—936 feet to post in mound.
- " 46 south, 84° 15' west—1564 feet to post in mound.

- Station 47 north, 75° 45' west—193 feet to station on James river.
- “ 48 north, 75° 45' west—171 feet over river.
- “ 48 south, 82° 30' west—97 feet to white ash tree 2 feet diam.
- “ 49 south, 22° 30' west—850 feet to post in mound.
- “ 50 south, 49° 45' west—1120 feet to post in mound.
- “ 51 south, 40° 30' west—679 feet to post in mound.
- “ 52 south, 68° west—368 feet to post in mound.
- “ 53 south, 83° 15' west—701 feet to post in mound.
- “ 54 north, 76° 15' west—920 feet to post in mound.
- “ 55 south, 83° 45' west—1339 feet to post in mound.
- “ 56 south, 76° 30' west—1 mile and 1092 feet to post in mound.
- “ 57 south, 79° west—2828 feet to post in mound.
- “ 58 south, 88° 45' west—1 mile and 523 feet to post in mound.
- “ 59 south, 66° 30' west—3280 feet to post in mound.

Station 60 south, 56° 30' west—4180 feet to a cedar post in mound of earth on west bank of creek near the foot of Fourth street, in village of Yankton..

Sec. 5. *And be it further enacted*, That a certain territorial road in Union county, located by Levi Cross, Charles LaBreeche and Joseph Shayer, in the year 1865, leading from Paquette's ferry by way of Willow Post Office, Fourteen Mile House and Elk Point, to the east boundary line of Clay county, except the branch which runs from the main line to a point on the Big Sioux river opposite Theophilus Brougherre's house, be and the same is hereby declared to be vacated, and shall be no longer considered as a public highway of the Territory.

Certain described road in Union county declared vacant.

Sec. 6. *And be it further enacted*, That a certain county road in Clay county, located by J. W. Turner, Miles Russell, and _____, in the year 1865, leading from the east line of Clay county, by way of Vermillion, and to its intersection with the Vermillion and Yankton territorial road, near Wm. Benedict's house, on sec. 15, T. 92, R. 52, be and the same is hereby declared to be vacated, and shall no longer be considered as a public highway of said county..

Certain road in Clay county declared vacant.

Sec. 7. *And be it further enacted*, That a certain territorial road in the counties of Clay and Yankton, located by A. VanOsdel, J. Whitehorn, Ole Sampson, C. F. Picotte and J. R. Hanson, in the year 186 , leading from a point near Wm. Benedict's house, on section 15, town 92, R. 52, westerly by the nearest and most practicable route to Yankton, be and the same is hereby declared to be vacated, and shall be no longer considered a public highway of this territory.

Certain road in Clay and Yankton counties declared vacant.

Authenticated copy of act to be furnished to certain registers of deeds.

Sec. 8. *And be it further enacted*, That a copy of this act duly enrolled and authenticated, shall be forwarded to each of the register of deeds for the counties of Union, Clay and Yankton, to be filed by such register among the records of their respective counties.

When to take effect.

Sec. 9. *And be it further enacted*, That this act shall take effect and be in force from and after the 1st day of April, A. D., 1866.

Approved, January 12th, 1866.

CHAPTER 27.

An Act to Locate and Establish a Territorial Road from the Missouri River by way of Elk Point and Brule Creek to the North Line of Union County.

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

Commissioners.

Section 1. That Barney McGraw, John Reams and I. T. Gore, be and are hereby appointed commissioners to locate, mark and establish, a Territorial road commencing at a point on the Missouri river, near the residence of Barney McGraw, in Union county, thence by the way of Elk Point and Brule Creek, to the north line of Union county, and the said commissioners shall locate, mark and establish a branch road from a point of the bluff between the Big Sioux river and Brule Creek, to the Fort Randall road near the house of Francis Riendeau, in said county.

Designating line of road.

Time commissioners have to locate road.

Sec. 2. That said commissioners, or a majority of them, shall have until the first day of November next, to locate, survey and establish, said road.

Commissioners have power to appoint substitutes, whom.

Sec. 3. Should any of the above named 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.

Expenses by whom paid.

Sec. 4. The expenses incurred in surveying, marking and establishing said road, shall be paid by Union county.

Sec. 5. The surveyor shall be entitled to three dollars per day, and the commissioners to two dollars per day each, while engaged in locating the same. Compensation of surveyor and commissioners.

Sec. 6. After said road shall be surveyed and located, it shall be the duty of the surveyor of said road, on or before the first day of December next, to file in the office of the register of deeds of Union county, a plat of said road. Surveyor to file plat of road with the register of deeds.

Sec. 7. This act shall take effect from and after its passage and approval by the Governor. When to take effect.

Approved, January 8th, 1866.

CHAPTER 28.

An Act to Locate and Establish a Territorial Road commencing at a point on a Territorial Road at or near the house of Charles Chaussee, in Clay County in said Territory, thence to the Big Sioux river through Union County.

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

Section 1. That A. K. Stoddard, Aaron Carpenter, Winslow Taylor, be and are hereby appointed commissioners to locate, mark and establish a territorial road, commencing at a point on a territorial road at or near the residence of Charles Chaussee, in Clay county, thence by shortest and most practicable route to a point eighty rods south of the north line of section thirty (30), township ninety-two (92), range forty-nine (49), thence keeping said line as near as practicable to the Big Sioux river. Commissioners designating the line of road.

Sec. 2. That said commissioners, or a majority of them, shall have until the first day of November next to locate, survey and establish said road. Time commissioners have to locate road.

Sec. 3. should any of the above named 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. Commissioners have power to appoint substitutes.

Who to pay expenses.

Sec. 4. The expenses incurred in surveying, marking and establishing said road, shall be paid by Union and Clay counties in proportion to the time expended in each of said counties, in locating, surveying, marking and establishing said road.

Compensation of surveyor and commissioners.

Sec. 5. The surveyor shall be entitled to three dollars per day, and the commissioners to two dollars per day each while engaged in locating said road.

Surveyor to file plat in Union county.

Sec. 6. After said road shall be surveyed and located, it shall be the duty of the surveyor of said road, on or before the first day of December next to file in the office of the register of deeds of Union county, a plat of so much of said road as shall come within the limits of said Union county.

To file plat in Clay county.

Sec. 7. And shall also file a plat with the register of deeds in Clay county, of so much of said road as shall come within the limits of said Clay county.

When to take effect.

Sec. 8. This act shall take effect from and after its passage and approval by the Governor.

Approved, January 11th, 1866.

CHAPTER 29.

An Act to Locate and Establish a Territorial Road from Yankton via Smutty Bear Bottom, Bonhomme, Yankton Reservation, and Fort Randall.

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

Commissioners.

Section 1. That A. G. Fuller, M. K. Armstrong, John Andrews, Franklin Starr and Alexander Kealear, be and they are hereby appointed commissioners to locate and establish a territorial road from Yankton via Smutty Bear bottom, Bonhomme, Yankton Reservation and Fort Randall.

When commissioners to meet.

Sec. 2. It shall be the duty of said commissioners or a majority of them to meet in June next and proceed to locate said road.

Sec. 3. Said commissioners shall have power to employ all necessary help for the location of said road and that said commissioners be paid at the rate of three dollars per day while necessarily engaged in making said location.

Powers of commissioners, and their compensation.

Sec. 4. Each county shall pay the expenses incurred in locating, surveying, marking and staking the same in the said county.

Who to pay expenses.

Sec. 5. If a majority of the commissioners do not meet at the time prescribed, it shall be the duty of such as are there to fill the commission and proceed to locate the same, and mark and plat and file, the same, in the county clerk's office of the county through which it passes.

Commissioners may appoint substitutes, when.

Shall file plat.

Sec. 6. This act shall take effect immediately upon its passage and approval by the Governor.

When to take effect.

Approved, January 12th, 1866.

CHAPTER 30.

An Act locating a Territorial Road in Union County.

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

Section 1. George W. Kellogg, William Lancaster and Joel Webber, be and they are hereby appointed commissioners to survey and locate a territorial road, commencing at a point on the Missouri river in sec. seventeen, town eighty-nine, range forty-eight west, thence by the most practicable route to the northwest corner of O. J. Kellogg's claim in sec. four, town eighty-nine, range forty-eight, then east one quarter of a mile, then south to the southwest corner of sec. three, then run east on the sec. line between sec. three and sec. ten, sec. two and sec. eleven, to a point on the bank of the Big Sioux river, with a branch commencing at the southwest corner of the southeast quarter of section three, town eighty-nine, range forty-eight west of the 5th principal meridian, thence running south from said corner until it intersects with the territorial road surveyed

Commissioners designating the line of road.

and established by LaBreeche, Cross and Shayer in the year 1865.

When and where
the commissioners
shall meet.

Sec. 2. The said commissioners or a majority of them shall meet at the house of George W. Kellogg on the first Monday of September next, or sooner if convenient and proceed to locate said road.

Who pay expenses
of road.

Sec. 3. The expenses incurring in surveying, marking and establishing said road shall be paid by the commissioners of said road.

Acts repealed.

Sec. 4. All acts and parts of acts conflicting with the provisions of this act, are hereby repealed.

When to take
effect.

Sec. 5. This act shall take effect from and after its passage and approval by the Governor.

Approved, January 8th, 1866.

SCHOOLS.

CHAPTER 31.

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 :

Board of
education.

Section 1. That Rev. M. Hoyt, Wm. Shriner and N. J. Wallace, are hereby constituted a board of education for the territory of Dakota, who shall hold their offices until successors are elected and qualified, and there shall be elected a board of education at each delegate election in this territory hereafter.

Annual and
special meetings

Sec. 2. Said board shall hold an annual meeting at the capitol of the territory, commencing on Tuesday of the first week of the session of the legislature, and such special meetings during the year as the board may, in their judgment, deem proper and necessary.

Sec. 3. At the annual meeting said board shall appoint a suitable and competent person to be superintendent of public instruction for the territory, who shall also be secretary of the said board of education, and shall take and subscribe an oath to support the constitution of the United States, and the organic act of the territory and faithfully discharge the duties of his office. He shall keep a record of all the official doings of said board; shall exert himself constantly and faithfully to promote the interests of education in the territory, by and with the advice of the board of education, and to this end he shall confer with county superintendents and visit schools in company with them, and furnish and distribute to them blank forms for collecting statistics of the various schools in the territory. He shall prepare and present to the board of education, on the first day of their annual session a report of his official doings for the preceding year and a full statement of the condition of the common schools in the territory, and of 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. He shall also have power to grant certificates to teachers of proper attainments and ability to teach in any of the public schools in the territory.

To appoint superintendent public instruction.

Duties of superintendent.

Sec. 4. Said board of education shall, from time to time, as they shall judge proper, recommend to the legislature such alterations, revisions, or amendments of existing laws, relating to common schools and seminaries of learning, as in their judgment are demanded, in order to the perfecting of a system of general education in the territory, and they shall annually make a report of their official doings and of the state and condition of the schools in the territory, to the legislature during the first week of the session.

Duties of board.

Sec. 5. Said board may at any time fill a vacancy in the office of superintendent of public instruction.

May fill vacancy in office of superintendent.

Sec. 6. The compensation to the members of said board and the superintendent of public instruction, for their services, shall be as follows: To each member of the board for each day's necessary attendance on the meetings of the same, the sum of

Compensation of board and superintendent.

three dollars, and the same mileage as is now provided by law for members of the legislature; to the secretary the sum of three dollars per day for the time spent in the discharge of his official duties, and the expenses of procuring blank forms and postage; all of which allowances shall be paid by the treasurer of the territory, on the certificate of the president of the board.

Board to select
list of text books

Sec. 7. The board of education shall select a list of books for the different branches usually taught in common schools, which list shall constitute the text books for district schools, and shall cause such list to be published in all the newspapers in Dakota in the month of January of each year; and on and after such publication, no other books but those prescribed in the list by said board shall be used in any of the district schools in this territory, except by permission of the district board.

Annual report
of superintendent.

Sec. 8. The superintendent of public instruction shall annually prepare and present, and have ready for distribution, on or before the first day of the annual meeting of the board of education, a sufficient number of copies of his annual report, to be distributed as follows; three copies to each member of the board of education, one copy to each member of the legislature, one copy to each county superintendent, one copy to each school district officer, and one copy to each teacher in the territory whose certificate of qualifications has not expired.

DUTIES OF COUNTY SUPERINTENDENTS.

County
superintendents

Sec. 9. The several counties in this territory shall, at their annual election, elect a competent person to be superintendent of public schools within such county, who shall hold his office during the school years commencing on the first of November, or until his successor is elected and qualified; who shall receive for his services two and a half dollars each day spent in the discharge of his legal duties, and a reasonable sum for his annual report to the superintendent of public instruction; and every superintendent of schools shall make out in detail his account for official services, 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 accounts

Compensation

shall be presented to the register of deeds 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 register of deeds, who is empowered to draw orders for the same; but no order shall be drawn to any superintendent until he shall have filed with the register of deeds, 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.

Sec. 10. The county superintendent of public school shall Bond and oath. have charge of the common school interests 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 office of the register of deeds. 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 register of deeds, and filed in his office.

Sec. 11. 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 subdivide the same whenever petitioned by a majority of the citizens thereof, and to furnish the register of deeds of such county with a written description of the boundaries of each district, which description must be filed with said register of deeds, before such district shall be entitled to proceed with its organization by the election of school district officers. 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 with the register of deeds of his county. Duties of county superintendent.

Sec. 12. It shall be the duty of the judge of probate, on the first Monday of April in each year, to furnish the county su- Probate judge to furnish superintendent with statement of money, &c.

perintendent of public school 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.

Apportionment
of money to dif-
ferent districts.

Sec. 13. It shall be the duty of the county superintendent of public school on the second Monday of April, in each year, or as soon thereafter as he shall receive the statement of 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 age of twenty-one years, as the same shall appear from the last annual reports of the clerks of the respective districts, and he shall draw his order on the county treasurer in favor of the several district treasurers for the amount apportioned to each district.

Superintendent
to visit schools,
and his duties.

