

PUBLIC AND PRIVATE LAWS,

MEMORIALS AND RESOLUTIONS,

OF THE

TERRITORY OF DAKOTA.

PASSED BY THE

LEGISLATIVE ASSEMBLY

AT THE SEVENTH SESSION THEREOF

**BEGUN AND HELD AT YANKTON, THE CAPITAL OF SAID
TERRITORY, ON MONDAY, DECEMBER 2d. A. D. 1867.
AND CONCLUDED JANUARY 10th, A. D. 1868.**

PUBLISHED BY AUTHORITY.

YANKTON, DAKOTA TERRITORY,
GEO. W. KINGSBURY, PUBLIC PRINTER, UNION AND DAKOTAIAN OFFICE.
1867:68.

PUBLIC LAWS.

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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 seventh session of the Legislative Assembly of the Territory of Dakota, begun and held at Yankton, the Capital of Said Territory, on the 2d day of December, in the year of our Lord one thousand eight hundred and sixty-seven.

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 20th day of February, in the year of our Lord, one thousand eight hundred and sixty-eight.

S. L. SPINK,
Secretary of Dakota Territory.

UNION AND DAKOTAIAN OFFICE, }
DAKOTA TERRITORY, }
February 20th, 1868.

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.

OF THE

TERRITORY OF DAKOTA.

CODE OF CIVIL PROCEDURE.

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

WHEREAS, it is expedient that the present forms of actions and pleadings in cases at common law should be abolished, that the distinction between legal and equitable remedies should no longer continue, and that an uniform course of proceeding, in all cases, should be established; therefore,

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

GENERAL DEFINITIONS AND DIVISIONS.

- SECTION 1.** Division of remedies.
2. Definition of an action.
 3. Definition of a special proceeding.
 4. Division of actions into civil and criminal.
 5. Definition of a criminal action.
 6. Definition of a civil action.
 7. Civil and criminal remedies not merged in each other.

SECTION 1. Remedies. Remedies in the courts of justice are ^{Remedies} divided into:

1. Actions;
2. Special proceedings.

Definition of
action

Sec. 2. *Definition of action.* An action is an ordinary proceeding in a court of justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offence.

Special proceed-
ing

Sec. 3. *Special proceeding.* Every other remedy is a special proceeding.

Division of
actions

Sec. 4. *Division of actions.* Actions are of two kinds :

1. Civil;
2. Criminal.

Criminal.

Sec. 5. *Criminal action.* A criminal action is prosecuted by the people of the Territory, as a party, against a person charged with a public offence, for the punishment thereof.

Civil

Sec. 6. *Civil action.* Every other is a civil action.

Remedies not
merged.

Sec. 7. *Remedies not merged.* Where the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

PART I.

OF THE COURTS OF JUSTICE AND THEIR JURIS- DICTION.

TITLE I. Of the courts in general.

- II. Of the supreme court.
- III. Of the district courts.
- IV. Of Probate courts.
- V. Of the courts of justices of the peace.

TITLE I.

OF THE COURTS IN GENERAL.

SECTION 8. The several courts of this Territory.

9. Their jurisdiction generally.

Of the courts
in general.

Sec. 8. *The several courts.* The following are courts of justice of this Territory :

1. The supreme court;

2. The district courts ;
3. Probate courts.
4. The courts of justices of the peace.

Sec. 9. *Their jurisdiction generally.* These courts shall continue to exercise the jurisdiction now vested in them respectively, except as otherwise prescribed by this act. Their jurisdiction generally.

TITLE II.

THE SUPREME COURT.

SECTION 10. Its jurisdiction.

11. Power of court.
12. Terms. Preferences of causes.
13. Judgment, how given.
14. Court, where held. Adjournment.

Sec. 10. *Its jurisdiction.* The supreme court shall have exclusive jurisdiction to review upon appeal every actual determination hereafter made at any regular or special terms of the district courts of this Territory, in the following cases and no other : Supreme Court Its jurisdiction.

1. In a judgment in an action commenced therein or brought there from another court, and upon the appeal from such judgment, to review any intermediate order involving the merits, and necessarily affecting the judgment ;

2. In an order affecting a substantial right, made in such action, when such order in effect determines the action, and prevents a judgment from which an appeal might be taken, and when such order grants or refuses a new trial ; but no appeal to the supreme court from an order granting a new trial shall be effectual for any purpose, unless the notice of appeal contain an assent on the part of the appellant that, if the order be affirmed, judgment absolute shall be rendered against the appellant. Upon every appeal from an order granting a new trial, if the supreme court shall determine that no error was committed in granting the new trial, they shall render judgment absolute upon the right of the appellant ; and after the proceedings are remitted to the court from which the appeal was taken, an assessment of damages or other proceedings to render the judgment effectual, may be there had, in cases where such subsequent proceedings are requisite ;

3. In a final order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment, and upon such appeal to review any intermediate order involving the merits and necessarily affecting the order appealed from ;

4. Whenever the decision of any motion heretofore made, or of any motion hereafter to be made in the District Court of this Territory at a special term thereof, involves the constitutionality of any law of this Territory or has been or shall be placed, in the opinion or reason for such decision of the justice making such decision, upon the unconstitutionality of such law, then an appeal shall lie and may be made from such decision or from the order entered, or to be entered upon such decision, to the general term of said supreme court,

Provided, however, That the time for appealing from such decision, or from such order, shall not be extended hereby.

Its powers.

Sec. 11. *Power of the Court.* The supreme court may reverse, affirm, or modify, the judgment or order appealed from, in whole or in part, and as to any or all of the parties ; and its judgment shall be remitted to the court below; to be enforced according to law.

Terms
Preferences of
causes.

Sec. 12. *Terms. Preferences of causes.* The times and places of holding the terms of the supreme court, shall be and remain as is now or as may hereafter be provided by law. The court may, by general rules, provide what causes shall have a preference on the calendar. On a second and each subsequent appeal to the supreme court, or when an appeal has once been dismissed for defect or irregularity, the cause shall be placed upon the calendar as of the time of filing the first appeal ; and whenever in any action or proceeding in which the people of this Territory, or any territorial officer, or any board of territorial officers, is or are sole plaintiff or defendant, an appeal has been or shall be brought from any judgment or order for or against him or them, in any court, such appeal shall have a preference in the supreme court, and may be moved by either party out of the order on the calendar.

Requirement
of hearings.

Sec. 13. *Judgment. Rehearing.* The concurrence of two judges is necessary to pronounce a judgment. If two do not concur, the cause must be reheard. But no more than two re-

hearings shall be had; and if on the second rehearing the two judges do not concur, the judgment shall be affirmed.

Sec. 14. *Court where held. Adjournment.* The supreme court may be held in other buildings than those designated by law as places for holding courts, and at a different place in the same city, from that at which it is appointed to be held. Any one or more of the judges may adjourn the court, with the like effect as if all were present.

Court, where held.
Adjournment.

TITLE III.

OF THE DISTRICT COURTS.

SECTION 15. District court. Terms.

16. Publication of appointments of special terms.
17. Inability of Judge.
18. Business out of court.
19. Rooms, &c.

Sec. 15. *Terms.* The times and places of holding the terms of the district courts, shall be as is now, or may hereafter be provided by law;

District court.
Terms.

Provided, That any judge of a district court, may in his discretion call a special term of the district court in his district, whenever in his opinion the public interests require it.

Sec. 16. *Publication of appointments of special terms.* Every judge calling a special term of the district court shall immediately give notice of the time and place of holding such special term of said court, by publishing a notice of the same in some newspaper printed in his district if any there be, and if not then by publishing the same in some newspaper of general circulation, printed at Yankton, at least once in each week, for three successive weeks before the holding of any court in pursuance thereof. The expense of the publication shall be paid out of the treasury of the county where said court is held.

Special terms

Sec. 17. *Inability of Judge.* In case of the inability, for any cause, of any district judge, to hold a regular or special term of the district court, to which he is assigned by law, any other judge may do so.

Inability of judge.

Sec. 18. *Business out of court.* The judges shall, at all reasonable times, when not engaged in holding court, transact such other business as may be done out of court.

Business out of court.

Rooms &c

Sec. 19. *Rooms, &c.* The commissioners of the several counties shall provide the courts appointed to be held therein with room, attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of their business. If the commissioners neglect, the court may order the sheriff to do so; and the expense incurred by him in carrying the order into effect, when certified by the court, shall be a county charge.

TITLE IV.

OF PROBATE COURTS.

SECTION 20. Jurisdiction and proceedings therein.

Probate courts] jurisdiction

Sec. 20. *Jurisdiction and proceedings therein.* The jurisdiction of probate courts and the manner of proceeding therein, shall be as is now or may hereafter be defined by law.

TITLE V.

OF COURTS OF JUSTICES OF THE PEACE.

Courts of justices of the Peace. Their jurisdiction and practice.

Sec. 21. *Jurisdiction. Practice in justices courts.* The jurisdiction of courts of justices of the peace, as well as the manner of instituting and conducting suits therein, shall remain as provided by chapter second of the laws of 1865 and 1866, passed by the legislative assembly of Dakota Territory.

PART II.

OF CIVIL ACTIONS.

TITLE I. Of their form.

- II. Of the time of commencing them.
- III. Of the parties.
- IV. Of the place of trial.
- V. Of the manner of commencing them.
- VI. Of the pleadings.
- VII. Of the provisional remedies.
- VIII. Of the trial and judgment.
- IX. Of the execution of the judgment.

TITLE X. Of the costs.

XI. Of appeals.

XII. Of the miscellaneous proceedings.

XIII. Actions in particular cases.

XIV. Provisions relating to existing suits.

XV. General provisions.

TITLE I,

FORM OF CIVIL ACTION.

SECTION 22. Distinctions between actions at law and suits in equity abolished.

23. Parties, how designated.

24. Actions on judgments.

25. Feigned issues abolished.

Sec. 22. *Distinction between actions at law and suits in equity abolished.* The distinction between actions at law and suits in equity, and the forms of all such actions and suits, heretofore existing, are abolished; and there shall be in this Territory, hereafter, but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which shall be denominated a civil action.

Distinction between actions at law and suits in equity, abolished.

Sec. 23. *Parties, how designated.* In such action, the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

Parties, how designated.

Sec. 24. *Actions on judgments.* No action shall be brought upon a judgment rendered in any court of this Territory, except a court of a justice of the peace, between the same parties, without leave of the court for good cause shown, on notice to the adverse party; and no action on a judgment rendered by a justice of the peace shall be brought in the same county, within five years after its rendition, except in case of his death, resignation, incapacity to act, or removal from the county, or that the process was not personally served on the defendant, or on all the defendants, or in case of the death of some of the parties, or where the docket or record of such judgment is or shall have been lost or destroyed.

Actions on judgments

Sec. 25. *Feigned issues abolished.* Feigned issues are abolished, and instead thereof, in the cases where the power now exists to order a feigned issue, or when a question of fact,

Feigned issues abolished.

not put in issue by the pleadings, is to be tried by a jury, an order for the trial may be made, stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.

TITLE II.

TIME OF COMMENCING CIVIL ACTIONS.

CHAPTER I. Actions generally.

II. For the recovery of real property.

III. Other than for the recovery of real property.

IV. General provisions.

CHAPTER I.

TIME OF COMMENCING ACTIONS IN GENERAL.

SECTION 26. Repeal of existing limitations.

27. Period of limitations. Answers.

Repeal of exist-
ing limitations.

Sec. 26. *Repeal of existing limitations.* All laws heretofore passed relating to the times of commencing actions are hereby repealed, and the provisions of this title are substituted in their stead. This title shall not extend to actions already commenced, or to cases where the right of action has already accrued, but the statutes now in force shall be applicable to such cases, according to the subject of the action, and without regard to the form.

Answer.

Sec. 27. *Period of limitation, answer, &c.* Civil actions can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, except where, in special cases, a different limitation is prescribed by statute, and in the cases mentioned in section 26. But the objection that the action was not commenced within the time limited, can only be taken by answer.

CHAPTER II.

TIME OF COMMENCING ACTIONS FOR THE RECOVERY OF REAL PROPERTY.

SECTION 23. When the people will not sue.

29. When action cannot be brought by grantee from the Territory.

Sec. 30. When actions by the people or their grantees to be brought within twenty years.

31. Seizin within twenty years, when necessary.
32. Seizin within twenty years when necessary in action or defence founded on title, &c.
33. Action after entry, or right of entry.
34. Possessor, when presumed. Occupation, when deemed under legal title.
35. Occupation under written instrument, &c.
36. Adverse possession under written instrument, &c.
37. Premises actually occupied, held adversely.
38. Adverse possession under claim of title not written.
39. Relation of landlord and tenant, as affecting adverse possession.
40. Descent cast. Effect of.
41. Persons under disability.

Sec. 28. *When the people will not sue.* The people of this Territory will not sue any person for or in respect to any real property, or the issues or profits thereof, by reason of the right or title of the people to the same, unless : When the people will not sue,

1. Such right or title shall have accrued within forty years before any action or other proceeding for the same shall be commenced; or unless,
2. The people, or those from whom they claim, shall have received the rents and profits of such real property, or of some part thereof, within the space of forty years.

Sec. 29. *When action cannot be brought by grantee from the Territory.* No action shall be brought for, or in respect to real property, by any person claiming by virtue of letters patent or grants from the people of this Territory, unless the same might have been commenced by the people, as herein specified, in case such patent or grant had not been issued or made. When action cannot be brought by grantee from the Territory.

Sec. 30. *When actions by the people or their grantees to be brought within twenty years.* When letters patent or grants of real property shall have been issued or made by the people of this Territory, and the same shall be declared void by the determination of a competent court, rendered upon an allegation of a fraudulent suggestion, or concealment, or forfeiture, or mistake, or ignorance of a material fact, or wrongful detaining, or defective title, in such case an action for the recovery of the premises so conveyed may be brought either by the people What actions by the people or their grantees to be brought within twenty years.

of this Territory, or by any subsequent patentee or grantee of the same premises, his heirs or assigns, within twenty years after such determination was made, but not after that period.

Seizin within
twenty years,
when necessary

Sec. 31. *Seizin within twenty years, when necessary.* No action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises in question within twenty years before the commencement of such action.

in action or de-
fence founded on
title.

Sec. 32. *Seizin within twenty years, when necessary in action or defence founded on title.* No cause of action or defence to an action founded upon the title to real property, or to rents or services out of the same, shall be effectual, unless it appear that the person prosecuting the action or making the defence, or under whose title the action is prosecuted or the defence is made, or the ancestor, predecessor or grantor of such person was seized or possessed of the premises in question, within twenty years before the committing of the act in respect to which such action is prosecuted or defence made.

Action after
entry or right
of entry.

Sec. 33. *Action after entry or right of entry.* No entry upon real estate shall be deemed sufficient or valid as a claim, unless an action be commenced thereupon within one year after the making of such entry, and within twenty years from the time when the right to make such entry descended or accrued.

Possession pre-
sumed,
occupation,
when deemed
under legal title

Sec. 34. *Possession presumed. Occupation, when deemed under legal title.* In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time required by law; and the occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that such premises have been held and possessed adversely to such legal title for twenty years before the commencement of such action.

Occupation
under written
instrument

Sec. 35. *Occupation under written instrument.* Whenever it shall appear that the occupant, or those under whom he claims, entered into the possession of premises under claim of title, exclusive of any other right, founding such claim upon a written instrument, as being a conveyance of the premises in question,

or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree or judgment, or of some part of such premises, under such claim, for twenty years, the premises so included shall be deemed to have been held adversely; except that where the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

Sec. 36. *Adverse possession.* For the purpose of constituting an adverse possession, by any person claiming a title founded upon a written instrument or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases:

1. Where it has been usually cultivated or improved;
2. Where it has been protected by a substantial inclosure;
3. Where, although not inclosed, it has been used for the supply of fuel or of fencing timber, for the purposes of husbandry, or the ordinary use of the occupant;

4. Where a known farm or a single lot has been partly improved, the portion of such farm or lot that may have been left not cleared or not inclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

Sec. 37. *Premises actually occupied held adversely.* Where it shall appear that there has been an actual continued occupation of premises, under a claim of title exclusive of any other right, but not founded upon a written instrument or a judgment or decree, the premises so actually occupied, and no other, shall be deemed to have been held adversely.

Sec. 38. *Adverse possession under claim not written.* For the purpose of constituting an adverse possession, by a person claiming title not founded upon a written instrument or judgment or decree, land shall be deemed to have been possessed and occupied in the following cases only:

1. Where it has been protected by a substantial inclosure;
2. Where it has been usually cultivated or improved.

Sec. 39. *Relation of landlord and tenant.* Whenever the relation of landlord and tenant shall have existed between any

persons, the possession of the tenant shall be deemed the possession of the landlord, until the expiration of twenty years from the termination of the tenancy; or, where there has been no written lease, until the expiration of twenty years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions shall not be made after the periods herein limited.

Descent cast.

Sec. 40. *Descent cast.* The right of a person to the possession of any real property shall not be impaired or affected by a descent being cast in consequence of the death of a person in possession of such property.

Persons under disabilities.

Sec. 41. *Persons under disabilities.* If a person entitled to commence any action for the recovery of real property, or to make an entry or defence founded on the title to real property, or to rents or services out of the same, be, at the time such title shall first descend or accrue, either :

1. Within the age of twenty-one years; or,
2. Insane; or,

3. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offence for a term less than for life; or,

4. A married woman; the time during which such disability shall continue shall not be deemed any portion of the time in this chapter limited for the commencement of such action, or the making of such entry or defence; but such action may be commenced, or entry or defence made, after the period of twenty years, and within ten years after the disability shall cease, or after the death of the person entitled who shall die under such disability; but such action shall not be commenced or entry or defence made, after that period.

CHAPTER III.

TIME OF COMMENCING ACTIONS OTHER THAN FOR THE RECOVERY OF REAL PROPERTY.

SECTION 42. Limitations prescribed.

43. Twenty years.
44. Six years.
45. Three years.
46. Two years.
47. One year.

SECTION 48. Action upon a current account.

49. Action for penalties.

50. Action for other relief.

51. Action by the people.

Sec. 42. *Periods of limitation prescribed.* The periods Limitations prescribed. prescribed in section 27 for the commencement of actions other than for the recovery of real property shall be as follows :

Sec. 43. *Twenty years.* Within twenty years: Twenty years,

1. An action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States ;

2. An action upon a sealed instrument.

Sec. 44. *Six years.* Within six years: Six years

1. An action upon a contract, obligation or liability, express or implied, excepting those mentioned in section 43 ;

2. An action upon a liability created by statute, other than a penalty or forfeiture ;

3. An action for trespass upon real property ;

4. An action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property ;

5. An action for criminal conversation, or for any other injury to the person or rights of another, not arising on contract, and not hereinafter enumerated ;

6. An action for relief on the ground of fraud, in cases which heretofore were solely cognizable by the court of chancery, the cause of action in such case not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud.

Sec. 45. *Three years.* Within three years: Three years.

1. An action against a sheriff, coroner or constable, upon a liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution. But this section shall not apply to an action for an escape :

2. An action upon a statute, for a penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the people of this Territory, except where the statute imposing it prescribes a different limitation.

Two years.

Sec. 46. *Two years.* Within two years :

1. An action for libel, slander, assault, battery, or false imprisonment.

2. An action upon a statute, for a forfeiture or penalty to the people of this Territory.

One year.

Sec. 47. *One year.* Within one year :

1. An action against a sheriff or other officer, for the escape of a prisoner arrested or imprisoned on civil process.

Action upon
current account

Sec. 48. *Action upon a current account.* In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

For penalties &c,

Sec. 49. *Actions for penalties &c.* An action upon a statute, for a penalty or forfeiture given in whole or in part to any person who will prosecute for the same, must be commenced within one year after the commission of the offence ; and if the action be not commenced within the year by a private party, it may be commenced within two years thereafter in behalf of the people of this Territory, by the district attorney of the county where the offence was committed.

For relief.

Sec. 50. *Actions for other relief.* An action for relief not hereinbefore provided for must be commenced within ten years after the cause of action shall have accrued.

Actions by the
people.

Sec. 51. *Actions by the people.* The limitations prescribed in this chapter shall apply to actions brought in the name of the people of this Territory, or for their benefit, in the same manner as to actions by private parties.

CHAPTER IV.

GENERAL PROVISIONS AS TO THE TIME OF COMMENCING ACTIONS.

SECTION 52. When action deemed commenced.

53. Exception, defendant out of Territory.

54. Exception as to person under disabilities.

55. Death of person entitled before limitation expires.

56. Suits by aliens.

57. Where judgment reversed.

58. Stay of action by injunction, &c.

SECTION 59. Disability must exist when right accrued.

60. Two or more disabilities.
61. This title when not to apply.
62. The like.
63. New promise must be in writing.

Sec. 52. *When action deemed commenced.* An action is commenced as to each defendant when the summons is served on him, or on a co-defendant who is a joint contractor or otherwise united in interest with him. An attempt to commence an action is deemed equivalent to the commencement thereof, within the meaning of this title, when the summons is delivered, with the intent that it shall be actually served, to the sheriff or other officer of the county in which the defendants, or one of them, usually or last resided; as, if a corporation be defendant, to the sheriff or other officer of the county in which such corporation was established by law, or where its general business was transacted, or where it kept an office for the transaction of business. But such an attempt must be followed by the first publication of the summons, or the service thereof, within sixty days.

When action deemed commenced.

Sec. 53. *Exception, defendant out of Territory.* If, when the cause of action shall accrue against any person, he shall be out of the Territory, such action may be commenced within the terms herein respectively limited, after the return of such person into this Territory; and if, after such cause of action shall have accrued, such person shall depart from and reside out of this Territory, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action.

Exception, defendant out of Territory.

Sec. 54. *Exceptions, persons under disabilities.* If a person entitled to bring an action mentioned in the last chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued, either;

Exception, persons under disabilities.

1. Within the age of twenty-one years; or,
2. Insane; or,
3. Imprisoned on a criminal charge: or, in execution under the sentence of a criminal court, for a term less than his natural life; or,
4. A married woman;

The time of such disability is not a part of the time limited for the commencement of the action; except that the period within which the action must be brought cannot be extended more than five years by any such disability, except infancy; nor can it be extended in any case longer than one year after the disability ceases.

Death of persons entitled before limitation expires.

Sec. 55. *Death of person entitled before limitation expires.* If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives, after the expiration of that time, and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survive an action may be commenced against his executors or administrators after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

Actions by aliens.

Sec. 56. *Actions by aliens.* When a person shall be an alien subject, or citizen of a country at war with the United States, the time of the continuance of the war shall not be part of the period limited for the commencement of the action.

Where judgment reversed

Sec. 57. *Where judgment reversed.* If an action shall be commenced within the time prescribed therefor, and a judgment therein be reversed on appeal, the plaintiff, or, if he die and cause of action survive, his heirs or representatives may commence a new action within one year after the reversal.

Time of stay by injunction.

Sec. 58. *Time of stay by injunction, &c.* When the commencement of an action shall be stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition shall not be part of the time limited for the commencement of the action.

Disability must exist when right of action accrued.

Sec. 59. *Disability must exist when right of action accrued.* No person shall avail himself of a disability, unless it existed when his right of action accrued.

Where several disabilities, all must be removed.

Sec. 60. *Where several disabilities, all must be removed.* When two or more disabilities shall co-exist at the time the right of action accrues, the limitation shall not attach until they all be removed.

Sec. 61. *This title not applicable to bills, &c., of corporations, or to bank notes.* This title shall not affect actions to enforce the payment of bills, notes, or other evidences of debt, issued by moneyed corporations, or issued or put in circulation as money. This title not applicable to bank notes &c.

Sec. 62. *Nor to actions against directors, &c., of moneyed corporations or banking associations. Limitation in such cases prescribed.* This title shall not affect actions against directors or stockholders of a moneyed corporation, or banking association, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within six years after the discovery, by the aggrieved party, of the facts upon which the penalty or forfeiture attached, or the liability was created. Nor to actions against directors, &c.

Sec. 63. *Acknowledgment or new promise must be made in writing.* No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this title, unless the same be contained in some writing signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest. Acknowledgment to be in writing

TITLE III.

PARTIES TO CIVIL ACTIONS.

- SECTION 64.** Party in interest to sue. Action by grantee of land held adversely.
65. Assignment of thing in action.
66. Actions by executor, trustee, &c.
67. Actions by and against married women.
68. Infants, actions by and against.
69. Guardian, how appointed.
70. Who may be plaintiffs.
71. Who may be defendants.
72. One or more may sue or defend for all.
73. One action against the different parties to bills and notes.
74. Action when not to abate.
75. Court to decide controversy, &c. Interpleading.

Action to be by
Party in interest
Action by
grantee of land
held adversely

Sec. 64. *Action to be by party in interest. Action by grantee of land held adversely.* Every action must be prosecuted in the name of the real party in interest, except as otherwise provided in section 66; but this section shall not be deemed to authorize the assignment of a thing in action not arising out of contract. But an action may be maintained by a grantee of land in the name of a grantor, when the grant or grants are void by reason of the actual possession of a person claiming under a title adverse to that of the grantor at the time of the delivery of the grant, and the plaintiff shall be allowed to prove the facts to bring the case within this provision.

Assignment of
thing in action.

Sec. 65. *Assignment of thing in action.* In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defence existing at the time of, or before notice of, the assignment; but this section shall not apply to a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration, before due.

Action by
executor,
trustee, &c.

Sec. 66. *Action by executor, trustee, &c.* An executor or administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue, without joining with him the person for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom or in whose name a contract is made for the benefit of another.

Action by and
against a
married woman

Sec. 67. *Action by and against a married woman.* When a married woman is a party, her husband must be joined with her, except that,

1. When the action concerns her separate property, she may sue alone;
2. When the action is between herself and her husband, she may sue or be sued alone. And in no case need she prosecute or defend by a guardian or next friend.

Infant to ap-
pear by guardian

Sec. 68. *Infant to appear by guardian.* When an infant is a party, he must appear by guardian, who may be appointed by the court in which the action is prosecuted, or by a judge thereof, or a county judge.

Appointment
of guardian.

Sec. 69. *Appointment of guardian.* The guardian shall be appointed as follows:

1. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years ; or if under that age, upon the application of his general or testamentary guardian, if he has any, or of a relative or friend of the infant. If made by a relative or friend of the infant, notice thereof must first be given to such guardian, if he has one; if he has none, then to the person with whom such infant resides.

2. When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply ^{Appointment of guardian} within twenty days after the service of summons. If he be under the age of fourteen, or neglects so to apply, then upon the application of any other party to the action, or of a relative or friend of the infant, after notice of such application being first given to the general or testamentary guardian of such infant, if he has one within this Territory; if he has none, then to the infant himself, if over fourteen years of age and within the Territory; or if under that age, and within the Territory to the person with whom such infant resides. And in actions for the partition of real property, or for the foreclosure of a mortgage or other instrument, when an infant defendant resides out of this Territory, the plaintiff may apply to the court in which the action is pending, at any special term thereof, and will be entitled to an order designating some suitable person to be the guardian for the infant defendant, for the purposes of the action, unless the infant defendant, or some one in his behalf, within a number of days after the service of a copy of the order, which number of days shall be in the said order specified, shall procure to be appointed a guardian for the said infant; and the court shall give special directions in the order for the manner of the service thereof, which may be upon the infant himself, or by service upon any relation or person with whom the infant resides, and either by mail or personally upon the person so served. And in case an infant defendant, having an interest in the event of the action, shall reside in any state with which there shall not be a regular communication by mail, on such fact satisfactorily appearing to the court, the court may appoint a guardian *ad litem*, for such absent infant party, for the purpose of protecting the right of such infant in said action, and on such guardian *ad litem*, process, pleadings and notices

in the action may be served, in the like manner as upon a party residing in this Territory.

Plaintiffs

Sec. 70. *Who to be plaintiffs.* All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except as otherwise provided in this title.

Defendants

Sec. 71. *Who to be defendant.* Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved therein.

Parties to be joined, &c.

Sec. 72. *Parties to be joined, &c.* Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest of many persons, or when the parties are very numerous and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole.

Parties to bills, notes, &c.

Sec. 73. *Parties to bills and notes, &c.* Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may all, or any of them, be included in the same action, at the option of the plaintiff.

Action when not to abate

Sec. 74. *Action when not to abate.* No action shall abate by the death, marriage, or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of death, marriage, or other disability of a party, the court, on motion, at any time within one year thereafter, or afterwards on a supplemental complaint, may allow the action to be continued by or against his representatives or successor in interest. In case of any other transfer of interest, the action shall be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action. After a verdict shall be rendered in any action for a wrong, such action shall not abate by the death of any party, but the case shall proceed thereafter in the same manner as in cases where the cause of

action now survives by law. At any time after the death, marriage, or other disability of the party plaintiff, the court in which an action is pending, upon notice to such persons as it may direct, and upon application of any person aggrieved, may, in its discretion, order that the action be deemed abated, unless the same be continued by the proper parties, within a time to be fixed by the court, not less than six months nor exceeding one year from the granting of the order.

Sec. 75. *Court may determine controversy. &c. Interpleader.*
 The court may determine any controversy between the parties before it, when it can be done without prejudice to the rights of others, or by saving their rights, but when a complete determination of the controversy cannot be had without the presence of other parties, the court must cause them to be brought in. And when, in any action for the recovery of real or personal property, a person not a party to the action, but having an interest in the subject thereof, makes application to the court to be made a party, it may order him to be brought in by the proper amendment. A defendant against whom an action is pending upon a contract, or for specific, real, or personal property, may at any time before answer upon affidavit that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount of the debt, or delivering the property or its value to such person as the court may direct; and the court may in its discretion, make the order.

Courts may determine controversy &c.

TITLE IV.

OF THE PLACE OF TRIAL OF CIVIL ACTIONS.

SECTION 76. Actions to be tried where subject matter situated.

77. Actions to be tried where cause of action arose.

78. Actions to be tried where the parties reside.

79. Changing place of trial.

tion to be
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subject matter
sitated

Sec. 76. *Actions to be tried where subject matter situated.*

Actions for the following causes must be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial, in the cases provided by statute: 1, For the recovery of real property, or of an estate or interest therein, or for the determination in any form of such right or interest, and for injuries to real property; 2, For the partition of real property; 3, For the fore-closure of a mortgage of real property; 4, For the recovery of personal property distrained for any cause.

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Sec. 77. *Actions to be tried where cause of action arose.*

Actions for the following causes must be tried in the county where the cause, or some part thereof, arose, subject to the like power of the court to change the place of trial, in the cases provided by statute: 1, For the recovery of a penalty or forfeiture imposed by statute, except that, when it is imposed for an offence committed on a lake, or river, or other stream of water situated in two or more counties the action may be brought in any county bordering on such lake, river, or stream, and opposite to the place where the offence was committed; 2, Against a public officer, or person specially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command or his aid, shall do anything touching the duties of such officer.

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ties reside

Sec. 78. *Action to be tried where parties reside.* In all other cases the action shall be tried in the county in which the defendants or any of them, shall reside at the commencement of the action, or may be summoned; or, if none of the parties shall reside in the Territory, the same may be tried in any county which the plaintiff shall designate in his complaint, subject, however, to the power of the court to change the place of trial in the cases provided by statute.

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Sec. 79. *Change of place of trial.* If the county designated for that purpose in the complaint be not the proper county, the action may, notwithstanding, be tried therein, unless the defendant, before the time for answering expire, demand in writing that the trial be had in the proper county; and the place of trial be thereupon changed by consent of parties, or by order of the court, as provided in this section. The court may change

the place of trial in the following cases :

1, When the county designated for that purpose in the complaint is not the proper county.

2, When there is reason to believe that an impartial trial cannot be had therein :

3, When the convenience of witnesses and the ends of justice would be promoted by the change. When the place of trial is changed all other proceedings shall be had in the county to which the place of trial is changed, unless otherwise provided by the consent of the parties, in writing, duly filed, or order of the court : and the papers shall be filed or transferred accordingly.

TITLE V.

MANNER OF COMMENCING CIVIL ACTIONS.

SECTION 80 Actions how commenced.

81. Summons, requisites of.
82. Notice to be inserted in summons.
83. Complaint need not be served with summons.
84. Defendant unreasonably defending.
85. Notice of pendants.
86. Service of summons.
87. Return of summons.
88. Publication of summons.
89. Proceedings when part only of defendants served.
90. When service complete.
91. Proof of service.
92. When jurisdiction of action acquired.

Sec. 80. *Actions how commenced.* Civil actions in the courts of this Territory shall be commenced by the service of a summons. Actions how commenced

Sec. 81. *Summons, requisites of.* The summons shall be subscribed by the plaintiff or his attorney, and directed to the defendant, and shall require him to answer the complaint, and serve a copy of his answer on the person whose name is subscribed to the summons, at a place within the Territory, to be therein specified, in which there is a post-office, within thirty days after the service of the summons, exclusive of the day of service. Summons, requisites of

Notice to be inserted in summons

Sec. 82. *Notice is to be inserted in summons.* The plaintiff shall also insert in the summons a notice, in substance as follows:

1, In an action arising on contract, for the recovery of money only, that he will take judgment for a sum specified therein, if the defendant fail to answer the complaint in thirty days after the service of the summons.

2, In other actions, that if the defendant shall fail to answer the complaint within thirty days after the service of the summons, the plaintiff will apply to the court for the relief demanded in the complaint.

Complaint, service of

Sec. 83. *Service of complaint.* A copy of the complaint need not be served with the summons. In such case, the summons must state where the complaint is or will be filed; and if the defendant, within thirty days thereafter, cause notice of appearance to be given, and, in person or by attorney, demand in writing, a copy of the complaint, specifying a place within the Territory where it may be served, a copy thereof must, within twenty days thereafter be served accordingly; and after such service, the defendant has thirty days to answer; but only one copy need be served on the same attorney.

Notice of no personal claim

Sec. 84. *Notice of no personal claim.* In the case of a defendant against whom no personal claim is made, the plaintiff may deliver to such defendant, with the summons, a notice subscribed by the plaintiff or his attorney, setting forth the general object of the action, a brief description of the property affected by it, if it affects specific, real or personal property, and that no personal claim is made against such defendant, in which case no copy of the complaint need be served on such defendant, unless within the time for answering he shall, in writing, demand the same. If a defendant on whom such notice is served unreasonably defend the action, he shall pay costs to the plaintiff.

Notice of lis pendens.

Sec. 85. *Notice of lis pendens.* In an action affecting the title to real property the plaintiff, at the time of filing the complaint, or at any other time afterward, or whenever a warrant of attachment, under chapter four of title seven, part second of this code, shall be issued, or at any time afterwards, the plaintiff, or a defendant when he sets up an affirmative cause

of action in his answer and demand a substantive relief, at the time of filing his answer, or at any time afterwards, if the same be intended to affect real estate, may file with the register of deeds of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action, and the description of the property in that county affected thereby; and if the action be for the foreclosure of a mortgage, such notice must be filed twenty days before judgment, and must contain the date of the mortgage, the parties thereto, and the time and place of recording the same. From the time of filing only shall the pendency of the action be constructive notice to a purchaser or incumbrance of the property affected thereby; and every person whose conveyance or incumbrance is subsequently executed or subsequently recorded, shall be deemed a subsequent purchaser or incumbrance, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were made a party to the action. For the purpose of this section an action shall be deemed to be pending from the time of filing such notice:

Provided, however, That such notice shall be of no avail unless it shall be followed by the first publication of the summons on an order therefor, or by the personal service thereof on a defendant within sixty days after such filing. And the court in which the said action was commenced may, in its discretion, at any time after the action shall be settled, discontinued or abated, as is provided in section number seventy-four, on application of any person aggrieved, and on good cause shown, and on such notice as shall be directed or approved by the court, order the notice authorized by this section to be cancelled of record by the register of deeds of any county in whose office the same may have been filed or recorded; and such cancellation shall be made by an indorsement to that effect on the margin of the record, which shall refer to the order, and for which the register of deeds shall be entitled to a fee of twenty-five cents.

Sec. 86. *Service of summons.* The summons shall be served by delivering a copy thereof as follows:

Service of
summons

1. If the suit be against a corporation, to the president or

other head of the corporation, secretary, cashier, treasurer, a director, or managing agent thereof; but such service can be made in respect to a foreign corporation only when it has property within this Territory, or the cause of action arose therein, or where such service shall be made within this Territory personally upon the president, treasurer or secretary thereof;

2. If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother, or guardian; or if there be none within the Territory, then to any person having the care and control of such minor, or with whom he shall reside, or in whose service he shall be employed;

3. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs in consequence of habitual drunkenness, and for whom a committee has been appointed, to such committee and to the defendant personally;

4. In all other cases, to the defendant personally.

Summons,
return of

Sec. 87. *Summons, by whom served, and return of same.* The summons may be served by the sheriff of the county where the defendant may be found, or by any other person not a party to the action. The service shall be made, and the summons returned with proof of the service to the person whose name is subscribed thereto, with all reasonable diligence. The person subscribing the summons may, at his option, by an endorsement on the summons, fix a time for the service thereof, and the service shall then be made accordingly.

Service by
publication

Sec. 88. *Service by publication.* Where the person on whom the service of the summons is to be made cannot, after due diligence, be found within the Territory, and that fact appears by affidavit to the satisfaction of the court or a judge thereof, and it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a proper party to an action relating to real property in this Territory, such court or judge may grant an order that the service be made by the publication of a summons in either of the following cases:

1. Where the defendant is a foreign corporation, has property within the Territory, or the cause of action arose therein;

2. Where the defendant, being a resident of this Territory, has departed therefrom, with intent to defraud his creditors,

or to avoid the service of a summons, or keeps himself concealed therein with the like intent ;

3. Where he is not a resident of this Territory, but has property therein, and the court has jurisdiction of the subject of the action ;

4. Where the subject of the action is real or personal property in this Territory, and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partly in excluding the defendant from any interest or lien therein ;

5. Where the action is for divorce, in the cases prescribed by law. The order must direct the publication to be made in some newspaper to be designated as most likely to give notice to the person to be served, and for such lengths of time as may be deemed reasonable, not less than once a week for six weeks. In case of publication, the court or judge must also direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the person to be served, at his place of residence, unless it appear that such residence is neither known to the party making the application, nor can with reasonable diligence be ascertained by him. When publication is ordered, personal service of a copy of the summons and complaint, out of the Territory, is equivalent to publication and deposit in the post office. The defendant against whom publication is ordered, or his representatives, on application and sufficient cause shown at any time before judgment, must be allowed to defend the action ; and, except in an action for divorce, the defendant against whom publication is ordered or his representatives, may, in like manner, upon good cause shown, be allowed to defend after judgment, or at any time within one year after notice thereof, and within seven years after its rendition, on such terms as may be just ; and if the defence be successful, and the judgment or any part thereof have been collected, or otherwise enforced, such restitution may thereupon be compelled as the court directs ; but the title to property sold under such judgment to a purchaser in good faith shall not be thereby affected. And in all cases where publication is made, the complaint must be first filed, and the summons, as published, must state the time and place of such filing.

Service of
publication.

In actions for the foreclosure of mortgages on real estate, already instituted, or hereafter to be instituted, if any party or parties having any interest in or lien upon such mortgaged premises are unknown to the plaintiff, and the residence of such party or parties cannot, with reasonable diligence, be ascertained by him, and such fact shall be made to appear, by affidavit, to the court, or to a justice thereof, such court or justice may grant an order that the summons be served on such unknown party or parties by publishing the same for six weeks, once in each week successively, in the official paper of the Territory, and in a newspaper printed in the county where the premises are situated, provided a paper be published in such county, and if no paper be published in the county, then in a paper published nearest the county seat of such county in the Territory, which publication shall be equivalent to a personal service on such unknown party or parties.

Joint and
several debtors

Sec. 89. *Joint and several debtors.* Where the action is against two or more defendants, and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows:

1. If the action be against defendants jointly indebted upon contract, he may proceed against the defendant served, unless the court otherwise direct; and if he recover judgment, it may be entered against all the defendants thus jointly indebted so far only as that it may be enforced against the joint property of all and the separate property of the defendants served, and if they are subject to arrest, against the persons of the defendants served; or,

2. If the action be against defendants severally liable, he may proceed against the defendants served, in the same manner as if they were the only defendants.

3. If all the defendants have been served, judgment may be taken against any or either of them severally, when the plaintiff would be entitled to judgment against such defendant or defendants, if the action had been against them, or any of them alone.

4. If the name of one or more parties shall, for any cause, have been omitted in any action in which judgment shall have passed against the defendants named in the summons, and such omission shall not have been pleaded in such action, the plain-

tiff; in case the judgment therein shall remain unsatisfied, may by action recover of such partner separately, upon proving his joint liability, notwithstanding he may not have been named in the original action; but the plaintiff shall have satisfaction of only one judgment rendered for the same cause of action.

When service complete.

Sec. 90. *When service complete.* In the cases mentioned in section 88, the service of the summons shall be deemed complete at the expiration of the time prescribed by the order for publication.

Proof of service

Sec. 91. *Proof of service.* Proof of the service of the summons, and of the complaint or notice, if any, accompanying the same, must be as follows:

- 1, If served by the sheriff, his certificate thereof; or,
- 2, If by any other person, his affidavit thereof; or,
- 3, In case of publication, the affidavit of the printer, or his foreman, or principal clerk, showing the same, and an affidavit of a deposit of a copy of the summons in the post-office, as required by law, if the same shall have been deposited; or,

4, The written admission of the defendant. In case of service otherwise than by publication, the certificate, affidavit or admission must state the time and place of the service.

Jurisdiction. Appearance

Sec. 92. *Jurisdiction. Appearance.* From the time of the service of the summons in a civil action, or the allowance of a provisional remedy, the court is deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of a defendant is equivalent to personal service of the summons upon him.

TITLE VI.

CHAPTER I. The complaint.

- II. The demurrer.
- III. The answer.
- IV. The reply.
- V. General rules of pleading.
- VI. Mistakes and amendments.

CHAPTER I.

THE COMPLAINT.

SECTION 93. Forms of pleading.

94. Complaint.

95. Complaint, what to contain.

Forms of
pleadings

Sec. 93. *Forms of pleading.* All forms of pleading heretofore existing are abolished; and hereafter, the forms of pleading in civil actions in courts of record, and the rules by which the sufficiency of the pleadings is to be determined, are those prescribed by this act.

Complaint

Sec. 94. *Complaint.* The first pleading on the part of the plaintiff is the complaint.

What to
contain

Sec. 95. *Complaint, what to contain.* The complaint shall contain :

1, The title of the cause, specifying the name of the court in which the action is brought, the name of county in which the plaintiff desires the trial to be had, and the names of the parties to the action, plaintiff and defendant.

2, A plain and concise statement of the facts constituting a cause of action, without unnecessary repetition.

3, A demand of the relief to which the plaintiff supposes himself entitled. If the recovery of money be demanded, the amount thereof shall be stated.

CHAPTER II.

THE DEMURRER.

SECTION 96. Defendant to demur or answer.

97. When the defendant may demur.

98. Demurrer, what to specify.

99. How to proceed if complaint be amended.

100. Objection not appearing on complaint.

101. Objection, when waived.

Defendant to
demur or
answer

Sec. 96. *Defendant to demur or answer.* The only pleading on the part of defendant is either a demurrer or an answer. It must be served within thirty days after the service of the copy of the complaint.

Sec. 97. *When defendant may demur.* The defendant may demur When defendant may demur to the complaint when it shall appear upon the face thereof, either—

1, That the court has no jurisdiction of the person of the defendant, or the subject of the action; or,

2, That the plaintiff has not legal capacity to sue; or,

3, That there is another action pending between the same parties, for the same cause; or,

4, That there is a defect of parties, plaintiff or defendant; or,

5, That several causes of action have been improperly united; or,

6, That the complaint does not state facts sufficient to constitute a cause of action.

Sec. 98. *Demurrer must specify grounds of objection.* The demurrer shall distinctly specify the grounds of objection to the complaint. Unless it do so, it may be disregarded. It may be taken to the whole complaint, or to any of the alleged causes of action stated therein. Demurrer to specify grounds of objection

Sec. 99. *How to proceed if complaint be amended.* If the complaint be amended, a copy thereof must be served on the defendant, who must answer it within thirty days, or the plaintiff, upon filing with the clerk on due proof of the service, and of the defendant's omission, may proceed to obtain judgment, as provided by section 199, but where an application to the court for judgment is necessary, ten day's notice thereof must be given to the defendant. How to proceed if complaint be amended.

Sec. 100. *Objection not appearing on complaint.* When any of the matters enumerated in section 97 do not appear upon the face of the complaint, the objection may be taken by answer. Objection not appearing on complaint.

Sec. 101. *Objection, when deemed waived.* If no such objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action. Objection when waived

CHAPTER III.

THE ANSWER.

SECTION 102. Answer, what to contain.

103. Counter-claim. Several defences.

104. Demurrer and answer, when allowed.

105. Sham and irrelevant defences to be stricken out.

Answer, what
to contain.

Sec. 102. *Answer, what to contain.* The answer of the defendant must contain—

1, A general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief :

2, A statement of any new matter constituting a defence or counter claim, in ordinary and concise language, without repetition.

Counter claim;

Sec. 103. *Counter-claim. Several defences.* The counter-claim mentioned in the last section must be one existing in favor of a defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action :

1, A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action ;

2, In an action arising on contract, any other cause of action arising also on contract, existing at the commencement of the action. The defendant may set forth by answer as many defences and counter-claims as he may have, whether they be such as have been heretofore denominated legal or equitable, or both. They must each be separately stated, and refer to the causes of action which they are intended to answer, in such manner that they may be intelligibly distinguished.

Demurrer and
answer, when
allowed

Sec. 104. *Demurrer and answer.* The defendant may demur to one or more of several causes of action stated in the complaint, and answer the residue.

Sham and
irrelevant
defences

Sec. 105. *Sham and irrelevant defences.* Sham and irrelevant answers and defences may be stricken out on motion, and upon such terms as the court may in their discretion impose.

CHAPTER IV.

THE REPLY.

SECTION 106. Reply. Demurrer to answer.

107. Motion for judgment upon answer.

108. Demurrer to reply.

Reply. Demurrer
to answer

Sec. 106. *Reply. Demurrer to answer.* When the answer contains new matter constituting a counter-claim, the plaintiff may,

within thirty days; reply to such new matter, denying generally or specifically each allegation controverted by him, or any knowledge or information thereof sufficient to form a belief; and he may allege, in ordinary and concise language, without repetition, any new matter not inconsistent with the complaint, constituting a defence to such new matter in the answer; and the plaintiff may in all cases demur to an answer containing new matter, where, upon its face, it does not constitute a counter-claim or defence, and the plaintiff may demur to one or more of such defences or counter-claims, and reply to the residue of the counter-claims. And in other cases, when an answer contains new matter constituting a defence by way of avoidance, the court may, in its discretion, on the defendant's motion, require a reply to such new matter; and in that case, the reply shall be subject to the same rules as a reply to a counter-claim.

Sec. 107. *Motion for judgment on answer.* If the answer contain a statement of new matter constituting a counter-claim, and the plaintiff fail to reply or demur thereto within the time prescribed by law, the defendant may move, on a notice of not less than ten days, for such judgment as he is entitled to upon such statement, and if the case require it, a writ of inquiry of damages may be issued. Motion for judgment on answer

Sec. 108. *Demurrer to reply.* If a reply of the plaintiff to any defence set up by the answer of the defendant be insufficient, the defendant may demur thereto, and shall state the grounds thereof. Demurrer on reply

CHAPTER V.

GENERAL RULES OF PLEADING.

- SECTION 100.** Pleadings to be subscribed and verified.
110. Pleadings, how verified.
 111. How to state an account in pleading.
 112. Pleadings to be liberally construed.
 113. Irrelevant or redundant matter to be stricken out, and indefinite matter made more definite.
 114. Judgment, how to be pleaded.
 115. Conditions precedent, how to be pleaded.
 116. Private statutes, how to be pleaded.
 117. Libel and slander, how stated in complaint.
 118. Answer in such cases.
 119. Answer in actions to recover property distrained for damage.
 120. What causes of action may be joined.
 121. Allegation not denied, when to be deemed true.

Pleadings to be subscribed and verified **Sec. 109. *Pleadings to be subscribed and verified.*** Every pleading in a court of record must be subscribed by the party or his attorney; and when any pleading is verified, every subsequent pleading, except a demurrer, must be verified also.

Pleadings, how verified **Sec. 110. *Pleadings, how verified.*** The verification must be to the effect that the same is true to the knowledge of the person making it, except as to those matters stated on information and belief, and, as to those matters, he believes it to be true, and must be by the affidavit of the party, or if there be several parties united in interest, and pleading together, by one at least of such parties acquainted with the facts, if such party be within the county where the attorney resides, and capable of making the affidavit. The affidavit may also be made by the agent or attorney, if the action or defence be founded upon a written instrument for the payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegations of the pleading be within the personal knowledge of the agent or attorney. When the pleading is verified by any other person than the party, he shall set forth in the affidavit his knowledge, or the grounds of his belief on the subject, and the reasons why it is not made by the party. When a corporation is a party, the verification may be made by any officer thereof; and when the Territory, or any officer thereof in its behalf, is a party, the verification may be made by any person acquainted with the facts. The verification may be omitted when an admission of the truth of the allegation might subject the party to prosecution for felony. And no pleading can be used in a criminal prosecution against the party, as proof of a fact admitted or alleged in such pleading.

Items of account Particulars **Sec. 111. *Items of account. Particulars.*** It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged; but he shall deliver to the adverse party, within ten days after the demand thereof in writing, a copy of the account, which, if the pleading is verified, must be verified by his own oath, or that of his agent or attorney, if within the personal knowledge of such agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof. The court, or a judge thereof, may order a "further account," when the one delivered is defective; and the court may in all cases order a bill of particulars of the claim of either party to be furnished.

Pleadings, how construed **Sec. 112. *Pleadings, how construed.*** In the construction of a pleading for the purpose of determining its effect, its allegation

shall be liberally construed, with a view of substantial justice between the parties.

Sec. 113. *Irrelevant or redundant. Indefinite or uncertain.* If irrelevant or redundant matter be inserted in a pleading, it may be stricken out, on motion of any person aggrieved thereby. And when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defence is not apparent, the court may require the pleading to be made definite and certain by amendment.

Irrelevant or
redundant. In-
definite or uncer-
tain

Sec. 114. *Judgments, how to be pleaded.* In pleading a judgment, or other determination of a court or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts conferring jurisdiction.

Judgments, how
to be pleaded

Sec. 115. *Conditions precedent, how to be pleaded. Instrument for payment of money only.* In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance; but it may be stated generally that the party duly performed all the conditions on his part; and if such allegations be controverted, the party pleading shall be bound to establish, on the trial, the facts showing such performance. In an action or defence founded upon an instrument for the payment of money only, it shall be sufficient for a party to give a copy of the instrument, and to state that there is due to him thereon from the adverse party a specified sum, which he claims.

Conditions
precedent, how
to be pleaded

Sec. 116. *Private statutes, how to be pleaded.* In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute, by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

Private statutes
how pleaded

Sec. 117. *Libel and slander, how stated in complaint.* In an action for libel or slander, it shall not be necessary to state in the complaint, any extrinsic facts, for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose, but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff, and if such allegation be controverted, the plaintiff shall be bound to establish, on trial, that it was so published or spoken.

Libel and
slander

Sec. 118. *Answer in such cases.* In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth

Answer

of the matter charged as defamatory and any mitigating circumstances, to reduce the amount of damages; and whether he prove the justification or not, he may give, in evidence, the mitigating circumstances.

Answer to
recover property
distrained for
damage

Sec. 119. *In actions to recover property distrained for damage, answer need not set forth title.* In an action to recover the possession of property distrained doing damage, an answer, that the defendant, or person by whose command he acted, was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing damage thereon, shall be good, without setting forth the title to such real property.

What causes of
action joined

Sec. 120. *What cause of action may be joined in the same complaint.* The plaintiff may unite in the same complaint several causes of action, whether they be such as have been heretofore denominated legal or equitable, or both, where they all rise out of,

- 1, The same transaction, or transactions connected with the same subject of action;
- 2, Contract, express or implied; or,
- 3, Injuries, with or without force, to person or property, or either;

or

- 4, Injuries to character; or
- 5, Claims to recover real property, with or without damages for the withholding thereof, and the rents and profits of the same; or
- 6, Claims to recover personal property, with or without damages for the withholding thereof; or

7, Claims against a trustee, by virtue of a contract, or by operation of law. But the cause of action, so united, must all belong to one of these classes, and, except in actions for the foreclosure of mortgages, must affect all the parties to the action and not require different places of trial, and must be separately stated. In actions to foreclose mortgages the court shall have power to adjudge and direct the payment, by the mortgagor, of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises, in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage; and if the mortgage debt be secured by the covenant or obligation of any person other than the mortgagor, the plaintiff may make such person a party to the action, and the court may adjudge payment of the residue of such debt remaining unsatisfied after a sale of the mortgaged premises against such other person, and may enforce judgment as in other cases.

Allegation when
deemed true

Sec. 121. *Allegation not denied, when to be deemed true.* Every material allegation of the complaint not controverted by the answer,

as prescribed in section 102, and every material allegation of new matter in the answer, constituting a counter-claim, not controverted by the reply, as prescribed in section 106, shall, for purposes of the action be taken as true. But the allegation of new matter in the answer, not relating to a counter-claim, or of new matter in a reply, is to be deemed controverted by the adverse party as upon a direct denial or avoidance, as the case may require.

CHAPTER VI.

MISTAKES IN PLEADING, AND AMENDMENTS.

- SECTION 122. Material variances, how provided for.
 123. Immaterial variances, how provided for.
 124. What not to be deemed a variance.
 125. Amendments of course and after demurrer.
 126. Amendments by the court.
 127. Court may give relief in case of mistake.
 128. Suing a party by a fictitious name.
 129. No error or defect to be regarded unless it affect substantial rights.
 130. Supplemental complaint; answer and reply.

Sec. 122. *Material variance.* No variance between the allegation in a pleading and the proof shall be deemed material, unless it have actually misled the adverse party to his prejudice, in maintaining his action or defense, upon the merits. Whenever it shall be alleged that a party has been misled, the fact shall be proved to the satisfaction of the court, and in what respect he has been misled; and thereupon the court may order the pleading to be amended, upon such terms as shall be just. Material variance

Sec. 123 *Immaterial variance.* Where the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment without costs. Immaterial variance

Sec. 124. *Failure of proof.* Where, however, the allegation of the cause of action or defence to which the proof is directed is unproved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance, within the last two sections, but a failure of proof. Failure of proof.

Sec. 125. *Amendments of course and after allowance of demurrer.* Any pleading may be once amended by the party of course, without Amendments

costs, and without prejudice to the proceedings already had, at any time within twenty days after it is served, or at any time before the period for answering it expires; or it can be so amended at any time within twenty days after the service of the answer or demurrer to such pleading, unless it be made to appear to the court that it was done for the purposes of delay, and the plaintiff or defendant will thereby lose the benefit of a term for which the cause is or may be noticed; and if it appear to the court that such amendment was made for such purpose, the same may be stricken out, and such terms imposed as to the court may seem just. In such case a copy of the amended pleading must be served on the adverse party. After the decision of a demurrer, either at a general or special term, the court may, in its discretion, if it appear that the demurrer was interposed in good faith, allow the party to plead over upon such terms as may be just. If the demurrer be allowed for the cause mentioned in the fifth subdivision of section 97, the court may, in its discretion, and upon such terms as may be just, order the action to be divided into as many actions as may be necessary to the proper determination of the causes of action therein mentioned.

Amendment by
order

Sec. 126. *Amendment by order.* The court may, before or after judgment, in furtherance of justice, and on such terms as may be proper, amend any pleading, process or proceeding, by adding or striking out the name of any party; or by correcting a mistake in the name of a party, or a mistake in any other respect; or by inserting other allegations material to the case; or, when the amendment does not change substantially the claim or defence, by conforming the pleading or proceeding to the facts proved.

Relief in case of
mistake

Sec. 127. *Relief in case of mistake.* The court may likewise, in its discretion, and upon such terms as may be just, allow an answer or reply to be made, or other act to be done, after the time limited by this act, or, by an order, enlarge such time; and may also, in its discretion, and upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, order or other proceeding, taken against him through his mistake, inadvertence, surprise, or excusable neglect, and may supply an omission in any proceeding; and whenever any proceeding taken by a party fails to conform in any respect to the provisions of this code, the court may, in like manner, and upon like terms, permit an amendment of such proceeding, so as to make it conformable thereto.

Fictitious name

Sec. 128. *Fictitious name.* When the plaintiff shall be ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding, by any name; and when his true name shall

be discovered, the pleading or proceeding may be amended accordingly.

Sec. 129. *Errors or defects to be disregarded.* The court shall, in every stage of action, disregard any error or defect in the pleadings or proceedings, which shall not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect. Errors disregarded

Sec. 130. *Supplemental pleading.* The plaintiff and defendant, respectively, may be allowed, on motion, to make a supplemental complaint, answer, or reply, alleging facts material to the case, occurring after the former complaint, answer, or reply, or of which the party was ignorant when his former pleading was made. Supplemental pleadings

TITLE VII.

OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS.

CHAPTER I. Arrest and bail.

- II. Claim and delivery of personal property.
- III. Injunction.
- IV. Attachment.
- V. Provisional remedies.

CHAPTER I.

ARREST AND BAIL.

- SECTION 131. No person to be arrested in civil action, except as prescribed.
132. Arrest in civil actions, in what cases.
133. Order for arrest, by whom to be made.
134. Affidavit to obtain order for arrest. To what actions this chapter applies.
135. Security by plaintiff before obtaining order for arrest.
136. Order for arrest, when it may be made, and its form.
137. Original affidavit and order to be delivered to sheriff, and copy to be delivered to defendant.
138. Arrest, how made.

- Section 139.** Defendant to be discharged on giving bail or making a deposit.
140. Bail, how given.
141. Surrender of defendant.
142. The like.
143. Bail, how proceeded against.
144. Bail, how exonerated.
145. Delivery of undertaking of bail to plaintiff, and its acceptance or rejection by him.
146. Notice of justification. New bail.
147. Qualification of bail,
148. Justification of bail.
149. Allowance of bail.
150. Deposit in lieu of bail
151. Payment of deposit into court.
152. Substituting bail for deposit.
153. Deposit, how disposed of after judgment in the action.
154. Sheriff, when liable as bail.
155. Proceedings on judgment against sheriff.
156. Bail liable to sheriff.
157. Vacating order of arrest or reducing bail.
158. Affidavits on motion to vacate order of arrest or reduce bail.

Arrests, how made

Sec. 131. *No person to be arrested, except as prescribed.* No person shall be arrested in a civil action, except as prescribed by this act; but this provision shall not apply to proceedings for contempt.

In what cases

Sec. 132. *In what cases.* The defendant may be arrested, as hereinafter prescribed, in the following cases:

1. In an action for the recovery of damages, on a cause of action not arising out of contract, where the defendant is not a resident of the Territory, or is about to remove therefrom, or where the action is for an injury to person or character, or for injuring, or for wrongfully taking, detaining or converting property;

2. In an action for a fine or penalty, or on a promise to marry, or for money received, or for property embezzled or fraudulently misapplied, by a public officer, or by an attorney, solicitor or counselor, or by an officer or agent of a corporation or banking association, in the course of his employment as such, or by any factor, agent, broker or other person in a fiduciary capacity, or for any misconduct or neglect in office,

or in a professional employment ;

3. In an action to recover the possession of personal property unjustly detained, where the property or any part thereof has been concealed, removed or disposed of, so that it cannot be found or taken by the sheriff, and with the intent that it should not be found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

4. Where the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought, or when the action is brought to recover damages for fraud or deceit ;

5. When the defendant has removed or disposed of his property, or is about to do so, with the intent to defraud his creditors. But no female shall be arrested in any action, except for a willful injury to person, character or property.

Sec. 133. *Order for arrest, by whom made.* An order for the arrest of the defendant must be obtained from a judge of the court in which the action is brought. Order, by whom made

Sec. 134. *Affidavit to obtain order.* *To what actions this chapter applies.* Affidavit, &c The order may be made where it shall appear to the judge, by the affidavit of the plaintiff or of any other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section 132. The provisions of this chapter shall apply to all actions included within the provisions of section 132, and in which judgment shall not have been obtained.

Sec. 135. *Security by plaintiff before order of arrest.* Be. Security Before making the order, the judge shall require a written undertaking on the part of the plaintiff, with or without sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least one hundred dollars. If the undertaking be executed by the plaintiff, without sureties, he shall annex thereto an affidavit that he is a resident and householder or freeholder within the Territory, and worth double the sum specified in the

undertaking, over all his debts and liabilities, and exclusive of all property exempt from execution by the laws of this Territory.

order, form of. Sec. 136. *Order, when made, and its form.* The order may be made to accompany the summons, or at any time afterwards before judgment. It shall require the sheriff of the county where the defendant may be found, forthwith to arrest him and hold him to bail in a specified sum, and return the order, at a place and time therein mentioned, to the plaintiff or attorney, by whom it shall be subscribed or indorsed. But said order of arrest shall be of no avail, and shall be vacated or set aside on motion, unless the same is served upon the defendant, as provided by law, before the docketing of any judgment in the action; and the defendant shall have twenty days, after the service of the order of arrest, in which to answer the complaint in the action, and to move to vacate the order of arrest, or to reduce the amount of bail.

Affidavit, to whom delivered Sec. 137. *Affidavit and order to be delivered to sheriff, and copy to defendant.* The affidavit and order of arrest shall be delivered to the sheriff, who upon arresting the defendant, shall deliver to him a copy thereof.

Arrest, how made Sec. 138. *Arrest, how made.* The sheriff shall execute the order by arresting the defendant, and keeping him in custody until discharged by law, and may call the power of the county to his aid in the execution of the arrest, as in case of process.

Defendant discharged on giving bail. Sec. 139. *Defendant to be discharged on bail or deposit.* The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest, as provided in this chapter.

Bail, how given. Sec. 140. *Bail, how given.* The defendant may give bail, by causing a written undertaking to be executed by two or more sufficient bail, stating their places of residence and occupations, to the effect that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein, or if he be arrested for the cause mentioned in the third subdivision of section 132, an undertaking to the same effect as that provided by section 164.

Sec. 141. *Surrender of defendant.* At any time before a failure to comply with the undertaking the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested, in the following manner:

Surrender of defendant.

1. A certified copy of the undertaking of the bail shall be delivered to the sheriff, who shall detain the defendant in his custody thereon, as upon an order of arrest, and shall by a certificate in writing, acknowledge the surrender:

2. Upon the production of a copy of the undertaking and sheriff's certificate, a judge of the court may, upon a notice to the plaintiff of eight days, with a copy of the certificate, order that the bail be exonerated; and on filing the order and the papers used on said application, they shall be exonerated accordingly. But this section shall not apply to an arrest for cause mentioned in subdivision 3 of section 132, so as to discharge the bail from an undertaking given to the effect provided by section 164.

Sec. 142. *Surrender of defendant.* For the purpose of surrendering the defendant, the bail, at any time or place, before they are finally charged may themselves arrest him, or by a written authority, indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

Sec. 143. *Bail, how proceeded against.* In case of failure to comply with the undertaking, the bail may be proceeded against, by action only.

Bail, how proceeded against.

Sec. 144. *Bail how exonerated.* The bail may be exonerated, either by the death of the defendant, or his imprisonment in a State or Territorial prison, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the sheriff of the county where he was arrested, in execution thereof, within twenty days after the commencement of the action against the bail, or within such further time as may be granted by the court.

How exonerated.

Sec. 145. *Delivery of undertaking to plaintiff, and its acceptance or rejection by him.* Within the time limited for that purpose, the sheriff shall deliver the order of arrest to the plaintiff or attorney by whom it is subscribed, with his return in

Delivery of undertaking to plaintiff.

dorsed, and a certified copy of the undertaking of the bail. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted it, and the sheriff shall be exonerated from liability.

Notice of justification new bail.

Sec. 146. *Notice of justification. New bail.* On the receipt of such notice, the sheriff or defendant may, within ten days thereafter, give to the plaintiff, or attorney by whom the order of arrest is subscribed, notice of the justification of the same or other bail (specifying the place of residence and occupation of the latter) before a judge of the court, at a specified time and place; the time to be not less than five nor more than ten days thereafter. In case other bail be given, there shall be a new undertaking, in the form prescribed in section 140.

Qualifications of bail.

Sec. 147. *Qualifications of bail.* The qualifications of bail must be as follows :

1. Each of them must be a resident and householder or freeholder, within the Territory.

2. They must each be worth the amount specified in the order of arrest, exclusive of property exempt from execution; but the judge, or a justice of the peace, on justification, may allow more than two bail to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Justification of bail

Sec. 148. *Justification of bail.* For the purpose of justification, each of the bail shall attend before the judge, or a justice of the peace, at the time and place mentioned in the notice, and may be examined on oath on the part of the plaintiff touching his sufficiency, in such manner as the judge or justice of the peace, in his discretion, may think proper. The examination shall be reduced to writing and subscribed by the bail if required by the plaintiff.

Allowance of bail

Sec. 149. *Allowance of bail.* If the judge or justice of the peace find the bail sufficient, he shall annex the examination to the undertaking; indorse his allowance thereon, and cause them to be filed with the clerk; and the sheriff shall thereupon be exonerated from liability.

Deposit with sheriff

Sec. 150. *Deposit with the sheriff.* The defendant may, at

the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. The sheriff shall thereupon give the defendant a certificate of the deposit, and the defendant shall be discharged out of custody.

Sec. 151. *Payment of deposit into court.* The sheriff shall, within four days after the deposit, pay the same into court, and shall take from the officer receiving the same two certificates of such payment, the one of which he shall deliver to the plaintiff and the other to the defendant. For any default in making such payment the same proceedings may be had on the official bond of the sheriff to collect the sum deposited as in other cases of delinquency.

Sec. 152. *Substituting bail for deposit.* If money be deposited, as provided in the last two sections, bail may be given and justified upon notice, as prescribed in section 146, any time before judgment; thereupon the judge before whom the justification is had, shall direct in the order of allowance, that the money deposited be refunded by the sheriff to the defendant, and it shall be refunded accordingly.

Sec. 153. *Deposit, how disposed of.* Where money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof, and after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall refund to him the whole sum deposited and remaining unapplied.

Sec. 154. *Sheriff, when liable as bail.* If, after being arrested, when there is a jail to which the defendant may be committed the defendant escape or be rescued, or bail be not given or justified, or a deposit be not made instead thereof, the sheriff shall himself be liable as bail. But he may discharge himself from such liability, by the giving and justification of bail, as provided in sections 146, 147, 148, and 149, at any time before process against the person of the defendant, to enforce an order or judgment in the action.

Sec. 155. *Proceedings on judgment against sheriff.* If a judgment be recovered against the sheriff, upon his liability as

bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on the official bond of the sheriff, to collect the deficiency, as in other cases of delinquency.

Bail liable to sheriff

Sec. 156. *Bail liable to sheriff.* The bail taken upon the arrest shall, unless they justify, or other bail be given or justified, be liable to the sheriff by action for damages, which he may sustain by reason of such omission.

Vacating order of arrest

Sec. 157. *Vacating order of arrest, or reducing bail.* A defendant arrested may, at any time before judgment, apply, on motion, to vacate the order of arrest, or to reduce the amount of bail.

Affidavits on motion

Sec. 158. *Affidavits on motion.* If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other proofs, in addition to those on which the order of arrest was made.

CHAPTER II.

CLAIM AND DELIVERY OF PERSONAL PROPERTY.

SECTION 159. Claim and delivery of personal property.

160. Affidavit and its requisites.

161. Requisition to sheriff to take and deliver property.

162. Security by plaintiff.

163. Exception to sureties.

164. Defendant, when entitled to re delivery.

165. Justification of defendant's sureties.

166. Qualification and justification of sureties.

167. Property, how taken when concealed in building or enclosure.

168. Property, how kept.

169. Claim of property by third person.

170. Notice and affidavit, when and where to be filed.

Delivery of personal property

Sec. 159. *Delivery of personal property.* The plaintiff, in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property, as provided in this chapter.

Sec. 160. *Affidavit and its requisites.* Where a delivery is claimed, an affidavit must be made by the plaintiff, or by some one in his behalf, showing, Requisites of affidavit

1, That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof, by virtue of a special property therein, the facts in respect to which shall be set forth ;

2, That the property is wrongfully detained by the defendant ;

3, The alleged cause of the detention thereof, according to his best knowledge, information, and belief ;

4, That the same has not been taken for a tax, assessment, or fine, pursuant to a statute ; or seized under an execution or attachment against the property of the plaintiff ; or, if so seized, that it is, by statute, exempt from such seizure ; and

5, The actual value of the property.

Sec. 161. *Requisition to sheriff to take and deliver the property.* The plaintiff may, thereupon, by an indorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be, to take the same from the defendant and deliver it to the plaintiff. Requisition to sheriff &c

Sec. 162. *Security by plaintiff.* Upon the receipt of the affidavit and notice, with a written undertaking executed by one or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken ; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion. Security by plaintiff

Sec. 163. *Exception to sureties.* The defendant may, Exception to sureties

within three days after the service of a copy of the affidavit and undertaking, give notice to the sheriff that he accepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest. And the sheriff shall be responsible for the sufficiency of the sureties, until the objection to them is either waived as above provided, or until they shall justify, or new sureties shall be substituted and justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

**Defendant,
when entitled to
redelivery**

Sec. 164. *Defendant, when entitled to re-delivery.* At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required, within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section 169.

**Defendants
sureties just-
fication of**

Sec. 165. *Justification of defendant's sureties.* The defendant's sureties, upon a notice to the plaintiff of not less than two nor more than six days, shall justify before a judge or justice of the peace, in the same manner as upon bail on arrest; upon such justification, the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties, until they justify, or until justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

**Qualification of
sureties**

Sec. 166. *Qualifications and justification of sureties.* The qualifications of sureties, and their justification, shall be as are

prescribed by section 147 and 148 in respect to bail upon an order of arrest.

Sec. 167. *Property, how taken when concealed in building or enclosure.* If the property, or any part thereof, be concealed in a building or inclosure, the sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession; and if necessary he may call to his aid the power of his county. Property how taken when concealed

Sec. 168. *Property, how kept.* When the sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping, the same. How kept

Sec. 169. *Claim of property by third person.* If the property taken be claimed by any other person than the defendant or his agent, and such person shall make affidavit of his title thereto and right to the possession thereof, stating the grounds of such right and title, and serve the same upon the sheriff, the sheriff shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, shall indemnify the sheriff against such claim, by an undertaking, executed by two sufficient sureties, accompanied by the affidavits, that they are each worth double the value of the property as specified in the affidavit of the plaintiff exclusive of property exempt from execution and freeholders and householders of the county. And no claim to such property, by any other person than the defendant or his agent, shall be valid against the sheriff, unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity. Claim of by third person

Sec. 170. *Notice and affidavit, when and where to be filed.* The sheriff shall file the notice and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein. Notice of affidavit, filing of

CHAPTER III.

INJUNCTION.

- SECTION 171. Writ of injunction abolished, and order substituted.
 172. Temporary injunction, in what cases granted.
 173. At what time it may be granted. Copy affidavit to be served.
 174. Injunction after answer.
 175. Security upon injunction. Damages how ascertained.
 176. Order to show cause why injunction should not be granted.
 177. Security upon injunction to suspend business of corporation.
 178. Motion to vacate or modify injunction.
 179. Affidavits on motion.

Injunction by order

Sec. 171. *Injunction by order.* The writ of injunction, as a provisional remedy, is abolished, and an injunction by order is substituted therefor. The order may be made by the court in which the action is brought, or by a judge thereof in the cases provided in the next section, and, when made by a judge, may be enforced as the order of the court.

In what cases granted

Sec. 172. *Injunction in what cases.*

1, Where it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or

2, When, during the litigation, it shall appear that the defendant is doing, or threatens, or is about to do, or procuring or suffering some act to be done in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act.

3, And where, during the pendency of an action, it shall appear by affidavit that the defendant threatens, or is about to remove or dispose of his property, with intent to defraud his creditors, a temporary injunction may be granted to restrain such removal or disposition.

Sec. 173. *At what time it may be granted. Copy affidavit to be served.* The injunction may be granted at the time of commencing the action, or at any time afterwards, before judgment, upon its appearing satisfactory to the court or judge, by the affidavit of the plaintiff, or of any other person, that sufficient grounds exist therefor. A copy of the affidavit must be served with the injunction.

At what time to be granted
Copy of affidavit to be served

Sec. 174. *Injunction after answer.* An injunction shall not be allowed after the defendant shall have answered, unless upon notice, or upon an order to show cause; but in such case the defendant may be restrained until the decision of the court or judge granting or refusing the injunction.

Injunction after answer

Sec. 175. *Security upon injunction Damages.* Where no provision is made by statute as to security upon an injunction, the court or judge shall require a written undertaking on the part of the plaintiff, with or without sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as he may sustain by reason of the injunction, if the court shall finally decide that the plaintiff was not entitled thereto. The damages may be ascertained by a reference, or otherwise, as the court shall direct.

Injunction security on Damages

Sec. 176. *Order to show cause. Restraint in meantime.* If the court or judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown, at a specified time and place, why the injunction should not be granted; and the defendant may, in the meantime, be retained.

Order to show cause

Sec. 177. *Security upon injunction to suspend business of corporation.* An injunction to suspend the general and ordinary business of a corporation shall not be granted except by the court or a judge thereof. Nor shall it be granted without due notice of the application therefor, to the proper officers of the corporation, except where the people of this Territory are a party to the proceeding, and except in proceedings to enforce the liability of stockholders in corporations and associations for banking purposes, as such proceedings are or shall be provided by law, unless the plaintiff shall give a written undertaking, executed by two sufficient sureties, to be approved by the court

Security upon injunction to suspend business of corporation

or judge, to the effect that the plaintiff will pay all damages, not exceeding the sum to be mentioned in the undertaking, which such corporation may sustain by reason of the injunction, if the court shall finally decide that the plaintiff was not entitled thereto. The damages may be ascertained by a reference or otherwise, as the court shall direct.

Motion to vacate or modify injunction

Sec. 178. *Motion to vacate or modify injunction.* If the injunction be granted by a judge of the court, without notice, the defendant, at any time before the trial, may apply, upon notice, to a judge of the court in which the action is brought, to vacate or modify the same. The application may be made upon complaint and the affidavits on which the injunction was granted, or upon affidavits on the part of the defendant, with or without the answer.

Affidavits on motion

Sec. 179. *Affidavits on motion.* If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavit or other proofs in addition to those on which the injunction was granted.

CHAPTER IV.

ATTACHMENT.

- SECTION 180. Property of foreign corporations, and of non-resident or absconding or concealed defendants, may be attached.
181. Attachment, by whom granted.
182. In what cases attachment may be issued. Affidavits to be filed.
183. Security on obtaining attachment.
184. Attachment, to whom directed, and what to require.
185. Mode of proceeding in executing attachment.
186. Proceedings in case of perishable property or vessels.
187. Interest in corporations or associations liable to attachment.
188. Attachment, how executed on property incapable of manual delivery.
189. Certificate of defendant's interest to be furnished by corporations.
190. Judgment, how satisfied.

- SECTION 191. When action to recover notes, &c., of defendant may be prosecuted by the plaintiff in the action in which the attachment issued.
192. Bond to sheriff on attachment, how disposed of on judgment for defendant.
193. Discharge of attachment, and return of property or its proceeds to defendant, on his appearance in the action.
194. Undertaking on the part of the defendant.
195. When sheriff to return attachment with his proceedings thereon.
196. Sheriff's fees.

Sec. 180. *Property of non-residents, &c., may be attached.* Property of non-residents &c may be attached

In an action arising on contract for the recovery of money only, or in an action for the wrongful conversion of personal property, against a corporation created by or under the laws of any other Territory, State, government or country, or against a defendant who is not a resident of this Territory or against a defendant who has absconded or concealed himself, or whenever any person or corporation is about to remove any of his or its property from this Territory, or has assigned, disposed of, secreted, or is about to assign, dispose of or secrete any of his or its property with intent to defraud creditors, as hereinafter mentioned, the plaintiff, at the time of issuing the summons, or any time afterwards, may have the property of such defendant or corporation attached, in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as the plaintiff may recover; and for the purposes of this section an action shall be deemed commenced when the summons is issued;

Provided however, That personal service of such summons shall be made, or publication thereof commenced within thirty days.

Sec. 181. *Warrant, by whom granted.* A warrant of attachment must be obtained from the clerk of the court in which the action is brought. Warrant by whom issued

Sec. 182. *In what cases warrant may be issued.* *Affidavits to be filed.* In what cases issued The warrant may be issued whenever it shall appear by affidavit that a cause of action exists against such defendant, specifying the amount of the claim and the grounds

thereof, and that the defendant is either a foreign corporation, or not a resident of this Territory, or has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or keep himself concealed therein with the like intent, or that such corporation or person has removed, or is about to remove any of his or its property from this Territory with intent to defraud his or its creditors, or has assigned, disposed of or secreted, or is about to assign, dispose of, or secrete any of his property, with the like intent, whether such defendant be a resident of this Territory or not.

Security on ob-
taining

Sec. 183. *Security on obtaining warrant.* Before issuing the warrant, the clerk shall require a written undertaking on part of the plaintiff with sufficient surety, to the effect that if the defendant recover judgment, or the attachment be set aside by the order of the court, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, which shall be at least two hundred and fifty dollars.

Warrant, to
whom directed.

Sec. 184. *Warrant, to whom directed, and what to require.* The warrant shall be directed to the sheriff of any county in which property of such defendant may be, and shall require him to attach and safely keep all the property of such defendant within his county, or so much thereof as may be sufficient to satisfy the plaintiff's demand, together with costs and expenses, the amount of which must be stated in conformity with the complaint, together with costs and expenses. Several warrants may be issued at the same time to the sheriffs of different counties.

Mode of pro-
ceeding in
executing

Sec. 185. *Mode of proceeding in executing warrant.* The sheriff to whom such warrant of attachment is directed and delivered, shall proceed thereon in all respects in the manner required of him by law in case of attachments against absent debtors; shall make and return an inventory, and shall keep the property seized by him, or the proceeds of such as shall have been sold, to answer any judgment which may be obtained in such action; and shall, subject to the direction of the court or judge, collect and receive into his possession all debts, credits, and effects of the defendant. The sheriff may also take such

legal proceedings, either in his own name or in the name of such defendant, as may be necessary for that purpose, and discontinue the same at such times and on such terms as the court or judge may direct.

Sec. 186. *Proceedings in case of perishable property or vessels.* If any property so seized shall be perishable, or if any part of it be claimed by any other person than such defendant, or if any part of it consist of a vessel, or of any share or interest therein, the same proceedings shall be had in all respects as are provided by law upon attachments against absent debtors.

Cases of perishable property

Sec. 187. *Interest in corporations or associations liable to attachment.* The rights or shares which such defendant may have in the stock of any association or corporation, together with the interests and profits thereon, and all other property in this Territory of such defendant, shall be liable to be attached and levied upon, and sold to satisfy the judgment and execution.

Certain interest attachable

Sec. 188. *Attachment, how executed on property incapable of manual delivery.* The execution of the attachment upon any debts or other property incapable of manual delivery to the sheriff, shall be made by leaving a certified copy of the warrant of attachment with the president or other head of the association or corporation, or the secretary, cashier or managing agent thereof, or with the debtor or individual holding such property, with a notice showing the property levied on, or if the property attached be unoccupied real property, by posting thereon a certified copy of such warrant.

Attachment how executed

Sec. 189. *Certificate of defendant's interest to be furnished by corporations.* Whenever the sheriff shall, with a warrant of attachment, or execution against the defendant, apply to such officer, debtor, or individual, for the purpose of attaching, or levying upon such property, such officer, debtor, or individual shall furnish him with a certificate under his hand, designating the number of rights or shares of the defendant in the stock of such association or corporation, with any dividend or any incumbrance thereon, or the amount and description of the property held by such association, corporation or individual, for the benefit of or debt owing to the defendant. If such offi-

Corporations to furnish certificate

cer, debtor, or individual refuse to do so, he may be required by the court or judge to attend before him, and be examined on oath, concerning the same, and obedience to such order may be enforced by attachment.

Satisfaction of
Judgment;

Sec. 190. *Judgment, how satisfied.* In case judgment be entered for the plaintiff in such action, the sheriff shall satisfy the same out of the property attached by him, if it shall be sufficient for that purpose:

1. By paying over to such plaintiff the proceeds of all sales of perishable property, and of any vessel, or share or interest in any vessel sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy such judgment;

2. If any balance remain due, and an execution shall have been issued on such judgment, he shall proceed to sell, under such execution, so much of the attached property, real or personal, except as provided in subdivision four of this section, as may be necessary to satisfy the balance, if enough for that purpose shall remain in his hands; and in case of the sale of any rights or shares in the stock of a corporation or association, the sheriff shall execute to the purchaser a certificate of sale thereof, and the purchaser shall thereupon have all the rights and privileges in respect thereto which were had by such defendant;

3. If any of the attached property belonging to the defendant shall have passed out of the hands of the sheriff without having been sold or converted into money, such sheriff shall repossess himself of the same, and for that purpose shall have all the authority which he had to seize the same under the attachment; and any person who shall willfully conceal or withhold such property from the sheriff, shall be liable to double damages, at the suit of the party injured;

4. Until the judgment against the defendant shall be paid, the sheriff may proceed to collect the notes and other evidences of debts that may have been seized or attached under the warrant of attachment, and to prosecute any bond he may have taken in the course of such proceedings, and apply the proceeds thereof to the payment of the judgment. At the expiration of six-months from the docketing of the judgment, the

court shall have power upon the petition of the plaintiff, accompanied by an affidavit setting forth fully all the proceedings which have been had by the sheriff since the service of the attachment, the property attached, and the disposition thereof, and also the affidavit of the sheriff that he has used diligence and endeavored to collect the evidences of debt in his hands so attached, and that there remains uncollected of the same any part or portion thereof, to order the sheriff to sell the same, upon such terms and in such manner as shall be deemed proper. Notice of such application shall be given to the defendant or his attorney, if the defendant shall have appeared in the action. In case the summons has not been personally served on the defendant, the court shall make such rule or order, as to the service of notice and the time of service, as shall be deemed just. When the judgment and all costs of the proceedings shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the residue of the attached property, or the proceeds thereof.

Satisfaction of judgment

Sec. 191. *When action to recover notes, &c., of defendant may be prosecuted by plaintiff in the action in which the attachment issued.* The actions herein authorized to be brought by the sheriff may be prosecuted by the plaintiff, or under his direction, upon the delivery by him to the sheriff of an undertaking executed by two sufficient sureties, to the effect that the plaintiff will indemnify the sheriff from all damages, costs, and expenses on account thereof, not exceeding two hundred and fifty dollars in any one action. Such sureties shall, in all cases, when required by the sheriff, justify by making an affidavit that each is a householder, and worth double the amount of the penalty of the bond, over and above all demands and liabilities, and exclusive of property exempt from execution.

Action to recover notes &c.

Sec. 192. *Bond to sheriff on attachment, how disposed of on judgment for defendant.* If the foreign corporation, or absent or absconding or concealed defendant, recover judgment against the plaintiff in such action, any bond taken by the sheriff, except such as are mentioned in the last section, all the proceeds of sales and moneys collected by him, and all the property attached remaining in his hands, shall be delivered by him to the defendant, or his agent, on request and the

Bond to sheriff how disposed

warrant shall be discharged, and the property released therefrom.

Discharge of attachment, return of property, &c

Sec. 193. *Discharge of attachment, and return of property or its proceeds to defendant, on his appearance in action:* Whenever the defendant shall have appeared in such action, he may apply to the officer who issued the attachment, or to the court, for an order to discharge the same; and if the same be granted, all the proceeds of sales and moneys collected by him, and all the property attached remaining in his hands, shall be delivered or paid by him to the defendant or his agent and released from the attachment. And where there is more than one defendant, and several property of either of the defendants has been seized by virtue of the order of attachment, the defendant whose several property has been seized may apply to the officer who issued the attachment, or the court, for relief under this section.

Defendant's undertaking

Sec. 194. *Undertaking on the part of the defendant.* Upon such application, the defendant shall deliver to the court or officer an undertaking executed by at least two sureties, who are residents and freeholders or householders in this Territory, approved by such court or officer, to the effect that such sureties will, on demand, pay to the plaintiff the amount of judgment that may be recovered against the defendant in the action not exceeding the sum specified in the undertaking, which shall be at least double the amount claimed by the plaintiff in his complaint. If it shall appear by affidavit that the property attached be less than the amount claimed by the plaintiff, the court or officer issuing the attachment, may order the same to be appraised, and the amount of the undertaking shall then be double the amount so appraised. And in all cases the defendant may move to discharge the attachment, as in the case of other provisional remedies. And where there is more than one defendant, and several property of either of the defendants has been seized by virtue of the order of attachment, the defendant whose several property has been seized may deliver to the court or officer an undertaking, in accordance with the provisions of this section, to the effect that he will, on demand, pay to the plaintiff the amount of judgment that may be recovered against such defendant. And all the provisions of

this section applicable to such undertaking shall be applied thereto.

Sec. 195. *When sheriff to return warrant and proceedings thereon.* When the warrant shall be fully executed or discharged, the sheriff shall return the same with his proceedings thereon, to the court in which the action was brought. When warrant to be returned

Sec. 196. *Sheriff's fees.* The sheriff shall be entitled to the same fees and compensation for services, and the same disbursements under this title, as are now allowed by law for like services and disbursements. Sheriff's fees

CHAPTER V.

PROVISIONAL REMEDIES.

Sec. 197. *Powers of court as to receivers, deposit of money, &c., in court, and other provisional remedies.* Judgment for sum admitted due. A receiver may be appointed: Powers of receivers &c in court, and other provisional remedies

1. Before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action, and which is in the possession of an adverse party, and the property, or its rents and profits are in danger of being lost or materially injured or impaired; except in cases where judgment upon failure to answer may be had without application to the court;

2. After judgment, to carry the judgment into effect;

3. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied, and the judgment debtor refuse to apply his property in satisfaction of the judgment;

4. In the cases provided in this Code, and by special statutes when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights; and in like cases, of the property within this Territory of foreign corporations. Receivers of the property within this Territory, of foreign corporations, shall be allowed the same commissions as are allowed by law to the trustees of the

Powers of
creditors

estates of absconding, concealed, and non-resident debtors.

5. In such other cases as are now provided by law, or may be in accordance with the existing practice, except as otherwise provided in this act. When it is admitted by the pleading or examination of a party, that he has in his possession or under his control any money or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in court, or delivered to such party, with or without security, subject to the further direction of the court. Whenever, in the exercise of its authority, a court shall have ordered the deposit, delivery or conveyance of money or other property, and the order is disobeyed, the court, besides punishing the disobedience as for contempt, may make an order requiring the sheriff to take the money or property, and deposit, deliver or convey it, in conformity with the direction of the court. When the answer of the defendant expressly, or by not denying, admits part of the plaintiff's claim to be just, the court, on motion, may order such defendant to satisfy that part of the claim, and may enforce the order as it enforced a judgment or provisional remedy.

TITLE VIII.

OF THE TRIAL AND JUDGMENT IN CIVIL ACTIONS.

- CHAPTER I. Judgment upon failure to answer, &c.
- II. Issues and mode of the trial.
 - III. Trial by jury.
 - IV. Trial by the court.
 - V. Trial by referees.
 - VI. The manner of entering judgment.

CHAPTER I.

JUDGMENT UPON FAILURE TO ANSWER, &c.

- SECTION. 198. Judgment defined.
199. Judgment on failure of defendant to answer, or for excess over counterclaim.

Section 200. Judgment on frivolous demurrer, answer or reply.

Sec. 198. *Judgment defined.* A judgment is the final determination of the rights of the parties in the action. Definition of judgment

Sec. 199. *Judgment on failure of defendant to answer, or for excess over counter claim.* Judgment may be had, if the defendant fail to answer the complaint, as follows: Judgment by default or on excess of counter claim.

1, In any action arising on contract for the recovery of money only, the plaintiff may file with the clerk proof of personal service of the summons and complaint on one or more of the defendants, or of the summons according to the provisions of section 83 and that no answer has been received. The clerk shall thereupon enter judgment for the amount mentioned in the summons, against the defendant or defendants, against one or more of several defendants, in the cases provided for in section 89. But if the complaint be not sworn to, and such action is on an instrument for the payment of money only, the clerk, on its production to him shall assess the amount due to the plaintiff thereon; and in other cases shall ascertain the amount which the plaintiff is entitled to recover in such action, from his examination, under oath, or other proof, and enter the judgment for the amount so assessed or ascertained. In case the defendant give notice of appearance in the action, he shall be entitled to five day's notice of the time and place of such assessment.