Sec. 14. It shall be the duty of the county superintendent to visit all such common schools within their respective counties as shall be organized according to law, at least once each year, and oftener if they shall deem it necessary. At such visitation the superintendents 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 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 scholars 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 register of deeds 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 the county clerk.

To see clerk's
reports correct.

Sec. 15. 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.

Sec. 16. He shall hold public examination for 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.

To hold public examinations for teachers at county seats.

To issue certificates to teacher

When may receive one dollar for same.

Sec. 17. Whenever a school district shall be formed in any county, the county superintendent of public 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.

His duties in formation of school district.

Sec. 18. The county superintendent of public schools shall perform all other duties of his 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 and papers appertaining to his office.

Other duties.

Sec. 19. If a vacancy occurs 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 register of deeds' office, as hereinbefore provided, and he 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 public schools.

Vacancy, how filled.

Sec. 20. The county superintendent shall make full and complete annual returns to the superintendent of public in-

County superintendent to make annual returns.

T. whom made
and what to
contain.

struction, between the first and tenth day of November, in 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 moneys 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.

SCHOOL DISTRICT MEETINGS.

School district
meetings.

Sec. 21. The inhabitants qualified to vote at a school district meeting, lawfully assembled, shall have power:

Powers of.

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;

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 the necessary fuel, stoves and benches;

6. To vote a district tax annually, not exceeding one half of one per cent. on the taxable property in the district for the 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.

8. To vote such a tax as may be necessary to furnish the school house with black boards, outline maps, and apparatus necessary for illustrating the principles of science, or to discharge any debts or liabilities of the district, lawfully incurred; *Provided*, The said tax shall not exceed one-half of 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 defence of any suit or proceeding in which the district may be a party.

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.

Sec. 22. The following persons shall be entitled to vote at any district meeting: all persons possessing the qualifications of electors, as defined by the act organizing this territory and 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 entitled to vote.

Sec. 23. 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 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. Challenge of voter. Oath.

ORGANIZATION OF DISTRICTS.

Sec. 24. Every school district shall be deemed duly organized when the officers constituting the district board shall be elected; they shall signify their acceptance, to the county superintendent, in writing, which he shall file in his office. 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. Organization of districts. Penalty against person elected refusing to act.

Sec. 25. The officers of each school district shall be a director, clerk, and treasurer, who shall constitute the district board, 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.

School district,
body corporate.

Style of.

Sec. 26. 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 holding such real or personal estate as it may come in possession of by will or otherwise, or as is authorized to be purchased by the provisions of this act.

Annual and special meetings of district board.

Sec. 27. An annual meeting of each school district shall be held on the last Saturday of September of each year, at such hour as the district board shall name. Special meetings may be called by any member of the district board, or by any five legal voters, but notice of such special meeting, stating the purposes for which it is called, shall be posted in at least three public places within the district, ten days previous to the time of meeting.

How special meeting called.

Sec. 28. Whenever the time for holding an annual meeting in any district, shall pass without such meeting being held, the clerk, or in his absence, any other member of the district board, within twenty 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 five days previous to the time of meeting; but if such meeting shall not be notified within twenty days as 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 offices until the next annual meeting, and until their successors are elected and qualified.

What may be determined at annual or special meeting.

Sec. 29. 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 the school, or a certain portion to each; but if such matters shall not be determined at the annual or any special meeting, it shall be the duty of the district board to determine the same.

Sec. 30. The director of each district shall preside at all district meetings, and shall sign orders drawn by the clerk, authorized by a 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.

Duties of director.

DISTRICT CLERK.

Sec. 31. 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 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.

Duties of district clerk.

Sec. 32. The said clerk shall be clerk of all district meetings when present; but if such clerk shall not be present at any district meeting, the voters present may appoint a clerk of such meeting, who shall certify the proceedings thereof, and the same shall be recorded by the clerk of the district.

Same.

Sec. 33. 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 a 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.

Same.

Same.

Sec. 34. 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 apportioned to or raised by the district to be applied to the payment of teachers' wages, and apply such money to the payment of teacher's wages as shall have been employed by the district 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 the district board, agreeably to the provisions of this act.

Same.

Sec. 35. It shall be the duty of the clerk to make out tax lists 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 said treasurer of said district, requiring said treasurer to collect the sums therein named.

To make annual report to county superintendent.

Sec. 36. 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, showing :

What to contain.

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 of children attending school during the year, their sex, 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.

When district shall lie in two or more counties.

Sec. 37. 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.

DISTRICT TREASURER.

Sec. 38. The treasurer shall execute to the district a bond in double the amount of money, as near as can be ascertained, to come into his hands as treasurer of the district during the year, 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.

District
treasurer.
To give bond.

In case of breach
of condition of.

Sec. 39. If the treasurer shall fail to give bond 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 a bond as the district treasurer is required to give.

When district
bond may
appoint
treasurer.

Sec. 40. The treasurer of each district shall apply for and receive from the county treasurer all school money apportioned 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.

Treasurer to
receive money
appointed to his
district.

To collect dis-
trict taxes and
pay over same,
when.

Sec. 41. 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.

When treasurer
fails to pay over
money belonging
to district.

Sec. 42. If by the 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 dis-

When money
lost by neglect
of treasurer.

district tax assessed, said treasurer shall forfeit to such district the full amount of the moneys so lost.

Treasurer to
make annual re-
port.
W. at to
contain.

Sec. 43. 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 districts, and the disbursements made, and exhibit the vouchers thereof, 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.

POWERS OF DISTRICT BOARD.

Powers of dis-
trict board.

Sec. 44. The district board shall purchase or lease such a 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.

Same.

Sec. 45. 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. 46. The district board shall have power to admit scholars from adjoining districts, and remove scholars for disorderly conduct.

Duties of dis-
trict board.

Sec. 47. 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.

Sec. 48. The district board shall provide the necessary app- Same.
pendages for the school-house, during the time a school is taught
therein, and shall keep an account of all expenses thus incurred,
and present the same for allowance at any regular district
meeting.

Sec. 49. The schools established under the provisions Schools to be
free.
of this act, shall at all times be equally free and accessible
to all the children resident therein over five and under the age Children
between five and
twenty-one
years.
of twenty-one years, subject to such regulations as the district
board in each may prescribe.

Sec. 50. In every school district there shall be taught orthog- branches to be
taught.
raphy, reading, writing, english grammar, geography and arith-
metic, if desired, during the time the school shall be kept, and
such other branches of education as may be determined by the
district board.

Sec. 51. If a vacancy should occur in the district board, in Vacancies in
district board.
Now filled.
any district, the county superintendent shall appoint some
suitable person to fill such vacancy.

COUNTY AND DISTRICT TAXES.

Sec. 52. The amount of district tax shall not exceed two District tax.
amount.
per cent. per annum. It shall be the duty of the county as-
sessor of each county, at the time of making the annual assess-
ment, to levy a tax of one dollar on each elector in the county
for the support of district schools, to be collected at the time
and the manner prescribed by law for the collection of taxes ;
which said tax, when collected, shall be distributed to the sev- county tax.
amount and
how distributed.
eral school districts in each county in proportion to the num-
ber of children over five and under twenty-one years of age
therein; and shall be drawn from the county treasury, upon
order of the superintendent of schools.

Sec. 53. All taxes raised and collected in any school dis- District taxes
assessed same as
county.
trict for any of the purposes authorized in this act, shall be as-
sessed on the same kind of property as taxes for county pur-
poses are assessed.

Sec. 54. The clerk of the school district, in making out any How district
clerk shall make
out tax list.
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.

When district board may estimate value of real estate.

Sec. 55. 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 district board of such district shall estimate the value of the same and apportion the taxes thereon.

Tax warrant, what to contain.

Sec. 56. 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 owners of the real estate described therein, the several sums set opposite to 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 thirty 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; *Provided, however,* The said treasurer shall be entitled to collect two per cent. over and above the sums to be collected in the tax list, when the aggregate of the tax does not exceed one thousand dollars, he shall be entitled to only one per cent. for collection; *further,* Whenever the said collector shall be compelled to resort to distress and sale of property to obtain any tax, he shall be entitled to and may take out of the proceeds of such sale, in addition to the above mentioned fees, the same fees as the county collector is entitled to under similar circumstances.

Distress for taxes.

Compensation of treasurer for collecting.

Sec. 57. 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 warrants 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.

Force and effect of warrant and powers of treasurer.

Sec. 58. 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.

Errors and corrections of in tax list.

Sec. 59. 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.

When tenant has paid tax.

Sec. 60. It shall be the duty of the register of deeds of each county, as soon as the annual assessment roll shall be completed 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 to the clerk of each school district in the county.

Duty of register of deeds, &c.

GRADED SCHOOLS.

Sec. 61. Whenever the inhabitants of two or more school districts may wish to unite for the purpose of establishing 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 each of the respective districts, call a meeting of the voters of such districts at some convenient place, by posting up written notices thereof in like manner as provided for calling district meetings, 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 that meeting or at an adjourned meeting, elect a board of directors, consisting of a director, clerk and treasurer.

Graded schools. how established.

Powers of board of directors in such cases.

Sec. 62. The board of directors, provided in the preceding 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.

School funds in such cases.

Sec. 63. The union district thus formed, shall be entitled to 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.

Union district may levy taxes.

Sec. 64. The said union district may levy taxes for the purpose of purchasing a building, or furnishing proper buildings 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.

Duties of clerk of union district

Sec. 65. The clerk of the union district shall report in writing to the treasurer of each school district uniting in the union district, the number of scholars attending the graded school, 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 and director thereof.

To make report to county superintendent.

Sec. 66. The clerk of the union district shall make a report to the county superintendent of schools and discharge all the duties of clerk, in like manner as the clerk of the district.

Duties of treasurer of union district.

Sec. 67. The treasurer of the union district shall perform all duties of treasurer, and give the bond as prescribed in this act, in like manner as the district treasurer.

Public schools of town regulated by special law, entitled to portion of public fund.

Proviso.

Sec. 68. 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*, The clerk of the board of education in such city, town or village, shall make due report within the time and manner prescribed in this act, to the county superintendent of schools.

Single districts possess power to establish graded schools.

Sec. 69. 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.

Sec. 70. The county treasurer shall collect all moneys due the county for school purposes, from fines, forfeitures, licenses or proceeds from the sale of estrays, 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, in the same manner as county taxes are collected, whenever such delinquent tax list shall have been lawfully reported and returned to him, and he shall pay the same over to the treasurer of the district to which delinquent taxes are due, 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 purpose than is specified in this act, any school money in his possession, he shall, on conviction thereof, be adjudged guilty of a misdemeanor, and be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year.

Duty of county treasurer in relation to money received for school purposes.

Penalty for failure of duty.

MISCELLANEOUS.

Sec. 71. 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 the 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 the sum of ten dollars to each school district, at the discretion of the district board.

Teacher to make full report to district clerk.

What to contain.

Penalty for failure.

Sec. 72. 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 against clerk for signing false report.

Sec. 73. Every school district clerk or treasurer who shall neglect or refuse to deliver to his successor in office all records and books belonging to his office, shall be subject to a fine not exceeding fifty dollars.

Penalty against clerk or treasurer for failing to deliver books, &c. to successor.

When final judgment obtained against school district.

Sec. 74. When 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.

Jurisdiction of justices of peace where district is party.

Sec. 75. 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 appeal as in other cases.

What funds district officers not to receive pay out of.

Sec. 76. No school district officer mentioned in this act shall receive any compensation for his services out of the territorial, county or school district fund.

Penalty against person elected as district officer and refusing to act.

Sec. 77. 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 the county where such district is located; and shall be appropriated to the support of schools in the district by whom such action was prosecuted.

Fines and penalties how collected.

Sec. 78. All fines and penalties not otherwise provided for in this act, shall be collected by an action in any court of competent jurisdiction.

When money paid into county treasury by benevolent person or society.

Treasurer to issue certificate what to contain

Sec. 79. 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 to [be] 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.

County superintendent to make return of such funds.

FORMS.

Sec. 80. The form of notice of the first school district meeting may be substantially as follows:

Form of notice of first school meeting.

To _____, a householder, in school district number _____

The county superintendent has 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 the district to attend the first meeting thereof, which is appointed to be held at the house of _____, in said district, on the _____ day of _____, 186____, at _____ o'clock,

This _____ day of _____, 186—.

_____, County Sup't Pub. School.

Sec. 81. The form of notice for annual district meeting may be as follows:

Form of notice for annual 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 the _____ day of _____, 186____, at _____ o'clock,

This _____ day of _____, 186 —.

_____, District Clerk.

Sec. 82. 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 _____, 186—.

_____, District Clerk.

_____, Director.

Sec. 83. The form of bond of district treasurer may read as follows:

Form of bond
of treasurer.

Know all men by these presents : that we,
treasurer of school district number _____, county of _____ and
his surety, are held and firmly bound unto the said
school district in the sum of _____ dollars for the payment
of which we bind ourselves severally and jointly, our heirs, ex-
ecutors, and administrators, firmly by these presents.

Sealed with our seals, and dated this _____ day of _____ A.
D., 186—.

The condition of the above obligation is such, that if the said
_____, treasurer as aforesaid, shall faithfully discharge the
duties of his office as treasurer of school district number _____,
county of _____, as prescribed by law, then this obligation to
be void, otherwise to remain in full force.

_____ [SEAL.]

Signed, sealed and delivered in presence of

_____ [SEAL.]

Form of warrant
for collection of
taxes-

Sec. 84. The form of warrant for the collection of district
tax may be as follows :

To _____, the 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 corpo-
ration 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 and
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., 186—.
_____, District Clerk.

Form of
vouchers.

Sec. 85. Vouchers may be in the following form :

Received _____, 186 _____, of _____, treasurer of school dis-
trict number _____, county of _____, _____ dollars for servi-
ces rendered as teacher in the said school district, for the term
of _____ months.

_____, Teacher.

Sec. 86. The form of contract between district and teacher Form of contract. 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 _____, 186 _____; 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 _____, 186 _____.

_____, District Clerk.

This _____ day of _____, 186_____.