Where the defendant, by his answer in any such action, shall not deny the plaintiff's claim, but shall set up a counter-claim, amounting to less than the plaintiff's claim, judgment may be had by the plaintiff for the excess of said claim over the said counter-claim, in like manner in any such action, upon the plaintiff's filing with the clerk of the court a statement admitting such counter-claim, which statement shall be annexed to and be a part of the judgment roll.

2, In other actions the plaintiff may, upon the like proof, apply to the court, after the expiration of the time for answering, for the relief demanded in the complaint. If the taking of an account of the proof of any fact be necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account or hear the proof, or may, in its discretion, order a reference for that purpose. And where the action is for the recovery of money only, or of specific real or personal property, with damages for the withholding thereof, the court may order the damages to be assessed by a jury, or, if the examination of a long account be involved, by a reference as above provided. If the defendant give

notice of appearance in the action before the expiration of the time for answering, he shall be entitled to eight day's notice of the time and place of application to the court for the relief demanded by the complaint.

3, In action where the service of the summons was by publication, the plaintiff may, in like manner, apply for judgment, and the court must thereupon require proof to be made of the demand mentioned in the complaint; and if the defendant be not a resident of the Territory, must require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover. Before rendering judgment the court may, in its discretion, require the plaintiff to cause to be filed satisfactory security, to abide the order of the court, touching the restitution of any estate or effects which may be directed by such judgment to be transferred or delivered, or the restitution of any money that may be collected under or by virtue of such judgment, in case the defendant or his representatives shall apply and be admitted to defend the action, and shall succeed in such defence.

Judgment on
frivolous
demurrer &c

Sec. 200. *Judgment on frivolous demurrer, answer or reply.* If a demurrer, answer or reply be frivolous, the party prejudiced thereby, upon a previous notice of five days, may apply to a judge of the court either in or out of the court, for judgment thereon, and judgment may be given accordingly.

CHAPTER II.

ISSUES, AND MODE OF TRIAL.

- SECTION 201. The different kinds of issues.
202. Issue of law
203. Issue of fact
204. On issue of both law and fact, the issue of law to be first tried
205. Trial defined
206. Issues, how tried
207. Issues triable by the court
208. Issues, where to be tried
209. Either party may give notice of trial. Note of issue
210. Order of disposing of issues on the calendar

CHAPTER II.

Sec 201. *The different kind of issues.* Issues arise upon the pleadings when a fact or conclusion of law is maintained by one party and controverted by the other. They are of two kinds :

Issues different kinds

- 1, Of law ; and 2, Of fact.

Sec. 202. *Issue of law.* An issue of law arises,

Of law

- 1, Upon a demurrer to the complaint, answer or reply, or to some part thereof.

Sec 203. *Issue of fact.* An issue of fact arises,

Of fact

- 1, Upon a material allegation in the complaint controverted by the answer, or

- 2, Upon new matter in the answer controverted by the reply ; or
- 3, Upon new matter in the reply, except an issue of law is joined thereon.

Sec. 204. *On the issues of both law and fact, the issue of law to be first tried* Issues both of law and of fact may arise upon different parts of the pleadings in the same action. In such cases the issues of law must be first tried, unless the court otherwise direct.

Issues of both law and fact which tried first

Sec. 205. *Trial defined.* A trial is the judicial examination of the issues between the parties, whether they be issues of law or of fact.

Definition of trial

Sec. 206. *Issues how tried.* An issue of law must be tried by the court, unless it be referred, as provided, in section 222. An issue of fact, in an action for the recovery of money only, or of specific real or personal property, or for a divorce from the marriage contract must be tried by a jury, unless a jury trial be waived, as provided in section 218, or a reference be ordered, as provided in section 222.

Trial of issues

Sec. 207. *Other issues to be tried by the court.* Every other issue is triable by the court, which, however, may order the whole issue, or any specific question of fact involved therein, to be tried by a jury, or may refer it, as provided in section 222.

Issues tried by court

Sec. 208. *Issues, where to be tried.* All issues of fact, triable by a jury or by the court, must be tried before a single judge. Issues of fact must be tried at a regular term of the district court when the trial is by jury, otherwise at a regular or special term, as the court may, by its rules, prescribe. Issues of law must be tried at a regular or special term of the district court.

When to be tried

Sec. 209. *Either party may give notice of trial. Note of issue.*

Either party
may give notice
of trial
Note of issue

At any time after issue, and at least ten days before the court, either party may give notice of trial. The party giving the notice shall furnish the clerk, at least eight days before the court, with a note of the issue, containing the title of the action, the names of the attorneys, and the time when the last pleading was served; and the clerk shall thereupon enter the cause upon the calendar, according to the date of the issue.

Order to dis-
pose of issues

Sec. 210. *Order of disposing of issues on the calendar.* The issues on the calendar shall be disposed of in the following order, unless, for the convenience of parties or the dispatch of business the court shall otherwise direct:

1. Issues of fact to be tried by a jury;
2. Issues of fact to be tried by the court;
3. Issues of law.

CHAPTER III.

TRIAL BY JURY.

- SECTION 211. Notice of trial. Separate trial
212. Court to be furnished with a copy of the pleadings
213. General and special verdicts defined.
214. When jury may render either general or special verdict, and when the court may direct a special finding
215. On special finding with a general verdict, the former to control
216. Jury to assess defendant's damages in certain cases
217. Entry of the verdict. Motion for new trial.

CHAPTER III.

Notice of trial,

Sec. 211. *Notice of trial. Separate trial.* Either party giving the notice may bring the issue to trial, and in the absence of the adverse party, unless the court, for good cause, otherwise direct, may proceed with his case, and take a dismissal of the complaint, or a verdict or judgment, as the case may require.

A separate trial between a plaintiff and any of the several defendants may be allowed by the court, whenever, in its opinion, justice will thereby be promoted.

Sec. 212. *Court to be furnished with copy of pleadings, &c.* **Court furnished with pleadings**
 When the issue shall be brought to trial by the plaintiff, he shall furnish the court with a copy of the summons and pleadings, with the offer of the defendant, if any shall have been made. When the issue shall be brought to trial by the defendant, and the plaintiff shall neglect or refuse to furnish the court with a copy of the summons and pleadings and the offer of the defendant, the same may be furnished by the defendant.

Sec. 213. *General and special verdicts defined.* **Verdicts defined**
 A general verdict is that by which the jury pronounces generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.

Sec. 214. *When jury may render either general or special verdict, and when court may direct special finding.* **When jury may render, and judge direct, special verdict**
 In an action for the recovery of specific property, if the property have not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff, or if they find in favor of the defendant, and that he is entitled to a return thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding such property.

In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases, the court may direct the jury to find a special verdict in writing upon all or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk, and entered upon the minutes.

Sec. 215. *On special finding with general verdict, former to control.* **Special finding with general verdict**
 Where a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

Sec. 216. *Jury to assess defendant's damages in certain cases.* **Jury to assess damages**
 When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a set-off for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury must also assess the amount of the recovery. They may also, under the direction of the court, assess the amount

of the recovery when the court give judgment for the plaintiff on the answer. If a set-off established at the trial, exceed the plaintiff's demand so established, judgment for the defendant must be given for the excess; or if it appear that the defendant is entitled to any other affirmative relief, judgment must be given accordingly.

Entry of verdict
New trial

Sec. 217. *Entry of the verdict. Motion for new trial.*

1. Upon receiving a verdict, the clerk shall make an entry in his minutes, specifying the time and place of the trial, the names of the jurors and witnesses, the verdict, and either the judgment rendered thereon, or an order that the cause be reserved for argument and further consideration. If a different direction be not given by the court, the clerk must enter judgment in conformity with the verdict.

2. If an exception be taken, it may be reduced to writing at the time, or entered on the judge's minutes, and afterwards settled as provided by the rules of the court, and then stated in writing in a case, or separately, with so much of the evidence as may be material to the questions to be raised, but need not be sealed or signed, nor need a bill of exceptions be made.

3. If the exceptions be in the first instance stated in a case, and it be afterwards necessary to separate them, the separation may be made under the discretion of the court, or a judge thereof.

4. The judge who tries the cause may, in his discretion, entertain a motion, to be made on his minutes, to set aside a verdict and grant a new trial upon exceptions, or for insufficient evidence, or for excessive damages; but such motion in actions hereafter tried, if heard upon the minutes, can only be heard at the same term at which the trial is had. When such motion is heard and decided upon the minutes of the judge, and an appeal is taken from the decision, a case or exceptions must be settled in the usual form, upon which the agreement of the appeal must be had.

CHAPTER IV.

TRIAL BY THE COURT.

SECTION 218. Trial by jury, how waived.

219. On trial by the court, judgment, how given.

220. Exceptions, how and when taken.

221. Proceedings upon judgment on issue of law.

CHAPTER IV.

Sec. 218. *Trial by jury, how waived.* Trial by jury may be waived by the several parties to an issue of fact, in actions on contract, and, with the assent of the court, in other actions, in the manner following :

Trial by jury,
how waived

- 1, By failing to appear at the trial.
- 2, By written consent, in person or by attorney, filed with the clerk.
- 3, By oral consent in open court, entered in the minutes.

Sec. 219. *On trial by the court, judgment, how to be given.* Upon a trial of a question of fact by the court, its decision shall be given in writing, and shall contain a statement of the facts found, and the conclusions of law separately ; and upon a trial of an issue of law, the decision shall be made in the same manner, stating the conclusion of law. Such decision shall be filed with the clerk within twenty days after the court at which the trial took place. Judgment upon the decision shall be entered accordingly.

Trial by court,
judgment how
given

Sec. 220. *Exceptions, how and when taken.*

Exceptions,
manner of
taking

1, For the purpose of an appeal, either party may except to a decision on a matter of law arising upon such trial within ten days after notice in writing of the judgment, in the same manner and with the same effect as upon a trial by jury.

2, And either party desiring to review, upon the evidence appearing on the trial, either of the questions of facts or of law may, at any time within ten days after notice of the judgment, or within such time as may be prescribed by the rules of the court, make a case or exceptions in like manner as upon a trial by a jury, except that the judge, in settling the case, must briefly specify the facts found by him, and his conclusions of law.

Sec. 221. *Proceedings upon judgment on issue of law.* On a judgment for the plaintiff upon an issue of law, the plaintiff may proceed in the manner prescribed by the first two subdivisions of section 199, upon the failure of the defendant to answer, where the summons was personally served. If judgment be for the defendant, upon an issue of law, and if taking

Proceedings on
judgment

of an account or the proof of any fact be necessary to enable the court to complete the judgment, a reference or assessment by jury may be ordered, as in that section provided.

CHAPTER V.

TRIAL BY REFEREES.

SECTION 222. All issues referable by consent.

223. Mode of trial. Effect of report. Review.

224. Referees, how chosen.

CHAPTER V.

Issues referable *Sec. 222. All issues referable by consent.* All or any of the issues in the action, whether of fact or of law, or both, may be referred; upon the written consent of the parties.

Mode of trial *Sec. 223. Mode of trial. Effect of report. Review.* The trial by referees shall be conducted in the same manner, and on similar notice, as a trial by the court. They shall have the same power to grant adjournments, and to allow amendments to any pleadings and to the summons, as the court upon such trial, upon the same terms and with the like effect. They shall have the same power to preserve order and punish all violations thereof upon such trial, and to compel the attendance of witnesses before them by attachment, and to punish them as for a contempt for non-attendance or refusal to be sworn or testify, as is possessed by the court. They must state the facts founded and the conclusions of law separately; and their decision must be given, and may be excepted to and reviewed in like manner, but with like effect in all respects as in cases of appeal under section 220; and they may in like manner settle a case of exceptions. The report of the referees upon the whole issue shall stand as the decision of the court, and judgment may be entered thereon in the same manner as if the action had been tried by the court. When the reference is to report the facts, the report shall have the effect of a special verdict.

Sec. 224. *Referees, how chosen.* In all cases of reference, ^{Referees, how chosen} the parties as to whom issues are formed in the action (except when the defendant is an infant or an absentee) may agree in writing upon a person or persons not exceeding three, and a reference shall be ordered to him or them, and to no other persons. And if such parties do not agree, the court shall appoint one or more referees, not more than three, who shall be free from exception. And no person shall be appointed referee to whom all parties in this action shall object, except in actions for divorce. And no justice or judge of any court shall sit as referee in any action pending in the court of which he is judge, and not already referred. Unless the court shall order, or the parties otherwise stipulate, the referee or referees shall make and deliver a report within sixty days from the time the action shall be finally submitted; and in default thereof, said referee or referees shall not be entitled to receive any fees, and the action shall proceed as if no reference had been enforced.

CHAPTER VI.

MANNER OF ENTERING JUDGMENT.

- Section 225. Judgment may be for or against any of the parties to the action; may grant defendant affirmative relief. Complaint may be dismissed for neglect to prosecute the action. Judgment against married woman.
226. The relief to be awarded to the plaintiff.
227. Rate of damages, where damages are recoverable.
228. Judgment in action for recovery of personal property.
229. Judgment, how directed.
230. Clerk to keep a judgment book.
231. Judgment to be entered in judgment book.
232. Judgment-roll.
233. Judgments, how and when to be docketed.

Sec. 225. *Judgment may be for or against any of the parties; may grant defendant affirmative relief. Complaint may be dismissed for neglect to prosecute action. Judgment against married woman.* ^{Judgment may be for, what}

1. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several de-

defendants; and it may determine the ultimate rights of the parties on each side, as between themselves.

2. And it may grant to the defendant any affirmative relief to which he may be entitled.

3. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them leaving the action to proceed against the others, whenever a several judgment may be proper.

Dismissal of
complaint

4. The court may also dismiss the complaint, with costs in favor of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or to proceed in the cause against the defendant or defendants served. In an action brought by or against a married woman, judgment may be given against her as well for costs as for damages, or both for such costs and for such damages, in the same manner as against other persons, to be levied and collected of her separate estate and not otherwise.

Judgment
against married
woman

Relief awarded
to plaintiff

Sec. 226. *The relief to be awarded to the plaintiff.* The relief granted to the plaintiff, if there be no answer cannot exceed that which he shall have demanded in his complaint; but in any other case the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

Rate of damages
if recoverable

Sec. 227. *Rate of damages where damages are recoverable.* Whenever damages are recoverable, the plaintiff may claim and recover, if he show himself entitled thereto, any rate of damages which he might have heretofore recovered for the same cause of action.

Judgment for
personal prop-
erty

Sec. 228. *Judgment in action for recovery of personal property.* In an action to recover the possession of personal property, the judgment for the plaintiff may be for the possession, or for the recovery of possession, or the value thereof in case a delivery cannot be had, and of damages for the detention. If the property have been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had, and damages for taking and withholding the same.

Sec. 229. *Judgment, how directed.* Judgment upon an issue of law or of fact, or upon confession, or upon failure to answer (except where the clerk is authorized to enter the same by the first subdivision of section 199, and by section 306.) shall be entered upon the direction of the judge, or report of referees. Judgment how directed

Sec. 230. *Clerk to keep a Judgment-book.* The clerk shall keep, among the records of the court, a book, for the entry of judgments, to be called the "judgment book." Clerk to keep judgment-book

Sec. 231. *Judgment to be entered in Judgment-book.* The judgment shall be entered in the judgment-book, and shall specify clearly the relief granted, or other determination of the action. Judgment to be entered

Sec. 232. *Judgment-roll.* Unless the party or his attorney shall furnish a judgment-roll, the clerk, immediately after entering the judgment, shall attach together, and file the following papers, which shall constitute the judgment-roll. Judgment-roll

1. In case the complaint be not answered by any defendant, the summons and complaint, or copies thereof, proof of service, and that no answer has been received, the report, if any, and a copy of the judgment.

2. In all other cases, the summons, pleadings, or copies thereof, and a copy of the judgment, with any verdict or report, the offer of the defendant, exceptions, case, and all orders or papers in any way involving the merits and necessarily affecting the judgment.

Sec. 233. *Judgments, when and how to be docketed.* On filing a judgment-roll upon a judgment directing in whole or in part the payment of money, it may be docketed with the clerk of the court where it was rendered, and in any other county upon the filing with the clerk of the district court for said county a transcript of the original "docket," and shall be a lien on the real property, in the county where the same is docketed, of every person against whom any such judgment shall be rendered, and which he may have at the time of docketing thereof in the county in which such real estate is situated, or which he shall acquire at any time thereafter, for ten years from the time of docketing the same in the county where it was rendered. But whenever an appeal from any judgment shall Docketing judgments

be pending, and the undertaking requisite to stay execution on such judgment shall have been given, and the appeal perfected as provided in the Code, the court in which such judgment was recovered may, on special motion, after notice to the person owning the judgment, that the same is "secured on appeal;" and thereupon it shall cease during the pending of the appeal, to be a lien on the real property of the judgment debtor as against purchasers and mortgagees in good faith.

TITLE IX.

OF THE EXECUTION OF THE JUDGMENT IN CIVIL ACTIONS.

CHAPTER I. The execution

II. Proceedings supplementary to the execution

CHAPTER I.

THE EXECUTION.

- Section 234. Execution within five years of course
 235. Execution can only be issued by leave of court after five years. Leave, how obtained
 236. Judgments, how enforced
 237. The different kinds of execution
 238. To what counties execution may be issued. Execution against a married woman.
 239. Execution against the person, in what cases
 240. Form of the execution
 241. Execution to be returned in sixty days
 242. Existing laws relating to execution continued

Execution with-
in five years of
course

Sec. 234. *Execution within five years of course.* Writs of execution for the enforcement of judgments, as now used, are modified in conformity to this title, and the party in whose favor judgment has been heretofore or shall hereafter be given may, at any time within five years after the entry of judgment, proceed to enforce the same as prescribed by this title.

Sec. 235. *After five years to be issued only by leave of court. Leave, how obtained.* After the lapse of five years from the entry of judgment, an execution can be issued only by leave of the court, upon motion, with personal notice to the adverse party, unless he be absent or non-resident, or cannot be found to make such service, in which case such service may be made by publication, or in such other manner as the court shall direct. Such leave shall not be given unless it be established by the oath of the party, or other satisfactory proof, that the judgment, or some part thereof, remains unsatisfied and due. But the leave shall not be necessary when execution has been issued on the judgment within the five years, and returned unsatisfied in whole or in part.

Sec. 236. *Judgments, how enforced.* Where a judgment requires the payment of money, or the delivery of real or personal property, the same may be enforced in those respects by execution, as provided in this title. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or the person or officer who is required thereby or by law to obey the same, and his obedience thereto enforced. If he refuse, he may be punished by the court as for contempt.

Sec. 237. *The different kinds of execution.* There shall be three kinds of execution; one against the property of the judgment debtor; another against his person; and the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same. They shall be deemed the process of the court, but they need not be sealed nor subscribed, except as prescribed in section 240.

Sec. 238. *To what Counties execution may be issued. Execution against a married woman.* When the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county where judgment is docketed. When it requires the delivery of real or personal property, it must be issued to the sheriff of the county where the property or some part thereof is situated. Executions may be issued at the same time to different counties. Real property adjudged to be sold must be sold in the county where it lies, by the sher-

How issued, &c

Judgment how enforced

Kinds of execution

To what counties issued; against married woman

iff of the county, or by a referee appointed by the court for that purpose, and thereupon the sheriff or referee must execute a conveyance to the purchaser, which conveyance shall be effectual to pass the rights and interests of the parties adjudged to be sold. An execution may issue against a married woman, and it shall direct the levy and collection of the amount of the judgment against her from her separate property, and not otherwise.

Against the
person

Sec. 239. *Execution against the person, in what cases.* If the action be one in which the defendant might have been arrested, as provided in section 132 and section 134, an execution against the person of the judgment debtor may be issued to any county within the jurisdiction of the court, after the return of an execution against his property unsatisfied in whole or in part. But no execution shall issue against the person of a judgment debtor, unless an order of arrest has been served, as in this act provided, or unless the complaint contains a statement of facts showing one or more of the causes of arrest required by section 132.

Form of
execution

Sec. 240. *Form of the execution.* The execution must be directed to the sheriff, or coroner when the sheriff is a party or interested, subscribed by the party issuing it, or his attorney, and must intelligibly refer to the judgment, stating the court, the county where the judgment roll or transcript is filed, the names of the parties, the amount of judgment, if it be for money, and the amount actually due thereon, and the time of docketing in the county to which the execution is issued, and shall require the officer substantially as follows:

1. If it be against the property of the judgment debtor, it shall require the officer to satisfy the judgment out of the personal property of such debtor; and if sufficient personal property cannot be found, out of the real property belonging to him on the day when the judgment was docketed in the county or at any time thereafter;

2. If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, or tenants of real property, or trustees, it shall require the officer to satisfy the judgment out of such property.

3. If it be against the person of the judgment debtor, it

shall require the officer to arrest such debtor, and commit him to the jail of the county until he shall pay the judgment or be discharged according to law.

4. If it be for the delivery of the possession of real or personal property, it shall require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the officer to satisfy any costs, damages, or rents or profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein; if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter, and shall in that respect be deemed an execution against property. Form of execution

Sec. 241. *To be returnable in sixty days.* The execution shall be returnable within sixty days, after its receipt by the officer, to the clerk with whom the record of judgment is filed. when returnable

Sec. 242. *Existing laws relating to execution continued, until otherwise provided.* Until otherwise provided by the legislature, the existing provisions of law, not in conflict with this chapter, relating to executions and their incidents, the property liable to sale on execution, the sale and redemption thereof, the powers and rights of officers, their duties thereon, and the proceedings to enforce those duties, and the liability of their sureties, shall apply to the executions prescribed by this chapter. existing laws continued

CHAPTER II.

PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

SECTION 243. Order for discovery of property, examination of judgment debtor, &c.

244. Any debtor to execution debtor may pay his debt to sheriff.

245. Examination of debtors of judgment debtor, or of those having property belonging to him.

- SECTION 246. Witnesses required to testify.
 247. Compelling party or witnesses to attend.
 248. What property may be ordered to be applied to the execution.
 249. Judge may appoint receiver, and prohibit transfer of property.
 250. Proceedings upon claim of another party to property, or on denial of indebtedness to judgment debtor.
 251. Reference by judge.
 252. Costs of proceeding.
 253. Disobedience of order, how punished.

Order for discovery of property,

Sec. 243 *Order for discovery of property, examination of judgment debtor, &c.*

1. When an execution against property of the judgment debtor, or of any one of the several debtors in the same judgment, issued to the sheriff of the county where he resides or has a place of business, or, if he do not reside in the Territory, to the sheriff of the county where a judgment roll, or a transcript of a justice's judgment for twenty-five dollars or upwards, exclusive of costs, is filed, is returned unsatisfied in whole or in part, the judgment creditor, at any time after such return made, is entitled to an order from a judge of the court, requiring such judgment debtor to appear and answer concerning his property, before such judge, at a time and place specified in the order, within the county to which the execution was issued.

2. After the issuing of an execution against property, and upon proof by affidavit, of a party or otherwise, to the satisfaction of the court, or a judge thereof; that any judgment debtor, residing in the district where such judge resides has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place, to answer concerning the same; and such proceedings may thereupon be had for the application of the judgment debtor towards the satisfaction of the judgment as are provided upon the return of an execution.

3. On an examination under this section, either party may examine witnesses in his behalf, and the judgment debtor may be examined in the same manner as a witness.

4, Instead of the order requiring the attendance of the judgment debtor, the judge may, upon proof by affidavit or otherwise, to his satisfaction, that there is danger of the debtor's leaving the Territory, or concealing himself, and that there is reason to believe he has property which he unjustly refuses to apply to such judgment, issue a warrant requiring the sheriff of any county where such debtor may be, to arrest him and bring him before such judge. Upon being brought before the judge, he may be examined on oath, and, if it then appears that there is danger of the debtor's leaving the Territory, and that he has property which he has unjustly refused to apply to such judgment, ordered to enter into an undertaking, with one or more sureties, that he will, from time to time, attend before the judge as he shall direct, and that he will not, during the pendency of the proceedings, dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison by warrant of the judge, as for a contempt.

Order for discovery of property

5, No person shall, on examination pursuant to this chapter, be excused from answering any question on the ground that his examination will tend to convict him of the commission of a fraud; but his answer shall not be used as evidence against him in any criminal proceeding or prosecution. Nor shall he be excused from answering any question on the ground that he has, before the examination, executed any conveyance, assignment or transfer of his property for any purpose, but his answer shall not be used as evidence against him in any criminal proceeding or prosecution.

Sec. 244. *Any debtor may pay execution against his creditors.* After the issuing of execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as shall be necessary to satisfy the execution and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

Debtor may pay execution

Sec. 245. *Examination of debtors of judgment debtor, or of those having property belonging to him.* After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon an affidavit that any person or corporation has pro-

Examination of judgment debtor, &c

perty of such judgment debtor, or is indebted to him in an amount exceeding ten dollars, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place, and answer concerning the same. The judge may also in his discretion, require notice of such proceeding to be given to any party to the action, in such manner as may seem to him proper. The proceedings mentioned in this section, and in section 243, may be taken upon the return of an execution unsatisfied, issued upon a judgment recovered in an action against joint debtors, in which some of the defendants have not been served with the summons by which said action was commenced, so far as relates to the joint property of such debtors; and all actions by creditors to obtain satisfaction of judgments out of the property of joint debtors are maintainable in the like manner and to the like effect. These provisions shall apply to all proceedings and actions now pending, and not actually terminated by any final judgment or decree.

Witness re-
quired to testify

Sec. 246. *Witness required to testify.* Witness may be required to appear and testify on any proceedings under this chapter, in the same manner as upon the trial of an issue.

Compelling par-
ty to attend

Sec. 247. *Compelling party or witnesses to attend.* The party or witness may be required to attend before the judge, or before a referee appointed by the court or judge; if before a referee, the examination shall be taken by the referee, and certified to the judge. All examinations and answers before a judge or referee, under this chapter, shall be on oath, except that when a corporation answers, the answer shall be on the oath of an officer thereof.

What property
applied to
execution

Sec. 248. *What property may be ordered to be applied to the execution.* The judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; except that the earnings of the debtor for his personal services, at any time within sixty days next preceding the order, cannot be so applied when it is made to appear by the debtor's affidavit or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

Sec. 249. *Judge may appoint receiver and prohibit transfer, &c., of property.* The judge may also, by order, appoint a receiver of the property of the judgment debtor, in the same manner, and with the like authority, as if the appointment was made by the court, according to section 197. But before the appointment of such receiver, the judge shall ascertain, if practicable, by the oath of the party, or otherwise, whether any other supplementary proceedings are pending against the judgment debtor, and if such proceedings are so pending, the plaintiff therein shall have notice to appear before him, and shall likewise have notice of all subsequent proceedings in relation to said receivership. No more than one receiver of the property of a judgment debtor shall be appointed. The judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor not exempt from execution, and any interference therewith. Whenever the judge shall grant an order for the appointment of a receiver of the property of the judgment debtor, the same shall be filed in the office of the clerk of the court where the judgment roll in the action or transcript from justice's judgment, upon which the proceedings are taken, is filed; and the said clerk shall record the order in a book to be kept for that purpose in his office, to be called "Book of orders appointing receivers of judgment debtors," and shall note the time of filing of said order therein. A certified copy of said order shall be delivered to the receiver named therein, and he shall be vested with the property and effects of the judgment debtor from the time of the filing and recording of the order as aforesaid. The receiver of the judgment debtor shall be subject to the direction and control of the court in which the judgment was obtained upon which the proceedings are founded. But before he shall be vested with any real property of such judgment debtor, a certified copy of said order shall also be filed and recorded in the office of the register of deeds of the county in which any real estate of such judgment debtor sought to be affected by such order is situated, and also in the office of the register of deeds of the county in which such judgment debtor resides.

Sec. 250. *Proceedings upon claim of another party to property, or on denial of indebtedness to judgment debtor.* If it

Proceedings in certain cases appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, such interest or debt shall be recoverable only in an action against such person or corporation by the receiver; but the judge may, by order, forbid a transfer or other disposition of such property or interest, till a sufficient opportunity be given to the receiver to commence the action, and prosecute the same to judgment and execution; but such order may be modified or dissolved by the judge granting the same, at any time, on such security as he shall direct.

Reference by judge Sec. 251. *Reference by judge.* The judge may, in his discretion, order a reference to a referee agreed upon by the parties, or appointed by him, to report the evidence or the facts, and, may in his discretion, appoint such referee in the first order, or at any time.

Cost of proceeding Sec. 252. *Costs of proceeding.* The judge may allow to the judgment creditor, or to any party so examined, whether a party to the action or not, witnesses' fees and disbursements, and a fixed sum in addition, not exceeding thirty dollars, as costs.

Disobedience of order how punished Sec. 253. *Disobedience of order, how punished.* If any person, party, or witness, disobey an order of the judge or referee, duly served, such person, party, or witness, may be punished by the judge as for a contempt. And in all cases of commitment under this chapter, the person committed may, in case of inability to perform the act required, or to endure the imprisonment, be discharged from imprisonment by the court or judge committing him, or the court in which the judgment was rendered, on such terms as may be just.

TITLE X.

OF THE COSTS IN CIVIL ACTIONS:

SECTION 254. Agreement of parties with attorneys, &c

255 Costs, when allowed of course to the plaintiff

- SECTION** 256. Costs, when allowed of course to the defendant
257. Costs, when allowed to either party, in the discretion of the court
258. Amount of costs allowed
259. Allowance in addition to costs
260. Allowance how computed. Difficult and extraordinary cases
260. Interest on verdict or report, when allowed
262. Costs, how to be inserted in judgment. Adjustment of interlocutory costs.
263. Clerk's fees
264. Referees fees
265. Costs on postponement of trial
266. Costs on a motion
267. Costs against an infant plaintiff
268. Costs in an action by or against an executor or administrator, trustee of an express trust, or a person expressly authorized by statute to sue. Security for costs
269. Costs in review of a decision of an inferior court in a special proceeding
270. Costs in actions by the people
271. The like
272. Costs against assignee after action brought, of cause of action
273. Costs on a settlement.

Sec. 254. *Agreement of parties with attorneys &c.* The amount of fees of attorneys, solicitors and counsel in civil and criminal actions shall be left to the agreement express or implied of the parties. But there may be allowed to the prevailing party, in civil actions, upon the judgment, certain sums by way of indemnity for his expenses in the action, which allowances are in this act termed costs.

Agreement of parties and attorneys

Sec. 255. *When allowed of course to the plaintiff.* Costs shall be allowed of course to the plaintiff, upon a recovery, in the following cases :

When costs allowed of course to the plaintiff

- 1, In an action for the recovery of real property, or when a claim of title to real property arises on the pleadings, or is certified by the court to have come in question at the trial;
- 2, In an action to recover the possession of personal property;
- 3, In the actions of which a court of justice of the peace has no jurisdiction;
4. In an action for the recovery of money, where the plaintiff shall recover fifty dollars; but in an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conver-

sation, or seduction, if the plaintiff recover less than fifty dollars damage, he shall recover no more costs than damages. And in action to recover the possession of personal property, if the plaintiff recover less than fifty dollars damages, he shall recover no more costs than damages, unless he recovers also property, the value of which, with the damages, amounts to fifty dollars, or the possession of property be adjudged to him, the value of which, with the damages, amounts to fifty dollars; such value must be determined by the jury, court, or referee, by whom the action is tried.

When several actions shall be brought on one bond, recognizance, promissory note, bill of exchange, or other instrument in writing, or in any other case, for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs other than disbursements shall be allowed to the plaintiff in more than one of such actions, which shall be at his election; *Provided*, That the party or parties proceeded against in such other action or actions have been within this Territory, and not secreted.

When to
defendant

Sec. 256. *When allowed to defendant.* Costs shall be allowed of course to the defendant, in the actions mentioned in the last section, unless the plaintiff be entitled to costs therein.

When to
other parties

Sec. 257. *When allowed to either party, in the discretion of the court.* In other actions, costs, may be allowed or not, in the discretion of the court.

In all actions where there are several defendants not united in interests, and making separate defences by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor, or any of them. In the following cases the costs of an appeal shall be in the discretion of the court:

- 1, When a new trial shall be ordered;
- 2, When a judgment shall be affirmed in part, and reversed in part;

Amount of costs
allowed

Sec. 258. *Amount of costs allowed.* When allowed, costs shall be as follows:

- 1, To the plaintiff, for all proceedings before notice of trial, eight dollars: for all proceedings after notice and before trial, eight dollars; for each additional defendant served with process not exceeding ten, two dollars; and for each necessary defendant in excess of that number, served with process, one dollar.

- 2, To the defendant, for all proceedings before notice of trial, five dollars; and for all proceedings after notice of and before trial, eight dollars.

3, To either party, where a new trial shall be had, for all proceedings after the granting of and before such new trial, twelve dollars; ^{Amount of costs allowed} for attending upon and taking the deposition of a witness conditionally, or attending to perpetuate his testimony, five dollars; for drawing interrogatories to annex to a commission for the taking of testimony, five dollars; for attending the examination of a party before trial, five dollars; for making and serving a case, or case containing exceptions, eight dollars; except that where the case shall necessarily contain more than fifty folios, there shall be allowed ten dollars in addition thereto; and for making and serving amendments thereto, five dollars. To the plaintiff for the appointment of a guardian of an infant defendant, five dollars; but no more than ten dollars shall be allowed for the appointment of guardians in any one action. To the plaintiff for procuring an order of injunction, ten dollars.

4, To either party for the trial of an issue of law, ten dollars; for every trial of an issue of fact, fifteen dollars; and where the trial shall necessarily occupy more than two days, ten dollars in addition thereto.

5, To either party on appeal to the supreme court, before argument, ten dollars; for argument twenty dollars, and when a judgment is affirmed, the court may, in its discretion, also award damages for the delay, not exceeding ten per cent on the amount of the judgment;

6, To either party, for every term, not exceeding five, at which the cause is necessarily on the calender and is not tried, or is postponed by order of the court, five dollars; and for every term not exceeding ten, excluding the term at which the cause is argued in the supreme court, ten dollars; but in an action hereafter brought to recover dower, before admeasurement of real property aliened by the husband, the plaintiff shall not recover costs unless it appear that the dower was demanded before the commencement of the action and was refused.

The same costs shall be allowed to the plaintiff in proceedings under chapter two, title twelve, of the second part of this Code, as upon the commencement of an action.

Costs shall be allowed to the prevailing party in judgments rendered on appeal from justices courts in all cases, with the following exceptions and limitations: In the notice of appeal, the appellant shall state in what particular or particulars he claims the judgment should have been more favorable to him. Within fifteen days after the service of the notice of appeal the respondent may serve upon the appellant and justice an offer, in writing, to allow the judgment to be

Amount of costs
allowed

corrected in any of the particulars mentioned in the notice of appeal. The appellant may thereupon, and within five days thereafter, file with the justice a written acceptance of such offer, who shall thereupon make a minute thereof in his docket, and correct such judgment accordingly, and the same, so corrected, shall stand as his judgment, and be enforced accordingly; and any execution which has been issued upon judgment appealed from shall be amended by the justice to correspond with the amended judgment; and no undertaking given to stay execution shall be enforced for more than the amount of the corrected judgment. If such offer be not made, and the judgment in the appellate court be more favorable to the appellant than the judgment in the court below, or if such offer be made and not accepted, and the judgment of the appellate court be more favorable to the appellant than the offer of the respondent, the appellant shall recover costs. If the offer be made, and accepted by the appellant the appellant shall recover all his disbursements on appeal, and all his costs, in the court below. But the appellant shall not recover costs except as provided in this chapter. The respondent shall be entitled to recover costs where the appellant is not.

Whenever costs are awarded to the appellant, he shall be allowed to tax, as part thereof, the costs and fees paid to the justice on making the appeal, as disbursements, in addition to the costs in the appellate court; and when the judgment in the suit before the justice was against such appellant, he shall further be allowed to tax the costs incurred by him which he would have been entitled to recover in case the judgment below had been rendered in his favor.

If, upon an appeal, a recovery for any debt or damages be had by one party, and costs be awarded to the other party, the court shall set off such costs against such debt or damages, and render such judgment for the balance.

The following fees and costs, and no other, except fees of officers, disbursements, and witnesses' fees, shall be allowed on appeal to the party entitled to costs as herein provided, when the new trial is in the district court;

For proceedings before notice of trial three dollars;

For all subsequent proceedings before trial, three dollars;

For trial of an issue of law, five dollars;

For every trial of an issue of fact, ten dollars;

For argument of a motion for a new trial on a case of bill of exception, ten dollars.

In all cases, to either party, for every term, not exceeding five, at

which the appeal is necessarily on the calendar and is not tried or is not postponed by the court, five dollars. Amount of costs allowed

In other appeals the costs shall be as follows: To the appellant on reversal, fifteen dollars; to the respondent, on the affirmance, twelve dollars. If the judgment appealed from be reversed in part and affirmed as to the residue, the amount of costs allowed to either party shall be such sum as the appellate court may award, not exceeding ten dollars. If the appeal be dismissed for want of prosecution, no costs shall be allowed to either party. In every appeal, the justice of the peace before whom the judgment appealed from was rendered, shall receive two dollars for his return. If the judgment be reversed for an error of fact in the proceedings, not affecting the merits, costs shall be in the discretion of the court.

If, in the notice of appeal, the appellant shall not state in what particular or particulars he claims the judgment should have been made more favorable to him, he shall not be entitled to costs unless the judgment appealed from be wholly reversed.

Sec. 259. *Addition allowance.* In addition to these allowances, Additional allowance there shall be allowed to the plaintiff, upon the recovery of judgment by him, in any action for the partition of real property, or for the foreclosure of a mortgage, or in any action in which a warrant of attachment has been issued, or for an adjudication upon a will or other instrument in writing, and in proceedings to compel the determination of claims to real property, the sum of five per cent. on the recovery, as in the next section prescribed for any amount not exceeding two hundred dollars; an additional sum of 2½ per cent. for any additional amount not exceeding four hundred dollars; and an additional sum of one per cent. for any additional amount not exceeding one thousand dollars.

And in the actions above named, if the same shall be settled before the judgment therein, like allowances upon the amount paid or secured upon such settlement, at one-half the rates above specified.

Sec. 260. *Allowance how computed.* Allowance how computed *Difficult and extraordinary* Unusual cases cases. These rates shall be estimated upon the value of the property claimed or attached, or affected by the adjudication upon the will or other instrument, or sought to be partitioned, or the amount found due upon the mortgage in action for foreclosure. And whenever it shall be necessary to apply to the court for an order enforcing the payment of an installment falling due after judgment in action for foreclosure, the plaintiff shall be entitled to the rate of allowance in the last section prescribed, but to no more in the aggregate than if the whole amount of the mortgage had been due when judgment

was entered. Such amount of value must be determined by the court, or by the commissioners in case of actual partition. In difficult and extraordinary cases, where a trial has been had, except in any of the actions or proceedings (other than those for the partition of real estate) specified in section 259, and in actions or proceedings for the partition of real estate, the court may also, in its discretion make a further allowance to any party, not exceeding five per cent, upon the amount of the recovery or claim, or subject matter involved.

Allowance of interest on verdict or report

Sec. 261. *Interest on verdict or report, when allowed.* When the judgment is for the recovery of money, interest, from the time of the verdict or report until judgment be finally entered, shall be computed by the clerk, and added to the costs of the party entitled thereto.

Costs how to be inserted in judgment
Adjustment of interlocutory costs

Sec. 262. *Costs, how to be inserted in judgment. Adjustment of interlocutory costs.* The clerk shall insert in the entry of judgment on the application of the prevailing party, upon five days' notice to the other, except when the attorney reside in the same city, village, or town, and then upon two days' notice, the sum of the allowances for costs as provided by this Code, the necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the reasonable compensation of commissioners in taking deposition, the fees of referees, and the expense of printing the papers for any hearing when required by rule of the court. The disbursements shall be stated in detail and verified by affidavit. A copy of the items of the costs and disbursements shall be served, with a notice of adjustment.

Whenever it shall be necessary to adjust costs in any interlocutory proceeding in an action, or in any special proceeding, the same shall be adjusted by the judge before whom the same be heard, or the court before which the same may be decided or pending, or in such other manner as the judge or court may direct.

Fees of clerk

Sec. 263. *Clerk's fees.* The clerk shall receive :

On every trial, from the party bringing it on, two dollars ;

On entering a judgment by filing transcript, ten cents ;

On entering judgment, one dollar.

But this section shall not be so construed as to prohibit the clerk from receiving any other fees that may be allowed to him by law, for any other service not included in this section.

Of referees

Sec. 264. *Referee's fees.* The fees of referees shall be three dollars to each, for every day spent in the business of the reference ; but the parties may agree in writing upon any other rate or compensation.

Sec. 265. *Costs on postponement of trial.* When an application shall be made to a court or referees to postpone a trial, the payment to the adverse party of a sum not exceeding ten dollars, besides the fees of witnesses, may be imposed as the condition of granting the postponement. Costs on postponement

Sec. 266. *Costs on a motion.* Costs may be allowed on a motion, in the discretion of the court or judge, not exceeding ten dollars, and may be absolute or directed to abide the event of the action. On a motion

Sec. 267. *Costs against infant plaintiff.* When costs are adjudged against an infant plaintiff, the guardian by whom he appeared in the action shall be responsible therefor, and payment thereof may be enforced by attachment. Costs against infant plaintiff

Sec. 268. *Costs in action by or against an executor or administrator, trustees of an express trust, or a person expressly authorized by statute to sue. Security for costs.* Costs in other cases

1. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered, as in action by and against a person prosecuting or defending in his own right; but such costs shall be chargeable only upon or collected of the estate fund, or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such action or defence. But this section shall not be construed to allow costs against executors or administrators where they are now exempted therefrom.

2. And whenever any claim against a deceased person shall be referred, pursuant to the provisions of law, the prevailing party shall be entitled to recover the fees of referees and witnesses, and other necessary disbursements, to be taxed according to law.

3. And the court may, in its discretion, in the cases mentioned in this section, require the plaintiff to give security for costs. Security for costs

Sec. 269. *Costs on review of a decision of an inferior court in a special proceeding.* When the decision of a court of inferior jurisdiction in a special proceeding, including appeals from probate courts, shall be brought before the supreme court for review, such proceedings shall for all purposes of costs, be deemed an action at issue, on a question of law, from the time the same shall be brought into the supreme court, and costs thereon shall be awarded and collected in such manner as the court shall direct according to the nature of the case. Costs on review decision of inferior court in a special proceeding

Sec. 270. *Costs in action by the people.* In all civil actions, prosecuted in the name of the people of the Territory, by an officer duly

Costs in an
action by the
people

authorized for that purpose, the people shall be liable for costs in the same cases and to the same extent as private parties. If a private person be joined with the people as plaintiff, he shall be liable in the first instance for the defendant's costs, which shall not be recovered of the people till after execution issued therefor against such private party and returned unsatisfied.

Costs in an
action by the
people

Sec. 271. *Costs in actions by the people.* In an action prosecuted in the name of the people of this Territory, for the recovery of money or property, or to establish a right or claim for the benefit of any county, city, town, village, corporation or person, costs awarded against the party plaintiff shall be a charge against the party for whose benefit the action was prosecuted, and not against the people.

Costs of assignee
after action
brought of case
of action

Sec. 272. *Costs against assignee after action brought of cause of action.* In actions in which the cause of action shall, by assignment after the commencement of the action, or in any other manner, become the property of a person not a party to the action, such person shall be liable for the costs, in the same manner as if he were a party, and payment thereof may be enforced by attachment.

Costs on a
settlement

Sec. 273. *Costs on a settlement.* Upon the settlement, before judgment, of any action mentioned in section 255, no greater sum shall be demanded from the defendant as costs than at the rates prescribed by that section.

TITLE XI.

ON APPEALS IN CIVIL ACTIONS.

CHAPTER I. Appeals in general

11. Appeals in the supreme court

CHAPTER I.

APPEALS IN GENERAL.

SECTION 274. Appeals

275. Orders made out of court, how vacated or modified

276. Who may appeal

277. Parties, how designated on appeals

278. Appeals, how made

SECTION 279. Clerk to transmit papers to appellate court.

280. Intermediate orders affecting the judgment may be reviewed on the appeal from the judgment

281. Judgment on appeal

282. Time for appealing.

Sec. 274. Appeals. The mode of reviewing a judgment or order, in a civil action, shall be that prescribed by this title. Appeal in general

Sec. 275. Orders made out of court, how vacated or modified. An order made out of court, without notice to the adverse party, may be vacated or modified, without notice, by the judge who made it, or may be vacated or modified on notice, in the manner in which other motions are made. Orders made out of court how vacated or modified

Sec. 276. Who may appeal. Any party aggrieved may appeal in the cases prescribed in this title. Who may appeal

Sec. 277. Parties, how designated on appeal. The party appealing shall be known as the appellant, and the adverse party as the respondent. But the title of the action shall not be changed in consequence of the appeal. Parties how designated on appeal

Sec. 278. Appeal, how made :

1. An appeal must be made by the service of a notice in writing on the adverse party, and on the clerk with whom the judgment or order appealed from is entered, stating the appeal from the same or some specified part thereof;

2. When a party shall give, in good faith, notice of appeal from a judgment or order, and shall omit, through mistake, to do any other act necessary to perfect the appeal or to stay proceedings, the court may permit an amendment on such terms as may be just.

Sec. 279. Transmission of papers to appellate court. If the appellant shall not, within twenty days after his appeal is perfected, cause a certified copy of the notice of appeal and of the judgment roll, or, if the appeal be from an order or any part thereof, a certified copy of such order and the papers upon which the order was granted, to be transmitted to the appellate court by the clerk with whom the notice of appeal is filed, the respondent may cause such certified copy to be transmitted by such clerk to the appellate court, and recover the expenses thereof as a disbursement on such appeal in case of Transmission of papers in case of appeal

judgment or order appealed from shall be in whole or in part affirmed; and this provision shall apply to all appeals heretofore taken where the appeal has not been dismissed in the manner prescribed by the rules of the appellate court.

Intermediate
orders affecting
the judgment
may be reviewed
on appeal

Sec. 280. *Intermediate orders affecting the judgment may be reviewed on the appeal.* Upon an appeal from a judgment, the court may review any intermediate order involving the merits and necessarily effecting the judgment.

Judgment on
appeal

Sec. 281. *Judgment on appeal.* Upon an appeal from a judgment or order, the appellate court may reverse, affirm, or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all the parties, and may, if necessary or proper, order a new trial. When the judgment is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment.

Time of appeal

Sec. 282. *Time for appealing.* The appeal to the supreme court under subdivision 2 of section 10 of this code, must be taken within sixty days after written notice of the order shall have been given to the party appealing; every other appeal allowed by the second chapter of this title must be taken within two years after the judgment shall be perfected by filing the judgment-roll.

CHAPTER II.

APPEALS TO THE SUPREME COURT.

SECTION 283. Appeal, in what cases

- 284. On appeal, security must be given or deposit made; unless waived
- 285. On judgment for money, security to stay execution. New undertaking in sureties on first becoming insolvent
- 286. If judgment be to deliver document or personal property, it must be deposited or security given
- 287. If judgment be to execute conveyance, it must be executed and deposited
- 288. Security where judgment is to deliver real property or for a sale of mortgaged premises

- SECTION 289. Stay of proceedings upon security being given
 290. Undertakings may be in one instrument or several
 291. Security to be approved and sureties to justify
 292. Perishable property may be sold, notwithstanding appeal
 293. Undertaking must be filed

Sec. 283. *Appeal, in what cases.* An appeal may be taken Appeal in what cases to the supreme court in the cases mentioned in section 10, when any of the courts mentioned therein shall render judgment upon a verdict taken subject to the opinion of the court; the questions or conclusions of law, together with a concise statement of the facts upon which they arose, shall be prepared by and under the direction of the court, and shall be filed with the judgment-roll, and be deemed a part thereof, for the purpose of a review in the supreme court. The provisions of this section shall apply to any judgment therein mentioned that has been heretofore rendered, and, upon which an appeal has been brought and is now pending, or upon which an appeal shall hereafter be brought. When the return has already been filed with the clerk of the supreme court such statement shall be filed with him, and be deemed a part of such return.

Sec. 284. *On appeal, security must be given or deposit made, unless waived.* To render an appeal effectual for any purpose, Security given on appeal a written undertaking must be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all costs and damages which may be awarded against him on the appeal, not exceeding two hundred and fifty dollars; or that sum must be deposited with the clerk with whom the judgment or order was entered, to abide the event of the appeal. Such undertaking or deposit may be waived by a written consent on the part of the respondent.

Sec. 285. *On judgment for money, security to stay execution. New undertaking on sureties in first becoming insolvent.* Security given to stay execution on judgment for money If the appeal be from a judgment directing the payment of money, it shall not stay the execution of the judgment, unless a written undertaking be executed on the part of the appellant by at least two sureties, to the effect that, if the judgment appealed from, or any part thereof, be affirmed, or the appeal be dismissed, the appellant will pay the amount directed to be

paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if it be affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal. Whenever it shall be made satisfactorily to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file, and serve a new undertaking as above; and in case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring such new undertaking, the appeal may, on motion to the court, be dismissed with costs. Whenever it shall be necessary for a party to any action or proceeding to give a bond or an undertaking, with surety or sureties, he may, in lieu thereof, deposit with the officer or into court, as the case may require, money to the amount for which such bond or undertaking is to be given. The court in which such action or proceeding is pending may direct what disposition shall be made of such money, pending the action or proceeding. In any case where, by this section, the money is to be deposited with an officer, a judge of the court, at special term or at chambers, upon the application of either party, may, before such deposit is made, order it to be deposited in court instead of with such officer; and a deposit made, pursuant to such order, shall be of the same effect as if made with such officer.

In case of judgment to deliver document &c

Sec. 286. *If judgment be to deliver document or personal property, it must be deposited, or security be given.* If the judgment appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment shall not be stayed by appeal, unless the things required to be assigned or delivered be brought into court, or placed in the custody of such officer or receiver as the court shall appoint, or unless an undertaking be entered into on the part of the appellant, by at least two sureties, and in such amount as the court shall direct, to the effect that the appellant will obey the order of the appellant court upon the appeal.

In case of judgment to execute conveyance

Sec. 287. *If to execute conveyance, it must be executed and deposited.* If the judgment appealed from direct the execution of a conveyance or other instrument, the execution of the judgment shall not be stayed by the appeal until the instrument

shall have been executed and deposited with the clerk with whom the judgment is entered, to abide the judgment of the appellate court.

Sec. 288. *Security where judgment is to deliver real property or for a sale of mortgaged premises.* If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the same shall not be stayed, unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that, during the possession of such property by the appellant, he will not commit, or suffer to be committed, any waste thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of possession thereof, pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered, and which shall be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking shall also provide for the payment of such deficiency.

In case of judgment for sale of mortgaged premises

Sec. 289. *Stay of proceedings upon security being given.* Whenever an appeal is perfected as provided by sections 285, 286, 287, and 288, it stays all further proceedings in the court below upon the judgment and appeal from, or upon the matter embraced therein; but the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from. And the court below may, in its discretion, dispense with or limit the security required by sections 285, 286, and 288, when the appellant is an executor, administrator, trustee, or other person acting in another's right; and may also limit such security to an amount not less than fifty thousand dollars, in the cases mentioned in sections 286, 287, and 288, where it would otherwise, according to those sections, exceed that sum.

Stay of proceedings on giving security

Sec. 290. *Undertakings may be in one instrument or several.* The undertakings prescribed by sections 284, 285, 286, and 288, may be in one instrument or several, at the option of the appellant; and a copy, including the names and residence of the sureties, must be served on the adverse party, with the notice of appeal, unless a deposit is made as provided in section 284, and notice thereof given.

Undertaking may be in one instrument or several

Security must
be approved &c

Sec. 291. *Security to be approved and to justify.* An undertaking upon an appeal shall be of no effect, unless it be accompanied by the affidavit of the sureties that they are each worth double the amount specified therein. The respondent may, however, except to the sufficiency of the sureties, within ten days after the notice of the appeal; and unless they or other sureties justify before a judge of the court below, as prescribed by sections 148 and 149, within ten days thereafter, the appeal shall be regarded as if no undertaking had been given. The justification shall be upon a notice of not less than five days.

When perishable
may be sold

Sec. 292. *Perishable property may be sold notwithstanding appeal.* In the cases not provided for in sections 285, 286, 287, 288, and 289, the perfecting of an appeal, by giving the undertaking mentioned in section 284, shall stay proceedings in the court below upon the judgment appealed from, except that where it directs the sale of perishable property, the court below may order the property to be sold, and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court.

Undertaking
must be filed

Sec. 293. *Undertaking must be filed.* The undertaking must be filed with the clerk with whom the judgment or order appealed from was ordered.

TITLE XII.

OF THE MISCELLANEOUS PROCEEDINGS IN CIVIL ACTIONS, AND GENERAL PROVISIONS.

CHAPTER I. Submitting a controversy without action.

- II. Proceedings against joint debtors, heirs, legatees, devisees, and tenants holding under a judgment debtor.
- III. Confession of a judgment without action.
- IV. Offers of the defendant to compromise the whole or a part of the action.
- V. Admission or inspection of writings.
- VI. Examinations of parties.
- VII. Examination of witnesses.

CHAP. VIII. Motions and orders.

- IX. Entitling affidavits.
- X. Computation of time.
- XI. Notices, and filing and service of papers.
- XII. Duties of sheriffs and coroners.
- XIII. Accountability of guardians.
- XIV. Powers of referees.
- XV. Miscellaneous provisions.

CHAPTER I.

SUBMITTING A CONTROVERSY WITHOUT ACTION.

- SECTION 294. Controversy, how submitted without action.
 295. Judgment.
 296. Judgment, how enforced or appealed from.

Sec. 294. *Controversy, how submitted without action.* Parties to a question in difference, which might be the subject of a civil action, may, without action, agreeing upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceeding in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case, at a general term, and render judgment thereon, as if an action were depending.

Sec. 295. *Judgment.* Judgment shall be entered in the judgment-book, as in other cases, but without costs for any proceeding prior to notice of trial. The case, the submission, and a copy of the judgment shall constitute the judgment-roll.

Sec. 296. *Judgment, how enforced or appealed from.* The judgment may be enforced in the same manner as if it had been rendered in action, and shall be subject to appeal in like manner.

CHAPTER II.

PROCEEDINGS AGAINST JOINT DEBTORS, HEIRS, DEVISEES, LEGATEES, AND TENANTS HOLDING UNDER A JUDGMENT DEBTOR.

- SECTION 297. Parties, not summoned in action on joint contract, may be summoned after judgment
298. If judgment debtor die, his representatives may be summoned
299. Form of summons
300. Summons to be accompanied by affidavit of amount due
301. Party summoned may answer and defend
302. Subsequent pleadings and proceedings the same as in an action
303. Answer and reply to be verified as in an action

parties not
summoned on
joint contract
may be summoned
at judgment

Sec. 297. *Parties, not summoned in action on joint contract, may be summoned after judgment.* When a judgment shall be recovered against one or more of several persons jointly indebted upon a contract, by proceeding as provided in section 89, those who were not originally summoned to answer the complaint may be summoned to show cause why they should not be bound by the judgment, in the same manner as if they had been originally summoned.

On death of
judgment debtor
who summoned
Form of summons

Sec. 298. *If judgment debtor die, his representatives may be summoned.* In case of the death of a judgment debtor after judgment, the heirs, devisees, or legatees of the judgment debtor, or the tenants of real property owned by him and affected by the judgment, may, after the expiration of three years from the time of granting letters testamentary or of administration upon the estate of the testator or intestate, be summoned to show cause why the judgment should not be enforced against the estate of the judgment debtor in their hands respectively; and the personal representatives of a deceased judgment debtor may be summoned, at any time within one year after their appointment.

Sec. 299. *Form of summons.* The summons provided in the last two sections shall be subscribed by the judgment creditor,

his representatives or attorney, shall describe the judgment, and require the person summoned to show cause within twenty days after the service of the summons; and shall be served in like manner as the original summons.

Sec. 300. *To be accompanied by affidavit of amount due.* The summons shall be accompanied by an affidavit of the person subscribing it, that the judgment has not been satisfied, to his knowledge or information and belief, and shall specify the amount due thereon.

Sec. 301. *Party summoned may answer and defend.* Upon such summons, the party summoned may answer within the time specified therein, denying the judgment, or setting up any defence which may have arisen subsequently; and, in addition thereto, if he be proceeded against according to section 297, he may make the same defence which he might have originally made to the action, except the statute of limitations.

Sec. 302. *Subsequent pleadings and proceedings same as in action.* The party issuing the summons may demur or reply to the answer, and the party summoned may demur to the reply; and the issue may be tried and judgment may be given in the same manner as in an action, and enforced by execution or the application of the property charged to the payment of the judgment may be compelled by attachment, if necessary.

Sec. 303. *Answer and reply to be verified as in an action.* The answer and reply shall be verified in the like cases and manner, and be subject to the same rules, as the answer and reply in an action.

CHAPTER III.

CONFESSION OF JUDGMENT WITHOUT ACTION.

SECTION 304. Judgment may be confessed for debt due or for contingent liability.

305. Statement in writing and form thereof.

306. Judgment and execution.

Sec. 304. *Judgment may be confessed for debt due or contingent liability.* A judgment by confession may be entered,

without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both in the manner prescribed by this chapter.

Statement in
writing

Sec. 305. *Statement in writing, and form thereof.* A statement in writing must be made, signed by the defendant and verified by his oath, to the following effect :

1. It must state the amount for which judgment may be entered, and authorize the entry of judgment therefor.

2. If it be for money due or to become due, it must state concisely the facts out of which it arose, and must show that the sum confessed therefore is justly due, or to become due.

3. If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability, and must show that the sum confessed therefore does not exceed the same.

Judgment and
execution

Sec. 306. *Judgment and execution.* The statement may be filed with the clerk of the district court in the county where the judgment is brought to be obtained, who shall endorse upon it, and enter upon the judgment book a judgment of the district court, for the amount confessed, with five dollars costs, together with disbursements. The statement and affidavit, with the judgment endorsed, shall thenceforth become the judgment roll. Execution may be issued and enforced thereon, in the same manner as upon judgments in other cases in such courts. When the debt for which the judgment is recovered is not all due, or is payable in installments, and the installments are not all due, the execution may issue upon such judgment for the collection of such installments as have become due, and shall be in the usual form, but shall have endorsed thereon, by the attorney or person issuing the same, a direction to the sheriff to collect the amount due on such judgment, with interest and costs, which amount shall be stated, with interest thereon, and the costs of said judgment. Notwithstanding the issue and collection of such execution, the judgment shall remain as security for the installments thereafter to become due, and whenever any further installments become due, execution may, in like manner, be issued for the collection and enforcement of the same.

CHAPTER IV.

OFFER OF THE DEFENDANT TO COMPROMISE THE WHOLE OR A PART
OF THE ACTION.

SECTION 307. Offer of compromise.

308. Defendant may offer to liquidate damages.

309. Effect of acceptance or refusal of offer.

Sec. 307. *Offer of compromise.* The defendant may at any time ^{Compromise} before the trial or verdict, serve upon the plaintiff an offer in writing to all judgment to be taken against him for the sum or property, or to the effect therein specified, with costs. If the plaintiff accept the offer, and give notice thereof in writing, within ten days, he may file the summons, complaint, and offer, with an affidavit of notice of acceptance, and the clerk must thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer is to be deemed withdrawn, and cannot be given in evidence; and if the plaintiff fail to obtain a more favorable judgment, he cannot recover costs, but must pay the defendant's costs from the time of the offer.

Sec. 308. *Defendants may offer to liquidate damages conditionally.* ^{Defendant may offer to liquidate damages} In an action arising on contract, the defendant may, with his answer serve upon the plaintiff an offer in writing, that if he fail in his defence, the damages be assessed at a specified sum; and if the plaintiff signify his acceptance thereof in writing, with or before the notice of trial, and on the trial have a verdict, the damages shall be assessed accordingly.

Sec. 309. *Effect of acceptance or refusal of an offer.* ^{Effect of acceptance or refusal of offer} If the plaintiff do not accept the offer, he shall prove his damages as if it had not been made, and shall not be permitted to give it in evidence. And if the damages assessed in his favor shall not exceed the sum mentioned in the offer, the defendant shall recover his expenses incurred in consequence of any necessary preparations or defence in respect to the question of damages. Such expenses shall be ascertained at the trial.

CHAPTER V.

ADMISSION OR INSPECTION OF WRITINGS.

SECTION 310. Admission or inspection of writings.

Admission of
writings

Sec. 310. *Admission or inspection of writings. Inspection and copy of books, papers, and documents, how obtained.* Either party may exhibit to the other, or to his attorney, at any time before the trial, any paper material to the action, and request an admission in writing of its genuineness. If the adverse party, or his attorney, fail to give the admission within four days after the request, and if the party exhibiting the paper be afterwards put to expense in order to prove its genuineness, and the same be finally proved or admitted on the trial, such expense, to be ascertained at the trial, shall be paid by the party refusing the admission, unless it appear to the satisfaction of the court, that there were good reasons for the refusal. The court before which an action is pending, or a judge or justice thereof, may, in their discretion, and upon due notice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy, of any books, papers, and documents, in his possession or under his control, containing evidence relating to the merits of the action or the defence therein. If compliance with the order be refused, the court, on motion, may exclude the paper from being given in evidence, or punish the party refusing, or both.

CHAPTER VI.

EXAMINATION OF PARTIES.

SECTION 311. Action for discovery abolished.

312. A party may examine his adversary as a witness.

313. Such examination also allowed before trial: Proceeding therefor.

314. Party, how compelled to attend.

315. Testimony of party may be rebutted.

316. Effect of refusal to testify.

317. Testimony of a party not responsive to the inquiries may be rebutted by the oath of the party calling him.

318. Persons for whom action is brought or defended may be examined.

Action for
discovery abol-
ished

Sec. 311. *Action for discovery abolished.* No action to obtain discovery under oath, in aid of the prosecution or defence of another action, shall be allowed, nor shall any examination of a party be had on behalf of the adverse party, except in the manner prescribed by this chapter.

Sec. 312. *A party may examine his adversary as a witness.* A party to an action may be examined as a witness, at the instance of the adverse party, or any of several adverse parties, and for that purpose may be compelled, in the same manner, and subject to the same rules of examination, as any other witness, to testify, either at the trial, or conditionally, or upon commission.

A party may examine his adversary as witness

Sec. 313. *Such examination also allowed before trial.* Proceedings therefor. The examination, instead of being had at the trial, as provided in the last section, may be had at any time before the trial, at the option of the party claiming it, before a judge of the court, on a previous notice to the party to be examined, and any other adverse party, of at least five days, unless, for good cause shown, the judge order otherwise. But the party to be examined shall not be compelled to attend in any other county than that of his residence, or where he may be served with a summons for his attendance.

Such examination allowed before trial

Sec. 314. *Party how compelled to attend.* The party to be examined, as in the last section provided, may be compelled to attend in the same manner as a witness who is to be examined conditionally; and the examination shall be taken and filed by the judge in like manner, and may be read by either party on the trial.

How to compel party to attend

Sec. 315. *Testimony of party may be rebutted.* The examination of the party, thus taken, may be rebutted by adverse testimony.

Rebutting testimony allowed

Sec. 316. *Effect of refusal to testify.* If a party refuse to attend and testify, as in the last four sections provided, he may be punished as for a contempt, and his complaint, answer, or reply, may be stricken out.

Refusal to testify

Sec. 317. *Testimony by a party not responsive to the inquiries may be rebutted by the oath of the party calling him.* A party examined by an adverse party, as in this chapter provided, may be examined on his own behalf, subject to the same rules of examination as other witnesses.

Testimony of a party not responsive to inquiries may be rebutted by the oath of the party calling him

Sec. 318. *Persons for whom action is brought or defended may be examined.* A person for whose immediate benefit the action is prosecuted or defended, though not a party to the ac-

Plaintiff or defendant may be examined

tion, may be examined as a witness, in the same manner, and subject to the same rules of examination, as if he were named as a party.

CHAPTER VII.

EXAMINATION OF WITNESSES.

Section 319. Interest not to exclude a witness.

320. Parties to actions and special proceedings may be witnesses on their own behalf, except in certain cases.

Interest not to
exclude a wit-
ness

Sec. 319. *Interest not to exclude a witness.* No person offered as a witness shall be excluded by reason of his interest in the event of the action.

Parties exam-
ined on their
own behalf

Sec. 320. *Parties to actions, and special proceedings may be examined as witnesses on their own behalf, except in certain cases.* A party to an action or special proceeding, including proceedings in probate courts and proceedings for the summary recovery of the possession of land, may be examined as a witness on his own behalf, or in behalf of any other party, in the same manner, and subject to the same rules of examination, as any other witnesses :

Provided, however, That the assignor of a thing in action shall not be examined in behalf of said party, nor shall a party to an action be examined in his own behalf in respect to any transaction or communication had personally by said assignor, or said party, respectively, with a deceased person, against parties who are the executors, administrators, heirs-at-law, next of kin, or assignees of such deceased person, where they have acquired title to the cause of action immediately from such deceased person, or have been sued as such by the executors, administrators, heirs at-law, next of kin, or assignees. But where such executors, administrators, heirs-at-law, next of kin or assignees shall be examined on their own behalf in regard to any conversation or transaction had between the deceased person and said assignor, or said party, respectively, then the said assignor or the said party may be examined in regard to such conversation or transaction, but not in regard to

any new matter. But if the testimony of a party to the action or proceeding has been taken, and he shall afterwards die, and after his death the testimony so taken shall be used upon any trial or hearing, in behalf of his executors, administrators, heirs-at-law, next of kin, or assignees, or other party, or the assignor of a thing in action, shall be a competent witness, as to any and all matters to which the testimony so taken relates, notwithstanding anything in this section contained to the contrary thereof. The husband can, in no case, be a witness for or against the wife, nor the wife for or against the husband, unless the contract or facts to be sworn to are in the exclusive knowledge of such husband or wife, as agent or otherwise, in which case but one can testify, and unless in a criminal proceeding for a crime committed by one against the other.

CHAPTER VIII.

MOTIONS AND ORDERS.

SECTION 321. Definition of an order.

322. Definition of a motion. Motions, how and when made. Stay of proceedings. Compelling parties to testify on motions.

323. Notice of motion.

324. In absence, &c., of judge at chambers, motion may be transferred to another judge.

325. Enlarging time for the proceedings in an action.

Sec. 321. *Definition of an order.* Every direction of a court or judge, made or entered in writing, and not included in judgment, is denominated an order. Order defined

Sec. 322. *Definition of a motion. Motions, how and where made. Stay of proceedings. Compelling parties to testify.* Motion defined

1, An application for an order is a motion.

2, Orders made out of court, without notice, may be made by any judge of the court, in any part of the Territory.

3, Motions upon notice must be made within the district in which the action is triable.

4, In all the districts, a motion to vacate or modify a provisional remedy, and an appeal from an order allowing a provi-

sional remedy, shall have preference over all other motions.

5, No order to stay proceedings for a longer time than twenty days, shall be granted by a judge out of court, except upon previous notice to the adverse party. Whenever any party intends to make or oppose a motion in any court of record, and it shall be necessary for him to have the affidavit of any person who shall have refused to make the same, such court may, by order, appoint a referee to take the affidavit or deposition of such person. Such person may be subpoenaed and compelled to attend and make an affidavit before such referee, to whom it is referred to try an issue, and the fees of such referee, for such service, shall be three dollars per day.

Notice of motion **Sec. 323. *Notice of motion.*** When a notice of a motion is necessary, it must be served three days before the time appointed for the hearing; but the court or judge may by an order to show cause, prescribe a shorter time.

In absence & of judge at chambers **Sec. 324. *In absence &c., of judge at chambers.*** *Motion may be transferred to another judge.* When notice of a motion is given, or an order to show cause is returnable before any judge, out of court, and, at the time fixed for the motion, he is absent, or unable to hear it, the same may be transferred, by his order, to some other district judge in the Territory.

Extension of time for the proceedings in action **Sec. 325. *Enlarging time for the proceedings in action.*** The time within which any proceeding in an action must be had, after its commencement, except the time within which an appeal must be taken, may be enlarged, upon an affidavit showing grounds therefor, by a judge of the court. The affidavit, or a copy thereof, must be served, with a copy of the order, or the order may be disregarded.

CHAPTER IX.

ENTITLING AFFIDAVITS.

Entitling affidavits **Sec. 326. *Entitling affidavits.*** *Affidavits defectively entitled, valid.* It shall not be necessary to entitle an affidavit in the action, but an affidavit made without a title, or with a defective title, shall be as valid and effectual, for every

purpose as if it were duly entitled if it intelligibly refer to the action or proceeding in which it is made.

CHAPTER X.

COMPUTATION OF TIME.

Sec. 327. *Computation of Time. Time, how computed.* Computation of time
 The time within which an act is to be done, as herein provided, shall be computed by excluding the first day, and including the last. If the last day be Sunday, it shall be excluded.

CHAPTER XI.

NOTICES, AND FILING AND SERVICE OF PAPERS.

SECTION 328. Notices, &c, how served.

- 329. Service, how made
- 330. Service by mail
- 331. The like
- 332. Double time where service by mail
- 333. Notice of motion, &c., where personally served
- 334. When papers need not be served on defendant
- 335. Service of papers where parties reside out of the Territory
- 336. Summons and pleadings to be filed
- 337. Service on attorney
- 338. When this chapter does not apply

Sec. 328. *Notices, &c., how served.* Notices shall be in writing; Notice &c how served
 and notices and other papers may be served on the party or attorney, in the manner prescribed in the next three sections, where not otherwise provided by this act.

Sec. 329. *Service how made.* The service may be personal; or Service how made
 by delivery to the party, or attorney, on whom the service is required to be made; or it may be as follows :

1, If upon an attorney, it may be made during his absence from his office, by leaving the paper with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving it, between the hours of six in the morning and nine in the evening, in a conspicuous place in the office; or if it be not open so as to admit of such service, then by leaving it at the attorney's res-

idence, with some person of suitable age and discretion.

2, If upon a party, it may be made by leaving the paper at his residence, between the hours of six in the morning and nine in the evening, with some person of suitable age and discretion.

Service by mail Sec. 330. *Service by mail.* Service by mail may be made when the person making the service and the person on whom it is to be made reside in different places, between which there is a regular communication by mail.

Same Sec. 331. *Same.* In case of service by mail, the paper must be deposited in the post office, addressed to the person on whom it is to be served, at his place of residence, and the postage paid.

Double time when served by mail Sec. 332. *Double time when served by mail.* When the service is by mail, it shall be double the time required in cases of personal service, except service of notice of trial, which may be made sixteen days before the day of trial, including the day of service.

Notice of motion &c when personally served Sec. 333. *Notice of motion, &c., when personally served.* Notice of a motion, or other proceeding before a court or judge, when personally served, shall be given at least three days before the time appointed therefor.

When papers need not be served on defendant Sec. 334. *When papers need not be served on defendant.* Where a defendant shall not have demurred or answered, service of notice or papers, in the ordinary proceedings in an action, need not be made upon him or his attorney, if notice of appearance in the action has been given.

Service of papers on non-residents Sec. 335. *Service of papers where parties reside out of the Territory.* Where a plaintiff or a defendant who has demurred or answered, or gives notice of appearance, resides out of the Territory, and has no attorney in the action, the service may be made by mail, if his residence be known; if not known, on the clerk for the party.

Summons and pleadings to be filed Sec. 336. *Summons and pleadings to be filed.* The summons and the several pleadings in an action shall be filed with the clerk within ten days after the service, thereof, respectively, or the adverse party, on proof of the omission, shall be entitled, without notice, to an order from a judge that the same be filed within a time to be specified in the order, or be deemed abandoned.

Service on attorney Sec. 337. *Service on attorney.* Where a party shall have an attorney in the action, the service of papers shall be made upon the attorney, instead of the party.

When this chapter does not apply Sec. 338. *When this chapter does not apply.* The provisions of this chapter shall not apply to the service of a summons, or other process, or of any paper to bring a party into contempt.

CHAPTER XII.

DUTIES OF SHERIFFS AND CORONERS

Sec. 339. *Duty of sheriff and coroner in serving or executing process, and how enforced.* Whenever, pursuant to this act, the sheriff may be required to serve or execute any summons, order, or judgment, or to do any other act, he shall be bound to do so in like manner as upon process issued to him, and shall be equally liable in all respects for neglect of duty; and if the sheriff be a party, the coroner shall be bound to perform the service, as he is now bound to execute process where the sheriff is a party; and the provisions of this act relating to the sheriff shall apply to coroners when the sheriff is a party.

Duty of officers
in serving
process

CHAPTER XIII.

ACCOUNTABILITY OF GUARDIANS.

Sec. 340. *Guardian not to receive property until security given.* No guardian appointed for an infant shall be permitted to receive property of the infant, until he shall have given sufficient security, approved by a judge of the court, to account for and apply the same, under the direction of the court.

Guardian not to
receive property
until security
given

CHAPTER XIV.

POWERS OF REFEREES.

Sec. 341. *Powers of referees.* Every referee appointed pursuant to this act shall have power to administer oaths in any proceeding before him, and shall have generally the powers now vested in a referee by law.

Powers of
referees

CHAPTER XV.

MISCELLANEOUS PROVISIONS.

SECTION 342. Papers lost or withheld, how supplied
343. Where undertakings to be filed

SECTION 344. Time for publication of notices, how computed
 345. Laws of other states and governments how proved

Papers lost or
withheld how
supplied

Sec. 342. *Papers lost or withheld, how supplied.* If an original pleading or papers be lost or withheld by any person, the court may authorize a copy thereof to be filed and used instead of the original.

When undertak-
ing to be filed

Sec. 343. *Where undertaking to be filed.* The various undertakings to be given by this act must be filed with the clerk of the court, unless the court expressly provides for a different disposition thereof, except that the undertakings provided for by the chapter on the claim and delivery of personal property, shall, after the justification of the sureties, be delivered by the sheriff to the parties respectively for whose benefit they are taken.

Time for publi-
cation of notice
how computed

Sec. 344. *Time for publication of notices, how computed.* The time for publication of legal notices shall be computed so as to exclude the first day of publication and include the day on which the act or event, of which notice is given, is to happen, or which completes the full period required for publication.

Laws of other
states and
governments
how proved

Sec. 345. *Laws of other states and governments, how proved.* Printed copies in volumes of statutes, or other written law, enacted by any other State or Territory or foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts and judicial tribunals of such State, Territory or government, shall be admitted by the courts and Territorial officers of this Territory on all occasions as presumptive evidence of such laws. The unwritten or common law of any other State or Territory, or foreign government, may be proved as facts by parole evidence; and the books of reports of cases adjudged in their courts may also be admitted as presumptive of such law.

TITLE XIII.

ACTIONS IN PARTICULAR CASES.

CHAPTER I. Actions against foreign corporations

II. Actions in place of *scire facias*, *quo warranto* and of informations in the nature of a *quo warranto*

- CHAP. III. Actions for the partition of real property
 IV. Actions to determine conflicting claims to real property
 and for waste and nuisance
 V. General provisions relating to actions concerning real
 property

CHAPTER I.

AGAINST FOREIGN CORPORATIONS.

Sec. 346. *Where and by whom brought.* An action against a corporation created by or under the laws of any other State government, or country, may be brought in any of the district courts of this Territory, in the following cases:

1. By a resident of this Territory, for any cause of action;
2. By a plaintiff not a resident of this Territory, when the cause of action shall have arisen, or the subject of the action shall be situated within this Territory.

CHAPTER II.

ACTIONS IN PLACE OF SCIRE FACIAS, QUO WARRANTO, AND OF INFORMATION IN THE NATURE OF QUO WARRANTO.

Section 347. *Scire facias* and *quo warranto* abolished, and this chapter substituted

348. Action may be brought by direction of the legislature by any prosecuting attorney, to vacate a charter
349. Action to annul a corporation, when and how brought by the prosecuting attorney, by leave of the supreme court
350. Leave to sue, how obtained
351. Action upon information or complaint of course
352. Action, when and how brought to vacate letters patent
353. Relator, when to be joined as plaintiff
354. Complaint and arrest of defendant in action for usurping an office
355. Judgment in such actions
356. Assumption of office, &c, by relator, when judgment is in his favor
357. Proceedings against a defendant, on his refusal to deliver books or papers

- SECTION 358. Damages, how recovered**
 359. One action against several persons claiming office or franchise
 360. Penalty for usurping office or franchise, how awarded
 361. Judgment of forfeiture against a corporation
 362. Costs against a corporation or persons claiming to be such, how collected
 363. Restraining corporation, and appointment of a receiver
 364. Action for forfeiture of property to the people

Scire facias and quo warranto abolished

Sec. 347. *Scire facias and quo warranto abolished, and this chapter substituted.* The writ of *scire facias*, the writ of *quo warranto*, and proceedings by information in the nature of *quo warranto*, are abolished; and the remedies heretofore obtainable in those forms may be obtained by civil actions under the provisions of this chapter. But any proceeding heretofore commenced, or judgment rendered, or right acquired, shall not be affected by such abolition.

Action may be brought by any prosecuting attorney to vacate a charter by the direction of the legislature

Sec. 348. *Action may be brought by any prosecuting attorney to vacate a charter, by direction of the Legislature.* An action may be brought by any prosecuting attorney, in the name of the people of this Territory, whenever the legislature shall so direct, against a corporation, for the purpose of vacating or annulling the act of incorporation, or an act renewing its corporate existence, on the ground that such act or renewal was procured upon some fraudulent suggestion or concealment of a material fact, by the person incorporated, or by some of them, or with their knowledge and consent.

Manner of bringing an action to annul a charter

Sec. 349. *Action to annul a corporation, when and how brought by prosecuting attorney, by leave of supreme court.* An action may be brought by any prosecuting attorney, in the name of the people of this Territory, on leave granted by the supreme court or judge thereof, for the purpose of vacating the charter or annulling the existence of a corporation other than municipal, whenever such corporation shall:

1. Offend against any of the provisions of the act or acts creating, altering, or renewing such corporation; or,
2. Violate the provisions of any law by which such corporation shall have forfeited its charter by abuse of its power; or,

3. Whenever it shall have forfeited its privileges or franchises by failure to exercise its powers; or,

4. Whenever it shall have done or omitted any act which amounts to a surrender of its corporate rights, privileges, and franchises; or,

5. Whenever it shall exercise a franchise or privilege not conferred upon it by law. And it shall be the duty of any prosecuting attorney, whenever he shall have reason to believe that any of these acts or omissions can be established by proof to apply for leave, and upon leave granted to bring the action, in every case of public interest, and also in every other case in which satisfactory security shall be given to indemnify the people of this Territory against the costs and expenses to be incurred thereby.

Sec. 350. *Leave, how obtained.* Leave to bring the action may be granted upon the application of any prosecuting attorney; and the court or judge may, at discretion, direct notice of such application to be given to the corporation or its officers, previous to granting such leave, and may hear the corporation in opposition thereto.

Leave how
obtained

Sec. 351. *Action upon information or complaint of course.* An action may be brought by any prosecuting attorney in the name of the people of this Territory, upon his own information, or upon the complaint of any private party, against the parties offending in the following cases;

Action upon
information or
complaint of
course

1. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within this Territory, or any office in a corporation created by the authority of his Territory; or,

2. When any public officer, civil or military, shall have done or suffered an act which, by the provisions of law, shall make a forfeiture of this office; or,

3. When any association or number of persons shall act within this Territory as a corporation, without being duly incorporated.

Sec. 352. *Action, when and how brought to vacate letters patent.* An action may be brought by any prosecuting attorney, in the name of the people of this Territory, for the purpose of vacating or annulling letters patent granted by the people of this Territory, in the following cases:

Action when
and how brought

1. When he shall have reason to believe that such letters patent were obtained by means of some fraudulent suggestion or concealment of a material fact, made by the person to whom the same were issued or made, or with his consent or knowledge; or,

2. When he shall have reason to believe that such letters patent were issued through mistake, or in ignorance of a material fact; or,

3. When he shall have reason to believe that the patentee, or those claiming under him, have done or omitted an act, in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same.

Relator when to be joined as plaintiff

Sec. 353. *Relator, when to be joined as plaintiff.* When an action shall be brought by the prosecuting attorney by virtue of this chapter, on the relation or information of a person having an interest in the question, the name of such person shall be joined with the people as plaintiff. And in every such case the prosecuting attorney may require as a condition for bringing such action that satisfactory security shall be given to indemnify the people of the Territory against the costs and expenses to be incurred hereby.

Complaint and arrest of defendant in for usurping an office

Sec. 354. *Complaint and arrest of defendant in action for usurping an office.* Whenever such action shall be brought against a person for usurping an office, the prosecuting attorney, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightfully entitled to the office, with a statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order may be granted by a judge of the supreme court for the arrest of such defendant, and holding him to bail; and thereupon he shall be arrested and held to bail, in the manner, and with the same effect, and subject to the same rights and liabilities, as in other civil actions where the defendant is subject to arrest.

Judgment in such actions

Sec. 355. *Judgment in such actions.* In every such case, judgment shall be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice shall require.

Sec. 356. *Assumption of office, &c., by relator, when judgment is in his favor.* If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office, and executing such official bond as may be required by law, to take upon himself the execution of the office; and it shall be his duty, immediately thereafter, to demand of the defendant in the action all the books and papers in his custody, or within his power, belonging to the office from which he shall have been excluded.

Assumption of office &c by relator when judgment is in his favor

Sec. 357. *Proceedings against defendant, on refusal to deliver books or papers.* If the defendant shall refuse or neglect to deliver over such books or papers, pursuant to the demand, he shall be deemed guilty of a misdemeanor, and the same proceedings shall be had, and with the same effect, to compel delivery of such books and papers, as are or may hereafter be prescribed by law.

Proceeding against defendant on refusal to deliver up books and papers

Sec. 358. *Damages how recovered.* If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover, by action, the damages which he shall have sustained by reason of the usurpation by the defendant of the office from which such defendant has been excluded.

Damages how recovered

Sec. 359. *One action against several persons claiming office or franchise.* Where several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

In case of several persons claiming office

Sec. 360. *Penalty for usurping office or franchise, how awarded.* When a defendant, whether a natural person or a corporation, against whom such action shall have been brought shall be adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any office, franchise, or privilege, judgment shall be rendered that such defendant be excluded from such office, franchise or privilege, and also that the plaintiff recover costs against such defendant. The court may also, in its discretion, fine such defendant a sum not exceeding five hundred dollars, which fine, when collected, shall be paid into the treasury of the Territory.

Penalty for usurping

Judgment of forfeiture against corporation *Sec. 361. Judgment of forfeiture against a corporation.* If it shall be adjudged that a corporation against which an action shall have been brought pursuant to this chapter, has by neglect, abuse, or surrender, forfeited its corporate rights, privileges, and franchise, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges, and franchises, and that the corporation be dissolved.

Costs against corporation *Sec. 362. Costs against corporation, or persons claiming to be such, how collected.* If judgment be rendered in such action against a corporation, or against persons claiming to be a corporation, the court may cause the costs therein to be collected by execution against the persons claiming to be a corporation, or by attachment or process against the directors or other officers of such corporation.

Restraining corporation and appointing receiver *Sec. 363. Restraining corporation, and appointment of receiver.* When such judgment shall be rendered against a corporation, the court shall have the same power to restrain the corporation to appoint a receiver of its property, and to take an account, and make distribution thereof among its creditors, as are now or may hereafter be provided by law, and it shall be the duty of the prosecuting attorney, immediately after the rendition of such judgment, to institute proceedings for that purpose.

Action for forfeiture of property to the people *Sec. 364. Actions for forfeiture of property to the people.* Whenever, by the provisions of law, any property, real or personal, shall be forfeited to the people of this Territory, or to any officer for their use, an action for the recovery of such property, alleging the ground of the forfeiture, may be brought by the proper officer, in the district court of the district where the property is situated.

CHAPTER III.

ACTION FOR THE PARTITION OF REAL PROPERTY.

Provisions of existing statutes how applied *Sec. 365. Provisions of existing statutes applicable to actions of partition.* The provisions of existing statutes relating to the partition of lands, tenements, and hereditaments, held or possessed by joint tenants or tenants in common, shall

apply to actions for such partition brought under this act, so far as the same can be so applied to the substance and subject-matter of the action, without regard to its form.

CHAPTER IV.

ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY, AND FOR WASTE AND NUISANCE.

SECTION 366. Actions to determine claims to real property, how prosecuted.

367. Action of waste abolished. Waste, how remediable.

368. When judgment of forfeiture and eviction to be given.

369. Writ of nuisance abolished.

370. Remedy for injuries heretofore remediable by writ of nuisance.

Sec. 366. *Action to determine claims to real property how prosecuted.* Proceedings to compel the determination of claims to real property, pursuant to the provisions of existing statutes, may be prosecuted by action under this act, without regard to the forms of the proceedings as they are prescribed by those statutes.

Actions to determine claims to real property how prosecuted

Sec. 367. *Action of waste abolished. Waste, how remediable.* The action of waste is abolished, but any proceeding heretofore commenced, or judgment rendered, or right acquired, shall not be affected thereby. Wrongs heretofore remediable by action of waste are subjects of action as other wrongs, in which action there may be judgment for damages, forfeiture of the estate of the party offending, and eviction from the premises.

Action of waste abolished

Sec. 368. *When judgment of forfeiture and eviction to be given.* Judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion, against the tenant in possession, when the injury to the estate in reversion shall be adjudged in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done in malice.

When judgment of forfeiture and eviction to be given

Sec. 369. *Writ of nuisance abolished.* The writ of nuisance is abolished; but any proceedings heretofore commenced

Writ of nuisance abolished

or any judgment rendered, or right acquired, shall not be affected thereby.

Remedy for
injuries

Sec. 370. *Remedy for injuries heretofore remediable by writ of nuisance.* Injuries heretofore remediable by writ of nuisance are subjects of action, as other injuries, and in such action there may be judgment for damages, or for the removal of the nuisance, or both.

CHAPTER V.

GENERAL PROVISIONS RELATING TO ACTIONS CONCERNING REAL PROPERTY.

Application of
existing statutes

Sec. 371. *Provisions of existing statutes applicable thereto.* The general provisions of existing statutes relating to actions concerning real property shall apply to actions brought under this act, according to the subject-matter of the action, and without regard to its form.

TITLE XIV.

GENERAL PROVISIONS.

SECTION 372. Definition of real property

373. Definition of personal property

374. Definition of property

375. Definition of district

376. Definition of clerk

377. Rule of construction

378. Inconsistent statutory provisions repealed

379. Inconsistent rules and practice abrogated

380. Act, when to take effect

Real property
defined

Sec. 372. *Definition of "real property."* The words "real property," as used in this act, are co-extensive with lands, tenements, and hereditaments.

Personal property
defined

Sec. 373. *Definition of "personal property."* The words "personal property," as used in this act, include money, goods, chattels, things in action, and evidences of debt.

Sec. 374. *Definition of "property."* The word "property," as used in this act, includes property, real and personal. Property defined

Sec. 375. *Definition of "district."* The word "district," as used in this act, signifies judicial district, except when otherwise specified. District defined

Sec. 376. *Definition of "clerk."* The word "clerk," as used in this act, signifies the clerk of the court where the action is pending. Clerk defined

Sec. 377. *Rule of construction.* The rule of common law, that statutes in derogation of that law are to be strictly construed, has no application to this act. Rule of construction

Sec. 378. *Statutory provisions inconsistent with this act repealed.* All statutory provisions inconsistent with this act are hereby repealed; but this repeal shall not revive a statute or law which may have been repealed or abolished by the provisions hereby repealed. And all rights of actions given or secured by existing laws may be prosecuted in the manner provided by this act. If a case shall arise in which an action for the enforcement or protection of a right, or the redress or prevention of a wrong, cannot be had under this act, the common law practice may be adopted so far as may be necessary to prevent a failure of justice. Conflicting statutes repealed

Sec. 379. *Rules and practice inconsistent with this act abrogated.* The present rules and practice of the courts in civil actions, inconsistent with this act, are abrogated; but where consistent with this act, they shall continue in force, subject to the power of the respective courts to relax, modify, or alter the same. Same

Sec. 380. *Act, when to take effect.* This act shall take effect and be in force from and after the first day of June, 1868; *Provided,* That it shall not apply to any action or proceeding now pending in any of the courts of this Territory, nor to any actions commenced prior to the said 1st day of June 1868, in this Territory. When to take effect

Attest :

HORACE J. AUSTIN,
President of the Council.