_____, Teacher.

Sec. 87. The form of annual report of district treasurer may Form of annual report of district treasurer. 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 district and collected,.....	\$_____
Total amount received,.....	\$_____
Paid out, on order of county superintendent,.....	\$_____e
On order of district clerk, _____,.....	\$_____
Balance on hand,.....	\$_____

This _____ day of _____, A. D., 186_____.

_____, Treasurer.

Sec. 88. The form of report of district clerk to the county Form of report of district clerk to county superintendent. superintendent of public school may read as follows :

_____ 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 from ———
 county treasurer,\$—
 Amount raised by district tax for teacher's wages,\$—
 Amount raised by district tax for building 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 teacher's report, giving the names, age and total number of male and female pupils, the 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 certificate.

Sec. 89. A school teacher's certificate may be in the following form :

Dakota Territory, }
 county. }

—————A. D., 186—.

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. 90. Form of deed of school property may be as follows :

This indenture, made the day of , one thousand eight hundred and sixty 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, witnesseth : That the said parties of the first part, in consideration of dollars to them duly paid before the delivery hereof, 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 premises.) 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, and 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 deeds 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. 186—.

Sec. 91. Whenever any elector of a school district shall feel himself aggrieved by the action of the district board under any of the provisions of this act, he shall have the right of appeal as follows: first to a district meeting; second, to the county superintendent, and third and finally to the board of county commissioners. And any elector of a school district shall have the right to appeal direct from the decision of the county superintendent in laying out or subdividing any school district, to the board of county commissioners whose decision in the premises shall determine the number and boundaries of such district.

When elector of school district feels himself aggrieved.

Appeals.

Sec. 92. All acts and parts of acts in conflict with this act are hereby repealed. Acts repealed.

When to take effect.

Sec. 93. This act shall take effect and be in force from and after the first day of February, A. D. 1866.

Approved, January 12th 1866.

SHEEP AND SWINE.

CHAPTER 32.

An Act to Prohibit Sheep and Swine from running at Large.

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

Sheep or swine not allowed to run at large, where.

Section 1. That no sheep or swine shall be permitted to run at large within either of the following named counties of this territory, to wit: Union and Clay.

When found running at large

First of April.

Sec. 2. Any sheep or swine found running at large, within either of the counties named in section one, on and after the first day of April, in the year of our Lord one thousand eight hundred and sixty-six, may be taken up and secured by any resident of the county where such sheep or swine are thus found, and the person so taking up and securing such sheep or swine shall proceed as hereinafter provided by this act.

Person taking up sheep or swine to give notice, how.

Sec. 3. The person taking up and securing sheep or swine, under the provisions of section two, shall within three days after such taking up, give notice thereof by posting up written or printed notices in three of the most public places in the election precinct where such sheep or swine have been taken up, and within five days after posting up such notices, the person taking up such sheep or swine shall deliver a copy of said notice to a justice of the peace of the county where such sheep or swine are secured, and shall state under oath that the paper delivered is a true copy of the notices posted up by him according to law. Whereupon the justice shall file such copy and preserve the same in his office for future reference.

Shall deliver copy of notice to justice of peace

Shall make oath as to correctness of copy.

Sec. 4. And it is hereby made the duty of such justice, immediately after filing such copy, to make out a written appointment of three disinterested electors of said county, commanding them to proceed within three days thereafter, to appraise the sheep or swine mentioned in the notice, and, if such sheep or swine have damaged the property of the person having them in charge, to estimate the amount thereof, and return make, under oath of their finding in the premises.

Duty of justice.

Sec. 5. The appointment mentioned in section four shall be delivered by the justice, to the person filing the notice who shall serve or cause to be served, the appointment upon each of the persons therein named.

Appointment served on persons named.

Sec. 6. It shall be the duty of such appraisers, after being notified of their appointment, as provided in section five, immediately to proceed to the place where such sheep or swine are secured, and after a view, to appraise the same, and after they have fully examined into the matter if a majority of them are of opinion that said sheep or swine have committed any damage upon the property of the person having them in charge, the appraisers shall agree upon the amount of such damage.

Duty of appraisers.

Sec. 7. The appraisers shall without delay make return, under oath, of their finding in the case to the justice by whom they were appointed. The justice shall file the written estimate returned by the appraisers, in his office, and on demand shall deliver a copy thereof to the person having in custody such sheep or swine.

Appraisers to make return under oath.

Justice to file estimate.

Shall furnish copy to whom.

Sec. 8. After the expiration of ten days after posting up the notices required by section three, the person having in custody such sheep or swine shall advertise the same for sale by posting up written or printed notices of such sale in three public places of the election precinct where such sheep or swine are secured. Such notices shall describe the sheep or swine to be sold, and name the day and place of sale; *Provided*, That the sale shall not take place sooner than five days after posting up the notices of such sale.

When person having custody to advertise for sale.

Manner of advertising.

Provide.

Sec. 9. On the day named for such sale, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, such sheep or swine shall be offered for sale at public auction, and shall be sold to the highest bidder for cash in

When and how sheep or swine offered for sale.

When do not
bring appraised
value.

hand; *Provided, however,* That if the highest bid received for such sheep or swine does not come up to the appraised value of such sheep or swine, the person taking them up shall be permitted to bid in such sheep or swine at their appraised value.

Written return
of notice and
sale to be made.

Sec. 10. A written return of such sale, together with a copy of the notice of sale, shall be delivered under oath, by the person for whose benefit such sale took place, to the justice of the peace having appointed the appraisers, which statement and notice shall be filed and preserved in the office of said justice.

Justice to file
same.

How proceeds
of sale applied.

Sec. 11. The proceeds of such sale shall be applied as follows: after paying the costs, and the expense of keeping such sheep or swine and the amount of damage, if any, adjudged by the appraisers, the residue, if any there be, shall upon demand be paid to the former owner of such sheep or swine.

When person
entitled does not
call for residue
in ninety days.

Sec. 12. If the person or persons entitled to such residue does not call for the same within ninety days after such sale, the person having such residue money shall pay the same into the county treasury of such county for the use of the common school fund of said county.

Prior to sale
owner may re-
ceive sheep or
swine by paying
costs and dama-
ges.

Sec. 13. At any time prior to the sale of such sheep or swine, the owner thereof may receive the same by paying all costs and the reasonable expense of keeping, and the amount of damages, if any, adjudged by the appraisers of such sheep or swine.

Complete owner-
ship to vest in
purchaser.

Sec. 14. The full and complete ownership in and to such sheep or swine sold by virtue of this act, shall vest in the purchaser thereof, and if the person lawfully entitled to the residue of such sale does not lawfully demand such residue within the time provided by section twelve, he shall forfeit all his right and claim to the same or any part thereof.

Residue not
called for in
time specified.

Form of notice.

Sec. 15. The notice of taking up sheep or swine required by section three may be in the following form:

Notice is hereby given that (here mention the place where such sheep or swine were taken up) in the county of _____, Territory of Dakota, on the _____ day of _____, I did take up and secure the following described sheep (or swine, as the case may be) which I found running at large contrary to law, to-wit, (here describe such sheep or swine) and the owner thereof is hereby

notified to claim his property and to pay costs, charges and damages.

This day of A. D., 18 .
Signed, A. B.,

Sec. 16. The appointment of praisers, required by section four, may be in the following form : Form of appointment of appraisers.

Territory of Dakota }
County of } ss :

To (here give the appraisers names) you are hereby commanded to appraise the following described sheep (or swine) which have been taken up by (give the name of the taker up) at (here mention the place) in the county and territory aforesaid, and if damage has been committed by said sheep (or swine) upon the property of the person taking them up, to estimate the amount thereof, and true return make without delay as required by law.

This day of A. D., 186 .
C. D., Justice of the peace.

Sec. 17. The notice of sale may be in the following form : Form of notice of sale.

Notice is hereby given that on the day of A. D. 18 , between the hours of ten o'clock A. M. and four o'clock P. M. at (here give the place of sale) in the county of and territory of Dakota, I will offer to the highest bidder for cash in hand, at public auction the following described sheep (or swine) to wit, (here describe the sheep or swine) which I found running at large, and took up and secured according to law, this day of A. D., 18 .

Signed E. F. ,

Sec. 18. That all the provisions of this act as far as it relates to swine shall apply to the town of Yankton in the county of Yankton as bounded by the act incorporating said town in chapter twenty five of the private laws of 1862. Provisions of act to apply to town of Yankton

Sec. 19. All acts and parts of acts, conflicting with the provisions of this act, are hereby repealed. Acts repealed.

Sec. 20. This act shall take effect from and after its passage and approval. When to take effect.

Approved, January 11th, 1866.

SURVEYORS.

CHAPTER 33.

An Act in Relation to County Surveyors.

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

Duty of county
surveyor to keep
a book and re-
cord of notes, &c

Section 1. Every county surveyor shall keep a record of the plot and field notes of each survey made by him or his deputies, in a book or books provided by the county for that purpose, a certified copy of which record, or of any other record of his office, he shall furnish to any person requesting the same. The records of all surveys hereafter recorded, shall be so made and arranged as to be easy of reference. The said surveyor shall also preserve the original field notes and calculations of each survey made by him or his deputies, and shall deliver them, together with the records of his office, to his successor.

Fees of survey-
ors.

Sec. 2. The said surveyor and his deputies may demand and receive for their services the following fees, to-wit: For each days service, three dollars; for each mile traveled in going from his office to the place of rendering such service and in returning ten cents; for a plot and certificate, except town plots, fifty cents; for recording a survey, fifty cents.

What shall be
expressed on
record.

Sec. 3. In all surveys, the bearings shall be expressed as nearly as may be according to the true meridian, and the declination of the magnetic meridian from the true meridian shall be given, with the year, month and day of the survey, except in the survey of an east and west or north and south line, when the declination of the needle from the line surveyed, with the date thereof, shall be sufficient.

When surveyor
is required to
make subdivi-
s on of section,
what to be done.

Sec. 4. Whenever a surveyor is required to make a subdivision of a section, as determined by the United States survey, except where the section is fractional, he shall establish the in-

terior quarter section corner therefor, at a point which is the same distance from the east quarter section corner that it is from the west quarter section corner, and the same distance from the north quarter section corner that it is from the south quarter section corner; and he shall, where practicable, fix the precise locality of the said interior quarter section corner, by setting at the said point a stone, the cubical contents of which shall be equivalent to not less than one cubic foot, or by setting a post in a mound of earth or stones, or by driving a post firmly into the ground, and writing in his field notes the bearings and distances from the same to two bearing trees, which shall be suitably marked " $\frac{1}{4}$ S" on the the upper blaze, and "B. T." on the lower blaze thereof; and any less subdivision than a quarter section shall be made and established in a similar manner.

Sec. 5. Where the section is fractional, the surveyor shall establish the interior quarter section corner, and the eighth and sixteenth corners thereof, at such points that whatever the fractional lines of the said section exceed or fall short of the United States survey, shall be divided between the entire and the fractional part of the said lines, in direct proportion to the length of the said parts.

Where section is fractional.

Sec. 6. Whenever a surveyor is required to establish a quarter section corner not established by the United States survey, in the north or west boundary of a township, he shall set the same in the middle of the north or west side (as the case may be) of the section to which the said quarter section corner belongs, and in the line determined by the quarter section corner for the section next north or west, as the case may be, except that he shall set the north quarter section corner of section six, forty chains from the north east corner of the said section, unless the north line of the section shall exceed or be less than the original survey, in which case the quarter section corner shall be set at a distance from the north east corner, in direct proportion to such excess or deficiency, and except, also, that he shall set the west quarter section corner of section six, at a like distance from the south west corner thereof.

what to be done in certain other cases.

When quarter
section cannot
be found.

Sec. 7. Whenever a quarter section corner, as established by the United States survey, cannot be found, it shall be the duty of the surveyor required to establish the same, to set it in the middle of the section line in which it belongs, except in fractional sections, in which case it shall be set at distances from the section or meander corners between which it belongs, which are directly proportional to the entire and fractional parts of the line, as determined by the United States survey.

Same

Sec. 8. Whenever a surveyor is required to establish a section corner which cannot be found, he shall set the said corner half way between the quarter section corners next north and south of the same, and at such distances from the quarter section or meander corners next east and west, as are directly proportional to the same distances, as determined by the United States survey, except that where there are fractional lines running north or south from said corner, the same shall be established at distances from the corners next north or south, which are directly proportional to the said lines.

When to take
effect.

Sec. 9. That this act shall take effect and be in force from and after its passage.

Approved, January 8th, 1866.

MEMORIALS AND RESOLUTIONS

BLOOD HOUNDS.

CHAPTER 34.

A Memorial and Joint Resolution Relative to the Introduction of Blood Hounds into this Military District.

Your memorialists, the legislative assembly of the Territory of Dakota, for and in behalf of the people of said territory, most respectfully represent as follows:

Since the territorial organization of Dakota, and prior to the inception of our Indian war and ever since that time and the establishment of military posts along our settlements, our people have been frequently subjected to sudden descents of small bodies of Indians for the purpose of theft or murder, or both, who after accomplishing what they sought, disappeared as suddenly as they came. By taking to the timber or reeds and tall grass which skirt our rivers and small streams they have in nearly every instance successfully evaded the pursuit of both our citizens and government troops. The experience of years have taught our people that the white man is not the equal of the Indian in skulking prowess, and that in order to capture and properly punish this class of Indians, as well as to intimidate others from like acts of murder and rapine, it is necessary some reliable auxiliary be added to the military forces in this district. Therefore we your memorialists most earnestly pray that for the better protection of the lives and property of our citizens, the military department of the general government may deem it both just and necessary to place a small number of blood hounds at each military post in this district between

Requesting the introduction of bloodhounds for the purpose of pursuit of Indians committing depredation

the Big Sioux river and Fort Randall, to be used by such military forces in the pursuit of Indians committing depredations upon our settlers.

Copy to be sent
to delegate to
lay before
Congress,

Be it resolved by the legislative assembly of the Territory of Dakota, That a copy hereof properly authenticated be forwarded by the secretary of the council, to our delegate in Congress and he is hereby requested to present the same to the secretary of war and urge immediate action thereon.

CAPITOL BUILDING.

CHAPTER 35.