ENOS STUTSMAN,
Speaker of House of Representatives.

GEO. I. FOSTER,
Secretary of Council.

P. H. HALNAN,
Chief Clerk of House of Representatives.

[NOTE BY THE SECRETARY OF THE TERRITORY. The foregoing act having been presented to the Governor of the Territory for his approval, and not having been returned by him to the House of the Legislative Assembly in which it originated, within the time prescribed by the Organic Act, has become a law without his approval.

S. L. SPINK, *Secretary.*]

CHAPTER I.

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

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

Or docketing
an execution

Section 1. That when an execution shall be issued under and by virtue of the provisions of an act entitled: An act to simplify and abridge the practice, pleadings and proceedings of the Courts of this Territory, included in chapter 1, Title IX, of said act, before the same shall be delivered to the sheriff or coroner as therein provided, the party or his attorney issuing the execution shall cause the same to be docketed in the execution-docket by the clerk of the court in which the judgment is rendered.

When to take
effect

Sec. 2. This act shall take effect and be in force on and after the first day of June, A. D. 1868.

Approved, January 8, 1868.

CHAPTER II.

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

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

Section 1. That in addition to the appeals provided for in section ten (10) of an act entitled an act to abridge the practice, pleadings and proceedings of the Courts of this Territory, writs of error shall be allowed on all final decisions, on all judgments, orders and motions of the District Courts to the Supreme Court of this Territory, under such regulations as may be prescribed by the rules of the Supreme Court. Providing for writs of error

Sec. 2. This act shall be in force and effect from and after the first day of June, A. D. 1868, and its approval. When to take effect

Approved, January 8, 1868.

 AMENDMENTS.

CHAPTER III.

AN ACT TO AMEND CHAPTER THIRTY-TWO (32) OF THE SESSION LAWS OF 1865-66, ENTITLED "AN ACT TO PROHIBIT SHEEP AND SWINE FROM RUNNING AT LARGE."

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

Section 1. That chapter thirty-two (32) of the session laws of 1865-66, entitled "an act to prohibit sheep and swine from running at large," be, and the same is hereby amended by striking therefrom the word "sheep," wherever the same occurs therein. Nothing in this act shall be construed as in any case to apply to Union County. Chapter 32 amended by striking out the word sheep

When to take
effect

Sec. 2. This act shall be in force and effect from and after its passage and approval,

Approved, January 10, 1868.

CHAPTER IV.

AN ACT TO AMEND CHAPTER TEN OF THE SESSION LAWS OF 1866-7.

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

Chapter ten
amended by
striking out the
word white

Section 1. That chapter ten of the session laws of 1866-7, "An act to provide for schools in the Territory of Dakota, be, and the same is hereby amended, by striking therefrom the word "white," wherever the same occurs therein.

When to take
effect

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

Approved, December 13, 1867.

AUDITOR AND TREASURER.

CHAPTER V.

AN ACT IN RELATION TO THE TERRITORIAL AUDITOR AND TREASURER.

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

Section 1. That in addition to the salary now allowed by law to the Territorial Auditor and Treasurer, there shall be al-

lowed to each annually the sum of twenty-five dollars for office rent, fuel, and stationery. Appropriation for office rent &c

Sec. 2. That the Treasurer and Auditor are hereby authorized and directed to procure each, for his office, a suitable seal not to exceed in cost to the Territory twenty dollars in the aggregate. Directed to procure seal

Sec. 3. This act shall take [effect] and be in force from and after its passage and approval. When to take effect

Approved, January 7, 1868.

COSTS.

CHAPTER VI.

AN ACT RELATING TO COSTS OF TRIAL ON CHANGE OF VENUE.

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

Section 1. Whenever a change of venue is granted in any case pending in the district courts of this Territory by any judge thereof, for the reason that a fair and impartial trial cannot be had in the county in which the action is commenced, all the costs and fees paid by the county to which the case is ordered for trial shall be charged to the county from which such case is sent. Which county to pay the costs

Sec. 2. The board of county commissioners of the county to which any case is ordered for trial according to section one (1) of this act, shall make out and present for payment to the county from which such case is sent an itemized bill of all the costs and fees of the trial of such case paid by the county according to law; said bill shall be sworn to by the register of deeds of the county, and the board of county commissioners County to make out and present bill of costs

receiving such bill or account shall examine the same and pay the whole thereof or so much as is legal, proper and correct.

When to take
effect

Sec. 3. This act shall be in force and effect from and after its passage and approval.

Approved, January 3, 1868.

COUNTIES.

CHAPTER VII.

AN ACT TO CREATE AND ESTABLISH THE COUNTY OF CARTER,
AND PROVIDING FOR THE APPOINTMENT OF OFFICERS THEREIN.

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

Boundaries,
Officers &c.

Section 1. That all that portion of the county of Laramie, and Territory of Dakota, west of the one hundred and seventh degree and thirty minutes west longitude, be and the same is hereby crected into a county by the name of Carter, and the following officers are hereby appointed for said county, to act until the next ensuing general election :

For county commissioners, James W. Lowery, William Mishany, William Rose;

For judge of probate, Haney B. Hubble;

For sheriff, John R. Murphy;

For register of deeds, A. G. Turner;

For justices of the peace, Frederick Staples, Francis D. McGovern;

For coroner, Nathaniel McDaniels.

Notaries public,

Sec. 2. The governor may appoint as many notaries public as he may deem necessary for said county.

Sec. 3. The county seat of said county is hereby located at County seat South Pass City.

Sec. 4. The county commissioners herein appointed shall, on County commissioners when to qualify meetings or board &c. or before the first day of May next, qualify and enter upon the discharge of their duties, and as soon as two or more shall qualify may hold a meeting of the board at the county seat of said county, first giving ten days notice of such meeting by publication in a newspaper published in said county, if there be one, if not, by posting notices in at least five of the most public places in said county, and may continue in session five days if the business requires it. At such meeting or at any subsequent regular meeting, said board may fill all vacancies that may exist in the county offices, and such persons so appointed shall hold until the next ensuing general election.

Sec. 5. The county commissioners shall have the power at Their powers any regular meeting of the board to make an order increasing the fees of the county officers of said county:

Provided, however, That the fees of said officers shall not be increased more than four times what is now allowed by law.

Sec. 6. The said county is hereby attached to the county of County attached to Laramie Laramie for representative and judicial purposes.

Sec. 7. This act shall take effect and be in force from and When to take effect after its passage and approval.

Approved, December 27, 1869.

CHAPTER VIII.

AN ACT TO RE-ORGANIZE THE COUNTY OF LARAMIE.

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

Section 1. That chapter — of the session laws of 1866-67, entitled "an act to create and establish the county of Laramie," Certain act of the session laws of 1866-67 approved January 9th, 1867, be and the same is hereby repeal-

ed, and all elections held or pretended to be held under and by virtue of said act is hereby declared null and void and shall be held for naught.

Boundaries of
Laramie county
appointment of
officers

Sec. 2. That all that portion of the Territory of Dakota, west of the one hundred and fourth meridian west, and east of the one hundred and seventh degree and thirty minutes west, be, and the same is, hereby erected into a county by the name of Laramie, and the following officers are hereby appointed for said county to act until the next ensuing general election and until their successors are duly elected and qualified :

County commissioners—Benjamin Ellinger, Roger T. Beal and Patrick McDonald.

Sheriff—J. L. Laird.

Judge of Probate—Wm. L. Kuykendall.

Register of Deeds—Wm. Morris.

Justices of the Peace—N. J. Bond, A. B. Moore, and Lewis Loweril.

Constable—James Masterson.

Coroner—F. W. Johnson.

County Superintendent of Public Instruction—J. H. Gildersleeve.

Surveyor—S. H. Winson.

District Attorney—Ed. P. Johnson.

County commis-
sioners to fill
vacancies

Sec. 3. The county commissioners may fill all vacancies in county offices and the persons so appointed shall hold their respective offices until the next general election and until their successors are duly elected and qualified.

Notaries public

Sec. 4. The Governor may appoint as many notaries public for said county as he may deem necessary.

County Seat

Sec. 5. The county seat of said county is hereby located at the city of Cheyenne.

County entitled
to one
representative
in the Legisla-
tive assembly

Sec. 6. Until otherwise provided by law said county shall be entitled to one member of the House of Representatives of the Legislative Assembly.

When to take
effect

Sec. 7. This act shall take effect and be in force from and after its passage and approval.

Approved, January 3, 1868.

CHAPTER IX.

AN ACT TO ORGANIZE THE COUNTY OF LINCOLN.

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

Section 1. That all that portion of the Territory of Dakota, <sup>Boundaries
Officers &c,</sup> embraced within the following described boundaries shall be known as the county of Lincoln, to wit: Commencing at a point on the Big Sioux river at the north east corner of Union county, it being the north east corner of Township No. 95 north, thence west to the south west corner of Township No. 96 north of range fifty-three west; thence east to the Big Sioux river; thence down and along the course of said river to the place of beginning. The county seat of said county, to be at Canton, on the southeast quarter of the southeast quarter of section No. fourteen, Township No. ninety-eight north of Range forty-nine west. And that until the next ensuing general election, the following named persons be appointed officers of said county, to wit:

Augustus J. Linderman, H. P. Hyde, Benjamin Hill, county commissioners;

C. H. Smith, sheriff;

J. Q. Fitzgerald, probate judge;

William Hill, register of deeds;

W. Hyde and W. S. Smith, justices of the peace;

James Weekly, constable;

Joseph Weekly, coroner. And that the said officers be empowered to discharge all the duties pertaining to their several offices.

Provided, That the said county of Lincoln shall remain as now, attached to Union county for Representative and Judicial purposes.

Sec. 2. This act shall take effect and be in force from and <sup>when to take
effect</sup> after its passage and approval by the governor.

Approved December 30, 1867.

CHAPTER X.

AN ACT TO ORGANIZE THE COUNTY OF MINNEHaha.

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

County commissioners Section 1. That John Nelson, John Thompson, and Wm. Melville, be, and the same are hereby appointed county commissioners of the county of Minnehaha, and said county commissioners shall have full power and authority to appoint all other officers for said county to complete the organization of said county of Minnehaha.

Register of deeds Sec. 2. That Edward Broughton be, and he is hereby appointed register of deeds of said county of Minnehaha.

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

Approved, January 4, 1868.

 CHEYENNE CITY.

CHAPTER XI.

AN ACT TO INCORPORATE THE CITY OF CHEYENNE, DAKOTA TERRITORY.

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

Description Section 1. That all that portion of territory surveyed, laid out and platted as a town site, situated on Crow Creek where the Union Pacific Railroad crosses the same, together with all the additions that may be hereafter made thereto, according to law, is hereby declared to be a corporation by the name of the "City of Cheyenne."

Sec. 2. The said city is hereby made a body corporate and politic, and is invested with all the powers and attributes of a municipal corporation, and by that name may sue and be sued, plead and be impleaded, complain and defend in any court of record, and any other place whatsoever; may have a common seal, and may alter the same at pleasure, and may take, hold, purchase, lease, convey and dispose of any real, personal, or mixed estate, for the use of said corporation.

City made a body politic

Sec. 3. The legislative authority of said city is hereby vested in a city council, composed of a mayor and board of aldermen, consisting of six members.

Legislative authority where vested

Sec. 4. Every legal voter of the Territory who shall have been a resident of the city thirty days next preceding a city election, is declared a citizen of said city, and is entitled to vote at all the elections thereof.

What to constitute a citizen

Sec. 5. The election of city officers shall be in a manner similar to county elections, as near as the nature of the case admits.

Election of city officers

Sec. 6. A person offering to vote may be challenged as in other elections in the county, and an oath may be administered to him in like manner, naming the qualifications herein prescribed.

Challenging of voters

Sec. 7. No person shall be eligible to any elective office mentioned in this act, unless he be a legal voter of the city.

Eligibility to office

Sec. 8. The annual election for city officers shall be held on the last Monday in December in each and every year and the officers elect shall qualify and enter upon the discharge of their duties on the first Monday in January thereafter; *Provided, however,* That in case the last Monday of December should be the 25th of said month, the election shall take place on the Tuesday following; *Provided further,* That the commissioners named in the ninth section of this act shall have the full power to fix the day for holding the first election of officers under this act, by giving at least five days notice of each election, and officers elected at such first election shall qualify and enter upon the discharge of their duties, in one week from the day of such election.

Annual election when held

Provide

Sec. 9. That J. P. Bartlett, G. M. O'Brien and William Martin, are hereby appointed commissioners to conduct the first election under this act, to canvass the votes and to issue certificates of election to the officers elect.

Commissioners of election

Sec. 10. In all elections for city officers, after the first, the mayor shall issue a proclamation to the voters of the city, naming the time and place of such election, and officers to be chosen, and cause

Notice of election

a copy to be posted at least ten days previous to the day of election. The polls shall be opened between the hours of eight and ten o'clock in the forenoon, and continue open until four o'clock in the afternoon. Within two days after election, the judges of election shall make out their returns to the president of the city council, who shall examine them at the next meeting, and cause an abstract of the votes to be recorded in a book kept for that purpose.

Officers to be elected

Sec. 11. In addition to a mayor and board of aldermen, there shall be elected at the general election in each year a marshal, treasurer and city clerk, who shall hold their respective offices for one year, and until their successors are elected and qualified.

Duties of the mayor

Sec. 12. It shall be the duty of the mayor to see that the laws and ordinances of the city are executed, and their violation punished; to superintend and direct the official conduct of subordinate officers; to sign and seal all commissions, licenses and permits, granted by the city council, and to perform such duties and exercise such powers as pertain to the office of Mayor of the city, and such as may be granted or imposed, by the ordinances of the city, consistent with law.

Mayor to be conservator of the peace and ex-officio justice of the peace

Sec. 13. The mayor shall be a conservator of the peace within the city, and *ex-officio* a justice of the peace, and is invested with original jurisdiction for the violation of the city ordinances; he shall not be disqualified from acting in such judicial capacity by any proceedings being in the name, or in behalf of the city.

Powers of city council

Sec. 14. The city council is invested with power to make ordinances to secure the inhabitants against fire, against violations of the public peace, to suppress riots, gambling, drunkenness and indecent behavior in public places; and in general, to provide for the safety, prosperity and good order of the city, and the health, morals and convenience of the inhabitants, and to impose penalties for the violation of its ordinances, not exceeding one hundred dollars for each offence, which may be recovered in a civil action in the name of the city, or by complaint before a justice of the peace. And the laws of the Territory relative to carrying into effect a judgment of a justice of the peace, imposing a fine, shall be applied to judgments in the above cases.

Same

Sec. 15. The council is authorized to establish and organize fire companies, and provide them with fire engines, hose and other apparatus.

Same

Sec. 16. The council may regulate the keeping and sale of gunpowder within the city.

Sec. 17. The council shall have exclusive authority to provide for the licensing and prohibition of all exhibitions, shows and theatrical performances, and billiard table halls, and ten-pin alleys, and other saloons, but the above authority extends to no exhibition of a purely scientific character. The city council shall also have the power to license and regulate the retailing of intoxicating liquors, and also the sale of all goods, wares and merchandise, and all other property sold at auction within the limits of said city.

Sec. 18. The council shall be the judge of the qualifications and elections of its own members; it may determine the rules of its own proceedings, and shall keep a record thereof, which shall be open to the inspection of every citizen, and may compel the attendance of its members in such manner and by such penalties as it may adopt.

Sec. 19. The mayor shall preside at all meetings of the city council, and in case of his death, resignation or inability to serve from any cause, a majority of the aldermen shall elect a mayor *pro tem* to preside at said meetings, and shall designate a justice of the peace to take cognizance of offences arising under the ordinances of said city.

The mayor to preside at meeting of the council

Sec. 20. No member of the city council shall be eligible to any office within the gift of the city council during the term of office for which he is elected, nor shall he be interested directly or indirectly in the profits of any contract, job, or work, or services to be performed for the city.

Member of city council not eligible to certain offices &c

Sec. 21. Ordinances passed by the city council shall be recorded in a book to be kept for that purpose, and shall be signed therein by the mayor and be attested by the clerk.

Ordinances of the council to be recorded

Sec. 22. It is the duty of the clerk to keep a true record of all the proceedings of the city council, and such record shall be open in all business hours for the inspection of any citizen.

Duties of the clerk

Sec. 23. The mayor, aldermen, marshal, treasurer, clerk, assessor and collector shall respectively take an oath to support the Constitution of the United States and the laws of the Territory, and faithfully and impartially to perform their duty to the best of their knowledge and ability. Other officers shall qualify in such manner as may be prescribed by the city council.

City officers to take oath &c.

cil. The oath of office may be administered by the mayor or clerk of the council when he is qualified, and in the transaction of the business of the corporation, those officers and the president for the time being may administer oaths which shall have the same effect as if administered by the officers authorized therefor.

Salaries of
officers

Sec. 24. The mayor shall receive for his services an annual salary not exceeding five hundred (\$500) dollars; each of the aldermen shall receive a salary not exceeding three hundred (\$300) dollars, said salaries to be fixed by the council within the limits aforesaid. And it shall be the duty of the council to allow such fees for the services of city officers not provided for in this act as it shall deem right.

The Treasurer,
clerk assessor
collector and
marshal to give
bonds

Sec. 25. The treasurer, clerk of the council, assessor, collector and marshal, shall give such bond, perform such duties, and exercise such powers as may be required of them by ordinance not inconsistent with law, which bond shall be approved by the council and filed with the mayor.

Treasurer and
marshal what to
do

Sec. 26. The treasurer shall be *ex-officio* collector, and the marshal *ex-officio* assessor of said city.

Duties of the
marshal

Sec. 27. The marshal shall be a conservator of the peace within said city, shall serve all process directed to him by the mayor or any justice of the peace exercising jurisdiction under the ordinances of the city, and shall possess the powers usually exercised by sheriffs and constables in making arrests, suppressing riots, and breaches of the peace and executing process.

Publishing of
annual financial
report

Sec. 28. On the third Monday in December in each year, it shall be the duty of the council to cause a full, complete and detailed statement of the financial condition of the city, to be published in some newspaper in the city, which statement shall be signed by the mayor, clerk and a majority of the members of the council.

This act declared
to be a public
act

Sec. 29. This act is hereby declared to be a public act, and may be read in evidence in all courts of law and equity in this Territory without proof; and all ordinances of the city council may be proved by the book referred to in this act; and when printed and published in book form, and purporting to have been printed by authority of the city council, said ordinances shall be received in all courts and places without further proof.

Sec. 30. The council shall provide by ordinance for the keeping of the public money of the city, and the manner of disbursing the same;

and shall cause all claims against the city to be audited, and all city officers are accountable to said council in such manner as it may direct. Keeping and disbursing of public money

Sec. 31. This act shall take effect and be in force from and after its passage. When to take effect

Approved December 24th, 1867.

EXEMPTIONS.

CHAPTER XII.

AN ACT PROVIDING THAT THE EXEMPTION LAW, APPROVED JANUARY 9TH, 1866, OF SESSION LAWS OF 1865-6, SHALL APPLY ONLY TO RESIDENTS OF THIS TERRITORY.

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

Section 1. That the exemption law of this Territory, shall be so construed as to apply only to residents of the Territory, and that no person except a resident of said Territory shall be entitled to the benefit thereof. Exemptions Who applied to

Sec. 2. This act to take effect and be in force from and after its passage and approval. When to take effect

Approved, December 18, 1867.

HIGHWAYS.

CHAPTER XIII.

AN ACT TO PROVIDE FOR THE OPENING, VACATING AND CHANGE
OF HIGHWAYS.

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

HIGHWAYS RUNNING INTO MORE THAN ONE COUNTY.

What necessary
to be done in
order to locate or
change highway

Section 1. That if fifteen freeholders of any county shall petition the board of commissioners of such county for the location, change or vacation of any highway running into more than one county, six of which freeholders shall reside in the immediate neighborhood of such highway, setting forth in such petition the beginning, course, and termination of the highway proposed to be located or vacated, or of the change desired to be made, together with the names of the owners and occupants or agents of the lands through which the same may pass, the register of deeds of such county shall notify the register of deeds of all the counties in which such highway is to be run, vacated or changed, of the filing of such petition, accompanying such notice with a copy of such petition, which shall be by such register of deeds laid before their respective boards of commissioners at their next session thereafter, when such board shall appoint commissioners according to the regulations hereinafter provided.

Commissioners
to be appointed
to examine
highway

Sec. 2. Upon the board of commissioners of the county, in which such petition is first filed, being satisfied that notice thereof has been given at least twenty days before the session of such board at which such petition is to be heard, by publication in a newspaper of each county in which such highway is to be run, vacated or changed, for three weeks successively, or by written or printed notices posted up in three of the most public

places in the neighborhood of such highway, in each of such counties, such board shall appoint a commissioner to examine such highway.

Sec. 3. Immediately upon the appointment of such commissioner, the register of deeds of such county shall notify the register of deeds of all the counties interested, specifying in such notice the time and place when such commissioners shall meet to commence the examination of such highway. When such last mentioned register of deeds and the register of deeds of the county where such petition is first filed, shall issue precepts to the sheriffs of their respective counties, directing them to notify such commissioners of such appointments, and the time and place of their meeting.

Register of deeds to give notice of appointment of commissioners

Sec. 4. Each of such board shall appoint one commissioner, and in case the number is equal and cannot agree, the commissioners thus appointed shall appoint another, who shall perform the same duties and receive the same fees as those first appointed.

Disagreement of commissioners

Sec. 5. At the time and place designated in the notice given by the register of deeds of the county in which such petition is first filed, such commissioners shall meet, and having first taken an oath, to be administered by some authorized officer, to faithfully perform their duties, shall proceed to examine the highway proposed to be located, vacated or changed, and in such examination may employ a surveyor, and a necessary number of chain carriers and markers.

Commissioners to take oath

Sec. 6. After such commissioners shall have completed their examination, they shall draw up a report of their proceedings setting forth the highway proposed to be located, vacated, or changed by course and distance, and recommending therein according to the opinion of the majority of such commissioners, either that the prayer of such petition shall be granted or rejected, a copy of which report shall be returned to the board of commissioners of each of the counties interested at their next session thereafter.

To make report

Sec. 7. Upon the return of such report, the board of commissioners shall proceed to determine the prayer of such petition, and if there shall be no remonstrance against the same, and it is recommended in such report, such board shall declare

Determining of the petition

it granted, and shall direct the register of deeds of such county to notify the register of deeds of all the other counties interested thereof. When, if there be no remonstrance pending in either county interested, the register of deeds of each of such counties, shall notify the supervisors of the road districts in his county through which such highway passes, or the change is made, when such supervisors shall open so much of such highway as lies in their respective districts:

Provided, That in case of a highway declared vacated, no notice to supervisors shall be necessary.

In case of not
granting peti-
tion

Sec. 8. If such commissioners do not recommend the prayer of such petition to be granted, the boards of commissioners of the counties interested, shall order it to be dismissed, but such order of dismissal shall not be a bar for other petitions thereafter concerning the same subject matter.

In case of re-
monstrance

Sec. 9. If at the session of the board of commissioners at which the report of the commissioners appointed to examine such highway, is presented, any person shall remonstrate against granting the prayer of the petition, setting forth in writing that he is damaged in a sum mentioned, by the location, vacation or change of such highway, to the truth of which he shall take and subscribe an oath, such board shall appoint three persons, residents of such county, to review that part of such highway whereof such complaint is made, and shall direct the register of deeds of such county to notify all the registers of deeds of the other counties interested, of such remonstrance, when further proceedings touching such petition shall be continued until the ensuing term of such boards.

Reviewers to
assess damages
and make report

Sec. 10. Such reviewers, at the time and place designated by the board of commissioners to whom such remonstrance is presented, shall meet, and having taken an oath before some officer authorized to administer oaths, to faithfully perform their duties as such reviewers, shall proceed to examine that part of such highway, or the change thereof complained of, and having done so, shall at the next term of such board, report their proceedings to such board, in which report they shall specify the amount of damages sustained by the person remonstrating, if any; whereupon such board shall determine whether the damages assessed are greater than the utility of the proposed high-

way or change, and if they shall be of opinion that the prayer of the petition should not be granted they shall direct the register of deeds of such county to notify the register of deeds of the other counties interested thereof, and continue further proceedings in the premises until the next term thereafter, but if they shall be of opinion that the damages should be paid and the prayer of the petition granted, they shall direct such register of deeds to notify the register of deeds of the other counties interested, of the amount of such damages, and shall continue further proceedings to the next term thereafter.

Sec. 11. If more freeholders residing along the highway proposed to be located, or vacated, or change to be made, than those of the same county petition therefor, remonstrate against granting the prayer of such petition therefor, the board of commissioners of such county shall decide against such petition, and shall direct the register of deeds of such county to notify the register of deeds of all the other counties interested thereof, and continue further proceedings in the premises until the ensuing term.

When petition
not granted

Sec. 12. At the next term after the reception of notice of any remonstrance, and the proceedings thereon, the register of deeds of such counties shall lay the same before their respective boards of commissioners, who shall determine whether the prayer of the petition ought to be granted, and shall notify the register of deeds of each county interested thereof; and if the boards of commissioners of a majority of such counties decide in favor of such petition, at the term of such boards when the same is ascertained, such highway shall be declared located, vacated or changed, and such supervisors notified thereof as hereinbefore provided, but if a majority of such boards decide against such petition, it shall be declared dismissed whenever it is ascertained, and all damages declared assessed shall be paid equally by the counties interested; and if such reviewers shall fail to assess any damages, the person asking the same shall pay the costs of such review.

When petition
granted

Sec. 13. Such commissioners appointed to examine such highway, and such reviewers, shall receive each two dollars for every day they may be necessarily employed, and such survey-

Fees of commis-
sioners reviewers
&c.

or, chain carriers and markers shall receive such compensation as the board of county commissioners, where such petition is first filed shall deem reasonable, to be paid equally by each county interested.

Location &c of
highway to be
recorded

Sec. 14. Whenever a highway is located, vacated or changed, the order therefor shall be entered of record in the order book of the board of commissioners of each county interested, in which county such highway or change thereof shall be particularly described by course and distance.

ROADS RUNNING IN BUT ONE COUNTY, AND THROUGH MORE THAN ONE
TOWNSHIP.

Manner of
procuring
location &c of
highway

Sec. 15. Whenever twelve freeholders of the county, six of whom shall reside in the immediate neighborhood of the highway proposed to be located, vacated, or of the change to be made, shall petition the board of commissioners of the county in which such highway is situate, for the location, vacation, or change of any highway, such board, if they shall be satisfied that notice of such application has been given by publication three weeks successively in a newspaper published in the county, or by posting up notices in three of the most public places in the neighborhood of such highway, or change, at least twenty days before the meeting of the board at which such petition is to be presented, shall appoint three persons to view such highway.

Sheriff to give
notice of meet-
ing

Sec. 16. The register of deeds of such county shall issue a precept to the sheriff thereof, commanding him to notify such viewers of the time, place and object of their meeting, and such viewers, at such time and place, after having taken an oath, before some officer authorized to administer oaths to faithfully perform their duties, shall proceed to view the highway, or such change; and if they shall deem the highway to be located, or the change to be made, of public utility, they shall lay out and mark the same on the best ground, not running through any person's enclosure of one year's standing, without the owner's consent, unless upon examination, a good way cannot otherwise be had:

Provided, That where the road is laid out upon the line dividing the land of two individuals, each shall give half the road.

Sec. 17. Such viewers, or a majority of them, shall make a report of their proceedings at the ensuing session of the board of commissioners of the county in which such location, change or vacation may be made, giving a full description of such location, change or vacation, by routes and bounds and by its course and distance, except that in case of the vacation of a road, or any part thereof, such description only as will designate it clearly, shall be required; and in such case, a copy of the order vacating such highway shall be recorded by the proper register of deeds of the county, and shall cause the supervisors of the road district to be notified accordingly.

Viewers of to
make report of
proceedings

Sec. 18. If no objections be made to such proposed highway, vacation or change, such board shall cause a record thereof to be made, and shall order the same to be opened and kept in repair, which order shall be transmitted to the trustees of any of the townships in which such location or change is made; and shall cause notice thereof to be given to the proper supervisor, to work such location or change.

In case no
objection is
made what to be
done

Sec. 19. If any person through whose land such highway or change may pass, shall feel aggrieved thereby, such person may at any time before final action of the board thereon, set forth such grievances by way of remonstrance, and the said board shall thereupon appoint three disinterested freeholders, as reviewers, and assign a day and place for them to meet.

Appointment of
reviewers

Sec. 20. Such reviewers, having five days' notice, to be given by the party remonstrating, shall meet at the time and place designated, and take an oath faithfully to discharge the duties assigned them, and shall then or on any other day, to which a majority may adjourn, prior to the next session of such board, proceed to review the proposed highway and assess the damages, if any, which such objector may sustain from such highway or change being opened, vacated or continued through his lands, and shall report the same to the ensuing session of such board.

Reviewers to
take oath make
reports &c,

Sec. 21. If a majority of the viewers assess and report damages in favor of the objector, and the board shall consider the proposed highway, vacation or change, to be of sufficient importance to the public, they shall order the costs and damages to be paid out of the county treasury; but if a majority report

On report of
majority what to
be done

against the claim for damages, the objector shall pay the costs; and when payment of damages is made as herein provided, such highway shall be recorded and ordered to be opened and kept in repair, as hereinbefore provided.

Setting aside
assessment

Sec. 22. If it shall be made to appear to the board that the damages assessed are unreasonable, they may set aside such assessment and order another review, under the same regulations as provided in case of the first review.

Reviewers
appointed

Sec. 23. If any one or more freeholders residing in such county, along such proposed highway, vacation or change, shall object to the same at any time before final action thereon, as not being of public utility, other viewers may be appointed, who shall proceed, on a day to be by them designated, after having taken an oath faithfully to discharge the duties assigned them, to examine the proposed highway, and shall make report to such board at their next session, whether or not, in their opinion, the said highway, vacation or change, will be of public utility.

Report of
Reviewers

Sec. 24. If a majority of the viewers last named report against the public utility of such highway, the same shall not be established, unless the petitioners will open and maintain the same at their own expense; but if they report favorably thereto, the objector shall pay the costs of the review, and the highway shall be recorded and ordered to be opened and kept in repair; but in no case shall a highway be opened, vacated, or a change be made, if a majority of the freeholders residing along such proposed highway, or along such change, or along the highway proposed to be vacated, shall remonstrate against the same.

Payment of
damages

Sec. 25. No such highway shall be opened, worked, or used, until the damages assessed therefor shall be paid to the persons entitled thereto, or deposited in the county treasury for their use, or they shall give their consent thereto in writing filed with the register of deeds of such county.

In case of ap-
peal to District
court

Sec. 26. Any person aggrieved by any decision of any board of commissioners, may appeal therefrom to the district court of such county, upon his filing a bond, with surety and penalty, to be approved by the register of deeds of such county, conditioned for the due prosecution of such appeal, and the payment

of costs, if costs be adjudged against him; and in case proceedings shall be had in more than one county, the register of deeds of each county, on being notified of such appeal by the register of deeds of the county in which the appeal is taken, shall transmit to the clerk of the court to which the appeal is taken, all the proceedings in such county; and upon the determination of such appeal, such clerk shall notify the register of deeds of all the counties interested thereof.

GENERAL PROVISIONS CONCERNING HIGHWAYS.

Sec. 27. No road shall be less than eighty feet wide; and the order for laying out of any highway shall specify the width thereof. Width of roads

Sec. 28. Public highways established on the county or township line, shall be opened and repaired by the supervisor of the proper road districts on each side thereof, and by the joint labor of the hands in each of such districts in each county or township. Highways on county or town lines

Sec. 29. Whenever any public highway shall have been laid out through any enclosed land, the supervisor shall give the occupant of such land, or the owner, if a resident of the road district, sixty days' notice in writing, to remove his fence; but such owner or occupant shall not be compelled to move such fence between the first day of April and the first day of November; and if such fence is not removed pursuant to such notice, such supervisor shall cause the same to be done. Highway running through enclosed field

Sec. 30. If the owner or occupant shall not have been allowed damages for the laying out of such highway upon his land, the supervisor shall give the person removing such fence credit on his highway tax for any amount that the supervisor shall deem just, subject to the approval of the county commissioners. In case of non allowance of damages

Sec. 31. Every public highway already laid out, or which may hereafter be laid out, and which shall not be opened and used within six years from the time of its being laid out, shall cease to be a highway for any purpose whatever; but if any distinct part thereof shall have been opened and used within six years, such part shall not be affected by the provisions of this section, nor shall this section be applied to streets and alleys in any town: When highway shall cease to exist

Provided, however, That the board of county commissioners shall decide that public necessity does not require such road kept open, which decision shall be recorded by the clerk of the court, whereupon said vacated highway shall vest in the rightful owner who may have the title thereof according to law, of the property on each side of said highway.

Rights of
settlers on
public lands

Sec. 32. In all applications for the location, change, or vacation of any public highway, actual settlers upon any public lands in any county in this Territory shall have and possess all rights in this act granted to freeholders.

What deemed
public highway

Sec. 33. All public highways which have been or may hereafter be used as such, for twenty years or more, shall be deemed public highways.

Who to act as
commissioners
reviewers &c

Sec. 34. No person owning lands, or who is related by consanguinity to any person owning lands, along any proposed highway or change, shall be competent to act as commissioner, viewer, or reviewer thereof.

Fees of viewers
and reviewers

Sec. 35. Viewers and reviewers appointed under this act shall receive two dollars for every day they shall be necessarily employed as such.

Planting hedges

Sec. 36. The board of county commissioners of any county, on petition of an individual desiring to plant a hedge on his land adjoining a public highway, may grant such individual the privilege of placing his fence seven feet on such highway:

Provided, Said fence will not be an obstruction to the highway.

When persons
may lay out
private roads

Sec. 37. Any person may have a private road laid out, changed or vacated, upon presenting a petition to the board of county commissioners [of the county] in which such petitioner may reside, under regulations hereinbefore provided for roads running through one county only:

Provided, That such board may order such private road to be laid out, changed or vacated, without any view, if there be no remonstrance against such petition; and the petitioner shall open and keep in repair such road at his own expense.

When persons
debarred from
recovering
damages

Sec. 38. Whenever any road has heretofore been laid out, and used as a highway under any law of the Legislative Assembly of the Territory of Dakota, any person damaged thereby shall make known his claim for damages, by petition to the

board of county commissioners of the county in which such road is located within one year from the taking effect of this act, and in case of failure for that length of time so to do, shall thereafter be debarred from recovering any damages whatever, by reason of such road having been so laid out and opened, and in case any such petition shall be presented to a board of county commissioners, the same proceedings shall thereafter be had to ascertain and pay such damages, as is provided for in this act upon a remonstrance being presented.

Sec. 39. When any person shall acquire the title to gov- Settlers on public lands claiming damages
ernment lands over which any road has been or may hereafter be duly laid out, subsequent to the laying out of such road, the person so acquiring such title, shall within three months after receipt of his patent therefor, assert his claim for damages in the manner provided in the preceding section, and such road shall remain and be a public highway, but his damages, if any, shall be paid, and in case of a failure for that length of time, to assert his claim for damages as aforesaid, he shall thereafter be debarred from asserting such claim.

Sec. 40. All public land in this Territory settled upon and occupied by settlers thereon, shall be subject to all the provisions of this act, so far as the rights and liabilities of such settlers are concerned. Who subject to the provisions of this act

Sec. 41. That chapter one of the session laws of 1866-7, be, Certain law repealed
and the same is, hereby repealed.

Sec. 42. This act shall take effect and be in force from and after its passage and approval. When to take effect

Approved, January 8, 1868.

INCORPORATIONS.

CHAPTER XIV.

AN ACT FOR THE INCORPORATION OF TOWNS, DEFINING THEIR POWERS, PROVIDING FOR THE ELECTION OF THE OFFICERS THEREOF, AND DEFINING THEIR DUTIES.

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

Townsite to be surveyed and platted

Section 1. That persons intending to make application for the incorporation of a town, as hereinafter provided, shall cause an accurate survey and map to be made of the territory intended to be embraced within the limits of such town; such survey shall be made by a practical surveyor, and show the courses and distances of the boundaries thereof, and the quantity of land contained therein, the accuracy of which survey and map shall be verified by the affidavit of such surveyor written thereon or annexed thereto.

Census to be taken

Sec. 2. Such persons shall cause an accurate census to be taken of the resident population of such territory, as it may be on some day not more than thirty days previous to the time of presenting such application to the board of county commissioners, as hereinafter provided; which census shall exhibit the name of every head of a family residing within such territory on such day, and the number of persons then belonging to every such family; and it shall be verified by the affidavit of the person taking the same.

Survey map and census subject to examination

Sec. 3. Such survey, map and census when completed and verified as aforesaid, shall be left at some convenient place within said territory for examination by those having an interest in such application, for a period of not less than thirty days.

Application for incorporation to be by petition

Sec. 4. Such application shall be by petition, subscribed by the applicants, and also by not less than one third of the whole number of qualified voters residing within such territory; and such petition shall set forth the boundaries thereof, the quantity of land embraced according to the survey, and the resident population therein contained, according to said census taken; and the said petition shall have at

tached thereto or written thereupon, affidavits verifying the facts alleged therein, and it shall be presented at the time indicated in the notice of such application, or as soon thereafter as the board can receive and consider the same.

Sec. 5. The board of county commissioners in hearing such application, shall first require proof, either by affidavit or by oral examination of witnesses before them, that the said survey, map and census were subject to examination in the manner and for the period required by section three of this act; and if said board be satisfied that the requirements of this act have been fully complied with, they shall then make an order, declaring that such territory shall, with the assent of the qualified voters thereof, as hereinafter provided, be an incorporated town, by the name specified in the application aforesaid, which name shall be different from that of every other town in this Territory, and they shall also include in such order a notice for a meeting of the qualified voters resident in said proposed town at a convenient place therein, to be by them named, on some day within one month therefrom, to determine whether such territory shall be an incorporated town.

County commis-
sioners to make
order of incor-
porations

Sec. 6. The board shall cause ten days notice of such meeting, by publication in a newspaper, if one be published in the county, and by posting up copies of said notice not less than ten in number, at the most public places in said proposed incorporated town.

Notice of meet-
ing to be given

Sec. 7. At the meeting of the qualified voters, as herein provided, polls shall be opened at nine o'clock in the forenoon of such day, and shall be kept open until four o'clock in the afternoon, when they shall be closed.

Opening of polls

Sec. 8. The voters at such meeting, shall first proceed to the election of three inspectors who, after being duly chosen and qualified, and one of their number elected clerk shall without delay proclaim to the meeting that the poll is now opened, and that they are ready to receive the ballots of the voters.

Election of
inspectors

Sec. 9. The qualified voters of said proposed incorporated town shall vote by ballot, having thereon the words "for incorporation, yes;" or the words "for incorporation, no; and if a majority of the ballots given at such meeting shall have thereon the words "no" the voters of such proposed town shall be deemed not to have assented to the incorporation thereof as a town, and no further proceedings shall be had in relation thereto, but if a majority of such ballots shall have thereon the word "yes" such territory shall from that time be deemed an incorporated town, to have continuance thereafter, by the name and style specified in the order made by the

Manner of
voting

board of county commissioners as herein before provided, and the inspectors of such meeting shall make a statement showing the whole number of ballots given at such meeting, the number having the word "yes" thereon, and the number having the word "no" thereon, which statement shall be verified by the affidavit of such inspectors, and shall be returned to such board of commissioners, at their next session, who if satisfied of the legality of such election, shall make an order declaiming that said town has been incorporated by the name adopted, which order shall be conclusive of such incorporation in all suits by or against such corporation, and the existence of such corporation, by the name and style aforesaid shall thereafter be judicially taken notice of in all courts and places in this Territory without specially pleading or alleging the same.

**Division of town
into districts**

Sec. 10. Such inspectors when they shall have returned the statement as aforesaid, shall next proceed to divide said town into not less than three nor more than seven districts having due regard to the equitable apportionment of the population among the same, and the convenience and contiguity of such district.

**Notice of
election**

Sec. 11. They shall also give ten days notice by publication in a newspaper if one be printed within such town, and by posting such notices in five public places therein, of an election to be held in such town for the purpose of electing officers thereof, naming the place therein, and the day upon which the same shall be had, but such day named shall be within twenty days from the posting of such notices. Every subsequent notice of a corporation election shall be given in like manner by the clerk of said town.

**Annual election
when held**

Sec. 12. An election for officers of said town after the first election, shall be held annually on the first Monday of May of each year, and at every such election the preceding board of trustees, or any three of them shall act as the inspectors thereof.

**How long polls
shall remain
open**

Sec. 13. At all elections in said town, the polls shall be open at nine o'clock in the forenoon, and shall not be finally closed until four o'clock in the afternoon of said day.

**Inspectors to be
the judges of
elections**

Sec. 14. Such inspectors shall preside at such first election, and be the inspectors thereof, and, in the receiving and canvassing of votes, shall be governed by the laws then existing, so far as they are applicable for the election of county officers.

**Officers to be
elected**

Sec. 15. There shall be elected at the first and at every subsequent election, one trustee, from each district in said town, and also a clerk, assessor, treasurer, and marshal who shall respectively hold their offices until the first Monday in May next following, or until

their successors are elected and qualified: *Provided*, That nothing herein contained shall prevent the respective offices of clerk, treasurer, assessor and marshal from being held by one and the same person.

Sec. 16. The persons having the greatest number of votes shall be declared elected as such trustees, and the persons who received the greatest number of votes respectively for clerk, marshal, assessor and treasurer as designated by the ballot for such office shall be declared so elected, and if two or more shall have an equal and highest number of votes, and there be no choice, the inspectors of such election shall forthwith determine by lot which shall be deemed elected, and it shall be the further duty of such inspectors to make a certified statement over their own signatures of the persons elected to fill the several offices in said town and file the same with the register of deeds in the county thereof, within ten days from the date of such election and no act or ordinance of any board of trustees chosen at such election shall be valid until the provisions of this section are substantially complied with.

Who to be declared elected

Sec. 17. It shall be the duty of the register of deeds of the proper county to make a record of such certified statement, for which services there shall be paid the same fee as is allowed for similar services in other cases.

Register of Deeds to make record of statement

Sec. 18. A vacancy occurring in the board of trustees or in any corporation office, shall be filled by appointment at a special meeting of the trustees called for that purpose, but such appointment shall be made from the district, if a trustee be appointed, in which the vacancy has occurred, and shall in no case extend beyond the annual elections provided for in this act.

vacancies in the board of trustees how filled

Sec. 19. The board of trustees chosen as aforesaid shall elect a president from their own body, and such president, trustees, and all other officers elect shall within five days after such election, take and subscribe before some person authorized to administer the same, the usual oath or affirmation for the faithful performance of the duties of their respective offices.

Officers to take oath

Sec. 20. The president, and trustees of such town and their successors in office, shall constitute a body politic and corporate, by the name of the town of _____, and shall be capable in law to prosecute and defend suits to which they are a party.

Board of trustees a body corporate

Sec. 21. Special meetings of the qualified voters may be called by the clerk by order of the trustees of said town, by giving ten days notice thereof in a newspaper, if any be printed in such town; otherwise by

Notice of special meeting

posting up such notices in five public places therein, and such notice shall state the object for which each meeting is called.

Powers of the
board of
trustees

Sec. 22. The board of trustees shall have the following powers, viz :

First, To have a common seal and alter the same.

Second, To purchase, hold, or convey any estate, real or personal, for the use of the corporation so far as such purchase may be necessary to carry out the objects contemplated by this act.

Third, To organize fire companies, hook and ladder companies, to regulate their government, and the times and manner of their exercise, to provide all necessary apparatus for the extinguishment of fires ; to make owners of buildings provide ladders and fire buckets ; which are hereby declared to be appurtenances to the real estate, and exempt from execution, seizure or sale, and if the owner shall refuse to procure suitable ladders or fire buckets after reasonable notice, the trustees may procure and deliver the same to him, and in default of payment therefor may recover of said owner the value of such ladder, or fire buckets by suit before any justice of the peace in the proper township, and costs accrued thereby ; to regulate the storage of gunpowder, and other materials ; to direct the construction of a place for the safe deposit of ashes ; and may under any order by them, entered upon the proper book of the board, visit, or appoint one or more fire wardens, to visit and examine at all reasonable hours, dwelling houses, lots, yards, enclosures and buildings of every description, discover if any of them are in a dangerous condition, and provide proper remedies for such dangers ; to regulate the manner of putting up stoves and stove pipes ; to prevent out fires, and the use of fire works, and the discharge of firearms within the limits of said corporation, or such parts thereof as they may think proper ; to compel the inhabitants of such town to aid in the extinguishment of fire, and prevent its communication to other buildings, under such penalties as are in this act provided ; to construct and preserve reservoirs, wells, pumps and other water works, and to regulate the use thereof, and generally to establish other measures of prudence, for the prevention or extinguishment of fires, as they shall deem proper.

Fourth, To declare what shall constitute a nuisance and to

prevent, abate and remove the same and take such other measures for the preservation of the public health, as they shall deem necessary.

Fifth, To restrain from running at large, cattle, swine, or other animals.

Sixth, To restrain and prohibit gambling, and other disorderly conduct; to suppress and prohibit the keeping of houses of ill-fame, and to authorise the seizure and destruction of gambling apparatus. ^{Same}

Seventh, To license, regulate or restrain auction establishments, traveling peddlers, and public exhibitions within the corporation.

Eighth, To establish and regulate markets, and build market houses, and direct the location of slaughter houses.

Ninth, To lay out, open, grade and otherwise improve the streets, alleys, sewers, sidewalks and crossings, and to keep them in repair and to vacate the same.

Tenth, To appoint street commissioners and also fire wardens not exceeding three.

Eleventh, To prohibit incumbrance of the side walks, of said town, and riding or driving thereon except to cross the same.

Twelfth, To insure the public property of such town.

Thirteenth, to purchase, lay out and regulate cemeteries.

Fourteenth, To plant trees upon public grounds, and along the streets of such town, and provide for their culture and preservation, and to enclose any public square or other public ground within said corporation.

Fifteenth, To levy and collect annual taxes not exceeding fifty cents on the hundred dollars valuation and twenty-five cents poll tax, on all property subject by law to taxation.

Sixteenth, To make and establish such by-laws, ordinances and regulations not repugnant to the laws of this Territory, as may be necessary to carry into effect the provisions of this act, and to repeal, alter or amend the same, as they shall seem to require, but every by-law, ordinance or regulation, unless in case of emergency, shall be published in a newspaper in such town, if one be printed therein, or posted in five public places, at least ten days before the same shall take effect.

Same Sec. 23. Such board of trustees shall have power to enact fines, penalties and forfeitures for violations of this act, or of any by-law or ordinance by them established, not exceeding ten dollars for any one offence, which may be recovered by action in the name of the corporation, but such board may remit the whole or any part of the fine, penalty, or forfeiture :

Provided, That the fine assessed for the violation of any ordinance requiring a license shall not be less than the amount required to be paid for such license although it may exceed the sum of ten dollars.

Appropriation of moneys Sec. 24. All moneys however derived belonging to such corporation, shall only be appropriated for such objects, and defraying such expenses as accrue, or necessarily arise in the exercise of powers granted by this act. No appropriation shall be made without an order to that effect, entered upon a proper book to be kept for that purpose by such board.

Of auditing accounts Sec. 25. No account or claim against said town shall be audited or allowed by the board of trustees, unless it be made out fully and itemized, and every such account audited shall be numbered from one upwards, in the order they were presented and a memorandum of the same entered upon a book to be kept exclusively for that purpose.

Payment of accounts Sec. 26. No account or claim shall be paid unless audited and allowed by the board as aforesaid, and no moneys shall be drawn from the treasury except upon a warrant from the treasurer signed by the president of said town, and attested by the clerk thereof.

Contracting of loans Sec. 27. No incorporated town under this act, shall have power to borrow money or incur any debt or liability unless the citizen owners of five-eighths of the taxable property of such town, as evinced by the assessment roll of the preceding year, petition the board of trustees to contract such debt or loan, and such petition shall have attached thereto an affidavit verifying the genuineness of the signatures to the same, and for any debt created thereby, the trustees shall add to the tax duplicate of each year successively a levy sufficient to pay the annual interest on such debt or loan with an addition of not less than five cents on the hundred dollars to create a sinking fund for the liquidation of the principal thereof.

Sec. 28. The clerk, assessor, treasurer, and marshal shall, within ten days from their election or appointment, each and severally give bonds payable to the Territory of Dakota, with freehold sureties to such an amount as the board of trustees shall direct, but the bonds of the treasurer and marshal shall respectively be for double the amount of the estimated tax duplicate for the current year.

What officers to give bonds

Sec. 29. All books, vouchers, moneys or other property, belonging to the corporation, and in charge or possession of any officer of the same shall be delivered to his successor when qualified.

Books, vouchers &c. to be delivered successor

Sec. 30. The board of trustees shall before the third Tuesday in May of each year, determine the amount of general tax for the current year.

Board of trustees to determine amount of tax to be raised

Sec. 31. The assessor shall assess all property liable to taxation in such town under such rules and regulations as the board may prescribe, and shall make return of his assessment roll to such board on or before the second Tuesday of June of each year.

Duties of assessor

Sec. 32. The trustees shall cause the clerk of said corporation to put up notices, in three or more public places in said town, stating that the assessment roll is returned and open for inspection and that on a day and at a place to be specified in said notice, the trustees will hear, and decide all complaints of, and appeals from, the acts of said assessor.

Notice to be given of opening of assessment roll

Sec. 33. When the assessment roll shall have been corrected and completed, the trustees shall levy a tax upon the taxable property of said town to such an amount as they may deem necessary, and shall set opposite the name of each person taxed, a description and valuation of the property, charged therewith, and the amount of tax assessed against such person, and when such tax list shall have been made, they shall cause a copy thereof, with a warrant annexed, to be delivered to the marshal of such town. The assessment roll, and tax list, shall be deposited with the treasurer of such town who is hereby charged with the safe custody of the same.

Correction of tax list

Sec. 34. Such warrant shall be under the seal of the corporation, signed by the president and trustees, or a majority of them and attested by the clerk, and shall command the marshal

Warrant to marshal to collect and pay over taxes

to collect the taxes specified in his duplicate within ninety days, and pay over the same, and make return of said warrant, to the treasurer of said town. Such trustees may renew such warrant, for any period not exceeding thirty days.

Powers of
marshal to
collect tax

Sec. 35. The marshal shall collect the taxes on said duplicate when so required, and shall have the same power to enforce collections, and shall be governed by the same rules and regulations as county treasurers and collectors, and shall have authority in like manner to collect by distress and sale, and to make conveyances and certificates of real estate sold by virtue of such sale; which sale if at a county-seat, shall be at the door of the court house or place of holding courts, and if not at the county seat it shall be held at the door of the town hall, or place of meeting of the board of trustees, and the clerk of said board shall perform the like duties, at said sale, as are required of the county treasurer, at a sale for territorial and county taxes, and all deeds or conveyances for lands so sold for taxes, shall be *prima facie* evidence of the validity of such purchase.

Redemption of
real estate sold
by distress

Sec. 36. Any real estate sold by virtue of this act shall be redeemable under the regulations and restrictions, as real estate sold for county and territorial taxes is made redeemable. All moneys for the redemption of such real estate shall be paid to the treasurer of the corporation.

Tax duplicate
may be deliver-
ed to collector

Sec. 37. The trustees of such town may at their option, deliver the tax duplicate to the collector of the proper county on or before the first day of August in each year, instead of the marshal of such town, and said collector shall enter said tax, and if delinquent; the interest and penalty thereon, upon his duplicate.

Compensation
of collector and
treasurer

Sec. 38. The collector of such county shall collect the corporation taxes upon such duplicate as other taxes are collected and pay the same over to the treasurer of such corporation. The collector and treasurer shall be allowed, and paid by the corporation, the same compensation as is paid by the county, for like services.

Duties of
treasurer

Sec. 39. The treasurer of every incorporated town, shall so keep his accounts as to show where, and from what sources, all moneys paid him have been derived, and to whom and when

such money, or any part thereof, have been paid. The treasurer shall grant all licenses authorized by this act, upon the presentation of the receipt of the marshal, that the money therefor has been paid to said marshal. His books, accounts, and vouchers, shall at all times be subject to the examination of the board of trustees, and it is hereby made their duty to examine the same, at a regular meeting of such board, on some day between the first and last Mondays of April, in each year, and have settlement with the said treasurer.

Sec. 40. It shall be the duty of the board of trustees, immediately after the annual settlement with the treasurer of said corporation, to publish in a newspaper if one be printed therein, or if there be no newspaper, then by posting in three or more public places, an exhibit of the receipts and expenditures, specifying the sources of such receipts, what appropriations were made, for what objects, and the specific amount of each.

Board of trustees to publish exhibits of receipts and expenditures

Sec. 41. The clerk of such town shall have the custody of the records, books and papers, of the board of trustees, and shall attend all meetings and record the proceedings of said board, and shall perform all other duties appertaining to his office, as required of him by the by-laws.

Duties of clerk

Sec. 42. The marshal of such town shall possess the powers, and be subject to the liabilities possessed and conferred by law upon constables in executing the orders of the trustees, or enforcing the by-laws and ordinances of said town.

Powers and liabilities of marshal

Sec. 43. The board of trustees shall superintend the grading, paving and improving of streets, and the building and repairing of sidewalks.

Trustees to superintend grading &c

Sec. 44. The fire wardens shall attend all fires, and give their personal superintendance to extinguish the same, and do all other acts required by the by-laws, and obey all orders given by the board of trustees in relation to the fire department. Trustees shall by virtue of their office be fire wardens.

Duties of fire wardens

Sec. 45. The trustees, clerk, assessor, treasurer and marshal, shall respectively receive for their services, such compensation as the board of trustees in their by-laws may decide, and said board shall cause to be paid all other officers of such town, for their services, a just and reasonable compensation.

Compensation of officers

Sec. 46. Whenever two-thirds of all resident owners in number, or in value of real estate, bounding both sides of any street not less

Repairing streets and sidewalks

than one square, shall petition to have such streets graded, paved or otherwise improved, or the sidewalks thereof built or repaired, or when two-thirds of the owners of real estate in number, or in value, on one side of such street shall desire a sidewalk on that side, it shall be the duty of such board, to levy, and cause to be collected by tax, upon the owner of real estate, or lots on such street or part of a street, according to the last assessed valuation of real estate, such a sum of money as is necessary for the improvement of said street or sidewalk, as in said petition requested.

Nobody exempt
from highway
tax

Sec. 47. Nothing contained in this act shall exempt the inhabitants of any town, from the payment of highway taxes legally assessed, nor from the formation of one or more road districts, irrespective of the corporate limits of such town.

Addition to
corporation

Sec. 48. When two-thirds of the owners of a tier of out-lots, adjoining an incorporated town, shall sign a petition, asking that the corporate limits of said town be extended so as to include said out-lots, the board of trustees of said town shall cause said petition to be recorded, and make an order that said tier of out-lots shall thereafter be included, and constituted a part of said corporation, and the inhabitants residing thereon, and owners thereof, shall be subject to and entitled to all privileges of said corporation.

Jurisdiction of
trustees

Sec. 49. The trustees shall have jurisdiction over any commons, or public grounds belonging to said town, and shall have power to regulate with the consent of a majority of the owners thereof, the banks, shores and wharves, of that portion of any navigable streams within the corporate limits, but no ferries heretofore or which may hereafter be established by law, shall be prejudiced or in any manner affected by the provisions of this act.

Annexing of
additional lots

Sec. 50. Whenever there shall be lots laid off, and platted, adjoining such town, and a record of the same is made in the register of deeds office of the proper county, the trustees may by a resolution of their board, extend the boundary of such town so as to include such lots; and the lots thus annexed shall thereafter form a part of such town and be within the jurisdiction thereof. The trustees shall immediately thereafter file a copy of such resolution, together with a plat and map of survey, defining the boundaries of such addition in the office of the register aforesaid.

Same

Sec. 51. When any town shall desire to annex contiguous territory thereto, not platted, or laid or recorded, the trustees shall present to the board of county commissioners, a petition setting forth the reasons for such annexation, and shall accompany the

same with a map or plat, accurately describing by metes and bounds the territory proposed to be attached, which shall be verified by affidavit. Such trustees shall give thirty days notice by publication in a newspaper printed in such town, if any, otherwise in the county, or if none there, by posting up such notice in five or more public places within the corporation; a copy of such notice shall be served on the owner or owners of such territory, if known, and are residents of the county.

Sec. 52. The board of county commissioners upon the reception of such petition shall consider the same, and shall have the testimony offered for or against such annexation, and if after inspection of the map and the testimony being heard, such board is of the opinion that the prayer of such petition should be granted, it shall cause an entry to be made on the order book, specifying the territory annexed with the boundaries thereof, according to the survey, which entry or an attested copy thereof shall be conclusive evidence in all courts of such annexation. Same

Sec. 53. When an application signed by one third of the legal voters of any incorporated town, shall be presented to the board of trustees, in writing, asking, for a dissolution of the corporation, setting forth the reasons therefor, it shall be competent for said board if they deem the reasons good to call a meeting of the voters of said town by giving ten days notice thereof as provided in this act, to determine whether such corporation shall be dissolved. Dissolution of corporation

The board of trustees shall preside at such meeting and a poll shall be opened as at any other corporation election and the voters shall vote by ballot "yes" or "no." If a majority of all the votes given shall have thereon the word "yes," and such votes shall have been given by two-fifths of all the legal voters in such town, a statement of the vote signed by the president and attested by the clerk, shall be filed in the register of deeds office of the county, and such town shall at the expiration of six months from the time of holding such meeting cease to be a corporation, and the property belonging to such corporation, after the payment of its debts and liabilities, shall be disposed of in such manner as a majority of the voters of such town at any special meeting thereof, may direct.

Sec. 54. No such dissolution shall affect the rights of any person in any contract or agreement to which such corporation is a party. Dissolution not to effect existing contracts

Sec. 55. Whenever any suit shall be instituted by an incorporated town, it shall not be required to show its compliance with any

Compliance with the provisions of this act how considered in law suits

Incorporation of towns under the provisions of this act

Penalty for violation of the provisions of this act

When debt not nullified

When to take effect

of the provisions of this act as to its organization or publication of by-laws or ordinances unless the same is controverted by affidavit.

Sec. 56. Any town heretofore not corporated may, by a resolution of the board of trustees, or other municipal board thereof entered upon the record book of the corporation, become incorporated under this act, but the same shall be deemed a surrender of all the rights and franchises acquired under any former act of incorporation or acts amendatory thereto. A copy of such resolution shall be filed with the register of deeds of the proper county, and entered by him of record. Trustees and other officers of such incorporated towns by whatever name designated performing duties of a like nature to those required of officers created by this act, shall continue to be the officers of such town, by the name as specified in this act, until superceded by the annual election.

Sec. 57. Any person violating the provisions of any ordinance of town organized under this act to which there may be a penalty affixed, may be prosecuted before a justice of the peace of such town, upon a warrant issued by such justice as in cases of misdemeanor; and such person upon conviction, shall stand committed until the fine and costs are paid or replevied.

Sec. 58. No debt or liability due to or from any incorporated town, shall be unpaid by reason of such town being brought within the provisions of this act, and becoming incorporated under it.

Sec. 59. This act shall take effect and be in force from and after its passage and approval.

Approved, January 6, 1868.

CHAPTER XV.

AN ACT TO REGULATE INCORPORATIONS.

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

INSURANCE COMPANIES

Section 1. It shall be the duty of each and every insurance company incorporated under the laws of this Territory, to file

with the auditor of the Territory a full and specific statement of the amount of cash paid in upon said stock, the amount of stock not paid for in cash, the amount secured by mortgage or pledges of real estate, the names and residences of the stockholders in said company, with the amount of stock owned or held, set opposite the name of each, and if not all paid up in cash, the amount unsecured and the amount secured, specifying whether by real or personal security, also set opposite the name of each, the names of all the officers and agents of the company, wherever residing, the amount of policies issued by, and outstanding against the company, at the date of said report; the amount of premiums received by said company during the preceding six months; the amount of cash on hand, the amount of bills payable and receivable at the date of said statement; the amount of real estate owned by said company, where held and owned, and in what manner such real estate became vested in said company, which report and statement shall be verified by the oath of the president and secretary of the company.

Insurance company to file statement Territorial auditor

Sec. 2. It shall be the duty of every insurance company now created, or that may hereafter be created under the laws of this Territory, to file a semi-annual statement of the affairs of said company, with the auditor of the Territory, on the first day of January and July, in each year, which statement shall be verified by the oath of the secretary of the company. Such statement shall contain:

Companies formed under the provisions of this act to file semi-annual statement with auditor

- First, The name and locality of the company.
- Second, The amount of capital stock of said company.
- Third, The amount of its capital stock paid up.
- Fourth, The assets of the company, including—
 1. The amount of cash on hand.
 2. The amount of cash in hands of agents.
 3. The real estate unincumbered.
 4. The bonds and notes of the company, and how they are secured, with the rates of interest thereon, and whether given in payment of stock subscription, or for *bona fide* loans.
 5. Debts of the company secured by mortgages.
 6. Debts otherwise secured.
 7. Debts for premiums.
 8. All other securities.

What statement to contain

Fifth, The amount of liabilities due or not due to banks or other creditors by the company.

Sixth, Losses adjusted and due.

Seventh, Losses adjusted and not due.

Eighth, Losses unadjusted.

Ninth, Losses in suspense.

Tenth, All other claims against the company.

Eleventh, The greatest amount insured by any one risk.

And the auditor shall cause a brief abstract of such statement to be published in at least one newspaper at the capital of the Territory, and such company shall pay for said publication.

Penalty for non compliance with the above requirements

Sec. 3. A failure to comply with the provisions of the two preceding sections, shall subject the president and secretary of any company, each, individually, to the penalty of one hundred dollars, to be recovered in an action at law in the name of any citizen of the Territory, one-half of the same to the use of the Territory, and the other moiety to the use of the informer.

Unlawful to hold real estate

Sec. 4. It is declared unlawful for any insurance company in this Territory to purchase or hold any real estate, save what shall be necessary for the transaction of its legitimate business of insurance; and deeds and conveyances to said company for any other purposes, are hereby declared to be void.

Agents of any company incorporated by any other territory or state to obtain certificate from auditor
Said agents to furnish statement

Sec. 5. It shall not be lawful for any agent or agents of any insurance company, incorporated by any other State or Territory, directly or indirectly, to take risks or transact any business of insurance in this Territory without first procuring a certificate from the auditor of the Territory, and before obtaining such certificate, such agent or agents shall furnish the auditor with a statement under the oath of the president or secretary of the company for which he or they may act, which statement shall show:

What statement to contain

First. The name and locality of the company,

Second. The amount of its capital stock,

Third. The amount of its capital stock paid up,

Fourth. The assets of the company, including:

1. The amount of cash on hand, and in the hands of agents and other persons.

2. The real estate unincumbered.

3. The lands owned by the company, and how they are secured, with the rate of interest thereon. Same

4. The debts of the company secured by mortgage.

5. Debts otherwise secured.

6. Debts for premiums.

7. All other securities.

Fifth, The amount of liabilities due or not due to banks or other creditors by the company.

Sixth. Losses adjusted and due.

Seventh. Losses adjusted and not due.

Eighth, Losses unadjusted.

Ninth. Losses in suspense, waiting for further proof.

Tenth. All other claims against the company.

Eleventh, The greatest amount insured by any one risk.

Twelfth. The greatest amount allowed by the rules of the company to be insured in any one city, town or village.

Thirteenth. The greatest amount allowed to be insured in any one block.

Fourteenth. The act of incorporation of such company.

Which statement shall be filed in the office of said auditor, together with a written instrument under the seal of the company, signed by the president and secretary, authorizing such agent to acknowledge service, consenting that service of process upon such agent shall be taken and held to be as valid as if served upon the company, according to the laws of the Territory, or any State or Territory, and waiving all claims of errors by reason of such service; and no insurance company or agents of any insurance company, incorporated by any other State or Territory, shall transact any business of insurance in this Territory, unless such company is possessed of at least one hundred thousand dollars of actual capital, invested in stocks of at least par value, or in bonds or mortgages on real estate worth double the amount for which the same is mortgaged, and upon filing the aforesaid statement and instrument with the auditor of the Territory and furnishing him with satisfactory evidence of such instrument as aforesaid, it shall be the duty of said auditor to issue a certificate thereof, with authority to transact business of insurance, to the agent or agents applying

for the same, and the auditor may demand and receive two dollars for every such certificate, to be paid by the company.

Making it unlawful for any company, association, firm, &c to transact business without certificate of auditor

Sec. 6. It shall be unlawful for any incorporated company or as sociation, partnership, firm, or individual, or any member or agent or agents thereof, or for any agent or agents of any company incorporated by any foreign government other than a state of this Union, to transact any business of insurance in this Territory without procur- ing a certificate of authority from the auditor of this Territory, such company, association, partnership, firm, or individual, or any agent or agents thereof, having first filed, under oath, in the office of said auditor, a statement setting forth the charter or act of incorporation of any and every such incorporated company, and the by-laws, co- partnership agreement and articles of association of any and every such unincorporated company, association, partnership or firm, and the name and residence of such individual, and the names and resi- dences of the members of every such partnership or firm, and the matters required to be specified by the provisions of this chapter, and the written authority therein mentioned, and furnish evidence, to the satisfaction of the auditor of the Territory, that said company has in- vested in stocks of some one or more of the States of this Union, or of the United States, the amount of one hundred thousand dollars, and that such stocks are held by citizens of the United States, or in bonds or mortgages of real estate situated within the United States, fully securing the amount for which the same is mortgaged, or bonds of cities of the United States, the aggregate market value of the investment of the company in which shall not be less than one hundred thousand dollars, and such incorporated company or unincorporated company, association, partnership, firm or individual, or any agent or agents thereof, filing said statement and furnishing evidence of investment, as aforesaid, shall be entitled to a certificate of authority for such body or individual, in like manner as is provi- ded in this chapter.

Certificate to be renewed annually

Sec. 7. The statement and evidences of investment required by this chapter, shall be renewed annually in the month of January of each year. The auditor of the Territory, upon being satisfied that the capital securities and investments re- main secure, shall furnish a renewal of certificates as aforesaid. And the company, agent or agents obtaining such certificate, shall file the same, together with the statement upon which it was obtained or renewed, in the office of the auditor of the Territory.

Sec. 8. Any person or firm in this Territory who shall receive or receipt for any money, on account of or for any contract of insurance made by him or them, or for any such insurance company or individual aforesaid, or who shall receive or receipt for money from other persons to be transmitted to any such company or individual aforesaid, for a policy or policies of insurance or any renewal thereof, although such policy or policies of insurance may not be signed by him or them as agent or agents of such company, or who shall in any wise, directly or indirectly, make or cause to be made any contract or contracts of insurance, for or on account of such company aforesaid, shall be deemed, to all intents and purposes, an agent or agents of such company, and shall be subject and liable to all the provisions of this chapter.

Who to be considered as agents

Sec. 9. Copies of all papers required by this chapter to be deposited in the office of the auditor to be true and correct copies of such papers, shall be received as evidence in all courts and places, in the same manner and have the same force and effect as the original would have produced.

Copies of papers deposited with auditor to be received as evidence

Sec. 10. Any person or persons violating the provisions of this subdivision shall upon conviction thereof, in any court of competent jurisdiction, be fined in any sum not exceeding one thousand dollars, or imprisoned in the county jail not more than thirty days, or both, at the discretion of the court. Violations of the provisions of this subdivision may be prosecuted by information filed by the prosecuting attorney of the proper county, or by indictment of the grand jury.

Penalty for violation of the provisions of this subdivision

Sec. 11. Any insurance company complying with the provisions of this subdivision, and securing the certificate of the auditor for any of its agents, shall not be required to furnish the single statement, and evidences required hereby for more than one of such agents, which being filed with the auditor of this Territory, shall be deemed a sufficient compliance for its freetransaction of business in this Territory.

What deemed compliance

Sec. 12. If any insurance company, firm or individual, or their agent or agents, having filed its or their statement as required by this subdivision, and conformed to the requirements thereof, shall have on deposit in any other State or Territory,

Guarantee fund to be deposited

same

or elsewhere than in this Territory, any portion of its capital or earnings as a guarantee fund for the exclusive benefit or security of persons insured in such State or Territory, or other place, it shall be the duty of the auditor of the Territory to withhold from such body or individual so alienating any such portion of their capital or resources, the certificates and authority in this subdivision provided for, until such body or individual shall file with the auditor of the territory, a statement, duly verified by the oath or affirmation of the president or secretary of such incorporated company, association, partnership, or firm, or of such individual, showing the amount of premiums received in this territory by such company during the year ending on the first day of January next preceding the filing of said statement, and shall deposit it in this territory, in such manner as the auditor of the territory shall direct, five per cent. of the amount received in money, or any solvent state or United States stocks of at least par value, or mortgages on real estate situated in this territory, of at least double the value for which the same is mortgaged; which statement and deposit shall be so made from year to year, at the time of each renewal or original grant of authority by said auditor, until the sum of forty thousand dollars is deposited as aforesaid, which said sum and every yearly part thereof deposited as aforesaid, shall be held under control of such auditor of the territory, as a guarantee fund for the benefit of such persons as may be in any manner insured in their property by such company in this Territory, and the same or any part of the sum so deposited, shall not be drawn out of the depositors, until all claims for losses or premiums, shall be paid and discharged, or until all deposits made in other States, Territories, or other places not within this Territory shall be withdrawn; and in case of the insolvency of any such company, the sums so deposited as aforesaid shall be applied by the auditor of the Territory, *pro tanto*, towards the payment of all claims against such body or individual, filed in his office, duly liquidated and authenticated, and losses and premiums or risk unpaid on policies issued within six months after such insolvency may occur. Any such body or individual shall be deemed insolvent, upon failure to pay any undisputed loss insured against within this Territory for the space of ninety days after

final judgment for the amount of any loss so insured against, when no appeal shall have been taken from such judgment by either party, or other proceeding begun to vacate, modify, reverse or review such judgment, or to arrest the same, or to obtain a new trial. Such body or individual shall be entitled to receive the interest or dividends on such stocks so deposited from time to time as the same may become due. This section shall not apply to any of the aforesaid bodies or individuals who have made no such deposits, as in this section mentioned, elsewhere than in this Territory.

Sec. 13. Mutual insurance companies incorporated by any State or Territory other than Dakota, upon filing in the office of the auditor the act of incorporation of said company, together with a written instrument under seal of said company signed by the president and secretary of said company under oath, certifying that said company is possessed of a capital of at least one hundred thousand dollars, secured by lien on real estate, worth at cash valuation, at least five times the amount of said capital, and not encumbered to more than one-fourth of said valuation, shall be entitled to a certificate from said auditor, with authority to transact business of insurance in this Territory, and said company shall be exempt from the provisions of this subdivision, with the exception of publication of statement and certificate of the auditor.

Mutual insurance companies entitled to certificate, when

Sec. 14. It shall be the duty of the agent or agents in either of the foregoing sections mentioned, before taking any risks or transacting any business of insurance in this Territory, to file in the office of the county clerk of the county in which he or they may desire to establish an agency for any such company, a copy of the statement required to be filed with the auditor of the Territory as aforesaid, together with a certificate of such auditor, which shall be carefully preserved for public inspection by said clerk; and said statement and certificate shall be published one week in one daily and four weeks in one weekly newspaper printed and published in the county in which such agent or agents, has or have his or their office of business as such agent or agents; and if no daily paper is published in such county, then such publication shall be sufficient if made in one weekly newspaper as aforesaid, but if no

Copy of statement filed with auditor to be filed with County Clerk

weekly newspaper be printed or published in such county, then such publication shall be made in one weekly newspaper of this Territory of most general circulation in such county.

COLLEGES, UNIVERSITIES, NORMAL SCHOOLS, ACADEMIES, ETC.

To incorporate
colleges,
universities &c,

Sec. 15. Any number of persons, not less than five, desiring to establish a college, university, normal school, or other institution for the purpose of promoting education, religion, morality, agriculture or the fine arts, may, by complying with the provisions of this subdivision, become a body corporate and politic with perpetual succession, and may assume a corporate name by which they may sue and be sued, plead and be impleaded in all courts of law and equity; may have a corporate seal, and the same alter and break at pleasure; may hold all kinds of estate, real, personal or mixed, which they may acquire by purchase, donation, devise, or otherwise, necessary to accomplish the objects of the corporation, and the same to dispose of and convey at pleasure.

To ascertain
amount of pro-
perty of any
company
desirous of be-
coming a body
corporate

Sec. 16. To ascertain the property and value thereof, of any institution desirous of becoming a body corporate, under the provisions of this subdivision, it shall be the duty of the probate judge of any county of this Territory, on application in writing, of any number of persons not less than five, of whom not less than five shall be resident freeholders of the county where such application is made, or where such institution is or is intended to be located, setting forth the objects for which they desire to become incorporated, to select three disinterested freeholders of the county and voters therein, as appraisers, who shall first take an oath for the faithful discharge of their duties, before some competent officer, and such appraisers shall then proceed to make a schedule, and upon actual view to appraise the true value, in money, of all such goods, chattels, lands and tenements, choses in action, rights, credits and subscriptions as such applicants shall exhibit to such appraisers, and shall return such schedule with their appraisal, and certificate of some officer authorized to administer oaths, that such appraisers were first duly sworn by him to discharge their duties as such appraisers, to the probate judge of the proper county; and if the amount so found shall be equal to the sum

required for the commencement of any such institution as said applicants desire, such probate judge shall give such applicants a certificate of the fact, and they shall enter it in a book of records, by them provided for that purpose, which certificate, together with the corporate name and the articles of association, they shall also cause to be recorded in the county clerk's office of the county where such institution is or is intended to be located, and they shall thenceforward be a body corporate and politic, according to the provisions of this subdivision, and such probate judge, appraisers and county clerk shall be entitled to the same fees as for like services in other cases, and no more.

Sec. 17. The incorporators of any college or university, which may be organized in accordance with the provisions of this subdivision, may elect five or more trustees of whom not less than five shall be resident freeholders of the county where such college or university is located, who shall constitute a board of directors for such institution, and they shall have power to fill vacancies that may occur in their board, and shall hold their offices until their successors are elected and qualified according to the rules and by-laws that may be adopted by the board of trustees, but at all times at least five of such board of trustees shall be residents, freeholders of the county where such institution is located, and when any such board, in their corporate name, shall have acquired for the benefit of such institution five thousand dollars, in real and personal property, to be ascertained as herein provided, said trustees shall have power to appoint a president, professors, tutors and teachers, and any other necessary agents and officers, and fix the compensation of each, and may enact such by-laws not inconsistent with the laws of this Territory or the United States, for the government of the institution, and for conducting the affairs of the corporation, as they may deem necessary, and shall have power to confer, on the recommendation of the faculty, all such degrees and honors as are conferred by colleges and universities of the United States, and such others, having reference to the course of studies and the accomplishment of the student, as they may deem proper.

Election of
trustees, their
powers &c,

Sec. 18. In case it should happen that an election for direc-

Corporation when not dissolved tors should not be held on the day appointed by the by-laws of any institution or company formed under the provisions of this subdivision, such corporation shall not, for that reason, be deemed to be dissolved, but it shall be lawful on any other day to hold a meeting and elect its directors in such manner as shall be prescribed by the by-laws thereof.

Trustees may hold property devised &c, in trust Sec. 19. The trustees of any university, college or academy may hold in trust, any property devised, bequeathed or donated to such institution, upon any specific trust, consistent with the object of said corporation.

Faculty Sec. 20. The president and professors shall constitute the faculty of any literary college or university instituted under the provisions of this subdivision, and have power to enforce the rules and regulations enacted by the trustees for the government and discipline of the students, and to suspend and expel offenders, as may be deemed necessary.

Amount necessary to establish an academy Sec. 21. When any number of persons shall have procured by subscription, donation, purchase or otherwise, the sum of five hundred dollars for the purpose of establishing and sustaining an academy, such persons may adopt a corporate name and enter the same in the county clerk's office of the proper county, and proceed to the election of such officers and teachers as they may deem necessary, may in their corporate name, sue and be sued, plead and be impleaded, in any court of law or equity of competent jurisdiction, and may have a corporate seal, may purchase and hold personal or real estate, and dispose of the same at pleasure, and do all other acts and things necessary for the promotion of education and the general interest of such academy.

Privileges under this subdivision Sec. 22. Any college, university or academy, now instituted, may come under the provisions of this subdivision by complying with the requisitions herein contained, and all such institutions now in existence, or that may hereafter be established, may connect therewith, to be used as a part of their course of education, any mechanical shops, or machinery or lands for agricultural purposes, not exceeding three hundred and twenty acres, to which may be attached all necessary buildings for carrying on the mechanical or agricultural purposes of such institution.

Sec. 23. Any company which may be formed in pursuance of this subdivision, or which may now exist by virtue of any special act of incorporation, the property of which is held as stock, and not derived by donation, gift, devise or gratuitous subscription, may increase its capital stock or change it into scholarships, when it becomes necessary for the purpose of carrying out the object for which such company or corporation is formed, in the following manner: the directors, for the time being, shall make out and sign a certificate in which they shall set forth the amount to which such capital stock is to be increased, and the object, which certificate shall be deposited in the office of the county clerk of the proper county, and be by him recorded in the same manner as the articles of association and corporate name are required by this subdivision to be recorded.

May increase
stock and schol-
ar ships

Sec. 24. Before the capital stock of such company shall be increased, it shall be the duty of the directors to publish a notice signed by at least a majority of them, in a newspaper of general circulation in the county in which such institution is located, at least four consecutive weeks, appointing a time and place for holding a meeting of the stockholders of the said company, specifying the amount to which it is proposed to increase the capital stock thereof; and a vote of at least two-thirds of the shares of the stock represented at such meeting, shall be necessary to an increase of its capital stock, and to authorize the directors to make and sign the certificate mentioned in the preceding section.

Notice by
publication

Sec. 25. Any university, college or academy that may become a body corporate under the provisions of this subdivision, the property of which is not derived by donation, gift, devise or subscription, but is owned by individuals in the shape of stock subscribed or taken, the owners of said stock shall be individually liable for the debts of said corporation to the amount of their stock respectively, and also in a sum equal thereto, over and above the amount of their stock:

When stock
holders person-
ally liable

Provided, That the trustees or directors of any corporation organized under the provisions of this subdivision, the property of which is not owned by individuals in the shape of stock subscribed or taken, but is held upon trust or derived by devise,

donation, gift or subscription, shall not contract any indebtedness beyond the actual means or assets of said corporation, and if said trustees or directors contract debts or incur liabilities beyond the actual means or assets of said corporation, the trustees or directors so contracting shall be held liable in their individual capacity for the payment of the same, but the property of said corporation shall be exhausted.

Manner of becoming trustees of an endowment fund

Sec. 26. Whenever three or more persons shall desire to create a board of trustees, to become incorporated as the trustees of a college endowment fund, they shall do so in the following manner, to-wit:

Whenever, at any meeting called for that purpose, the said persons, at least three of whom shall be residents of this Territory, not less than three in number, as aforesaid, shall resolve to become a body politic and corporate, having a seal and corporate name, whereby they may sue and be sued in courts of justice in this Territory, they shall prepare a statement, setting forth the name by which they shall be called, the amount of said fund, and the manner in which, and the district to which the said fund shall be applied, whether within or without this Territory, together with the name of the persons who shall act as trustees, which said statement shall be subscribed by all the persons composing said meeting in the presence of some magistrate, or judicial officer having a seal, who shall attest the signing of the same, and the same shall be recorded in the office of the county clerk in the county where said meeting was held and thereupon the persons named in said statement as trustees, and their successors in office, shall become a body corporate and politic for purposes in said statement named and specified; and a certified copy of said record, under the hand and seal of the county clerk of said county, shall at all times be *prima facie* evidence of the existence of said corporation.

To change objects of company

Sec. 27. In any case where, in the original statement in the preceding section provided for, it is contemplated that the fund may be applied to any object, not inconsistent with the purposes of education, different from that particularly specified in said statement, the trustees above named, or their successors in office, may apply to the district court in the county where the record hereinbefore provided for was made, for the privilege to

make such change, designating particularly the purposes to which it is proposed to apply the same; and the said court, on being satisfied that such change is not inconsistent with the object of the original creation and institution of said fund, shall authorize and sanction such change.

Sec. 28. The said board of trustees and their successors in office, shall be a body politic with perpetual succession, and they shall hold their offices for such terms and receive their appointments in such manner as shall be designated in the statement on record in the office of the county clerk, as hereinbefore provided.

Term of office of trustees

BRIDGE COMPANIES.

Sec. 29. Whenever any number of persons, not less than five, associate together for the purpose of constructing a bridge over any of the streams of water in this Territory, they shall under their hands and seals, make a certificate specifying the amount of capital stock necessary, the amount of each share, the place where such bridge is to be built, and on what stream; and said certificate shall be acknowledged, certified, and forwarded to the secretary of the Territory, and by him recorded and copied; and when so incorporated, they are hereby authorized to carry on the operations named in said certificate of incorporation, and by the name and style provided in such certificate, shall be deemed a body corporate with succession, and they and their associates, successors and assigns shall have the same general corporate powers, and be subject to all restrictions hereafter provided; but in all cases the banks on both sides of the stream where the said bridge is to be erected, shall be owned by said company, or they shall obtain in writing the consent of the owner or owners of the bank where the said bridge is to be erected, to erect the said bridge as aforesaid, unless the said banks at such points shall be in a public highway.

Bridge companies to file certificate of stock

Sec. 30. The incorporators herein named shall open the books of said company for subscription to the capital of said bridge, and so soon thereafter as ten per cent. of the capital shall be subscribed, they shall call a meeting of the persons who have subscribed stock as aforesaid, and shall then and there proceed to elect five directors, who shall be stockholders in said company, who shall hold their offices as such directors for one year from and after said election and until their successors are elected and qualified, one of whom shall be

Opening subscription books &c.

president, one treasurer, and one secretary, to be named on the tickets when voted for by the stockholders as aforesaid; each stockholder shall be entitled to one vote for each and every share of stock he may own, and after the first election no stockholder shall be entitled to a greater number of votes than the number of shares he may have paid into the said company.

Treasurer of company to give bonds

Sec. 31. The treasurer of said company, before entering upon his duties of office, shall enter into a bond with good and sufficient security, to be approved by said board of directors, payable to the said company, conditioned for the faithful performance of all and singular the duties of his said office, and that he will well and truly account for and pay over to the said company all moneys and property that shall, from time to time, come into his hands by virtue of his said office, and that he will use due and proper diligence to collect all moneys and demands that from time to time shall be due and owing to the said company, which it shall be his duty by law to collect.

Duties of president

Sec. 32. The president shall preside at all meetings when present and not otherwise incapacitated, in which case, or in case of his absence, the board of directors shall choose a president from among their number, who shall perform the duties of the president at such meeting, and perform such duties as may from time to time be pointed out by the by-laws and rules of said company.

Duties of secretary

Sec. 33. The secretary shall keep a record of all meetings of the board of directors and other proceedings of said company, not required to be performed by any other officers of the said board of directors, and perform such other and further duties as may be assigned him from time to time by the rules and by-laws of the said company.

Powers of company to make by-laws &c.

Sec. 34. The company shall have power from time to time, at any regular meeting of the board of directors, to make, alter and change such by-laws and rules for the government of the said company.

Duties of company, regard to tolls

Sec. 35. The company, previous to receiving any tolls upon said bridge, shall set up and keep in a conspicuous place a board on said bridge, on which shall be written painted or printed, in a plain and legible manner, the rates of toll, which rates of toll shall have been prescribed by the district court of the proper county; and if any company shall demand or receive any greater rates of toll than the rate prescribed by said court, they shall be subject to a fine of ten dollars for each offence.

Sec. 36. The compensation of the president and other officers of such company, shall be regulated and fixed by the rules and by laws of such company from time to time.

Compensation
of officers

MANUFACTURING COMPANIES.

Sec. 37. Whenever any number of persons associate themselves together for the purpose of engaging in the business of manufacturing, they shall, under their hands and seals, make a certificate, specifying the amount of capital stock necessary, the amount of each share, the name of the place where such manufacturing establishment shall be located, and the name and style by which such company shall be known; Said certificate shall be acknowledged, certified and forwarded to the secretary of the Territory, and by him be recorded and copied; and when so incorporated, they are hereby authorized to carry on the manufacturing operations named in said certificate of incorporation, and, by the name and style provided in said certificate, shall be deemed a body corporate with succession, and they and their associates, successors and assigns shall have the same general corporate powers as conferred in this chapter upon bridge companies, and subject to all restrictions hereafter provided.

Manufacturing
companies to file
certificate
With secretary
of Territory

Sec. 38. The annual meeting of the stockholders shall be held on the first Monday of January in each year, at which meeting the directors of the company shall be elected, and such other lawful business done as the stockholders shall deem necessary and proper; and should they fail to elect directors at the annual meeting, they shall, hold a special meeting at some subsequent time for that purpose by giving thirty days notice thereof in some newspaper of general circulation in such county; the directors shall hold their offices until their successors are chosen and qualified, but no person shall be a director after ceasing to be a stockholder. Immediately after the election, the directors shall elect one of their number president of the corporation, and may appoint such other officers and agents as they may deem proper to transact their business, and prescribe the amount of compensation to be allowed them for their services, and such officers, when required by the by-laws, shall give bonds to the satisfaction of the directors, for the faithful discharge of the trust committed to them, and shall have power and are hereby authorized to make such rules, regulations and by-laws as may be necessary for their government, not inconsistent with the Organic Act of this Territory. The directors shall have the general manage-

Annual meeting.
term of office to

Term of office, &c ment of the affairs of the company, and may dispose of the residue of the capital stock at any time remaining unsubscribed, in such manner as the stockholders for the time being may prescribe, and may employ the capital and means of the company in such manufactures as they shall deem best for the company, and for the erection and maintenance of such machinery, dams, buildings, races and watercourses, subject always to the control of the stockholders, as may be necessary in the business of manufacturing, but for no other purposes than those connected with and pertaining to said business. They shall cause a record to be kept of all stock subscribed and transferred, and all business transactions, and their books and records shall at all reasonable times be open to the inspection of any and every stockholder; they shall also, when required, present to the stockholders reports in writing, of the situation and the amount of business of the company, and declare and make such dividends of the profits from the business of the company, not reducing the capital stock while they have outstanding liabilities, as they shall deem expedient.

**Who to open
subscription
books**

Sec. 39. The persons named in the certificate of incorporation, or a majority of them, shall be commissioners to open the books for the subscription to the capital stock of said company, and at such times and places as they shall deem proper, and the said company are authorized to commence operations upon the subscription of ten per cent. of said stock.

RELIGIOUS AND OTHER SOCIETIES.

**Religious and
other societies**

Sec. 40. It shall be lawful for any religious sect or denomination, fire company, or any literary, scientific or benevolent associations (other than colleges, universities, academies or seminaries,) within this Territory, to elect, at a meeting of a majority of the members of any organized church, fire company, literary, scientific or benevolent association as aforesaid, called for that purpose, any number of their members, not less than three, to serve as trustees or directors, and one member as clerk, who shall hold their offices during the pleasure of the society or association.

**Clerks to keep
record of meet-
ing**

Sec. 41. That the clerk so appointed shall make a true record of the proceedings of the meeting provided for in this subdivision, and certify and deliver the same to the clerk of the county where such meeting shall be held, together with the name by which such church, fire company or association shall there-

after desire to be known; and it shall be the duty of each county clerk in this Territory, immediately upon the receipt of such certified statement, to record the same in a book of record to be kept by him, provided for that purpose at the expense of his county, for which service he may demand the sum of ten cents per hundred words, and from and after making such record by the county clerk, the said trustees or directors, and their associated members and their successors, shall be invested with the powers and immunities incident to aggregate corporations and a certified transcript of the record herein authorized to be made by the county clerk, shall be deemed and taken in all courts and places whatsoever in this Territory as *prima facie* evidence of the existence of such association and corporation.

Clerks to keep record

Sec. 42. The trustees or directors, who may be appointed under the provisions of this subdivision, and their successors in office, shall have perpetual succession by such name as may be designated and by such name be legally capable of contracting and prosecuting and defending suits, and shall have capacity to acquire, hold, enjoy, dispose of and convey all property real and personal, which they may acquire by purchase, donation, or otherwise, for the purpose of carrying out the intentions of such society or association, but they shall not acquire or hold property for any other purpose.