A Memorial to Congress Praying for an Appropriation to Erect a Capitol Building in Dakota Territory.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled :

Asking Congress
for an appropriation
to erect a
capitol building
in Dakota.

Your memorialists, the legislative assembly of the Territory of Dakota, would most respectfully represent, that whilst Congress has uniformly made adequate appropriations for the erection of suitable capitol buildings for the organized territories, not a dollar, thus far for that purpose, has been appropriated for this territory.

Your memorialists would further represent, that the buildings thus far occupied, by the legislative assembly and the several federal officers of this territory, are rented of private individuals and are wooden tenements, in all respects unsafe, unsuitable and unfit for the purposes for which they are used, liable at any time to be destroyed by fire, together with their valuable contents.

And your memorialists would further represent, that the legislative, executive, and judicial records, files, libraries, furniture and other valuables of said territory are utterly destitute of suitable protection, and liable to injury and total destruction owing to the want of adequate provision for their preservation and safe keeping.

Your memorialists therefore would most earnestly pray that an appropriation of not less than forty thousand dollars be made for the erection of a capitol building at the seat of government of said territory.

And we your memorialists, as in duty bound, will ever pray.

Be it resolved by the legislative assembly of the territory of Dakota, that an authenticated copy of this memorial be forwarded to our delegate in Congress, who is hereby requested to lay the same before the Congress of the United States and urge immediate and favorable action thereon.

Delegate requested to lay subject before Congress,

CODIFICATION OF LAWS.

CHAPTER 36

A Memorial to Congress Asking for an Appropriation to Codify the Laws of Dakota Territory.

Your memorialists, the legislative assembly of the Territory of Dakota would respectfully represent, that the laws of Dakota enacted from time to time need revision and codification, and for this purpose would recommend and pray that an appropriation be made by congress of ten thousand dollars to compensate a commission of competent persons to make said revision.

Asking for an appropriation to codify the laws.

And they would further recommend and ask that the secretary of this territory be authorized to employ such persons as in his judgment are qualified to perform the duties of such commission of revision, and to pay a reasonable compensation to the persons so employed, and also to pay the expenses of printing, &c.

Resolved, That our delegate in Congress be respectfully requested to bring the foregoing to the immediate attention of Congress, and use all honorable means to bring about the asked for appropriation.

Delegate requested to bring matter to attention of Congress

GEOLOGICAL SURVEY

CHAPTER 37.

A Memorial to Congress asking for a Geological Survey of the Black Hills and Bad Lands in connection with the Military Forces under General Sully in this District.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled :

Asking Congress for a geological survey of the Black Hills and Bad Lands of Dakota.

Your memorialists, the legislative assembly of the Territory of Dakota, most respectfully represent, that the Black Hills and Bad Lands of Dakota and Montana Territory, lying near the 102° 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 beast and red man hold dominion, that on account of the determined and superstitious hostility of the Indians in that region, no geologist has ever penetrated the interior of the Black Hills, and no scientific exploration has ever been made among the mysterious ruins of the Bad Lands, save a hasty survey by Evans in 1849, and Hayden in 1855 6.

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 Geological survey. 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 bearing rocks are to be found in this and the lower salurian period, which Dr. Hayden says 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 "Band 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."

Humbolt 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 subteraneous beds of burning coal.

Later travelers inform us that since the year 1830 these strange "fires and explosions" have ceased. Capt. Bonneville in 1834, and Parker in 1835, found nothing but the silent, dismal and mysterious ruins of this great subteraneous conflagration, heaped in charred and crumbling towers and castles

Geological
survey.

standing in the midst of a solitary valley of ashes, bones and petrifications.

This theory in the origin of the "Bad Lands" being sustained both by 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 formation, which have been thrown up through and above the surrounding coal fields which border immediately upon the base of these mountainous hills.

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. Embedded in the debris, lie strewn, in the greatest profusion organic relics of extinct animals. All speak of the former existence of most remarkable races that roamed about in bygone ages high up in the valley of the Missouri towards the sources of its 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 percipitates 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 archipelego 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 therefore pray that a scientific investigation be made of that region in early spring under the protection of the military forces under Gen. Sully in this district.

And your memorialists as in duty bound will ever pray.

INDIAN AGENT

CHAPTER 38.

A Memorial and Joint Resolution Relative to the Appointment of an Indian Agent.

To his Excellency the President of the United States :

Your memorialists, the legislative assembly of the Territory of Dakota, feeling a deep interest in the management of Indian affairs in the north-west, and particularly in our own territory, and believing that our difficulties with the various tribes of Indians which have cost the general government millions of treasure, and infused such fear throughout the states as to have prevented thousands from immigrating to the rich and inviting plains of the great north-west, originated from incompetency and avariciousness on the part of the agents appointed to preside over them, more directly than from any other cause. In nearly all instances these agents were men who had no direct interest in common with the people of the west as to whether the Indians occupied a friendly or a hostile position towards the Government; men who had neither property in jeopardy nor loved ones whose lives could be endangered by the hostility of the revengeful and murderous savage; who were

Asking for the appointment of some citizen of Dakota as Indian agent.

rarely at their posts of duty, and who had no knowledge of Indian character, so essential in adapting means to suit their moral, physical and intellectual condition.

Therefore, we, your memorialists, pray your excellency to appoint some citizen of Dakota, who possesses these qualifications, (the want of which constitutes the main objections to the appointment of a citizen of either the states) as shall be designated by the delegate in Congress from this Territory, to the Indian agency formerly under the management of S. N. Latta, Esq., of Kansas.

And as in duty bound, we, your memorialists, will ever pray.

Be it resolved, That a copy of this memorial and joint resolution be forwarded to our delegate in Congress, Walter A. Burleigh, and he be requested to present the same to his excellency the President of the United States.

Copy to be sent
to delegate and
laid before
President.

INDEMNIFICATION

CHAPTER 39.

A Memorial to the Senate of the United States relative to the Treaty between the Ponca Indians and the United States pending before said Honorable Body asking that certain Settlers be Indemnified in case it is Ratified.

Asking Congress
to indemnify
certain settlers
in case the
Ponca Indian
treaty is ratified

Your memorialists, the legislative assembly of the Territory of Dakota would respectfully represent, that a treaty formed between the Ponca tribe of Indians and the Government of the United States is pending before the Honorable the Senate of the United States for ratification, providing for an extension of the present boundaries of the Ponca reserve, and including lands now in the occupancy and tillage of white settlers; that these lands are most eligible and adapted for stock farms, abounding in small lakes and streams well supplied with timber, affording a natural shelter, possess an excellent steam boat landing on the Missouri river, and upon a portion of them is erected the county seat of the organized county of Todd, duly incorporated by

the legislative assembly of the Territory. The improvements made thereon have been attended with considerable outlay, while the advantages of location, being convenient to a market furnished by the upper river trade, are to the occupants invaluable. To give an approximate idea of the damage, your memorialists would state that two settlers thereon, co-partners on a moderate capital, engaged in raising and sale of cattle, have netted ten thousand dollars within two years past, and so of others who will be equally demnified, not to mention losses from the prospective enhancement of value of these lands certain to arise.

Your memorialists pray in view of the premises, that a clause, if not already provided in said treaty, be inserted, making adequate indemnity to the settlers upon the tracts proposed to be added to the Ponca reservation, and authorizing the Secretary of the Interior to adjust the losses and to reserve out of the annuities of said Indians a definite sum to be applied or so much thereof as may be necessary to extinguish the claims of the said settlers.

Confiding in the enlightened sense of justice of the Senate, your memorialists trust that their memorial will be favorably considered, and as in duty bound will ever pray.

Resolved, That copies of the foregoing, properly attested, be forwarded to the Hon. James Doolittle, chairman of the Senate committee on Indian affairs, Hon. James Harlan, Secretary of the Interior Department, and to our Delegate in Congress.

Copies sent to
Hon J R Doolittle,
Hon James
Harlan and
delegate.

LINCOLN AND JOHNSON

CHAPTER 40.

Joint Resolution relative to Abraham Lincoln and Andrew Johnson

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

Relative to
Abraham Lin-
coln and Andrew
Johnson.

1st. That the memory of Abraham Lincoln should be perpetually cherished by the whole American people, for his wise statesmanship, his noble, self-sacrificing and successful labors for the preservation of our national constitution, and the Union; for his great patriotism; his unflinching and continual devotion to the cause of right; his staunch and sterling integrity; his almost divine forgiveness; his exemplary patience, great charity, and unceasing philanthropic labors in behalf of the poor and suffering; for his abiding faith in God, through Whose Almighty power and aid, he was enabled to rescue our government from destruction, and our country from threatened anarchy.

2d. In Andrew Johnson, the present chief magistrate of the United States, we recognize a noble example of loyalty and devotion to his country, in his opposition to traitors during the rebellion, and in the sacrifices he made in sustaining the constitution and the laws, and we pledge ourselves to sustain him in all his efforts to restore and re-establish the government upon the corner stone of freedom and equality, in accordance with the letter and spirit of the constitution and the declaration of independence.

3d. The successful termination of the war furnishes abundant cause to render thanks to the Supreme Ruler that the majesty and sovereignty of popular governments have been vindicated and established, that the cause of freedom and right has triumphed over wickedness and oppression, in spite of armed traitors in the field, and the insidious acts and counsel of enemies elsewhere; and

4th. Our thanks are eminently due those heroic soldiers who volunteered to defend, not only our hearths and our firesides from the scalping knife and tomahawk of the savage, but to protect and defend the flag of the Union, and who have so bravely and nobly performed their duty, that they should ever be remembered with gratitude and favor by the American people. And that the memory of those heroes who have fallen in battles or by disease, for the many acts of sacrifice and devotion to the cause in which they were engaged, will be treasured in the heart of every true citizen as the brightest incentive to the pursuits of patriotic fame. Such recollections of the past will never be forgotten—for the fame of the patriot there is no grave.

MAIL ROUTES

CHAPTER 41.

A Memorial and Joint Resolution asking for the Establishment of a Mail Route from Sioux Falls, Dakota Territory, to Ponca, Nebraska.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled :

Your memorialists, the legislative assembly of the Territory of Dakota, would respectfully represent, That since the establishment of the military post at Sioux Falls and the garrisoning of the same by troops of the United States, the interests of Dakota and of the country demand that a mail route should be established between said military post and the settlements along the valley of the Missouri in Dakota. We regard the establishment of Fort Brookings at Sioux Falls as a source of vital importance to the protection of the settlements in southeastern Dakota, especially to the protection of the settlements in the Big Sioux valley. The land along the Big Sioux river is unsurpassed in fertility by any section of the west, and will soon be one of the most populous sections of the Terri-

Asking for establishment of mail route from Sioux Falls to Ponca, Nebraska

tory. Ample protection is afforded to the settlers in this valley by the troops of said post. The settlers in this valley have no mail facilities, and this fact tends to greatly retard the settlement of this portion of the Territory. It is essential to the development of the agricultural resources of this valley, that inducements should be offered to encourage the settlement of the same by extending mail facilities to the inhabitants.

Your memorialists would respectfully represent, that there is no mail route on which there is mail service between the settlements on the Missouri river in Dakota and the settlements in Nebraska, from Yankton in Dakota, to the mouth of the Big Sioux river, a distance of sixty-five miles. This is a source of great inconvenience to the settlers on both sides of the Missouri river, and whereas, there is already a mail route between Elk Point and Brule Creek, two points between Sioux Falls and Ponca aforesaid, the establishment of a mail route from Sioux Falls to Ponca, would be but extending a route already established so as to accommodate the citizens of the territory, which is filling up with an industrious, enterprising and intelligent class of settlers.

Your memorialists would further represent, that the route herein asked for would extend through one of the richest agricultural portions of the territory, and would extend postal facilities to several flourishing settlements now destitute of such facilities.

We therefore pray your honorable body to establish the route herein named by way of Brule Creek and Elk Point, D. T., with weekly service thereon, and we your memorialists will, as in duty bound ever pray.

Copy sent to
delegate, who
requested to lay
subject before
Congress.

Be it resolved, That a copy of this memorial and joint resolution be forwarded to our delegate in Congress, Walter A. Burleigh, and he is hereby requested to use all proper means to bring this subject to the favorable consideration of Congress.

CHAPTER 42.

A Memorial to Congress asking for the continuation of Post Route No. 13,577, from St. Paul, the Capital of Minnesota, to Yankton, the Capital of Dakota Territory, via Mankato and Sioux Falls City.

To the Honorable the Senate and House of Representatives of the United States of America in Congress assembled:

The memorial of the legislative assembly of the Territory of Dakota, would respectfully represent, That one of the greatest inducements for immigration and settlement in a new Territory, is the early establishment of mail routes and postal facilities, that extending to the pioneer of the west, direct and accessible mail communications with the eastern States removes one of the greatest privations experienced by our early settlers and induces others to join in making their homes in the western country; that although mail routes in a sparsely settled community are not immediately remunerative to the public treasury, yet the government may be doubly repaid by the more speedy settlement and advancement of the public domain.

Asking a continuation of mail route from St Paul, Minn. to Yankton, D.T.

And your memorialists would more especially call the attention of Congress to the fact, since the Indian outbreak in 1862 there has been no direct mail communication between the State of Minnesota and the adjoining Territory of Dakota; and that it is of the greatest importance to the future growth of southwestern Minnesota, the Big Sioux valley, and the Missouri river country in Dakota that direct communication by mail be established connecting the two sections.

And your memorialists would further represent, that a large portion of the country lying between Mankato on the Minnesota river and Yankton on the Missouri river, (a distance of 200 miles) is without any convenient mail connection with the east, and that the settlement and advancement of the country is thereby impaired and retarded.