Duties of trustees &c.

Sec. 43. Such society or association, when incorporated, may elect such officers and make such rules and regulations as may be necessary and expedient for its own government, and the management of its fiscal and other affairs to effect their respective objects.

Election of officers Rules &c

Sec. 44. If said board of trustees or directors, as is provided for in this subdivision, shall be vacated, either in whole or in part, by death, resignation or otherwise, such board of trustees or directors may be revived, or such vacancy or vacancies filled, in the manner pointed out in this subdivision for the original organization of said board, and a majority of said trustees or directors shall be a quorum for the transaction of business.

Revival of organization

CEMETERIES

Sec. 45. It shall be lawful for any number of persons, not

Cemetery associations

less than five, who are residents of the county in which they desire to form themselves into an association, to form themselves into a cemetery association, and to elect any number of their members, not less than three, to serve as trustees, and one member as clerk, who shall continue in office during the pleasure of the society; all such elections shall take place at a meeting of a majority of the members of such association, and after notice, for at least twenty days in a newspaper, or by posting at least three written notices at public places in the township.

Certified statement to be filed with county clerk

Sec. 46. The clerk hereinbefore authorized to be appointed, shall forthwith make out a true record of the proceedings of the meeting provided for by the preceding section, and certify and deliver the same to the clerk of the county in which such meeting shall be held, together with the name by which such association shall desire to be known; and it shall be the duty of each county clerk in this Territory, immediately upon the receipt of such certified statement, to record the same in a book by him provided for that purpose, at the expense of the county; and the clerk shall be entitled to the same fees for his services as he is entitled to demand for other similar services and from and after making of such record by the county clerk the said trustees, and their associated members and successors shall be invested with the powers, privileges and immunities incident to aggregate corporations; and a certified transcript of the record herein authorized to be made by the county clerk, shall be deemed and taken in all courts and places whatsoever, within this Territory, as *prima facie* evidence of the existence of such cemetery association.

Powers of trustees

Sec. 47. The trustees who may be appointed under the provisions of this subdivision, shall have perpetual succession and shall be capable in law of contracting, and prosecuting and defending suits at law and in equity; and where suits shall be brought against said incorporation, mesne process against it may be served by leaving an attested copy thereof with one of the trustees, at least ten days before the return day thereof.

Association may make rules

Sec. 48. Such association may have power to prescribe the terms on which members may be admitted, the number of its trustees and other officers (subject to the limitation set forth in this subdivision,) and the time and manner of their election and

appointment, and the time and place of meeting for the trustees and for the association, and to pass all such other by-laws as may be necessary for the good government of such association, not inconsistent with this or any other statute of the Territory, nor in violation of the organic act.

Sec. 49. Such association shall be authorized to purchase or take by gift or devise, and hold land exempt from execution and from any appropriation to public purposes, for the sole purpose of a cemetery, not exceeding one hundred acres, which shall be exempt from taxation if used exclusively for burial purposes, and in nowise with a view to profit. After paying for such land, all the future receipts and income of such association; whether from the sale of lots, from donations, or otherwise, shall be applied exclusively to laying out, protecting, preserving and embellishing the cemetery and the avenues leading thereto, and to the erection of such building or buildings as may be necessary for the cemetery purposes, and to paying the necessary expenses of the association. No debts shall be contracted in anticipation of future receipts, except for originally purchasing, laying out, inclosing and embellishing the grounds and avenues, for which a debt or debts may be contracted, not exceeding one thousand dollars in the whole, to be paid out of future receipts, and such association shall have power to adopt such rules and regulations as they deem expedient for disposing of and conveying burial lots.

Land exempt
from execution.

Sec. 50. Burial lots sold by such association shall be for the sole purpose of interments, and shall be subject to the rules prescribed by the association, and shall be exempt from taxation, execution, attachment, or any other claim, lien or process whatever, if used exclusively for burial purposes and in no wise with a view to profit.

Burial lots

Sec. 51. Such association shall cause a plat of their grounds, and of the lots by them laid out, to be made and recorded, such lots to be numbered by regular consecutive numbers, and shall have power to inclose, improve and adorn the grounds and avenues, and erect buildings for the use of the association, and to prescribe rules for the inclosing and adorning lots, and for erecting monuments in the cemetery, and to prohibit any use, division, improvement or adornment of a lot which they may deem

Plat of cemetery
to be recorded.

improper, and an annual exhibit shall be made of the affairs of the association.

Penalty for
destroying, de-
facing, &c, any
tomb monu-
ment, &c.

Sec. 52. Any person who shall willfully destroy, mutilate, deface, injure or remove any tomb, monument or grave stone, or other structure placed in any cemetery, or any fence railing or other work for the protection or ornament of a cemetery, or tomb, monument or grave stone, or other structure aforesaid, or of any cemetery lot within a cemetery, or shall willfully destroy, cut, break or injure any tree, shrub or plant, within the limits of a cemetery, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof before any court of competent jurisdiction, be punished by a fine of not less than five dollars nor more than five hundred dollars, and by imprisonment in the county jail for a term of not less than one day nor more than thirty days, according to the nature and aggravation of the offense; and such offender shall also be liable, in an action of trespass in the name of the association, to pay all such damages as have been occasioned by his unlawful act or acts, which money, when recovered, shall be applied to the reparation and restoration of the property destroyed or injured as above, and in all prosecutions and suits under this chapter, members of said association shall be competent witnesses.

Cemetery not
subject to sale
on execution

Sec. 53. Lands appropriated and set apart as burial grounds, either for public or private use, and so recorded in the county clerk's office of the county where such lands are situated, shall not be subject to sale on execution on any judgment to be hereafter recovered, to taxation, to dower, nor to compulsory partition.

GENERAL PROVISIONS.

Companies
may accept of
the provisions
of this chapter

Notice by
publication

Sec. 54. All companies now incorporated in this Territory, and actually doing business, may accept any of the provisions of this chapter and when so accepted, and a certified copy of their acceptance filed with the secretary of the Territory, that portion of their charters inconsistent with the provisions of this chapter is hereby repealed. All companies hereafter incorporated, or accepting the provisions of this chapter, except those named in the fortieth section of this chapter, are required to make and publish in some newspaper of general circulation in the county where the principal office is located, an annual exhibit, showing a full, fair and detailed statement

of the condition of such company which statement shall be verified by the oath of the president, secretary and clerk.

Sec. 55. No company or association incorporated under the provisions of this chapter, shall employ its stock, means, assets or other property, directly or indirectly for any other purpose whatever than to accomplish the legitimate object of its creation.

How stock to be employed

Sec. 56. The board of directors or trustees of any company heretofore incorporated, or which may hereafter be formed under any law of this territory, may, with the written consent of the persons in whose name a majority of the shares of the capital stock thereof shall stand on books of said company, reduce the amount of the said capital stock thereof and issue certificates therefor; *Provided*, That the rights of creditors shall not be affected or in any wise impaired by the reduction of the capital stock of any such corporation.

Amount of stock may be reduced

Sec. 57. Whenever any joint stock company hereafter incorporated for the purpose of erecting any public improvement in this Territory, whose charter may be limited as to the time of completion of said improvement, and when any such company has been legally organized, and has actually commenced, and has in progress toward completion such public improvement, it shall be lawful for any such company to have further time allowed for the final completion of said work, as hereinafter provided.

Extension of time

Sec. 58. Upon petition being filed by the directors of any corporation, in the district court of the county in which the principal office of such corporation is located, and upon giving thirty days notice, by publication in a newspaper of general circulation in said county, of the object and prayer of such petition, said court shall, at any regular term after the publication of said notice, upon good cause shown, decree the extension of the time for the completion of said improvement, to such period as shall appear to such court just and reasonable.

Same

Sec. 59. All officers of any such incorporated companies, organized under the provisions of this chapter, shall be residents of this Territory; and whenever any company, association or society heretofore or hereafter incorporated, shall have failed to elect its officers at the time designated, it shall be lawful for any such company, association or society to call a meeting and elect its officers who shall hold their respective offices until the time specified for the annual or other fixed time for holding such election; and when any incorporated company heretofore organized, or that may hereafter be organized under the provisions of this chapter, shall have a specified time fixed for its annual meeting; a majority of the stockholders in interest may,

Officers must be residents of the Territory

at any regular annual meeting change the time of the annual meeting thereof.

Corporations
may alienate or
mortgage real-
estate when

Sec. 60. When any real estate shall have been or may hereafter be bequeathed, aliened, donated or otherwise entrusted to any religious society in this Territory, or to any of the trustees or officers of any such society, and such society shall be desirous to sell, exchange or encumber, by mortgage or otherwise, any such real estate; it shall be lawful for the district court of the proper county, upon good cause shown upon petition of any such real estate; and said court may include in such order directions how the proceeds of such sale or incumbrance shall be appropriated or invested; *Provided*, Such order shall in no case be inconsistent with original terms upon which such real estate becomes invested in or entrusted to such religious society.

Sec.

Sec. 61. When any religious society shall petition as is provided for in the preceding section, all persons who may have a vested, contingent or reversionary interest in the real estate sought to be sold or encumbered, shall be made parties to said petition, and such parties shall be notified of such petition in the same manner as is or may be provided for in cases of petitions for partitions of real estate;

Provided, That the provisions of this chapter shall not extend to any grounds used or occupied as burial places for the dead.

In case of dis-
solution or expira-
tion of charter

Sec. 62. Upon the dissolution, by the expiration of the term of its charter or otherwise, of any corporation now existing or hereafter created, and unless other persons be appointed by the legislature, or by some court of competent authority, the directors or managers of the affairs of such corporations, acting last before the time of its dissolution, by whatever name they may be known in law, and the survivors of them, shall be trustees of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the same, collect and pay the outstanding debts, and divide among the stockholders the moneys and property that shall remain, in proportion to the stock of each stockholder paid up, after the payment of debts and necessary expenses; and the persons so constituted trustees shall have authority to sue for and recover the debts and property of the dissolved corporation, by the name of the trustees of such corporation, describing it by its corporate name, and shall be jointly and severally responsible to the creditors and stockholders of such corporation, to the extent of its property and effects that shall come into their hands; and no suit against any such corporation shall abate in consequence of such dissolution, and said trustees

may be made parties thereto by *scire facias*; and all liens of judgments and decrees of any courts of chancery, existing at the time of such dissolution, either in favor of or against such corporation, shall continue in force in the same manner as if such dissolution had not taken place ;

Provided, That in case of the death, resignation, inability or refusal to act, of the directors or managers aforesaid, or the survivors thereof, the district court of the proper county may, on the application of any persons interested, appoint trustees to fill the vacancy, with full power to perform the duties aforesaid.

Sec. 63. No suit or action, either at law or in chancery, pending in any court in favor of or against any banking or other corporation, shall be discontinued or abated by the dissolution of such corporation, whether such dissolution occur by the expiration of its charter or otherwise ; but all such suits or actions may, in all courts of justice, be prosecuted by the creditors, assigns, receivers or trustees, having the legal charge of the assets of such dissolved corporation, to final judgment or decree, in the corporate name of such dissolved corporation.

Action against corporation not abated when

Sec. 64. Upon all judgments and decrees in favor of or against any such corporation, whether such judgments or decrees exist at the time of the dissolution of such corporations or are obtained afterwards, in suits or actions pending at the time of such dissolution, execution may be had, and satisfaction or performance of the same be enforced by the creditors, assigns, receivers or trustees having the legal charge of the assets of such dissolved corporation, in the corporate name of such dissolved corporation.

Judgment on execution

Sec. 65. The title of all real estate belonging to any such corporation shall, at the time of the dissolution of the same, pass to the trustees of such corporation, who shall have full power and authority to sell and dispose of any such real estate in such manner and upon such terms as may be thought best for the interest of the creditors and stockholders, and upon any such sale to make a good and sufficient title therefor.

Disposition of real estate on dissolution of company

Sec. 66. The trustees of any such dissolved corporation shall be subject to the control of the court of chancery, and be liable to be sued by petition in chancery, on behalf of any person interested, on account of any neglect or omission of duty, or abuse of trust ; and in case of the removal of any such trustee by such court for an abuse of trust, such court shall have the power and authority to appoint a suitable person to fill the vacancy, and any such trustee may,

Trustees may be sued

for reasonable cause, upon the application of any creditor or stockholder, be required by the district court to give bond and security in such amount and subject to such conditions as the court may direct.

dissolved corporation may prosecute suit

Sec. 67. Any corporation created by this chapter may, at any time after its dissolution, whether such dissolution occur by the expiration of its charter or otherwise, prosecute any suit at law or in equity, in and by the corporate name of such dissolved corporation, for the use of the party entitled to receive the proceeds of any such suit, upon any and all causes of action accrued, or which, but for such dissolution, would have accrued in favor of such corporation, in the same manner and with the like effect as if such corporation were not dissolved.

May be sued

Sec. 68. Any such dissolved corporation may be sued at law or in equity, in and by its corporate name, for or upon any cause of action accrued, or which but for such dissolution would have accrued against such corporation, in the same manner and with the like effect as if such corporation were not dissolved, and all process by which any suit, either at law or in equity, may be instituted against any such dissolved corporation, may be served by the sheriff or any other proper officer by delivering to any one of the assignees, trustees, receivers or persons having charge of the assets of such dissolved corporation, a copy thereof, or by leaving such copy at the residence of any such assignee, trustee, receiver or person having charge of such assets.

Judgments or decrees for or against

Sec. 69. Judgments and decrees, in favor of or against any such dissolved corporation, whether such judgments and decrees were rendered before or after such dissolution, and which have heretofore, or may at any time hereafter become dormant, may be revived in favor of or against such dissolved corporation, as the case may be, in and by the corporate name of such dissolved corporation, in the same manner and with the like effect as if such corporation were not dissolved; and in all cases of judgments or decrees against any such corporations, the writ of *scire facias* or other proper process shall be served in the manner prescribed in the preceding section for the process in suits against dissolved corporations.

Writs of error &c.

Sec. 70. Writs of error upon judgments at law may be sued out, and bills of review in chancery may be exhibited, in favor of or against any such dissolved corporation, and by its corporate name, in the same manner and with the like effect as if such corporation were not dissolved, and process thereon against any such dissolved

corporation shall be served in the manner prescribed in this subdivision.

Sec. 71. Nothing in this chapter contained shall at any time be construed as extending or reviving the charter of any banking or other corporation, dissolved either by effluxion of time or otherwise, for any other purpose than that of judicial proceedings, in favor of or against the same.

Construction of this chapter

RAILROAD COMPANIES.

Sec. 72. Any number of natural persons, not less than five, may become a body corporate with all rights, privileges and powers conferred by, and subject to all the restrictions of this subdivision.

What number necessary to constitute a railroad company

Sec. 73. That any number of persons as aforesaid, associating to form a company for the purpose of constructing a railroad, shall under their hand, make a certificate which shall specify as follows:

Must file certificate with secretary of the territory

1. The name assumed by such company and by which it shall be known.

2. The names of the places of the termini of said road, and the county or counties through which such road shall pass.

3. The amount of capital stock necessary to construct such road. Such certificate shall be acknowledged before a notary public, and certified by the clerk of the district court in the same manner as is provided for the conveyance of real estate, and shall be forwarded to the secretary of the Territory, who shall record and carefully preserve the same in his office; and a copy thereof duly certified by said secretary under the seal of the Territory, shall be *prima facie* evidence of the existence of such corporation.

Sec. 74. That when the foregoing provisions have been complied with, the persons named as corporators in said certificate, are hereby authorized to carry into effect the objects named in such certificate in accordance with the provisions of this act, and they, and their associates, successors and assigns, by the name and style provided in said certificate, shall thereafter be deemed a body corporate, with succession, with power to sue and be sued, plead and be impleaded, defend and be defended, contract and be contracted with, acquire and convey at pleas-

Power of company

ure all such real and personal estate as may be necessary and convenient to carry into effect the objects of the corporation ; to make and use a common seal, and the same to alter at pleasure, and do all needful acts to carry into effect the objects for which it was erected. And such company shall possess all the powers, and be subject to all the rules and restrictions provided by this subdivision.

Same

Sec. 75. Said corporation shall be authorized and empowered to lay out, locate, contract, furnish, maintain, operate and enjoy a railroad with single or double tracks, with such side tracks, turn outs, offices and depots as shall be necessary, between the places of the termini of the said road, commencing at or within, and extending to or into any town, city or village, named as the places of the termini of said road, and construct branches from the main line to other towns or places within the limits of this Territory.

Division of stock into shares

Sec. 76. The capital stock of such company shall be divided into shares of one hundred dollars each, and consist of such sum as may be named in the certificate ; such shares shall be regarded as personal property, and shall be subject to sale or transfer, and to execution at law.

Payment of installments

Sec. 77. An installment of ten per cent. on each share of stock, shall be payable at the time of making the subscription, and the residue thereof shall be paid in such installments, and at such times and places as may be required by the directors of such company.

Collection of installments

Sec. 78. If any installment of stock shall remain unpaid for sixty days after the time it may be required or specified in the call by order of the board of directors, whether said stock is held by an assignee, transferee, or original subscriber, the same may be collected by action of debt, or the directors may, at their election, serve upon such stockholder, in case he shall be a resident of the Territory, thirty day's notice in writing, that such installment has been due and unpaid for the term aforesaid, or in case such stockholder shall be a non-resident of this Territory, publish in some newspaper printed at the capital of this Territory, and of general circulation in this Territory, a like notice that such installment has been due and unpaid for the term aforesaid, and if the said installment shall not be paid,

with all the charges and expenses incurred in the proceedings hereby prescribed, within ninety days after the service of notice or the last publication, provided for as aforesaid, the said stock, and all the right, title and interest of the said assignee, transferee, or original subscriber therein, shall by virtue of such failure, and without further action by such company, become forfeited, and may be disposed of by said company as it sees proper.

Sec. 79. That whenever any railroad company heretofore incorporated, or created and incorporated under the provisions of this act, shall, in the opinion of the directors thereof, require an increased amount of capital stock, they shall, when authorized by the holders of a majority of the stock, file with the secretary of the Territory or State, a certificate, setting forth the amount of such desired increase, and thereafter such company shall be entitled to have such increased capital as is fixed by said certificate.

May increase
amount of stock

Sec. 80. That the persons named in said certificate of incorporation, or any three of them shall be authorized to order books to be opened for receiving subscriptions to the capital stock of said company, at such time or times, and at such place or places as they may deem expedient, after having given at least thirty day's notice, in a newspaper published, or generally circulated in one or more counties where books of subscription are to be opened, of the time and place of opening books; and so soon as ten per centum on the capital stock shall be subscribed, they may give like notice for the stockholders to meet at such time and place as they may designate, for the purpose of choosing seven directors who shall continue in office until the time fixed for the annual election, and until their successors are chosen and qualified. At the time and place appointed, directors shall be chosen by ballot, by such of the stockholders as shall attend for that purpose, either in person or by lawful proxies. Each share shall entitle the owner to one vote, and a plurality of votes cast at such election shall be necessary for a choice; but after the first election for directors, no person shall vote on any share on which any installment is due and unpaid. The persons named in such certificate, or such of them as may be present, shall be inspectors of such election,

Opening
subscription
books

and shall certify what persons are elected directors, and appoint the time and place for holding their first meeting. A majority of said directors shall form a board, and be competent to fill vacancies therein, make by-laws not inconsistent with the provisions of this act or the laws of this Territory, and alter the same at pleasure, and transact all business of the corporation. A new election shall be annually held for directors, at such time and place as the stockholders, at their first meeting shall determine, or as the by-laws of the corporation may require; and the directors chosen at any election shall, so soon thereafter as may be convenient, choose one of their number to be president, and shall appoint a secretary and treasurer of the corporation. The directors shall from time to time, make such dividends of the profits of the said company as they may think proper, and the said by-laws and all other actions, and revisions thereof, shall be recorded and preserved in the office of the secretary of the Territory or State, in the same manner as the certificate provided for in section 78 of this act.

Rights of corporation

Sec. 81. Such corporation is authorized to enter upon any land for the purpose of examining and surveying its railroad line, and may take, hold and appropriate so much real estate as may be necessary for the location, construction and convenient use of its road, including all necessary grounds for stations, buildings, workshops, depots, machine shops, switches, side tracks, turn tables and water stations; all materials for the construction and repair of said road and its appurtenances; and a right of way over adjacent lands, sufficient to enable such company to construct and repair its road, and a right to conduct water by aqueducts, and the right of making proper drains;

Provided, That the lands so held, taken and appropriated, otherwise than by the consent of the owner, shall not exceed two hundred feet in width, except for wood and water stations, and depot grounds, unless where greater width is necessary for excavation, embankments, or depositing waste earth; and,

Provided, further, That no appropriation of private property, for the use of any corporation provided for in this subdivision, shall be made, until full compensation therefor be first made or secured to the owners thereof.

Sec. 82. Whenever any railroad company, heretofore incor- ^{Same}porated, or which may hereafter be incorporated, shall find it necessary, for the purpose of avoiding annoyance to public travel, or dangerous or difficult curves or grades, or unsafe or unsubstantial grounds or foundations, or for other reasonable causes, to change the grade or location of any portion of their road, whether heretofore made, or hereafter to be made, such railroad companies shall be and are hereby authorized to make such changes of grade and location, not departing from their general route. And for the purpose of making any such change in the location and grades of any such roads as aforesaid, such companies shall have all the rights, powers and privileges to enter upon, and appropriate such lands and make surveys necessary to effect such changes and grades, upon the same terms, and be subject to the same obligations, rules and regulations as are prescribed by law; and shall also be liable in damages, when any may have been caused by such change to the owner, or owners of lands upon which such road was heretofore constructed, to be ascertained and paid, or deposited as herein provided; but no damages shall be allowed, unless claimed within ninety days after actual notice in writing of such intended change shall be given to such owner or owners residing on the premises, or notice by publication in some newspaper in general circulation in the county, if non-resident.

Sec. 83. If it shall be necessary, in the location of any part of any railroad, to occupy any road, streets, alley, or public way or ground of any kind, or any part thereof, it shall be competent for the municipal or other corporation or public officer or public authorities, owning or having charge thereof, and the railroad company, to agree upon the manner, and upon the terms and conditions upon which the same may be used or occupied; and if said parties shall be unable to agree thereon, and it shall be necessary, in the judgment of the directors of such railroad company, to use or occupy such road, street, alley or other public way or ground, such company may appropriate so much of the same as may be necessary for the purposes of such road, in the same manner and upon the same terms as is provided for the appropriation of the property of individuals by the eighty-first section of this chapter.

Borrowing
money

Sec. 84. Such company shall have power to borrow money on the credit of the corporation, and may execute bonds or promissory notes therefor, and to secure the payment thereof, may pledge the property and income of such company.

Of Purchasing
and selling
bonds

Sec. 85. Such company may acquire, by purchase or gift, any lands in the vicinity of said road, or through which the same may pass, so far as the same may be deemed convenient or necessary by said company to secure the right of way to such as may be granted to aid in the construction of such road, and the same to hold or convey in such manner as the directors may prescribe; and all deeds and conveyances made by such company shall be signed by the president under the seal of the corporation, and any existing corporation may accept the provisions of this subdivision, by filing in writing their acceptance thereof, under the seal of said corporation, in the office of the secretary of the Territory. And upon filing such acceptance, such corporation shall, from the date thereof, succeed to, and become invested with all the rights, privileges, immunities and powers conferred by this subdivision without reorganizing. The said secretary shall record and preserve such acceptance in his office, and a copy thereof, duly certified by said secretary, under the seal of the Territory, shall be evidence in all the courts of this Territory, of such acceptance.

Of crossing
public highways

Sec. 86. Any railroad company may construct and carry their railroad across, over or under any road, railroad, canal, stream or water-course, when it may be necessary in the construction of the same; and in such cases said corporation shall so construct their railroad crossings as not unnecessarily to impede the travel, transportation or navigation upon the road, railroad, canal, stream or water-course so crossed. Said corporation shall have the right to change the channel of any stream or water-course from its present location or bed, whenever it may be necessary in the location, construction or use of their said road;

Provided, They do not change its general course, or materially impair its former usefulness.

Must establish
an office

Sec. 87. Such corporation shall, upon commencing business, establish an office at some point on the line of its road, and may change the same at pleasure.

Sec. 88. Each and every railroad company, incorporated under this subdivision, and such as shall hereafter accept the same, shall annually, in the month of January, make, upon the oath of the president, secretary or treasurer, a full report of the condition of its affairs to the auditor of the Territory, showing the amount of the capital stock of such company, the gross amount of receipts during the previous year, the cost of repairs and incidental expenses, the net amount of profits and the dividends made, with such other facts as may be necessary to a full statement of the affairs and condition of such road; and the auditor shall incorporate an abstract thereof in his annual report to the general assembly.

Company to
make annual
report to
Territorial
auditor

Sec. 89. Whenever the lines of railroad of any railroad companies in this Territory, or any portion of such lines, have been or may be constructed, so as to admit the passage of burden or passenger cars over any two or more of such roads continuously, without break of gauge or interruption, such companies are hereby authorized to consolidate themselves into a single corporation, in the manner following: The directors of two or more corporations may enter into an agreement, under the corporate seal of each, for the consolidation of the said two or more corporations, prescribing the terms and conditions thereof;

When companies
may consolidate

The mode of carrying the same into effect;

The name of the new corporation;

The number of the directors thereof, which shall not be less than seven;

The time and place of holding the first election of directors;

The number of shares of capital stock in the new corporation;

The amount of each share;

The manner of converting the shares of capital stock in each of said two or more corporations, into shares in such new corporation;

The manner of compensating stockholders in each of said two or more corporations, who refuse to convert their stock into the stock of such new corporation, with such other details as they shall deem necessary to perfect such consolidation of said corporations;

And such new corporations shall possess all the powers, rights and franchises conferred upon such said two or more corporations, and shall be subject to all the restrictions, and perform all the duties imposed by the provisions of this subdivision :

Provided, That all stockholders in either of such corporations who shall refuse to convert their stock into the stock of such new corporation, shall be paid the market value of said stock, at the date of such consolidation.

How to consolidate

Sec. 90. Such agreement of the directors shall not be deemed to be the agreement of the said two or more corporations until after it has been submitted to the stockholders of each of the said corporations separately, at a meeting thereof, to be called upon a notice of at least ninety days ; specifying the time and place of such meeting, and the object thereof, to be addressed to each of such stockholders, when the place of residence is known ; and deposited in the post office, and published at least for six successive weeks, in one newspaper in one of the cities or towns in which each of said corporations has its principal office of business ; and has been sanctioned by such stockholders, by the vote of at least two-thirds in the amount of the stock represented at such meeting ; voting by ballot in regard to such agreement, either in person or by proxy, each share of capital stock being entitled to one vote. And when such agreement of the directors has been so sanctioned by each of the meetings of the stockholders, separately, after being submitted to such meetings in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said two or more corporations.

Duplicate of agreement to be filed with the Secretary of the Territory

Sec. 91. Upon making the agreement mentioned in the preceding section, in manner required therein, and filing a duplicate in counterpart thereof, in the office of the secretary of the Territory, the said two or more corporations (mentioned or referred to in the last two preceding sections, or any other law of this Territory,) shall be merged in the new corporation provided for in such agreement, to be known by the corporate name therein mentioned ; and the details of such agreement shall be carried into effect as provided therein.

Sec. 92. Upon the election of the first board of directors of the corporation created by the agreement in the preceding section mentioned, and by the provisions of this subdivision, all and singular the rights and franchises of each and all of said two or more corporations, parties to such agreement, all and singular the rights and interests in and to every species of property, real personal and mixed, and things in action, shall be deemed to be transferred to, and vested in such new corporation, without any other deed or transfer. And such new corporation shall hold and enjoy the same together with the right of way and all other rights of property, in the same manner and to the same extent as if the said two or more corporations, parties of agreement, should have continued to retain the title and transacted the business of such corporations. And the titles, and the real estate acquired by either of said two or more corporations, shall not be deemed to revert or be impaired by means of anything in this subdivision contained;

Property when
deemed vested

Provided, That all rights of creditors, and all liens upon the property of either of said corporations, shall be, and hereby are preserved unimpaired; and the respective corporations shall continue to exist, as far as may be necessary to enforce the same; and,

Provided, further, That all debts, liabilities and duties of either company shall henceforth attach to such corporation and be enforced to the same extent and in the same manner as if such debts, liabilities and duties had been originally incurred by it.

Sec. 93. When any two or more railroad companies shall have consolidated, as contemplated by the provisions of this subdivision; such companies so consolidated, shall keep each and every railroad line that may come into its possession by such consolidation, in good running order, with sufficient rolling stock to transport the freight and passengers. They shall not discriminate against business of either or any of said railroad lines, either directly or indirectly, by the detention of freight or passengers, or by charging more freight or passage than is charged in proportion upon any other railroad line under the control of said company so consolidated.

Duties of such
consolidated
company

Sec. 94. Any railroad company heretofore or hereafter incorporated may, at any time by means of subscription to the capital stock of any other company, or otherwise aid such company in the con-

When company
may aid another

struction of its railroad, for the purpose of forming a connection of said last mentioned road with the road owned by the company furnishing such aid ; or any railroad company existing in pursuance of law, may lease or purchase any part or all of any railroad constructed by any other company ; if said company's lines of said road are continuous or connected as aforesaid, upon such terms and conditions as may be agreed on between said companies respectively ; or any two or more railroad companies whose lines are connected, may enter into an agreement for their common benefit consistent with, and calculated to promote the objects for which they were created ;

Provided, That no such aid shall be furnished, nor any purchase, lease or arrangement perfected, until a meeting of the stockholders of each of said companies shall have been called by the directors thereof, at such time and place and in manner as they shall designate, and the holders of at least two-thirds of the stock of such company, represented at such meeting either in person or by proxy, and voting thereat, shall have assented thereto.

Damages to be
paid for forcible
entry upon
private lands

Sec. 95. Any railroad corporation may purchase and use real estate for a price to be agreed upon with the owners thereof ; or the damages to be paid by such corporation for any real estate taken as aforesaid, when not agreed upon, shall be ascertained and determined by commissioners to be appointed by the probate judge of the county wherein such real estate is situated, in conformity with the provisions of this subdivision ;

Proviso

Provided, That if the company shall need or require, for the purpose of constructing said railroad, to take and occupy any real estate, in any unorganized county or other unorganized country in this Territory, where there is no probate judge, then the probate judge of the first organized county east of said lands, upon the line of said road, shall appoint commissioners, to assess said damages and perform all other duties required by the probate judges, and commissioners by terms of this subdivision, and either shall have the right of appeal, as in other cases provided for by this subdivision.

Same

Sec. 96. Whenever any railroad corporation shall take any real estate as aforesaid, of any minor, insane person, or any married woman whose husband is under guardianship, the guardian of such minor or insane person, or such married woman with the guardian of such husband may agree and settle with said corporation for all damages or claims by reason of the taking of such real estate, and may give valid releases and discharges therefor.

Sec. 97. If the owner of any real estate over which said railroad corporation may desire to locate their road, shall refuse to grant the right of way through his or her premises, the probate judge of the county in which said real estate may be situated, as provided in this subdivision, shall, upon the application of either party, direct the sheriff of said county to summon six disinterested freeholders of said county, to be selected by said probate judge and not interested in a like question, unless a smaller number is agreed upon by the parties, whose duty it shall be to inspect said real estate and assess the damages which said owner will sustain by the appropriation of his land to the use of said railroad corporation, and make report in writing to the probate judge of said county, who after certifying the same under his seal of office, shall transmit the same to the county clerk of said county for record, and the said county clerk shall file, record and index the same in the same manner as is provided for the record of deeds in this Territory, and such record shall have the like force and effect as the record of deeds in pursuance of the statute in such case made and provided. And if said corporation shall, at any time before they enter upon said real estate for the purpose of constructing said road, pay to said probate judge for the use of said owner, the sum so assessed and returned to him as aforesaid, they shall thereby be authorized to construct and maintain their road over and across said premises ;

In case of refusal of right of way by owner of land

Provided, That either party may have the right to appeal from such assessment of damages to the district court of the county in which such lands are situated, within sixty days after such assessment. And in case of such appeal, the decision and finding of the district court shall be transmitted by the clerk thereof, duly certified, to the county clerk, to be filed and recorded, as hereinbefore provided, in his office. But such appeals shall not delay the prosecution of the work on said railroad, if such corporation shall first pay or deposit with said probate judge the amount so assessed by said freeholders; and in no case shall said corporation be liable for the costs on such appeal, unless the owner of such real estate shall be adjudged entitled, upon the appeal, to a greater amount of damages than was awarded by said freeholders. The company shall, in all cases, pay the cost of the first assessment ;

Provided, That either party may appeal from the decision of the district court of the Territory, and the money so deposited, shall remain in the hands of the probate judge until a final decision be had, subject to the order of the supreme court.

Same

Sec. 98. Freeholders so appointed shall be commissioners to assess all damages to the owners of real estate in said county; and said corporation may, at any time after their appointment, upon the refusal of any owner or guardian of any owner of lands in said county to grant the right of way aforesaid, by giving the said owner or guardian ten days notice thereof in writing, either by personal service or by leaving a copy thereof at his usual place of residence, have the damages assessed in the manner hereinbefore prescribed.

Upon refusal of commissioner

Sec. 99. In case of the death, absence, or refusal or neglect of any of said freeholders to act as commissioners as aforesaid; the sheriff shall, upon the selection of said probate judge, summon other freeholders to complete the panel, and said commissioners shall proceed as directed in the preceding section. Said commissioners shall receive two dollars per day, each, for their services, and the same shall be taxed in the bill of costs.

Laying the road through the lands of a non resident

Sec. 100. If upon the location of said railroad it shall be found to run through the lands of any non-resident owner, the said corporation may give four weeks notice to such proprietor, if known, and if not known, by a description of such real estate, by publication four consecutive weeks in some newspaper published in the county where such lands may lie, if there be any, and if not, in one nearest thereto on the line of their said road, that said railroad has been located through his or her lands; and if such owner shall not, within thirty days thereafter, apply to said probate judge to have the damages assessed in the mode prescribed in the preceding sections, said company may proceed, as herein set forth, to have the damages assessed, subject to the same right of appeal as in case of resident owners; and upon the payment of the damages assessed, to the probate judge of the proper county for such owner, the corporation shall acquire all rights and privileges mentioned in this subdivision.

Corporation may raise or lower highway

Sec. 101. Any railroad corporation may raise or lower any turnpike, plank road, or other way, for the purpose of having their railroad pass over or under the same; and in such cases said corporation shall put such turnpike, plank road or other way, as soon as may be, in good repair.

Same

Sec. 102. Every railroad corporation, while employed in raising or lowering any turnpike or other way, or in making alterations, by means of which the said way may be obstructed, shall provide, and keep in good order, suitable temporary ways to enable travelers to avoid or pass such obstructions.

Sec. 103. Every railroad corporation shall maintain and keep in good repair all bridges, with their abutments, which such corporation shall construct, for the purpose of enabling their road to pass over or under any turnpike road, canal, water-course or other way.

Corporation shall keep their bridges in repair

Sec. 104. A bell at least thirty pounds weight or a steam whistle, shall be placed on each locomotive engine, and shall be rung or whistled at the distance of at least eighty rods from the place where the said railroad shall cross any other road or street, and be kept ringing or whistling until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by the corporation owning the railroad, one-half thereof to go to the informer, and the other half to this Territory, and also be liable for all damages which shall be sustained by any person by reason of such neglect.

Penalty for neglecting to ring bell &c

Sec. 105. Any railroad corporation shall be authorized to pass over, occupy and enjoy, any of the school, university, saline or other lands of this Territory:

Road may pass over school lands &c.

Provided, That no more of such lands shall be taken than is required for the necessary use and convenience of such corporation; and,

Provide

Provided further, That the damages accruing to any occupant or owner, or other person who may reside or have improvements on said land, shall be determined and paid by said railroad company as heretofore provided in this subdivision.

Sec. 106. When any person owns land on both sides of any railroad, the corporation owning such railroad shall, when required so to do, make and keep in good repair one causeway or other adequate means of crossing the same.

To keep cause way in repair

Sec. 107. If any passenger shall refuse to pay his fare, it shall be lawful for the conductor of the train and the servants of the corporation to put him and his baggage out of the cars, using no unnecessary force, at any place within five miles of any station.

Passengers to pay fare

Sec. 108. If any person shall, while in charge of a locomotive engine running upon the railroad of any such corporation, or while acting as the conductor of a car or train of cars on any such railroad be intoxicated, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not less than six months nor more than one year, and be imprisoned until the fine is paid.

Penalty for intoxication

Penalty for
injuring propert-
ty of railroad

Sec. 109. If any person or persons shall willfully do or cause to be done any act or act whatever, whereby any building, construction or work of any railroad corporation or telegraph line, or any engine, machine or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person or persons so offending shall be guilty of a misdemeanor, and shall forfeit and pay to the said corporation treble the amount of damages sustained by means of the offense; and in case any person or persons shall willfully place any obstruction on the track, or change or misplace any switch of any railroad corporation, he shall, on conviction thereof, be imprisoned in the penitentiary and kept at hard labor for the term of not more than ten years nor less than five years, said term of imprisonment to be fixed by the jury before whom such conviction shall be had; and in case death shall result to any passenger, employee of the company, or other person on the train, by reason of such obstruction, or change or displacement of switches, the person or persons committing such offense shall be deemed guilty of murder, and shall, on conviction thereof before any court of competent jurisdiction, suffer the punishment provided for said offense by the laws of this Territory; and it shall not be lawful for any person other than those connected with or employed upon the railroad, to walk or lead, ride or drive any animal along the track or tracks of any railroad.

When company
not liable for
injury

Sec. 110. In case any passenger on any railroad shall be injured while on the platform of a car while in motion, or in any baggage, wood or freight car, in violation of the printed regulations of the company posted up at the time in a conspicuous place inside of its passenger cars then in the train, such company shall not be liable for the injury;

Provided, Said company furnish room inside its passenger cars sufficient for the accomodation of its passengers.

Company liable
as common
carriers

Sec. 111. Any railroad company receiving freight for transportation, shall be entitled to the same rights and be subject to the same liabilities as common carriers. And whenever two or more railroads are connected together, the company owning either of said roads receiving freight to be transported to any place on the line of either of the roads so connected, shall be liable as common carriers for the delivery of such freight to the consignee of said freight, in the same order in which such freight was shipped.

Sec. 112. Every stockholder of any railroad company shall be individually liable to the creditors of such company, to an amount equal to the amount unpaid on the stock held by him, for all the debts and liabilities of such company, until the whole of the capital stock held by him shall have been paid to the company; but in no other case shall the stockholders be individually liable for the debts of the corporation.

Stockholders personally liable for debts of company to the amount of his stock

Sec. 113. Every railroad company shall have power to cross, intersect, join and unite its railroad with any other railroad before constructed at any point on its route and upon the grounds of such other railroad company, with the necessary turn-outs, sidings and switches, and other conveniences in furtherance of the objects of its connection. And every company whose railroad is or shall hereafter be intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined by commissioners, to be selected as provided in this subdivision.

Power of road to cross other roads

Sec. 114. Every railroad company shall have power to intersect, join and unite their railroads, constructed or to be constructed in this Territory, or in adjoining States and Territories, at such point on the boundary line of each, or at such other point as may be mutually agreed upon by said companies. And such railroads are authorized to merge and consolidate the stock of the respective companies, making one joint stock company of the railroad thus connected, upon such terms as may be mutually agreed upon in accordance with the laws of the adjoining State or Territory with whose road or roads connections are thus formed;

Power to connect with other roads

Provided, That the consent of three-fourths of all the stockholders in amount in any road whose stock is proposed to be consolidated shall be obtained.

Sec. 115. Every railroad company heretofore organized, or which may be hereafter organized under this subdivision, or which may accept the same as is hereinbefore provided, is hereby empowered to extend their [road] into or through any other State

Right of extension

or Territory, under such regulations as may be prescribed by the laws of such State or Territory through which said road may be extended; and the rights and privileges over said extension, in construction and use of said railroads for the benefit of said company, and controlling and applying the assets of said company, shall be the same as if their railroads had been constructed wholly within the Territory.

Power to
contract with
road for trans-
portation

Sec. 116. Every railroad company heretofore organized, or which may be hereafter organized under this subdivision, or which may accept the same as is hereinbefore provided, and which may have constructed or commenced the construction of their road so as to meet and connect with any other railroad in an adjoining State or Territory, at the boundary line of this Territory, shall have the power to make such contracts and agreements with any such roads constructed in an adjoining State or Territory for the transportation of freight and passengers, or for the use of its said road, as to the board of directors may seem proper.

Power to
mortgage and
execute deeds

Sec. 117. Every railroad company shall have power and is hereby authorized to mortgage or execute deeds of trust of the whole or any part of their property and franchises, including any lands or other property granted to said company by the United States, to secure money borrowed by them for the construction and equipment of their roads, and may issue their corporate bonds in sums not less than five hundred dollars—secured by said mortgages or deeds of trust—payable to bearer or otherwise; and if payable to bearer, negotiable by delivery, bearing interest at a rate not to exceed ten per cent. per annum, and convertible into stock, or not, as shall be plainly expressed on the face of each and every bond so issued by said company, and may sell them at such rates or prices as they may deem proper; and if said bonds should be sold below their nominal or par value, they shall be valid and binding upon the company, and no plea of usury shall be put in or allowed by said company upon any suit or proceedings upon the same; the principal and interest on said bonds, or either of them, may be made payable within or without this Territory.

Sec. 118. Any mortgage or deed of trust made upon the lands, roads or other property of any railroad company, shall

bind and be a valid lien upon all the property mentioned in such deed or mortgage, including rolling stock ; and the purchaser under foreclosure of mortgage or trust deed shall have and enjoy all the rights of a purchaser on execution sale ;

Mortgage upon road &c a valid lien

Provided, That nothing contained in this subdivision shall be so construed as in any manner to interfere with, change or modify the rights of this Territory or the United States, to any lands granted by Congress to this Territory or to said companies, or to transfer any right in said lands, otherwise than as subject to all the conditions imposed by the grant made by the United States.

Sec. 119. Said mortgages or deeds of trust may by their terms include and cover not only the property of the companies making them at the time of their date, but property, both real and personal, which may thereafter be acquired by them, together with all the material and property necessary for the use and operation of said road, and shall be as valid and effectual as if the property were in possession at the time of the execution thereof.

Mortgage what to cover

Sec. 120. Said mortgages or deeds of trust shall be recorded in the office of the county clerk of each organized county through which said road mortgaged or deeded may run in this Territory or State, whenever it may hold lands included in said mortgages or deeds of trust, and shall benotice to all the world of the rights of parties under the same ; and for this purpose, and to secure the rights of mortgages or parties interested under deeds of trust so executed and recorded, the rolling stock, personal property and material necessary for operating the road of said company, belonging to said road, and appertaining thereto, shall be deemed a part of the road, and said mortgages and deeds so recorded, shall have the same effect, both as to notice and otherwise as to the estate covered by them.

Mortgages and deeds to be recorded

Sec. 121. Every such railroad corporation shall start and run their cars for the transportation of passengers and property at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of passengers to and from such stations as the trains stop, and property at, from, or to, all places and stations upon their said road, on the due payment of fare or freight bill.

Trains to be run at regular times

Penalty on refusal to transport passengers or baggage

Sec. 122. In case of the refusal by such corporation or their agents to take and transport any passenger or property, or to deliver the same or either of them, under the laws, rules and usages that regulate common carriers, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby with costs of suit.

CORPORATIONS

Corporations

Sec. 123. Any number of persons may be associated and incorporated for the transaction of any lawful business, including the construction of canal, railways, bridges, and other works of internal improvement.

Their powers

Sec. 124. Every corporation as such, has power—

First. To have succession by its corporate name.

Second. To sue and be sued, to complain and defend in courts of law and equity.

Third. To make and use a common seal, and alter the same at pleasure.

Fourth. To hold personal estate, and all such real estate as may be necessary for the legitimate business of the corporation.

Fifth. To render the interest of the stockholders transferable.

Sixth. To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation therefor.

Seventh. To make by-laws, not inconsistent with any existing law, for the management of its affairs.

To vest in every corporation

Sec. 125. The powers enumerated in the preceding section, shall vest in every corporation in this Territory, whether the same be formed without, or by legislative enactment, although they may not be specified in its charter, or as articles of association.