And in view of the fact that a cordon of military posts has been recently established along the said route from Mankato to Yankton (via Fort Watonwa, Lake Scheteck, and Sioux City,) and in view of the steady and increasing settlement of south-

western Minnesota and the rich agricultural lands of southern Dakota, and the augmented tide of immigration following in the train of the new and short government wagon roads recently opened from this Territory to the great mineral fields of the Black Hills, Montana, and Idaho; and in view of the fact that the rapid increase in the navigation of the upper Missouri river is becoming the channel of communication with the east for all the travel, trade and commerce of the northwestern Territories; and whereas, the present difficult relations which the government entertains with many of the tribes of northwestern Indians, requiring to be stationed in their midst garrisoned military posts, with which the government has but a long and circuitous mail communication;

Therefore, your memorialists, the legislative assembly, of the Territory of Dakota, do most earnestly ask for the immediate establishment of mail communication, once a week, between St. Paul, Minnesota, and Yankton, the Capital of Dakota, by the continuation of post route 13,577; thus bringing the great valley of the upper Missouri within three days communication of the eastern states.

And your memorialists, as in duty bound, will ever pray.

Be it resolved by the council and house of representatives of the Territory of Dakota, That our delegate in Congress be and he is hereby requested to urge the foregoing memorial upon the attention of Congress, and endeavor by all proper means, to procure the rights petitioned for at an early day.

Be it further resolved, That the Secretary of the Territory is hereby respectfully requested to forward a certified copy of the foregoing memorial, in printed form, to the post master general of the United States.

Copy sent to
P. M. General.

CHAPTER 43.

A Memorial to Congress for the Establishment of a Mail Route from Fort Randall, Dakota Territory, to Fort Sully in the same Territory.

To the Congress of the United States :

Your memorialists, the legislative assembly of the Territory

of Dakota, would respectfully represent, that that portion of country between Fort Randall, D. T., and Fort Sully, D. T., is entirely destitute of all mail facilities. The distance is one hundred and fifty miles over a high rolling prairie country, and good road the entire distance. Along the line of the route the country is sparsely settled for about one half the distance. Ninety miles from Fort Randall, the Minnesota Sioux Indian Agency is located and about one hundred United States soldiers stationed. At Fort Sully about four hundred United States soldiers are stationed, and above Fort Sully there are about one thousand persons that the establishment of such a route would accommodate.

Asking Congress to establish a mail route from Fort Randall to Fort Sully.

Your memorialists are further of the opinion that this route would pay expenses and be a self sustaining route, besides enhancing very much the commercial interests of the upper Missouri.

Therefore, your memorialists would most urgently ask for the immediate establishment of said route, with a semi-weekly mail service on the same.

For which your memorialists will ever pray.

CHAPTER 44.

A Memorial to Congress for the Establishment of a Mail Route from Choteau Post Office, Dakota Territory, to Ponca Agency, Dakota Territory.

To the Honorable Senate and House of Representatives in Congress assembled:

Your memorialists, the legislative assembly of the Territory of Dakota, would most respectfully represent, that the commercial and social interests of Todd county, in this territory, demands the establishment of a mail route with semi-weekly service on the same, from Choteau post office, Bon Homme county, to Ponca Agency, Todd county, territory aforesaid. That this section of country is destitute of all mail facilities at present, except what is carried by private individuals; the

Asking Congress to establish a mail route from Choteau P. O. to Ponca Agency, D. T.

distance between the two places aforementioned, is fifteen miles, and would serve to pay expenses.

Therefore your memorialists, would most urgently ask the early establishment of said route with semi-weekly service on the same, and as in duty bound will ever pray.

CHAPTER 45.

A Memorial to Congress for a Mail Route from Fort Sully, Dakota Territory, to Virginia City, Montana Territory.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled:

Asking Congress to establish mail route from Fort Sully, D. T. to Virginia city, Montana.

Your memorialists, the legislative assembly of the Territory of Dakota, would most respectfully represent, That the commercial and social interests of the north-western states and territories would be very materially enhanced by the establishment of a mail route from Fort Sully, Dakota Territory, to Virginia city, Montana Territory, with a weekly or semi-monthly service on the same.

The distance from Fort Sully to Virginia city, is between five and six hundred miles, over what is reported to be a good country for a natural road, in short a good road has been opened the past year, the entire distance, with the exception of about one hundred and fifty miles, by the federal government, and the remainder is to be opened in early spring.

There is abundance of wood, water and grass, on this route, and it is the intention of the military authorities of this military department and district, to establish sufficient military posts along the route to protect emigrants on the same from all attacks of Indians. Fort Conner or Reno is already established about midway between Fort Sully and Virginia City, and there are several settlements between Fort Conner or Reno and Virginia City, at the present time.

Further, your memorialists would represent, that if this route to the gold fields of the Black Hills of Dakota, Montana and Idaho, is sufficiently protected by the military authorities of

this military district, against hostile Indians, there will be in the course of two or three years, flourishing settlements along this whole route.

Further, your memorialists would represent, that this is by far the most direct and shortest route to Montana, Idaho, and the Pacific states, for all the north-western states and territories.

Therefore, your memorialists respectfully ask the establishment of this route with a weekly or semi-monthly mail service on the same, at the earliest practicable period.

And your memorialists will ever pray.

MAIL SERVICE

CHAPTER 46.

A Memorial to the Post Master General requesting service on Mail Route No. 15,562.

To the Hon. Post Master General of the United States :

Your memorialists, the legislative assembly of the Territory of Dakota, would most respectfully represent, that it is important to the interests of the States and Territories of the north west that a direct mail communication be established between a point on the upper Missouri in the vicinity of Sioux city, Iowa, and Virginia or Bannock city, Montana Territory. Your memorialists would therefore pray that service, at least once per week, be ordered upon mail route No. 15,562, from Sioux city, Iowa, via Vermillion, and Yankton, in Dakota Territory, Niobrarah, in Nebraska Territory, Gallatin, to Bannock city in Montana Territory, on the route of Col. Sawyer's wagon road, as contemplated by the act of Congress providing for the construction of said road. And that this request may be promptly granted, your memorialists, as in duty bound, will ever pray.

Requesting
mail service on
route between
Sioux city, Iowa
and Bannock
city, Montana.

Resolved by the Legislative Assembly of the Territory of Dakota, That authenticated copies of this memorial be forward-

Copies of memorial to be sent to delegate and A. W. Hubbard to lay before P. M. General.

ed to the Hon. W. A. Burleigh, delegate in Congress from Dakota, and the Hon. A. W. Hubbard, member of Congress from Iowa, who are hereby respectfully requested to lay the same before the honorable Post Master General.

CHAPTER 47.

A Memorial to the Post Master General in Relation to the Establishment of a Daily Mail from Sioux City, Iowa, to Yankton, Dakota Territory.

To the Honorable Post Master General:

Asking for a daily mail from Sioux city to Yankton.

Your memorialists, the legislative assembly of the Territory of Dakota, in view of the growth and increasing prospects of that section of this Territory bordering on the Missouri river and between the Big Sioux river on the east and Yankton the capital of Dakota on the west, would most respectfully urge a daily mail service between the said points beginning at Sioux City, Iowa, and terminating at Yankton.

Your memorialists would most respectfully represent, that the section of country above designated is already well settled with an industrious and intelligent population whose interests would be very much enhanced by the establishment of such mail service, and further, the town of Vermillion lying about midway between the above points has already reached a position of considerable commercial importance, as has several other points along the route. Yankton, the capital of Dakota, the most prosperous, thriving and promising town west of Omaha, Nebraska Territory, has attained a position of such commercial, social, and literary importance that these interests each demand the favor prayed for.

Your memorialists would further make mention of the fact that bodies of U. S. troops are at all times stationed at Vermillion and Yankton, and that in this connection the interest of the general government in making and receiving rapid communications to and from the military stations at these points, would seem to indicate that such mail services should be established.

Your memorialists would further represent, that the distance between Sioux city and Yankton is sixty miles, and the service asked for would accommodate eight post offices daily, being the number between Sioux city and Yankton, besides affording increased mail facilities to several military posts that receive their mail from Yankton.

And, as in duty bound, your memorialists would ever pray.

MILITARY HEAD QUARTERS

CHAPTER 4S.

A Memorial to the Hon. Secretary of War, Praying that the Head Quarters of the Upper Missouri Military District be established within the Territory of Dakota.

To the Hon. E. M. Stanton, Secretary of War:

Your memorialists, the legislative assembly of the Territory of Dakota, would most respectfully represent, that in their opinion, it would be economy on the part of the government, besides affording much better protection to the citizens of northern Nebraska, western Minnesota, and north western Iowa, as well as the territory of Dakota, against hostile Indians, to remove the head quarters of this military district from its present location to some suitable point on the Missouri river within this territory, between the Big Sioux river and Fort Randall. By the diagram accompanying this memorial it will be observed that the city of Yankton, the capital of this territory, and other eligible points within the limits mentioned, are much nearer the several military posts now established on the frontier, than any eligible point east of the Big Sioux river, and in order to avail itself of this advantage, the government has deemed it necessary to keep a large amount of military stores at the above named town, in charge of an A. A. Quarter Master and a guard of troops.

Asking that headquarters of this district be established within the territory of Dakota.

Your memorialists would further represent that, in their opinion, there is no necessity for any military establishment at the town of Sioux City, Iowa, nor that any troops should be stationed there for the protection of its inhabitants or adjacent settlements, for the reason that there is a line of settlements and military posts in Dakota territory, that fully protect that place and surroundings against all danger from Indian attacks, as will be more fully shown by reference being had to the accompanying diagram.

Your memorialists would further represent the military posts at Fire Steel creek on the Dakota river, and at Sioux Falls on the Big Sioux river can be supplied from a point, as recommended herein, at one half the land transportation that is required to supply the same from Sioux City, and if said posts be supplied, as at present, from Yankton, the maintenance of a military establishment at Sioux City will entail upon the government a great expense from which no beneficial results can possibly be derived.

Further, your memorialists are fully of the opinion that the nearer the head quarters of this military district are to the field of active operation against the hostile Indians, so much the more effective will such movements be. And in thus expressing their views, your memorialists have only stated what they believe will result, if acted upon, in a great saving to the government and at the same time render all future military operations in this territory more effective.

Be it resolved by the legislative assembly of the territory of Dakota, That our delegate in Congress be, and is hereby requested to use all proper means to bring this subject to the favorable consideration of the war department.

And be it further resolved, that a copy hereof, be forwarded to each, the Hon. Secretary of War, the commanding generals of this military department and district, and to our delegate in Congress.

Copies to be sent to secretary of war, commanding general of department and district, and delegate.

MILITARY POSTS

CHAPTER 49.

A Memorial and Joint Resolution to the Secretary of War, Commanding Generals Pope and Sully.

Your memorialists, the legislative assembly of the Territory of Dakota, would most respectfully call your attention to the necessity of erecting a military post on the Niobrara river in this Territory, at or near the mouth of Pine creek on the Sawyer route.

Asking for a military post on the Niobrara, near mouth of Pine creek.

Your memorialists would most respectfully represent, that the above named place is a famous camping ground for several hostile tribes of Indians. The Brules and Minneconjues inhabit this section of country, from which they issue forth in bands and make war on the settlers of the Niobrara valley; the killing and driving off of stock is common; but they do not stop here. Last summer they made a raid on the Ponca agency, killing two Poncas in view of the whole tribe; and no longer than the fifteenth of last November, (eighteen hundred and sixty-five,) these Indians attacked the trading post of Messrs. Smith and Kerler, in sight of the post Fort Keha Paha, killing one of our best citizens, John Gleeson, and robbing the store of several thousand dollars worth of goods.

These raids have thus far prevented the settlement of one of the finest valleys of the western country, and keeping the people constantly in fear of these raids, which prove so destructive to life and property.

Taking in view the bounteous liberality of the government in extending protection to the immigrant seeking a home in our sunny valleys, and to all of her children migrating westward, whether to cultivate the soil or to develop the hidden treasures of earth; and when your memorialists represent that the establishment of the post prayed for is necessary to protect the adventurous pioneer in prospecting for and developing the hidden wealth which is believed to exist in the Black Hills, to wit:

gold, silver, copper, iron, lead, and other minerals of value, to say nothing of the pine forests of that region which would of themselves be sufficient to build up the country ; and when your memorialists represent that the emigration to these mines will be up the valley of the Niobrara river to a great extent, they have not the least doubt that the government, in its liberal sense of justice ever being ready and willing, as it has shown itself, to extend that protection so essential to the industrious and enterprising pioneer of the border who puts forth his energy to extend the boundaries of civilization and hew out homes for himself and his neighbors, will grant the prayer of your memorialists.

Your memorialists would further represent, that the military force now at Fort Keha Paha is inadequate for the protection of the post and government property at that place against a strong body of Indians, and we would ask that the Fort be reinforced.

Hoping that our memorial will be favorably considered, your memorialists will, as in duty bound, ever pray.

Resolved, That a copy of the foregoing be forwarded to the secretary of war, and each of the commanding generals of this military district, Pope and Sully ; to our delegate in Congress, and to A. W. Hubbard, M. C. 6th district, Iowa.

Copies sent to secretary of war gen ls Pope and Sully, delegate, and A. W. Hubbard.

CHAPTER 50.

A Memorial to the Secretary of War praying for the erection of a Military Post at the North base of the Black Hills of Dakota.

To the Hon. E. M. Stanton, Secretary of War :

Your memorialists, the legislative assembly of the Territory of Dakota, would most respectfully represent, that in order to suppress any and every outbreak of the hostile Sioux Indians west of the Missouri river at the very beginning—to protect, with the least cost to the government, the emigration from the states to Montana and Idaho over the northern or Big Sheyenne route, also to protect all persons desiring to explore the

Asking for a military post at the north base of the Black Hills.

Black Hills and the surrounding country, a Military Post should be established at the north base of the Black Hills in north latitude $44^{\circ} 30'$ and longitude $108^{\circ} 30'$ west, or about half way between Fort Sully on the Missouri river and Fort Conner on Powder river. The distance between Fort Sully and Fort Conner is nearly three hundred miles, over a good country for a natural road for a greater part of the entire distance.

Military post at
the Black Hills.

It is a well known fact that the Sioux Indians in the vicinity of the Black Hills have ever been more or less hostile. In 1857 they turned Lieut. Warren's party back from exploring the Black Hills country, and they have ever been opposed to the whites passing through their country. Lieut. Warren as early as 1857 in his report of that year speaks of the Black Hills as a good point from which to strike a blow at the Teton Sioux. The establishment of such a Post in their midst would very materially tend to overawe and prevent the Sioux Indians from violating their treaties with the Government, and it is much easier and more economical to the Government to check and prevent an Indian outbreak in the first start, than to wage a long Indian war, and to do so requires a few soldiers stationed in the heart of the Indian country.

Besides the overland emigration requires that this Post should be at once built. From Fort Sully on the Missouri river to Virginia city, Montana Territory is less than six hundred miles, making some six hundred miles less land transportation to the Territory of Montana than any other route, and will be traveled more or less within the next year, consequently such a Post is necessary for the protection of emigrants, also to guard against any infringement of the rights of Indians that inhabit this section of country.

A hundred thousand dollars or more would be saved by government yearly in its transportation of supplies for Fort Conner, by having them taken over this route instead of the Omaha and Fort Laramie route, besides such a Post would be the connecting link of a line of Posts between Fort Ridgely in the State of Minnesota and Fort Conner in Montana Territory.

Further, this section of country should at once be opened to emigrants. On page 217 in a valuable report on foreign and domestic commerce issued by the treasury department in 1864 we find the following in relation to the Black Hills of Dakota:

Military post at
the Black Hills.

“ It is now well ascertained that the Black Hills of Dakota Territory, situated on the 44th parallel of latitude, and between the 103d and 105th meridian of longitude are rich in gold and silver as well as coal, iron, copper, and pine forests. With the pacification of the Sioux nation and the establishment of emigrant roads, Dakota will be the scene of great mining excitement as the gold fields of the Black Hills are within one hundred and fifty miles of the steamboat navigation of the Missouri river ;” sufficient information has been recently obtained to establish the proof of the above quotation. The Black Hills are but a continuation of the Snow and Big Horn mountains which are a continuation of the Rocky mountains, and it is now the opinion of the best geologists that this entire range abounds in gold and silver. Prof. J. W. Taylor speaking of the “Black Hills of Dakota” says, “ The whole geological range of rocks from the granite and metamorphosed azoic, to the cretaceous formation of the surrounding plains are developed by the upheaval of the mountains mass. Thus at the junction of the silurian rocks, gold becomes accessible, and the carboniferous strata bring coal measures within reach.

But aside from the immense mineral wealth of these Hills, the settlers of the valley of the lower Missouri, need and must have the pine lumber from these Hills, which is known to be of the best quality, and can easily be rafted down the Big Sheyenne river, consequently the protection of the colonization of the Black Hills becomes an unavoidable military necessity, as emigration is determined to explore and settle the same ; and it will be a saving to the Government to send sufficient military force to prevent all difficulty between the whites and Indians.

Your memorialists entreat your prompt attention to the subject, confidently believing that the interests of the general government and the people of the northwest will be greatly subserved by the establishment of the post asked for in early spring. And as in duty bound we shall ever pray.

Delegate to
bring subject to
secretary of war

Be it resolved by the council and house of representatives of the Territory of Dakota, That our delegate in congress be and he is hereby requested to use all honorable means to bring this subject to the favorable consideration of the Secretary of War.

To whom copies
of memorial
sent.

And be it further resolved, that a copy of this memorial be sent to secretaries of War and Interior, to our delegate in Con-

gress, generals Pope and Sully, commanding generals of this department and district.

CHAPTER 51.

Memorial of the Legislative Assembly of the Territory of Dakota praying for the Establishment of a Military Post on the Vermillion river.

To the Hon. E. M. Stanton, Secretary of War :

Your memorialist, the legislative assembly of the territory of Dakota, would most respectfully represent, that the safety of the people residing on the Vermillion river and its vicinity, would be greatly enhanced if a small military post was established and garrisoned at a point where the road leading from Yankton the capital of said territory to Sioux Falls, crosses the said Vermillion river.

Asking for a military post on the Vermillion river.

Your memorialist would further represent, that with the establishment of the posts on the Dakota and Sioux rivers. peace and quiet have reigned below, and as the Vermillion is about midway between the posts on the said Sioux and Dakota, it is the only war path for roving hostile bands of Indians not guarded from the Sioux to the Missouri river.

Your memorialist would further represent, that the Vermillion river is about midway from Yankton to Sioux Falls, that it requires two days to perform the journey, and it is the opinion of your memorialist that a small military post at such point would not only make it a safe place for encamping, but also secure the settlements below from attack of hostile bands of savages. And your petitioners in duty bound will ever pray.

Copies forwarded to secretary of war and delegate.

Resolved, that a copy of the foregoing memorial be forwarded to the Hon. Secretary of War, and W. A. Burleigh, delegate in Congress.

PACIFIC RAIL ROAD.

CHAPTER 52.

A Memorial to Congress Relative to the Location of the North Branch of the Pacific Railroad.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled :

Asking a change of the location of the north branch of the Pacific railroad so that it shall run through Dakota.

Your memorialists, the legislative assembly of the Territory of Dakota, do most respectfully represent, that

WHEREAS, The original Pacific railroad bill, passed by Congress in 1861-2, provided that the north branch of the Pacific railroad should start from Sioux city and unite with the Union Pacific railroad upon the 100th meridian of longitude and between the Republican fork and Platte river ; and

WHEREAS, The said route was found to be impracticable, and the said bill was amended by Congress in 1863-4, so as to permit the said north branch of the Pacific railroad to be constructed in such a manner as to benefit the northwestern territories, by allowing the said north branch (under sections 9 and 17 of the amendatory bill, approved July 2, 1864,) to connect with the Pacific railroad at any point westwardly of the initial point named in the original bill ; and

WHEREAS, The construction of the said north branch through the south-eastern portion of this Territory, and up the valley of the Niobrarah river through northern Nebraska, so as to join the Pacific railroad at or near Fort Laramie, would be of immense advantage in developing the rich agricultural and mineral resources of this Territory and of the Territories to the west of us, as was evidently the intention of Congress in the amendments made with reference to the said north branch ; and

WHEREAS, Under said amendments, (section 17,) a company has been organized in Iowa, and procured the designation of the President to construct the said north branch, who propose

to construct the said north branch from Sioux City, south-easterly, down the Missouri river to a point near Omaha, connecting with the middle branch of the Pacific railroad, on the Platte river; and

WHEREAS, The construction of this branch, on the route referred to, would be injurious to the people of this Territory, and, in our opinion, contrary to the spirit of the amended Pacific railroad bill and the intention of Congress, who undoubtedly desired the construction of the Pacific railroad by three branches starting from the Missouri, to benefit the people of all the north-western Territories, and that all three branches of the Pacific railroad should be constructed in a westwardly direction from their respective starting points; and

WHEREAS, Section seventeen of said amended bill is somewhat indefinite, inasmuch as it allows the said north branch to connect with the Iowa branch of the Union Pacific railroad from Omaha, or, the Union Pacific railroad proper, as the company designated to construct the same may select; and also requires that the said north branch shall be completed to the Pacific railroad, which commences on the 100th meridian of longitude, within ten years from the passage of said amendment.

Therefore, your petitioners would respectfully ask of your Honorable bodies such further legislation upon this subject as will clearly and plainly compel the construction of the north branch of the Pacific railroad in a westerly course from Sioux City through this Territory, making Yankton, the Capital of Dakota, a point on said branch railroad; thus conducing to the benefit of the people of northern Nebraska, Montana and Idaho, which result so earnestly hoped for, we believe to have been the intention of Congress, in providing for the construction of this great national work.

And your petitioners will ever pray.

Be it resolved, further, That our Delegate in Congress, be and he is hereby requested to urge the foregoing memorial upon the attention of Congress, and endeavor by all proper means to procure the legislation petitioned for, at the earliest day convenient.

Delegate to urge
the matter on
attention of
Congress.

S. L. SPINK

CHAPTER 53.

Joint Resolution Requesting the Confirmation of the Appointment of Secretary Spink.

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

Requesting confirmation of appointment of S. L. Spink.

That the appointment by the President of the United States, of the Hon. S. L. Spink to the office of Secretary of this territory, meets, as we believe, with the hearty approval of the citizens thereof who have been brought into business connection with him, or have made his acquaintance. And not as a compliment to Mr. Spink, but with the desire to retain to this territory the services of an efficient and faithful officer we do hereby unite in the request to the Senate of the United States, that his appointment to said office be confirmed, and in thus requesting his confirmation, we feel confident that we are also expressing the wishes of the people we represent.

Copy sent to Hon. Richard Yates and delegate.

And be it further resolved, that a copy hereof be forwarded to our delegate in Congress, and also to the Hon. Richard Yates, United States Senator from Illinois.

TERRITORIAL COLLEGE.

CHAPTER 54.

A Memorial to Congress relative to an endowment of Lands for College purposes.

WHEREAS, The congress of the United States, did enact a law donating public lands to the several states and territories,

which may provide colleges for the benefit of agriculture, and the mechanic arts, which said act was approved July 2d, 1862, and,

Asking that the act of Congress donating lands to the states for agricultural colleges, be amended to include territories.

WHEREAS, the provisions of said act according to the construction of the Commissioner of the General Land Office do not apply to the territories, therefore,

Your memorialists, the legislative assembly of the territory of Dakota, would pray your honorable body to so amend said act that the benefits therein conferred upon the states, may be extended to the territories.

Your memorialists would respectfully represent, that the territory of Dakota is rapidly settling up with an enterprising, intelligent and industrious class of immigrants and that 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 benefits 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, equally with those of the states may receive the benefits of the provisions of said act.

Be it resolved, that duly authenticated copies of this memorial be forwarded to our delegate in Congress, (Hon. Walter A. Burleigh) and to the Hon. A. W. Hubbard, of Iowa.

Copies sent to delegate and A W Hubbard.

W. A. BURLEIGH.

CHAPTER 55.

Joint Resolution relative to Hon. Walter A. Burleigh.

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

That in Walter A. Burleigh, our delegate in Congress we re-
pose entire confidence, believing that he will urge upon

Relative to Hon. W A Burleigh.

W. A. Burleigh. Congress and the departments of government the necessity of granting the prayers of this Legislative Assembly and that he will not falter in his exertions to the extent of his ability in sustaining the President in his measures for reconstructing the states recently in rebellion.

SPECIAL AND PRIVATE
L A W S,

PASSED AT THE FIFTH SESSION

OF THE

LEGISLATIVE ASSEMBLY,

OF THE

TERRITORY OF DAKOTA.

1865-66.

SPECIAL AND PRIVATE LAWS.

CITIZENSHIP

CHAPTER 1.

An Act to Confer the Rights of Citizenship on Antwine Roy and Louis Roy.

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

Section 1. That Antwine Roy and Louis Roy be and are hereby created citizens of this Territory, with all the rights and privileges of other citizens of this Territory.

Antoine and Louis Roy created citizens of Territory.

Sec. 2. That 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, 1866.

FERRIES

CHAPTER 2.

An Act Granting to Barny McGraw a Ferry Charter Across the Missouri River.

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

To have privilege of keeping ferry five years, at what point.

Section 1. That Barny McGraw, his heirs, executors, administrators and assigns shall have the exclusive privilege for a period of five years, of keeping and maintaining a ferry across the Missouri river in said Territory at a point on the Missouri river, where the east line of section twenty-three (23) township ninety (90) north of range fifty (50) west, intersects said river, and for the distance of three miles above and below said point.

To keep good boat.

Sec. 2. That said McGraw shall at all times keep a safe and good boat or boats, in good repair, for the accommodation of all persons wishing to cross said ferry, and shall give prompt and ready attention to all passengers and teams on all occasions from sunrise to sunset, except in tempestuous weather or when the navigation of said river is dangerous on account of ice running in said river; *Provided*, Said Barny McGraw, his heirs, executors, administrators or assigns, shall before running said ferry boat or boats, file or cause to be filed in the office of the register of deeds of Union county, Dakota Territory, a bond to said county for the use of the public with one or more sufficient sureties to be approved by said register of deeds in the penal sum of five hundred dollars, conditional that he will fulfill all the duties imposed upon him in this act.

To file bond. With whom

In what sum.

Shall keep ferry within six months.

Sec. 3. That said Barny McGraw, his heirs, executors, administrators or assigns, shall within six months after the passage of this act, have and maintain a good and sufficient boat or boats for the accommodation of persons wishing to cross the Missouri at said ferry, and in case of failure or neglect to do

so, he shall forfeit all benefits that may have accrued to him Penalty for not doing so. from the passage of this act; but any other person or persons residents of this Territory who shall comply with the conditions of this act within three months thereafter, shall be entitled to all the benefits of this act.

Sec. 4. Any person who shall sustain any injury from the negligence, or default of the said Barny McGraw, or any person or persons in his employ, or in the employ of any persons who may establish a ferry under the provisions of this act, may have a remedy by an action upon the bond required in this act. Injury from negligence and default.

Sec. 5. The rates for crossing said ferry shall not exceed Rates of ferrriage the following, to wit:

For two horses, mules or oxen and wagon, with or without load, one dollar:

For each additional pair of horses, mules or oxen, twenty-five cents.

For each two horses or mules and buggy, seventy-five cents.

For each one horse or mule with buggy and driver, fifty cents.

For each led horse or mule, twenty-five cents.

For loose cattle per head, fifteen cents.

For sheep and swine per head, ten cents.

For each one hundred pounds of freight or merchandise, unloaded, ten cents.

For each thousand feet of lumber, unloaded, one dollar.

And it shall be the duty of said ferryman running said ferry to post on his boat or near the landing, in some conspicuous place, the said rates of toll allowed.

Sec. 6. All acts or parts of acts so far as they conflict with Acts repealed. the provisions of this act are hereby repealed.

Sec. 7. This act shall take effect and be in force from and When to take effect after its passage and approval by the Governor.

Approved, December 27th, 1865.

INCORPORATIONS

CHAPTER 3.

An act Incorporating the North Platte and Green River Bridge and Ferry Company.

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

Declared body corporate.

Section 1. That A. S. Holladay and J. H. Jones, their associates and assigns are hereby declared a body corporate and politic under the name and style of the "North Platte and Green river Bridge and Ferry Company," and by that name and style shall have all the rights and powers of a corporate association to sue and be sued, plead and be impleaded in all courts having jurisdiction.

Rights and powers.

where authorized to keep ferries and bridges.

Sec. 2. Said corporation shall have the exclusive power and privilege to keep ferries, or build and maintain toll bridges across the North Platte and Green rivers at the points, within this Territory, where the "overland mail" crosses said streams, or any other points on said streams within ten miles, either way, from said points, for the term of fifteen years from and after the approval of this act.

Free ferries.

Sec. 3. That after the establishment of such ferries or bridges as herein provided, any person or persons crossing or ferrying any person or property across said streams at said points or within the limits herein specified for compensation, shall be deemed guilty of an infringement of the privilege herein granted and shall forfeit and pay to the said corporation ten dollars for each person or article of property so carried over said streams; *Provided*, That nothing herein contained shall be so construed as to prohibit any person or persons, or corporation from establishing and keeping free ferries, or building and keeping free bridges on said streams within the limits herein mentioned.

Rates of ferriage.

Sec. 4. Until otherwise provided by law, the rates of toll or ferriage shall be established and regulated by the command-

ing officer at the nearest military post or garrison ; *Provided, however,* That all government troops and munitions of war shall be transported across said streams without delay and free of charge.

Government troops and munitions.

Sec. 5. It shall be the duty of said corporation to keep suitable boats or erect and keep in good condition substantial bridges at the points or within the limits mentioned, for the safe and speedy transportation of persons and property over said rivers at all suitable times between sunrise and sunset.

To keep suitable boats and bridges.

Sec. 6. Said corporation shall have a chief head, denominated President of the corporation, who shall be nominated or elected by the members thereof.

President of corporation.

Sec. 7. Said corporation shall keep a book in which shall be recorded the name and place of residence of each member of the corporation, which book shall be kept in the office of the president, at or in the vicinity of one of the points of crossing herein mentioned, and shall be open to public inspection.

To keep book.

What record therein.

To be open to inspection.

Sec. 8. A violation of the provisions of this act by said corporation shall work a forfeiture of the privileges therein granted.

Violations of provisions of act to work forfeiture.

Sec. 9. Said corporation shall be liable for damages at the suit of any person who may suffer loss or injury to person or property from the culpable negligence or bad conduct of said corporation, before any court of competent jurisdiction, and any judgment so obtained shall be collected, in the usual manner, out of the property of said corporation or any member thereof.

When liable to damages.

How collected.

Sec. 10. Said corporation shall keep posted up, in view of the passing public, at or near said ferries or bridges, a bill of their authorized rates of ferriage or toll.

To keep posted up legal rates of ferriage.

Sec. 11. Said corporation may also elect a secretary and treasurer and such other officers as the corporation shall deem necessary.

May elect secretary, treasurer, and other officers.

Sec. 12. This act shall take effect from and after its passage and approval.

When to take effect.

Approved, December 27th, 1865.

JAIL.

CHAPTER 4.

An Act to Authorize the County Commissioners of Yankton County to rent a suitable building for a County Jail.

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

- Board authorized to rent suitable building for jail for three years.**
Amount of rent.
- Section 1.** That the board of county commissioners of Yankton county are hereby authorized to rent or lease a suitable room or building for a county jail, for the term of three years, at an annual rent of not over one hundred dollars per year.
- On what terms board authorized to contract for building.**
- Sec. 2.** That in case the county commissioners shall find that there is at present no suitable building for a jail in said county, they may submit a plan and contract with any person or persons for the lease of such a building as will, in their judgment, meet the necessities of the county, for the term of five years from the date of such lease; *Provided, however,* The lease of such building shall not extend beyond the term of five years, nor shall the rent thereof amount to more than one hundred dollars a year; *And provided further,* That the said board of county commissioners shall reserve the privilege in said lease, to purchase the said building at a stipulated price, at any time within the five years, by submitting the same to the people of the county at any regular election.
- Lease and amount of rent.**
- Board may reserve right to purchase building.**
- Sec. 3.** A direct "jail tax" shall be levied by said board, each year, on the taxable property in said county, sufficient to meet the said annual rent of one hundred dollars.
- Board to levy tax annually or pay rent.**
- 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, 1866.

TAX---CLAY COUNTY.

CHAPTER 5.

An Act to Authorize the Sheriff of Clay County to levy and collect a direct Tax for the purpose of purchasing Blank Books for Keeping County Records.

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

Section 1. That the sheriff of Clay county be, and he is hereby empowered to levy a direct tax of two mills to the dollar, on the assessed value of property in said county as returned by the county assessors for the year of 1866, for the purpose of purchasing blank books for keeping the county records.

Sheriff empowered to levy and collect a tax of two per cent.

Sec. 2. That the said sheriff shall collect the said direct tax of two mills to the dollar at the same time and in the same manner that other county taxes are collected on the said assessment roll of 1866.

Sheriff to collect tax same as other taxes for 1866.

Sec. 3. That as soon as the sheriff shall have collected said tax, and shall have paid it into the county treasury, the treasurer shall proceed to purchase such good substantial blank books for the use of the county as are most needed, so far as the amount raised will provide.

Treasurer to purchase books.

Sec. 4. That this act shall take effect from and after its passage and approval.

When to take effect.

Approved, January 11th, 1866.

TRANSPORTATION OF BOOKS.

CHAPTER 6.

An Act to provide for Defraying certain Expenses Incident to the Transportation. and other charges on Books, Maps, and Charts Donated to the Territory by Act of Congress, or Otherwise.

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

Auditor authorized to draw orders on Treasurer, and for what

Section 1. The territorial auditor is hereby authorized to draw his orders on the territorial treasurer for such sum or sums as from time to time, may be necessary to defray the expenses of transportation of books, maps, and charts which have, or may be donated to the territory by Congress or otherwise.

Treasurer authorized to pay orders.

Sec. 2. The territorial treasurer is hereby directed to pay all orders drawn on the treasurer, as specified in section one of this act, out of any money in the treasury not otherwise appropriated, provided the gross amount shall not exceed two hundred and fifty dollars.

Sum not to exceed \$250.00.

When to take effect.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved, January 12th, 1866.

TERRITORIAL WARRANTS

CHAPTER 7.

An Act to authorize and direct the Territorial Auditor to issue Warrants to certain Officers.

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

Auditor directed to issue warrant to certain officers.

Section. 1. That the auditor be and is hereby authorized and directed to issue territorial warrants to Capt. William

Tripp, Lieut. John B. Wood and 2nd Lieut. T. Elwood Clark, late officers of company B, Dakota volunteer cavalry, for the sums respectively that officers of like grade are entitled to by law, from the date of their commission until the date of their muster into the United States service, which was the 31st day of March, 1863.

Sec. 2. These warrants on their face shall be styled ~~SPE-~~ ^{To be styled special military warrants, &c.} CIAL MILITARY WARRANTS, and shall be drawn to the special persons hereinbefore mentioned, and not transferable, and the first money paid into the territorial treasury by the general Government, for the purpose of reimbursing the territory for these warrants, shall be appropriated to pay the said warrants.

Sec. 3. This act shall take effect and be in force from and ^{When to take effect.} after its passage.

Approved, January 12th, 1866.

GENERAL INDEX.

ACKNOWLEDGMENT OF INSTRUMENTS, 93.

AGENCY, 217.

AGENTS, 187.

AMENDMENTS.

amending chapter nineteen, laws of 1864-5, relating to laying out poisons, 449.

chapter twenty-three, laws 1863-4, concerning licenses, &c., 450.

section seven of chapter twenty-three, laws of 1863-4, relating to selling certain commodities without license, 450.

chapter thirty-five, laws 1862, concerning estrays, 451.

chapter thirty-three, laws 1864-5, concerning number of pounds per bushel of articles of produce, 451.

chapter thirty-seven, laws 1862, concerning exemption from execution, 452.

ASSIGNMENT FOR BENEFIT OF CREDITORS, 346.

ATTORNEYS,

regulating their admission to the several courts of the territory, 454.

AUCTION,

sale by, 161.

AUCTIONEERS, 225.

BANK NOTES—*see bonds.*

BILLS OF EXCHANGE, 315.

BILLS OF LADING, 198.

BONDS, 324.

BOUNDARIES,

relating to real property, 49.

BOTTOMRY, 299.

CARRIAGE, 194.

CERTIFICATE OF DEPOSIT, 324.

CHEQUE, 324.

CHILD—*see Parent and Child.*

CHILDREN, 18.

CIVIL CODE,

an act to establish, 1.

general definitions and divisions, 1.

Persons, 2

Personal Rights, 4.

Personal Relations, 6.

Marriage, 6.

contract of, 6.

validity of, 7.

authentication of, 8.

Divorce, 10.

when marriage may be annulled, 11.

how marriage dissolved, 13.

separation, relating to, 14.

general provisions, 15.

Husband and Wife, 16.

Parent and Child, 18.

children by birth, 18.

children by adoption, 21.

Guardian and Ward, 23.

Master and Servant, 26.

Property, 30.

in general, 30.

nature of, 30.

owners of, 32.

interests in, 33.

conditions of ownership in, 35.

restraints upon alienation of, 36.

accumulations of, 37.

rights of owners of, 38.

CIVIL CODE—Continued.

- termination of ownership of, 38.
- general definitions relating to, 39.
- Real or Immovable Property, 40.**
 - general provisions, 40.
 - estates in general in, 40.
 - termination of estates in, 44.
 - servitudes, 45.
 - incidents of ownership, 47.
 - boundaries relating to, 49.
 - obligations of owners, 50.
 - uses and trusts relating to, 50.
 - powers in relation to, 54.
- Personal Property in General, 63.**
 - particular kinds of, 64.
 - shipping, 65.
 - rules of navigation, 66.
 - corporations, creation of, 67.
 - corporate stock, 72.
 - corporate powers, 73.
 - corporations, dissolution of, 76.
 - products of the mind, 77.
 - other kinds of personal property, 78.
- Acquisition of Property, 79.**
 - modes in which it may be acquired, 79
 - occupancy, 80.
 - accession real property, 80.
 - to personal property, 81.
- Transfer, 83.**
 - definition of, 84.
 - what may be transferred, 84.
 - mode of transfer, 84.
 - interpretation of grants, 86.
 - effect of transfer, 86.
- Transfer of Real Property, 87.**
 - mode of transfer, 87.
 - effect of transfer, 88.
- Transfers of Personal Property, 90.**
 - mode of transfer, 90.
 - what operates as a transfer, 90.

CIVIL CODE—*Continued.*

- gifts, 91.
- recording transfers, 92.
- what may be recorded, 92.
- mode of recording, 93.
- proof and acknowledgment of instruments, 93.
- effect of recording, or want thereof, 97.
- unlawful transfers, 98.
- Wills, 99.
 - execution and revocation of, 99.
 - interpretation of wills and effect of various provisions, 107.
 - general provisions relating to, 110.
- Succession, 114.
- Obligations, 121.
 - in general, 121,
 - definition of, 121.
 - interpretation of, 122.
 - joint or several, 122.
 - conditional, 123.
 - alienative, 124.
 - transfer of, 125.
- Extinction of Obligations, 126.
 - performance, 127.
 - offer of performance, 128.
 - prevention of performance or offer, 131.
 - accord and satisfaction, 133.
 - novation, 133.
 - release, 134.
- Contracts, 135.
 - nature of a, 135.
 - definition of, 135.
 - parties to, 136.
 - consent, 136.
 - object of a, 140.
 - consideration of, 141.
 - manner of creating, 142.
 - interpretation of, 144.
 - unlawful contracts, 147.
 - execution of contracts, 146.

CIVIL CODE—Continued.

how extinguished, 146.

recession of, 146.

alteration and cancellation of, 150.

Obligations Imposed by Law, 151.

Obligations Arising from Particular Transactions, 153.

sale, 153.

agreements for sale, 154.

form of the contract, 156.

rights and obligations of the seller, 156.

rights and duties before delivery, 157.

delivery, 157.

warranty, 158.

rights and obligations of the buyer, 160.

sale by auction, 161.

Exchange, 162.

Deposit, 163.

nature and creation of, 163.

obligations of the depositary, 164.

deposit for keeping, 165.

general provisions relating to, 165.

gratuitous deposit, 167.

storage, 167.

innkeepers, 168.

finding, 169.

deposit for exchange, 170.

Loan, 170.

loan for use, 171.

loan for exchange, 172.

loan for money, 173.

Hiring, 175.

in general, 175.

hiring of real property, 177.

hiring of personal property, 179.

Service, 180.

with employment, 180.

definition of employment, 180.

obligations of employer, 180.

obligations of employee, 181.

termination of employment, 182.

CIVIL CODE—Continued.

particular employments, 185.
master and servant, 186.
agents, 187.
factors, 187.
shipmasters, 188.
mate and seamen, 190.
ship's managers, 192.
service without employment, 193.

Carriage, 194.

in general, 194,
of persons, 195.
gratuitous carriage of persons, 195.
carriage for reward, 195.
carriage of property, 196.
general definitions, 196.
obligations of the carrier, 197.
bill of lading, 198.
freightage, 199.
general average, 201.
carriage of messages, 202.
common carriers, 202.
common carriers in general, 203.
common carriers of persons, 204.
common carriers of property, 205.
common carriers of messages, 207.

Trust, 208.

in general, 208.
nature and creation of a, 208.
obligations of trustees, 210.
obligations of third persons, 212.
trust for the benefit of third persons, 212.
nature and creation of the trust, 213.
powers of trustees, 214.
rights of trustees, 215.
termination of the trust, 216.
successions or appointment of new trustees, 217.

Agency, 217.

in general, 217.
definition of, 218.

CIVIL CODE—Continued.

- authority of agents, 218.
- mutual obligations of principals and third persons, 221.
- obligations of agents to third persons, 223.
- delegation of agency, 224.
- termination of agency, 225.
- particular agencies, 225.
- Auctioneers, 225.**
- Factors, 226.**
- Shipmate and Pilots, 227.**
- Partnership, 229.**
 - in general, 229.
 - what constitutes a partnership, 229.
 - partnership property, 230.
 - mutual obligations of partners, 231.
 - renunciation of partnership, 231.
 - general partnership, 232.
 - what is a general partnership, 232.
 - powers and authority of partners, 233.
 - mutual obligations of partners, 234.
 - liability of partners, 234.
 - termination of partnership, 235.
 - liquidation, 236.
 - of the use of fictitious names, 237.
- Special Partnership, 238.**
 - formation of the partnership, 239.
 - powers, rights and duties of the partners, 241.
 - liability of partners, 242.
 - alteration and dissolution, 243.
- Insurance, 244.**
 - in general, 245.
 - definition of, 245.
 - what may be insured, 245.
 - parties to the contract, 246.
 - insurable interest, 247.
 - concealment and representation, 248.
 - the policy, 251.
 - warranties, 253.
 - premium, 254.
 - loss, 255.

CIVIL CODE—*Continued.*

notice of loss, 256.

double insurance, 257.

re-insurance, 257.

Marine Insurance, 258.

definition of, 258.

insurable interest, 259.

concealment, 260.

representations, 261.

implied warranties, 261.

the voyage and deviation, 262.

loss, 263.

abandonment, 265.

measure of indemnity, 267.

Fire Insurance, 270.**Life and Health Insurance, 271.****Indemnity, 272.****Guarranty, 274.**

in general, 274.

definition of, 274.

creation of, 274.

interpretation of, 276.

liabilities of guarantors, 277.

continuing guaranty, 277.

exoneration of guarantors, 278.

Suretyship, 279.

who are sureties, 279.

liabilities of sureties, 280.

rights of sureties, 281.

rights of creditors, 282.

letter of credit, 282.

Lien, 284.

in general, 284.

definition of, 284.

creation of, 285.

effect of, 286.

priority of, 287.

redemption from extinction of, 288.

Mortgage, 289.

in general, 289.

CIVIL CODE.—*Continued.*

- of real property, 291.
- of personal property, 293.
- Pledge, 295.
- Bottomry, 299,
- Respondentia, 301.
 - other liens, 301.
- Stoppage Intransitu, 304.
- Negotiable Instruments, 304.
 - in general, 305.
 - general definitions, 305.
 - interpretation of, 306.
 - indorsement of, 307.
 - presentment for payment, 310.
 - dishonor of, 312.
 - excuse of presentment and notice, 314.
 - extinction of, 315.
- Bills of Exchange, 315.
 - form and interpretation of, 315.
 - days of grace, 317.
 - presentment of acceptance, 317.
 - acceptance, 318.
 - acceptance or payment for honor, 319.
 - presentment for payment, 320.
 - excuse of presentment and notice, 321.
 - foreign bills, 321.
- Promissory Notes, 323.
- Cheques, 324.
- Bonds, Bank Notes and Certificates Deposit, 324.
 - general provisions, 325.
- Relief, 326.
 - in general, 326.
- Damages, 327.
 - general principles, 327.
 - interest as, 327.
 - exemplary, 328.
 - measure of, 328.
 - damages for breach of contract, 329.
 - damages for wrongs, 332.
 - penal damages, 334.

CIVIL CODE.—*Continued.*

general provisions, 335.

Special and Preventive Relief, 336.

general provisions, 336.

special relief, 337.

provisions of real property, 337.

provisions of personal property, 337.

specific performance of obligations, 338.

revision of contracts, 341.

rescission of contracts, 342.

cancellation of instruments, 342.

preventive relief, 343.

Special Relations of Debtor and Creditor, 344.

general principles, 344.

fraudulent instruments and transfers, 345.

assignment for benefit of creditors, 346.

Nuisance, 352.

general principles, 352.

Public Nuisances, 353.

Private Nuisances, 354.

Maxims of Jurisprudence, 354.

Definitions and General Provisions, 356.

Forms, 361.

grant of real property without covenants, 361.

grant of real property with covenants, 361.

lease, 362.

mortgage of real property, 362.

mortgage of personal property, 363.

bond, 365.

bill of lading, 365.

charter party, 365.

bottomry bond, 366.

respondentia bond, 367.

policy of marine insurance on vessels, 368.

policy of marine insurance on cargo, 370.

policy of marine insurance on freightage, 371.

policy of fire insurance, 373.

policy of life insurance, 375.

COMMON CARRIERS, 202.

CONSTABLES, and their duties, 426.

to qualify and give bonds, 457.

CONTRACTS, 135.

CONTINUANCE, 420.

CORPORATIONS, 67.

CORPORATE STOCK, 72.

CORPORATE POWERS, 73.

COUNTIES.

fixing the time of holding the regular meetings of the board of county commissioners, 455.

relating to commissioners and probate judge of Todd county, 456.

requiring justices of the peace and constables to qualify and give bonds, 457.

COUNTY COMMISSIONERS.—*see counties.*

COURTS.

fixing the time of holding district courts in the territory, 458.

CREDITOR.—*see debtor.*

CRIMINAL CASES IN JUSTICES COURTS, 435.

DAMAGES, 327.

DEBTOR AND CREDITOR, special relations, 344.

DEFINITIONS AND GENERAL PROVISIONS, 354.

DEPOSIT, 163.

DIVORCE, 163.

ELECTIONS.

providing for and prescribing the canvass and return of the same, 459.

EMPLOYMENT, 180.

ESTRAYS, 451.

EXEMPTION OF PROPERTY FROM MESNE OR FINAL PROCESS, 452.

EXCHANGE, 162.

EXTINCTION OF OBLIGATIONS, 126.

FACTORS, 187—226.

FENCES.

establishing a fence law, 472.

FERRIES.

regulating ferries in organized counties, 475.

FINDING, 169.

FIRING OF PRAIRIES.

to prevent the firing of woods, marshes and prairies,
479.

FORMS.

under civil code, 361.

in criminal cases.—*see criminal cases.*

in civil actions in justice court, 433.

under school law, 533.

relating to taking up sheep and swine, 541.

FREIGHTAGE, 199.

GENERAL PROVISIONS IN CIVIL CODE.—*see definitions.*

GRANTS.

interpretation of, 86.

GUARDIAN AND WARD, 23.

GUARRANTY, 274.

HIRING, 175.

HOGS.—*see sheep and swine.*

HUSBAND AND WIFE, 16.

INDEMNITY, 272.

INDIANS.

prohibiting furnishing intoxicating liquors to, 480.

prohibiting harboring of Indians in organized counties,
482.

IMMIGRATION.

authorizing appointment of immigrant agent, 483.

INNKEEPERS, 168.

INSURANCE, 244.

JOURNALS.—*see laws and journals.*JUSTICES OF THE PEACE.—*see Justice's Code.*

to qualify and give bonds, 457.

JUSTICES CODE, 377.

- jurisdiction of justices of the peace, 377.
- commencements of suits, and service and return of process, 379.
- appearance, 382.
- pleadings, 382.
- set offs, 385.
- bill of particulars, 387.
- witnesses and depositions, 387.
- issuing commissions to take testimony, 389.
- trial without a jury, 390.
- trial by jury, 390.
- entering judgment, 394.
- judgment set off against judgment, 395.
- entering judgment by confession, 396.
- appeals, 397.
- executions, 402.
- stay of execution, 405.
- change of place of trial, 407.
- sale of property under execution, 408.
- replevin of property, 409.
- proceedings by attachment, 411.
- adjournment, 420.
- arbitrations, 421.
- trial of the right of property, 422.
- forcible entry and detention of property, 423.
- constables and their duties, 426.
- proceedings for contempts, 427.
- general provisions, 430.
- forms in civil actions, 433.
- form of execution, 434.
 - writ of replevin, 434.
 - subpena, 435.
 - venire for a jury, 435.
- proceedings in criminal cases, 435.
- form of complaint, 436.
 - undertaking, 441.
 - warrant, 445.
 - certificate of conviction, 446.

JUSTICES CODE—*Continued.*

execution, 446.

order to bring up prisoner, 446.

commitment upon sentence, 447.

after arrest and before trial, 447.

commitment where justice on the trial shall find
that he has not jurisdiction of the case, 448.

miscellaneous provisions in criminal cases, 442.

court of inquiry, 444.

LAWS AND JOURNALS,

providing for the printing and distribution of, 484.

LIEN, 284,

LOAN, 170.

LOSS, 255—263.

MARRIAGE, 6.

MARINE INSURANCE, 258.

MASTER AND SERVANT, 26.

MATES AND SEAMEN, 190.

MAXIMS OF JURISPRUDENCE, 354.

MORTGAGE, 289.

NAVIGATION, RULES OF, 66.

NEGOTIABLE INSTRUMENTS, 304.

NUISANCES, 353—354.

OBLIGATIONS, 121.

OBLIGATIONS IMPOSED BY LAW, 151.

PARENT AND CHILD, 18.

PARTNERSHIP, 229.

special, 238.

PERSONS, 2.

PERSONAL PROPERTY, 63.

PILOTS—*see ship masters and pilots.*

PLEADINGS.

in justice court, 382.

PLEDGE, 295.

POISONS.

regulating the sale of, 487.

POWERS, 54.

PREMIUM, 254.

PRINTERS FEES.

regulating the rates of, 488.

PRIVATE NUISANCES, 354.

PROMISSORY NOTES, 323.

PROPERTY, 30.

PUBLIC NUISANCES, 353.

REAL PROPERTY, 40.

RECORDING TRANSFER OF PROPERTY, 92.

RELIEF, 326.

REPLEVIN.—*see Justice's Code.*

RESPONDENTIA, 301.

REVENUE.

act in relation to county and territorial, 489.

property exempt, 489.

taxable property, 490.

time and manner of assessing, 493.

equalization of taxes, 495.

collection of taxes, 497.

delinquent taxes, 499.

ROAD SUPERVISORS.

providing for appointment of and prescribing duties of
the same, *504.

ROADS.

establishing territorial road from Big Sioux river to
Yankton, on line surveyed by government, 507.

locating and establishing territorial road from Missouri
river to north line of Union county, 510.

establishing territorial road from point in Clay county,
through Union county to Big Sioux river, 511.

locating and establishing territorial road from Yankton
via Smutty Bear Bottom to Fort Randall, 512.

locating a territorial road in Union county, 513.

SALE, 153.

SEAMEN—*see mates and seamen.*

SERVANTS— *see master and servant.*

SERVITUDES, 45.

SERVICE, 180.

SCHOOLS,

act establishing public school law, 514.

duties of county superintendents, 516.

school district meetings, 520.

organization of districts, 521.

district clerk, 523.

district treasurer, 525.

powers of district board, 526.

county and district taxes, 527.

graded schools, 529.

miscellaneous provisions, 531.

forms, 533.

SHEEP AND SWINE,

prohibiting from running at large, 538.

forms, 541.

SHIPPING, 65.

SHIPMASTERS AND PILOTS, 188—227.

SHIPS MANAGERS, 192—228.

SPECIAL PARTNERSHIP, 238.

STOPPAGE IN TRANSIT, 304.

STORAGE, 167.

SUCCESSION, 114.

SURETYSHIP, 279.

SURVEYORS,

relating to, 542.

TRANSFER OF PROPERTY, 83.

TRUSTS, 298.

USES AND TRUSTS, 50.

WARD—*see guardian and ward.*

WARRANTY, 158.

WIFE—*see husband and wife.*

WILLS, 99.

Memorials and Joint Resolutions.

BLOOD HOUNDS.

memorial and joint resolution relative to the introduction of Blood Hounds into this Military District, 545.

CAPITOL BUILDING.

memorial for an appropriation for a Capitol Building, 546.

CODIFICATION OF LAWS.

memorial for an appropriation to codify the laws, 547.

GEOLOGICAL SURVEY.

memorial for a Geological Survey of Black Hills and Bad Lands, 548.

INDIAN AGENT.

memorial and joint resolution relative to the appointment of an Indian Agent, 551.

INDEMNIFICATION.

memorial relative to treaty pending between Ponca Indians and United States, 552.

LINCOLN AND JOHNSON.

joint resolution relative to Abraham Lincoln and Andrew Johnson, 554.

MAIL ROUTES.

memorial and joint resolution for a mail route from Sioux Falls, D. T. to Ponca, Nebraska, 555.

memorial for continuation of post route No. 13,577, from St. Paul to Yankton, 557.

memorial for mail route from Fort Randall to Fort Sully, 558.

memorial for a mail route from Choteau post office to Ponca Agency, 559.

memorial for a mail route from Fort Sully, D. T., to Virginia City, M. T., 560.

MAIL SERVICE,

memorial to Post Master General requesting service on route No. 15,562, 561.

memorial to Post Master General for daily mail service from Sioux City, Iowa, to Yankton, D. T., 562.

MILITARY HEADQUARTERS,

memorial to Secretary of War for establishment of head quarters within the Territory of Dakota, 563.

MILITARY POSTS,

memorial and joint resolution to Secretary of War and Generals Pope and Sully, 565.

memorial to Secretary of War for erection of military post at Black Hills, 566.

memorial for establishment of military post on the Vermillion river, 569.

PACIFIC RAIL ROAD,

memorial relative to location of north branch of Pacific railroad, 570.

S. L. SPINK,

joint resolution requesting confirmation of Secretary Spink, 572.

TERRITORIAL COLLEGE,

memorial for an endowment of lands for college purposes, 572.

W. A. BURLEIGH,

joint resolution relative to Hon. Walter A. Burleigh, 573.

Special and Private Laws.

CITIZENSHIP.

conferring the right of citizenship on Antwine and Louis Roy, 577.

FERRIES.

granting a ferry charter to Barney McGraw, 578.
rates, &c., of ferriage, 579.

INCORPORATIONS, North Platte and Green river.

certain persons declared body corporate, 580.
rights and powers, 580.
how rates of ferriage established, 581.
duty of corporation, 581.

JAIL.

commissioners of Yankton county authorized to rent a building for a jail, 582.

TAX—CLAY COUNTY.

sheriff empowered to levy and collect a tax of two per cent. for purpose of purchasing blank books, 583.

TRANSPORTATION OF BOOKS,

territorial officers authorized to pay transportation &c., on books donated to territory, 584.

TERRITORIAL WARRANTS.

certain military officers to receive territorial warrants, 584.
style of warrants, 585.
when to be paid, 585.