Must adopt articles of incorporation

Sec. 126. Every corporation, previous to the commencement of any business, except its own organization, when the same is not formed by legislative enactment, must adopt articles of incorporation, and have them recorded in the office of the county clerk of the county or counties in which the business is to be transacted, in a book kept for that purpose.

Sec. 127. Corporations for the construction of works of internal improvement, must also file in the office of the secretary of the Territory, a copy of their articles of association, and the same shall be recorded in a book kept for that purpose.

To be filed in office of Secretary of the territory

Sec. 128. The articles of incorporation must fix the highest amount of indebtedness or liability to which the corporation shall, at any one time, be subject, which must in no case, except in that of insurance companies, exceed two-thirds of its capital stock.

Articles of incorporation what to fix

Sec. 129. If any corporation hereafter created by the legislature, shall not organize within one year after its incorporation, its corporate powers shall cease.

Corporation to organize within a year

Sec. 130. Notice must be published in some newspaper near the principal place of business, for four weeks.

Notice by publication

Sec. 131. Such notice must contain:

What notice to contain

First. The name of the corporation.

Second. The principal place of its transacting its business.

Third. The general nature of the business to be transacted.

Fourth. The amount of capital stock authorized, and the time and conditions on which it is to be paid in.

Fifth. The time of commencement and termination of the corporation.

Sixth. The highest amount of indebtedness or liability to which the corporation is at any time to subject itself.

Seventh. By what officers the affairs of the corporation are to be conducted.

Sec. 132. Any corporation formed without legislative enactment, may commence business as soon as its articles of incorporation are filed by the county clerks of the counties, as required by this subdivision, and shall be valid, if a copy of its articles be filed in the office of the secretary of the Territory, and the notice required be published within four months from the time of filing such articles in the clerk's office.

When corporation to commence business

Sec. 133. Every change, in any of the above matters shall be recorded, and published in the same manner as the original articles are required by law.

Change to be recorded

Sec. 134. No corporation can be dissolved by the members thereof, except by consent of two-thirds of all its members; which

Corporation how dissolved

consent must be entered on its records, unless a different rule has been adopted in its articles of incorporation.

Copy of by-laws
to be posted

Sec. 135. A copy of the by-laws of the corporation, with the names of all the officers appended thereto, must be posted in some conspicuous place, at the places of doing business, subject to public inspection.

Notice to be
given annually

Sec. 136. Every corporation hereafter created, shall give notice annually, in some newspaper printed in the county or counties in which the business is transacted, and in case there is no newspaper printed therein, then in the nearest paper in the Territory, of the amount of all the existing debts of the corporation, which notice shall be signed by the president and a majority of the directors; and if any corporation shall fail to do so, all the stockholders of the corporation shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be contracted before such notice is given.

How lands to be
conveyed

Sec. 137. It shall be lawful for any corporation to convey lands by deed, sealed by the common seal of said corporation, and signed by the president or presiding officer of the board of directors of the corporation; and such deed when acknowledged by such officer to be an act of the corporation, or proved in the usual form prescribed for other conveyances for lands, shall be recorded in the clerk's office of the county in which the lands lie, in like manner as other deeds.

Members may be
sued by each
other

Sec. 138. All corporations, may sue for, and recover from their respective members in any court of competent jurisdiction, all arrears or other debts due, or other demands which now are or hereafter may be owing to them, in like manner as they might sue for and recover the same from any indifferent person who might be a member, any law, usage or custom to the contrary notwithstanding.

Penalty for non
compliance
with the provis-
ions of this
subdivision

Sec. 139. If any corporation fail to comply substantially with the provisions of this subdivision, in relation to giving notice, and other requisitions of organization, the property of all the stockholders shall be liable for the corporate debts.

Penalty for
fraud

Sec. 140. If any deception be practiced by any corporation upon the public or individuals, in relation to its means or liabilities, all those engaged in such deception

shall be liable to a fine not exceeding five hundred dollars; and any person injured by such deception, may recover double the amount of damages he may have sustained by reason of the same, in any court having jurisdiction of the amount claimed.

Sec. 141. A division of the funds of a corporation, for other purposes than those mentioned in the act granting the charter and the payment of dividends, which have insufficient funds to meet the liabilities of the corporation, shall be deemed a violation of the provisions of this subdivision, and subject those engaged therein to the penalties herein prescribed.

What deemed a violation of the provisions of this subdivision

Sec. 142. Any violation of the provisions of this subdivision shall cause a forfeiture of all the privileges conferred by the same, and the court may proceed to close the affairs of the corporation, by an information for that purpose.

Violation will cause a forfeiture of charter

Sec. 143. Corporations whose charters expire by their own limitation, or by the voluntary act of the stockholders, may continue to act for the purpose of closing their business, but for no other purpose.

Certain dissolved corporation may continue to act for the purpose of closing the business

Sec. 144. No body of men acting as a corporation under the provisions of this subdivision, shall be permitted to set up the want of legal organization as a defense to any action brought against them, as a corporation; nor shall any person sued on a contract made with such corporation, or for an injury to the property of such corporation, be permitted to set up the want of legal organization in defense of such action.

What no defence against a legal action

Sec. 145. That wherever the word county clerk occur in this act the same shall be construed to mean register of deeds.

County clerk to mean Register of deeds

Sec. 146. This act shall take effect and be in force from and after its passage and approval.

When to take effect

Approved, January 6, 1868.

JAILS.

CHAPTER XVI.

AN ACT AUTHORIZING THE COUNTY COMMISSIONERS OF THE SEVERAL COUNTIES IN THIS TERRITORY TO BUILD JAILS.

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

Preliminary
proceedings;
Election

Section 1. That whenever the board of county commissioners of any county shall deem it for the interests of such county to construct a jail therein, they shall make an order to that effect, at any regular or special meeting of such board and shall from the best information they can obtain, estimate the probable cost thereof and shall immediately cause an election to be held by the qualified voters of such county, first causing at least twenty days notice of such election to be given by publication in some newspaper, if one is published in the county, and by posting copies of such notice in at least five of the most public places of said county, one to be posted in each precinct as established by law, and in such notice there shall be set forth the amount, in the opinion of such board, it will be necessary to expend in building such jail, and such board shall at that time appoint three inspectors of such election for each precinct of the county, one of which shall be elected clerk thereof.

Opening of
polls

Sec. 2. At the election called as aforesaid, the polls shall be opened at nine o'clock, A. M., and be kept open until four o'clock, P. M., when they shall be closed and if the inspectors so appointed shall fail to act, the qualified voters present at the polls at the opening thereof, may elect inspectors thereof, and at said election the voting shall be by ballot either written or printed and said ballots shall contain the words "for building a jail, yes," or "for building a jail, no," and the canvass and returns shall be in accordance with the election law of this Territory.

Sealed propo-
sals

Sec. 3. If at such election a majority of the ballots shall contain thereon the word "no," no further steps shall be taken by such board of commissioners, but if a majority thereof shall contain the word "yes" then such board shall immediately cause plans and specifications

to be prepared by some competent architect, for a jail to cost not more than the amount specified in the notice of election, and after such plan and specifications are prepared and adopted by the board they shall deposit the same in the office of the register of deeds for the county, where they shall be open to the inspection of any person, and such board shall give notice that they will receive sealed proposals for the building of such jail according to such plans and specifications, by publication in a newspaper, if there be one published in the county, if not, by posting notices in at least five of the most public places in said county and by publication in a newspaper published within this Territory nearest to the county seat; such notice shall be that they will until a day to be specified therein, not less than twenty days from publication of said notice, receive sealed proposals for the building of such jail, either as a whole or in parts as shall seem to them best for the interests of the county, and shall also specify the time in which the same shall be completed, and that such proposals shall be handed to the register of deeds said county.

Sec. 4. On the day appointed for the opening of such bids, the county commissioners shall meet, open and declare the same in public and shall award the contract or contracts to the lowest bidder or bidders, requiring such contractor or contractors to furnish security in double the amount of his contract to the satisfaction of the board for the completion of such contract.

Awarding contract

Sec. 5. The bids above provided for shall be accompanied by the guarantee of two or more responsible persons that if the contract is awarded to the bidder, he will enter into the requisite bonds for the faithful performance of such contract.

Contractor to give bonds

Sec. 6. The expense of building such jail shall be paid one-half in county bonds bearing date at the completion of such contract and payable five years from date, with interest at ten per cent, and issued and signed by such board of county commissioners and attested by the register of deeds *ex-officio* clerk of the board, and the seal of said county; and one-half in county warrants issued by the order of such board payable in equal proportion, one-fifth due and the balance one, two, three and four years from date, with ten per cent. interest, and which warrants after they become due shall be receivable for county taxes;

Expenses of building jails

Provided however, That no bonds shall be issued until the entire completion of the contract or contracts and the acceptance by the board of county commissioners of the work and an order to that effect made by said board;

Provided further, That said warrants may be issued as the work progresses, not to exceed one-half the amount of the value of such work or material furnished, and the balance upon completion of the contracts.

County commis-
sioners to levy
tax

Sec. 7. The board of county commissioners shall each year levy and cause to be collected upon the assessment roll of the taxable property of such county, a tax in addition to the tax now provided by law, sufficient to pay such warrants as they become due, and in the year the bonds become due, they shall levy a tax sufficient to pay said bonds and interest.

Same

Sec. 8. The board of county commissioners of any county may levy and cause to be collected a yearly tax not exceeding five cents on the hundred dollars as a fund to be used for the purpose of building a jail, and the first tax as above provided may be levied for the year 1868, or for any year thereafter.

When inspector
not to be ap-
pointed

Sec. 9. Whenever the election provided for in section one (1) of this act shall be held on the day of the general election, no inspectors shall be appointed as provided for in this act, but the canvass and returns of the votes shall be made by the judges and clerk, of the general election in each precinct of the county as provided for by the election laws of this Territory.

Jail to be built
at county seat

Sec. 10. No jail shall be built under the provisions of this act except at the county seat of the county.

County commis-
sioners may rent
jail

Sec. 11. The county commissioners of any county having a jail, may rent or otherwise dispose of the use of a portion of the same to other counties of this Territory sending prisoners to such jail for safe keeping, or to the United States government or United States marshal for like purposes, and the proceeds of such renting shall be used in extinguishing the bonds and warrants issued by the county commissioners for the payment of such jail, and for the payment of the interest on such bonds and warrants.

Sheriff may be
allowed board of
prisoners

Sec. 12. The county commissioners of any county shall have the power to allow and pay a reasonable price per day to the sheriff or a jailor for the board of any prisoners confined in jail, not exceeding fifty cents per day.

When to take
effect

Sec. 13. This act shall take effect and be in force from and after its passage and approval.

Approved, December 30, 1867.

JUDICIAL DISTRICTS.

CHAPTER XVII.

AN ACT CONSTITUTING THE COUNTIES OF LARAMIE AND CARTER
A PART OF THE SECOND JUDICIAL DISTRICT, AND PROVIDING FOR
TERMS OF THE COURT THEREIN.

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

Section 1. That all that portion of the Territory of Dakota known
and designated as the counties of Laramie and Carter, be, and the
same is hereby attached to, and made a part of the second judicial
district.

Laramie and
Carter made a
part of the se-
cond judicial dis-
trict

Sec. 2. That in addition to the terms of court in said district now
provided by law, there shall be annually held at the county seat of
said county of Laramie, at least one general term of said court ; said
term shall commence on the first Monday of March, in each year.

Additional
terms in
Laramie county

Sec. 3. That in addition to said term as above provided, the judge
of said court may in his discretion, if he shall deem the public in-
terests require it, hold another general term of said court in said
county of Laramie, annually, at the county seat thereof, at such time
as he may appoint.

General terms

Sec. 4. The judge of said court may also in his discretion if he
shall deem the public interests require it, also hold annually, a gen-
eral term of said court at the county seat of said county of Carter,
and may appoint the time for the holding thereof.

Additional terms
in Carter county

Sec. 5. The judge of said court, if he shall appoint additional
terms of said court, as provided for in this act, shall give notice
thereof, by publication for at least three weeks in a newspaper pub-
lished in the county in which the court is appointed, if there be one
published in such county, if not, by publication in a newspaper pub-
lished in this Territory nearest to the county seat, the first of which
publications shall be at least sixty days before the first day of said
term.

Judge to give
notice of addi-
tional term

Judge to appoint
a clerk

Sec. 6. The judge of said court is hereby authorized to appoint a clerk of said court within and for each of said counties of Laramie and Carter.

County commis-
sioners to levy
tax for the ex-
pense of said
court

Sec. 7. The county commissioners of each of said counties of Laramie and Carter, are hereby authorized and required, to levy and cause to be collected a tax upon the taxable property of their respective counties sufficient to pay the expenses of the courts herein provided for, which expenses, including the per diem of the judge, attorney, marshal, jurymen and all other expenses, shall be certified by the judge of said court, and shall be paid by the treasurer of the said counties respectively, upon such certificate.

Per diem of
judge

Sec. 8. There shall be allowed and paid by the treasurer of the said counties respectively, out of the money collected as above provided, to the judge holding said additional terms, the sum of ten dollars per day for each and every day necessarily occupied in holding said courts.

Transmission of
cases pending in
Yankton county

Sec. 9. All cases that are now pending, or that shall before the first day of the term herein appointed for Laramie county, be pending in the said second judicial district court within and for the county of Yankton, the defendants in which are charged with the commission of crimes within the limits of what is at present the counties of Laramie and Carter, shall be transferred to the district court within and for the county of Laramie, and shall be there disposed of, and the clerk of said court in Yankton county shall certify to the clerk of said court in Laramie county, all the proceedings that may have been had, in each of said cases, in said court, and transmit the same with all the papers in the case, to the said clerk without delay.

Construction of
this act

Sec. 10. Nothing in this act contained shall be construed to interfere in any manner with the courts now provided by law to be holden within and for the county of Yankton.

When to take
effect

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

Approved, January 10, 1868.

JURORS.

CHAPTER XVIII.

AN ACT RELATING TO THE CHALLENGING OF JURORS IN CIVIL AND CRIMINAL CASES.

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

Section 1. It shall be sufficient cause for challenge to a juror that he is interested in another suit begun or contemplated, involving the same or similar matter. Cause of challenge

Sec. 2. The number of jurors to try a civil action shall not exceed twelve nor less than eight. The parties may determine the number of persons by agreement, and in case of disagreement the number shall be twelve ; Number of jurors

Provided, That in no case shall the jury consist of less than eight jurors.

Sec. 3. In all civil cases where the jury consists of eight or more persons, each party shall have three peremptory challenges. Number of challenges in civil cause

Sec. 4. Before the commencement of the trial an oath must be administered to each juror, that he will well and truly try the matter in issue between the parties, and a true verdict give according to law and evidence. Jurors to take oath

Sec. 5. In all criminal cases the defendant is entitled to the following challenges : Number of challenge in criminal cases

For capital offences, the defendant may challenge peremptorily, twenty jurors.

In prosecution for offences punishable by imprisonment in the Territorial prison, ten jurors.

In other prosecutions, three jurors.

Where several defendants are tried together they must join in their challenges.

Number of
challenges of
attorney

Sec. 6. The prosecuting attorney in capital cases may challenge peremptorily six jurors; in other cases, three jurors.

Conflicting acts
repealed

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

When to take
effect

Sec. 8. This act shall take effect and be in force from and after its passage and approval.

Approved, December 24, 1868.

CHAPTER XIX.

AN ACT RESPECTING GRAND AND PETIT JURORS OF THE DISTRICT COURTS.

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

Who compe-
tent to serve on
juries

Section 1. All male citizens residing in any of the counties of this Territory, having the qualifications of electors, and being over the age of twenty one years, and of sound mind and discretion, and not judges of the supreme court or district courts, clerks of the supreme or district courts, sheriffs, coroners, licensed attorneys or jailors, or subject to any bodily infirmity amounting to a disability, and who have not been convicted of a criminal offense punishable by imprisonment in the penitentiary, and not subject to disability for the commission of any offense, which by special provision of law does or shall disqualify them, are and shall be competent persons to serve on all grand and petit juries within their counties respectively;

Provided, That persons over sixty years of age, ministers of the gospel, probate judges, county commissioners, registers of deeds, practicing physicians, postmasters and carriers of the United States mail, shall not be compelled to serve as jurors.

Selecting jurors

Sec. 2. In each of the counties of this Territory wherein a district court is appointed or directed to be holden, the county commissioners of the county shall at least fifteen days before the first day of the session of the court, meet together, or a majority may meet, and select sixty persons possessing the qualifications prescribed in section one, and as many as may be a proportionate number, from

each precinct in the county, and shall within five days thereafter furnish to the district clerk of the county, or his deputy, a list of the names of the jurors selected.

Sec. 3. No jury shall be summoned except by order of the judge of the district court, who shall issue an order to the clerk of said court that a jury shall be summoned, and in such order shall specify the number of petit jurors that shall be summoned, and the time and place where they shall appear.

Summoning jurors

Sec. 4. The order mentioned in the preceding section of this act, may be issued at any time within ten days before the first day of the term of the district court, or at any time during the term of said court.

When order to be issued

Sec. 5. A grand jury shall be summoned in the same manner provided for summoning petit juries;

Manner of summoning a grand jury

Provided, That in all cases a grand jury shall consist of sixteen jurors.

Sec. 6. Whenever an order shall be issued by the judge of any district court of the Territory, ordering a jury to be summoned for a term of the district court, the clerk or deputy clerk receiving the names from the county commissioners as provided by section two of this act, shall write the name of each person selected on a separate ticket and place the whole number of tickets in a box or other suitable and safe receptacle, and shall preserve the list of names furnished by the commissioners in the files of his office.

List of jurors to be preserved

Sec. 7. The clerk of the district court, or his deputy, and the sheriff, or, if there is no sheriff, the deputy sheriff, or, if there is no sheriff or deputy sheriff the coroner of the county shall immediately upon or within two days from the receipt of the order directing a jury to be summoned, meet together and draw by lot out of the box or receptacle wherein shall be kept the tickets aforesaid, the number of jurors directed to be summoned by the judge of the district court. The sixteen jurors first drawn shall serve as grand jurors, if a grand jury shall be ordered to be summoned, and the remainder drawn in compliance with said order shall serve as petit jurors.

Drawing by lot

Sec. 8. The clerk shall on the day of the drawing before mentioned, issue an order to the sheriff, deputy sheriff or coroner, as the case may be, commanding him to summon the persons whose names are drawn, to appear before the district court at the hour, day and place as directed by the order of the district judge to appear as grand jurors if a grand jury is ordered, a like order commanding the sheriff, deputy sheriff or coroner, to summon the petit jurors.

Clerk to direct Sheriff to summon jury

Serving of
summons

Sec. 9. The sheriff, deputy sheriff or coroner, having received the order, shall forthwith serve upon such person whose name was selected and drawn as grand jurors a true copy of the command except that the copy shall contain only the name of the grand juror served, and not the name of any other grand juror, or by leaving said copy at his residence, or by sending the same to him; and the sheriff, deputy sheriff or coroner, shall immediately in like manner, summon such persons whose name was selected or drawn as a petit juror, and such service shall be made by reading or delivering the copy to the person to be summoned, or by leaving the copy at his residence.

When jurors to
appear

Sec. 10. Each grand and petit juror summoned shall appear before the court on the day and at the hour specified in the summons and shall not depart without leave of court.

In case of jury
not appearing

Sec. 11. If all persons summoned as grand and petit jurors do not appear before the court, or if by any cause the panel of the grand jurors or petit jurors is not complete, or if no jury be drawn, as above provided, the court may order the sheriff, deputy sheriff or coroner, to summon without delay good and lawful men having the qualifications of jurors and the person or persons summoned shall forthwith appear before the court and if competent shall serve on the grand jury or petit jury as the case may be unless such person or persons may be excused from serving or lawfully challenged.

In case of petit
jury being
exhausted by
challenges

Sec. 12. Whenever the panel of petit jurors shall be exhausted by the challenges of either party, in any action, the judge of the court shall order the sheriff, deputy sheriff or coroner, to summon without delay a sufficient number of persons possessing the qualifications of jurors as before provided to complete the number requisite for a jury in that particular case.

No person to
serve a second
time till list is
exhausted

Sec. 13. It shall be the duty of the county commissioners in selecting and furnishing to the clerk the number of persons qualified to serve as grand and petit jurors, so to select and arrange that no one person shall come on the jury a second time before all qualified persons shall have served respectively in rotation according to the best information that can be obtained.

Sheriff to make
returns

Sec. 14. The sheriff, deputy sheriff or coroner, having received the summons issued by the clerk, shall make return thereof with his proceedings to the clerk as soon as he has executed the order.

Penalty for
contempt

Sec. 15. If any person summoned to appear as grand juror or petit juror fails, refuses or neglects to appear, such person shall be considered guilty of contempt of the court and may be fined by the court in any sum not less than five nor more than fifty dollars, and

If any person when a second order or attachment is issued neglects or refuses to appear, such person may be fined as above provided and imprisoned by the court not longer than ten days in the county jail, and if the county commissioners of any county neglect or fail to select and furnish to the clerk names of persons as herein before provided, such person so offending may be fined by the court not less than five nor more than fifty dollars, and if the clerk of the district court, or deputy clerk, or sheriff, deputy sheriff or coroner, neglect or fail to perform the duties imposed by this act, the persons so offending shall be considered guilty of contempt of court and may be fined by the court not less than five nor more than fifty dollars, and if guilty of gross misconduct in office and contempt in disregarding the provisions of this act, may be imprisoned by the court not longer than thirty days in the county jail.

Sec. 16. Jurors summoned in accordance with this act shall be entitled to two dollars per each day for their services for the time they shall actually serve, and five cents per mile for each mile traveled in going and returning, such compensation to be paid out of the county treasury upon the order of the judge of the district court. Compensation of jurors

Sec. 17. Chapter fifty-two of the session laws of 1862, and chapter twenty-six (26) of the session laws of 1862-63, and all other acts and parts [of acts] in conflict with the provisions of this act, are hereby repealed. Certain acts repealed

Sec. 18. This act shall take effect and be in force from its passage and approval. When to take effect

Approved, December 24, 1867.

LIBRARY.

CHAPTER XX.

AN ACT TO PROVIDE FOR CATALOGUING THE TERRITORIAL LIBRARY AND TO COMPENSATE THE LIBRARIAN.

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

Section 1. That the Dakota Historical Society are hereby

Historical
society author-
ized to appoint
Librarian

authorized and empowered to employ some suitable and capable person to catalogue, label, arrange and take care of the books in the Territorial Library, and to procure the printing of a certain number of the catalogues of said library, not to exceed, however, five hundred copies.

Money appropri-
ated as com-
pensation

Sec. 2. The sum of one hundred and fifty dollars is hereby appropriated out of any money in the Territorial treasury not otherwise appropriated, to the Dakota Historical Society, for the purpose of carrying into effect the objects set forth in the first section of this act.

When to take
effect

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

Approved, January 8, 1868.

MECHANICS LIENS.

CHAPTER XXI.

AN ACT TO ENFORCE MECHANICS LIENS ON BUILDINGS.

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

On what liens
may be had

Section 1. Mechanics, and all persons performing labor, or furnishing materials for the construction or repair of any building, or who may have furnished any engine or other machinery for any mill, or other manufactory may have a lien separately or jointly upon the building which they may have constructed or repaired, or upon any buildings, mill, or other manufactory for which they may have furnished materials of any description, and on the interest of the owner in the lot or land stands, to the extent of the value of any labor done, on which it or materials furnished, or for both.

Sec. 2. The provisions of this act shall only extend to work done or materials furnished on new buildings, or to a contract entered into with the owner of any building for repairs, or to the engine or other machinery furnished for any mill or other manufactory, unless furnished to the owner of the land on which the same may be situated, and not to any contract made with the tenant, except only to the extent of his interest.

Provisions of this act how far to extend

Sec. 3. Any sub-contractor, journeyman or laborer employed in the construction or repair, or furnishing materials for any building, may give to the owner thereof notice in writing, particularly setting forth the amount of his claim and service rendered, for which his employer is indebted to him, and that he holds the owner responsible for the same, and the owner shall be liable for such claim but not to exceed the amount due from him to the employee at the time of notice, which may be recovered in an action.

Notice in writing to be served on employer

Sec. 4. Any person wishing to acquire such lien upon any property, whether his claim be due or not, shall file in the office of register of deeds of the county, within sixty days after the completion of the buildings or repairs, notice of his intention to hold a lien upon such property for the amount of his claim, specially setting forth the amount claimed, and the register of deeds shall record the notice when presented, in a book to be kept for that purpose, for which he shall receive twenty-five cents.

Steps necessary to procure liens

Sec. 5. Any person having such lien, may enforce the same by filing his petition or complaint in the district court in and for the county where the work was done or materials furnished; at any time within one year from the completion of the work or furnishing the materials, or if a credit be given, from the expiration of the credit.

When liens to be taken

Sec. 6. In such actions, all persons whose liens are recorded, as herein provided, may be made parties, and issues shall be made, and trials had as in other cases; and the court may by the judgment direct a sale of the land and buildings for the satisfaction of the liens and costs; such sale to be without prejudice to the rights of any prior incumbrancer, owner or other persons not parties to the action. If several such actions be

Parties to actions on liens

- brought by different claimants, and be pending at the same time, the court may order them to be consolidated.
- Claimants to be paid proportionately** Sec. 7. If the proceeds of the sale be insufficient to pay all the claimants, then the court shall order them to be paid in proportion to the amount due each.
- Defendant to file written undertaking** Sec. 8. In all actions or proceedings commenced under this chapter, the defendant may file a written undertaking, with surety, to be approved by the court, to the effect that he will pay the judgments that may be recovered, and costs, and thereby release his property from the lien hereby created.
- Certain act repealed, Proviso** Sec. 9. Chapter fifty-four of the session laws of 1862, entitled an act to create a lien for mechanics in certain cases, is hereby repealed;
Provided, however, That such repeal shall not affect the rights or liabilities that have already accrued under and by virtue of said act.
- When to take effect** Sec. 10. This act to take effect and be in force from and after its passage and approval.
 Approved, December 24, 1867.

MINES AND MINING.

CHAPTER XXII.

AN ACT CONCERNING MINES AND MINING.

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

- Size of claim** Section 1. That a mining claim subject to location and pre-emption, by any one individual, on any gold or silver bearing quartz ledge or lode, in the Territory of Dakota, either discovered or that may hereafter be discovered, shall consist of two hundred feet along the ledge or lode with all its dips, spurs and angles, and with fifty feet on

each side of the ledge for the purpose of conveniently working and developing the same ;

Providing, That the discoverer and locator of any gold or silver bearing quartz ledge or lode, shall be entitled to an extra claim of two hundred feet on the ledge or lode so discovered, and located in accordance with this act.

Sec. 2. Any person discovering and locating any gold or silver bearing quartz ledge or lode, or who shall locate a claim thereon after discovering, shall immediately thereafter, make the same known by defining the boundaries, and extent of his or their location, by posting in the ground at the point of discovery, on the ledge, a good and substantial stake, not less than three feet above the surface of the earth, with a notice thereof, stating the name of the person so locating or discovering.

Persons to
make known
their discoveries

Sec. 3. A copy of the notice mentioned in section two of this act, and notices of all river, bar, hill, creek or gulch, mining claims, must be recorded by the register of deeds for the county wherein the said mines may be situated, and such record shall be evidence in all courts of justice ;

Notice of
discovery to be
recorded

Providing, That the fee for recording all such notices shall not be more than two dollars.

Sec. 4. All notices of mining claims must be filed for record with the register of deeds, within the following specified times, to-wit :

When notice to
be filed

If discovered and located within ten miles of the county seat, five days thereafter ; if more than ten and less than twenty miles, ten days ; if more than twenty and less than one hundred and fifty miles, thirty days.

Sec. 5. Any person or persons, owning or holding or who shall hereafter own or hold a mining claim on any gold or silver bearing quartz ledge or lode, in the Territory of Dakota, shall be required to perform monthly labor thereon, to the value of not less than twenty dollars per month for the first six months following location, and to the value of not less than thirty dollars per month for the six months ensuing ; at the expiration of which time, the required labor having been duly performed in accordance with this act, and satisfactory evidence of the fact, having been certified to by two competent witnesses, and to the satisfaction of the register of deeds, the title to the said mining claim shall as between claimants thereafter be deemed perfect, and a certificate to that effect shall be issued by the register of deeds, to the party or parties interested ; and upon complying with these conditions the same shall be treated as real estate ;

Necessary steps
to acquire title
to claims

Providing, That any company or association of men, owning or holding more than one claim of two hundred feet and not more than ten thousand feet, on any one gold or silver bearing quartz ledge or lode, and who have complied with the general incorporation law of the Territory, shall not be required to perform more than one thousand dollars worth of labor upon their associated claims, upon any single ledge or lode, and such labor may all be expended on any one of their different claims of two hundred feet, on the respective ledge or lode where the same may be located ;

Providing further, That any person or persons, claiming or holding, shall hereafter claim or hold a mining claim on any gold or silver bearing quartz ledge or lode, either discovered or that may hereafter be discovered in the Territory of Dakota, and who shall fail to comply with the provisions of this act, shall forfeit all rights to any such mining claim, and the same shall be subject to re-location and pre-emption ;

And providing further, That nothing in this act shall be so construed as to conflict with any law of congress in regard to quartz mines and mining.

When privileges
mill sites &c to
be staked and
notices posted

Sec. 6. All water privileges for ditches and other mining purposes, and all mill sites must be staked, and at least two notices posted in a conspicuous manner on the ground, a correct copy of which must be filed for record with the register of deeds in the same manner as provided for the recording of mining claims in section four of this act.

When notice to
be filed with
Register of
deeds

Sec. 7. Any person or persons, locating water privileges for mining purposes and with the intention of conveying the said water from its natural channel, must within ten days after filing his or their notice, as provided for in section six of this act, commence the construction of his or their ditch by actual survey or by constructing at least one rod, or sixteen and one-half feet of the same, into which the waters of the stream must be turned from its natural channel, to the extent of the capacity of the ditch in contemplation of construction, and no person or persons, shall claim or appropriate to the exclusion of others, more of the waters of any natural streams than can be conveyed through his or their ditch.

Miners to enact
by laws

Sec. 8. The miners in all placer or surface diggings, are hereby empowered to enact all by-laws, rules and regulations for the government of the same ;

Providing, That the record of all such mining claims must be made in the office of the register of deeds.

Sec. 9. All sales, transfers and conveyances of mining property, shall be made by deed as in the sale, transfer, or conveyance of real estate. Transfer to claims to be by deed

Sec. 10. This act shall take effect and be in force from and after its passage and approval. When to take effect

Approved, January 10, 1868.

OATHS.

CHAPTER XXIII.

AN ACT IN RELATION TO THE FORMS OF CERTAIN OATHS.

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

Section 1. The following shall be the forms of oaths to be administered to officers and persons hereafter mentioned :

Oaths to be administered to Witnesses and Persons when examined under oath.

“ You do solemnly swear that the evidence you shall give relative to the matter in difference now in hearing between A. B. plaintiff, and ——— defendant, shall be the truth, the whole truth and nothing but the truth, so help you God.” Oath for witnesses

Oath to be administered to Interpreters of Testimony.

“ You do solemnly swear that you will justly, truly and impartially, interpret to A. B., the oath about to be administered to him, and the questions that may be asked him and the answers that he shall give to such questions relative to the cause now under consideration before this court, so help you God.” Oath for interpreters

Oath to be administered to Attorney.

For attorneys “ You do solemnly swear that you will support, protect and defend the Constitution of the United States, and the Organic Act of the Territory of Dakota, that you shall do no falsehood or consent that any be done in court, and if you know of any you will give knowledge thereof to the judge of the court or some one of them that it may be reformed; you shall not wittingly, willingly or knowingly promote, sue, or procure to be sued, any false or unlawful suit, or give aid or consent to the same; you shall delay no man for lucre or malice, but shall act in the office of attorney in this court, according to your best learning and discretion, with all good fidelity, as well to the court, as to your client, so help you God.”

Oath to be administered to Officers, &c.

The form of oath to be administered to persons appointed in pursuance of the provisions of law, to perform any duty or execute any office, commission or trust whatever where an oath is required, and no specific form is provided, shall be as follows :

For officers “ You do solemnly swear that you will support the Constitution of the United States and the Organic Act of the Territory of Dakota, and that you will faithfully execute the office (duty or trust) of——— to the best of your judgment and ability, according to law, so help you God.”

Or when the person to be sworn shall produce to the magistrate a warrant of appointment, commission or other certificate, the oath may be this :

“ You do solemnly swear that you will faithfully execute the duties assigned you by this commission, warrant, (or other certificate of appointment, as the case may be,) to the best of your judgment and ability, according to law, so help you God.”

Oath to be administered to an Officer taking charge of a jury in a criminal cause, during a recess of the court and before the jury are charged.

For officers taking charge of a jury “ You do solemnly swear that you will keep together the persons composing this jury, until they [return] into court, and that in the meantime you will suffer no person to speak to them or speak to them yourself concerning the cause on trial or any matter thereto relating, so help you God.”

Oath to be administered to the Officer attending the Grand Jury.

“ You do solemnly swear that as the officer having in charge this grand jury, you will keep their counsel and that of the government, and that you will not disclose any thing relative to their proceedings, so help you God.”

For officer attending grand jury

Oath to be administered to the Legislative Assembly of this Territory.

“ You do solemnly swear that you will support the Constitution of the United States and the Organic Act of the Territory of Dakota, and that as a member of this house of representatives, or this council, as the case may be, you will [not] propose or assent to any bill, vote or resolution which shall appear to you injurious to the people, nor do or consent to any act or thing whatever that shall have a tendency to lessen or abridge their rights and privileges as declared by the Constitution of the United States, and the Organic Act of this Territory, but will in all things conduct yourself as a faithful, honest representative and guardian of the people, according to the best of your judgment and abilities, so help you God.”

For the Legislative Assembly

Sec. 2. In addition to other of the oaths aforesaid when by law it shall be necessary, the oath of allegiance or the oath to support the Organic Act of this Territory, or both, shall be administered.

Other oaths

Sec. 3. In the administration of any oath, the word “swear” may be omitted, and the word “affirm” substituted whenever the person to whom the obligation is administered, shall be religiously scrupulous of swearing or taking an oath in the prescribed form, and in such case the words “so help you God” may be omitted, and the words “under the pains and penalties of perjury” substituted, and every person so affirming shall be considered, for every legal purpose, privilege, qualification or liability, as having been duly sworn.

Form of affirmation

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

When to take effect

Approved January 8, 1868,

OFFICIAL ACTS LEGALIZED.

CHAPTER XXIV.

AN ACT TO LEGALIZE THE ACTS OF JOHN W. BOYLE, AS CLERK OF THE UNITED STATES DISTRICT COURT, FIRST JUDICIAL DISTRICT OF THIS TERRITORY, AND FOR OTHER PURPOSES.

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

Acknowledgments & legalized

Section 1. That all acknowledgments of deeds and other instruments by John W. Boyle as Clerk of the United States District Court, First Judicial District of this Territory, are hereby legalized, and such acknowledgments shall have the same force and effect as if the said Boyle as such clerk, was duly authorized to take and certifying acknowledgments of deeds and other instruments by the laws of this Territory.

Deeds &c declared recorded

Sec. 2. That all deeds and other instruments acknowledged by said Boyle, which now are, or shall hereafter be placed on record, shall be, and they are hereby declared to be duly recorded, and shall be notice to all persons the same as though said deeds and other instruments had been acknowledged before and certified by an officer competent to take and subscribe acknowledgments under the laws of this Territory.

What acknowledgments declared lawful

Sec. 3. That deeds and other instruments, the acknowledgments of which had been taken and certified by and before any district court clerk of this Territory, prior to January 9th, 1867, are hereby declared to be duly acknowledged and certified, and the record of the same shall be as valid and binding in law and equity, as though the same had been acknowledged before some officer duly authorized by the laws of this Territory to take and certify acknowledgments of deeds and other instruments.

Sec. 4. All acts and parts of acts in conflict with the provisions of this act are hereby repealed so far as they apply to the cases herein provided for by this act. Conflicting acts repealed

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

Approved, January 8, 1868.

CHAPTER XXV.

AN ACT TO LEGALIZE CERTAIN ACTS AND PROCEEDINGS OF THE CTTY CLERK OF THE CITY OF CHEYENNE, AND THE REGISTER OF DEEDS OF THE COUNTY OF LARAMIE.

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

Section 1. That the action of M. Leland acting city clerk of the city of Cheyenne, and J. H. Cheighton, register of deeds for the county of Laramie, in so far as they have recorded such conveyances as are by law required to be recorded, be, and the same are hereby confirmed, and said records declared to be legal and binding in law to the end that titles to real estate shall in no wise be clouded by the unauthorized organization of the offices of said register of deeds and city clerk. What acts legalized

Sec. 2. This act shall take effect and be in force from and after its passage and publication in one or more newspapers published in said city of Cheyenne, for three successive days. When to take effect

Approved, January 10, 1868.

RECOVERY OF PROPERTY.

CHAPTER XXVI.

AN ACT FOR THE RECOVERY OF PROPERTY REMOVED BY HIGH WATER.

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

Manner of
recovering
property

Section 1. That when the fence rails or other property of any person or persons in this Territory, shall be removed by high water and lodged upon the lands of another, it shall be lawful for the owners of such property so removed, to proceed within sixty days thereafter, upon the premises where such property may be lodged, and in case the proprietor of said lands shall refuse to deliver up the same, the parties shall each select an arbitrator who shall examine and hear upon all the circumstances and facts and determine the case;

Provided, That if they cannot agree, they shall select an umpire and the decision of a majority of them shall be final between the parties.

Arbitrators to
take oath

Sec. 2. That before said arbitrators shall proceed as above provided, they shall be sworn to discharge their duties as faithfully, impartially and according to law, by some person having power to administer oaths.

Claimant of
property to
give notice

Sec. 3. That when two or more persons shall claim any property as aforesaid, they shall give notice to all interested of the time and place of such arbitration and upon hearing all the facts and circumstances in the case, the arbitrators shall award to each such a proportion of said property as they may deem reasonable and just.

Search for
property not
trespass

Sec. 4. That it shall not be considered a trespass for any person to go upon the lands of another for the purposes in this act mentioned:

Provided, That such person shall go upon such route as will do the least possible injury to said lands if it be practicable and convenient.

Sec. 5. All acts and part of acts in conflict with the provisions of this act, are hereby repealed. Conflicting acts repealed

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

Approved, December 30, 1867.

REPEALS.

CHAPTER XXVII.

AN ACT TO REPEAL CERTAIN SECTIONS OF AN ACT ENTITLED "AN ACT RELATIVE TO COUNTY SURVEYORS," APPROVED JANUARY 8, 1866.

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

Section 1. That in order to conform the law of this Territory upon the subject of surveying, to the provisions of the act of Congress entitled "An act concerning the mode of surveying the public lands of the United States," approved February 11th, 1805, sections number four, five, six, seven, and eight of an act of the Legislative Assembly of this Territory, entitled "An act relative to county surveyors," approved January 8th, 1866, be and the same are hereby repealed. What sections repealed

Sec. 2. This act shall take effect from and after its passage and approval. When to take effect

Approved, January 3, 1868.

REPRESENTATIVE DISTRICT.

CHAPTER XXVIII.

AN ACT TO CREATE THE NINTH REPRESENTATIVE DISTRICT.

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

Boundaries

Section 1. That all that portion of the Territory of Dakota embraced within the limits of the counties of Lincoln, Minnehaha, Brookings and Deuel, shall be known as the ninth district, and shall be entitled to one representative as hereinafter provided.

When to take
effect

Sec. 2. That if that portion of Dakota, comprising the counties of Laramie and Carter, shall be organized into a new Territory, prior to September 1, 1868—then this act to be in force and effect—otherwise to be null and void.

Approved January 6, 1868.

ROAD SUPERVISORS.

CHAPTER XXIX.

AN ACT RELATING TO ROAD SUPERVISORS.

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

Section 1. That at the annual meeting of the county commissioners in January of each year, 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, where such county is not at present formed into townships and shall appoint for each district a road supervisor, who shall hold his office until the first of January succeeding his appointment and shall take an oath to faithfully discharge his duties as such road supervisor.

Division of
counties into
road districts

Sec. 2. In all counties that are organized into townships there shall at the general annual election in each township be elected a road supervisor for such township, who shall hold office for the term of one year from the first of January succeeding his election, and shall take an oath to faithfully discharge his duties as such road supervisor.

Election of road
supervisors

Sec. 3. The board of county commissioners of each county shall have power to fill all vacancies, and shall fill all vacancies that may occur for any reason in the office of road supervisor.

Board of county
commissioners
to fill vacancies

Sec. 4. It shall be the duty of the assessor of each township to obtain the names and make out a list of all male persons between the ages of twenty-one and fifty years, residing within each road district, which list shall be completed on or before the first day of March in each year, and in case any person as aforesaid shall locate in any road district after the

Assessor to
make out list of
non residents

first day of March, the assessor shall enroll his name and he shall be liable to labor on the road at the same time and in the manner that those originally enrolled are liable to labor, but any person who has labored that 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.

Who to perform
labor on road

Sec. 5. Every male person between the age of twenty-one and fifty years, who is able to perform manual labor, shall be subject to labor one day in each year on the road within his road district, at a time and place directed by the road supervisor.

When work to be
performed

Sec. 6. The said road supervisors 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.

County commis-
sioners to levy
tax

Sec. 7. It shall be the duty of the county commissioners of each county to levy a tax annually of one dollar and fifty cents to each able bodied male person between the ages of twenty-one and fifty years, in each township or county, and in their discretion may levy a further tax not exceeding two mills on the dollar of the property on the assessment rolls of such county to be applied as a road tax; the person thus assessed shall pay the same in the manner and at the same time that the annual taxes of the county are paid;

Provided, however, That said tax so assessed may be worked out in the road district in which such person resides or such real estate lies, and the said tax assessed on personal property in the district where the owner thereof resides at the rate of one dollar and fifty cents per day. The road supervisor shall obtain a list of all road tax assessed on each individual, and his certificate for the amount worked out shall be taken by the collector or treasurer of the county in payment of said tax.

Provided further, That if any person shall perform labor as required in section five (5) of this act, the certificate of the road supervisor to that fact shall be in full of the tax of one dollar and fifty cents above provided.

How money to
be expended

Sec. 8. In case such tax is assessed as provided for in section seven of this act, and collected, such board of county com-

missioners shall order the expenditures thereof in the improvement of the highways, paying the road supervisors, purchasing implements, and repairing bridges in each district under such regulations as they may deem most expedient for the public interest, and for this purpose shall order the payment of such sum by the treasurer to the parties performing such labor upon the certificate of the road supervisor.

Sec. 9. All monies collected under the provisions of this ~~Same~~ ^{act} shall be expended in the road district in which the person resides when it is a personal tax, or a tax on personal property; and where the real estate is situate, where it is a tax on real estate.

Sec. 10. On or before the First Monday of January of each year, the road supervisors shall make report to the board of county commissioners of his doings the preceding year, the ~~amount~~ ^{amount} of labor performed, the number of days labor necessarily performed by himself in ~~this~~ ^{the} discharge of his duties, and the county commissioners shall thereupon issue a county warrant to the supervisor for such service at two dollars a day, payable from the common road fund in the county treasury belonging to said road district.

Sec. 11. Every person who shall be elected or appointed a road supervisor according to the provisions of this act, and shall fail, refuse or neglect to qualify as such road supervisor for thirty days after having been duly notified of his election or appointment by the register of deeds of the county, shall be fined the sum of ten dollars, to be collected by a complaint made before a justice of the peace of the county, and shall pay all the costs of the prosecution, which fines shall go to the road fund of the district in which he resides.

Sec. 12. Chapter twenty-five (25) of the session laws of 1865-66, and all other acts in conflict with the provisions of this act are hereby repealed.

Sec. 13. This act shall take effect and be in force and effect from and after its passage and approval.

Approved, January 8, 1868.

SALE OF LIQUORS.

CHAPTER XXX.

AN ACT TO REGULATE THE SALE OF SPIRITUOUS LIQUORS AND
FOR OTHER PURPOSES.

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

License

Section 1. That no person shall be permitted to sell spirituous liquors in this Territory by measure, [less] than one quart, without having first obtained a license from the board of county commissioners, or if they be not in session from the clerk of the board of county commissioners of the proper county, for that purpose.

Amount necessary to be paid for license

Sec. 2. Every person applying for a license to sell spirituous liquors in less quantity than one quart, shall pay into the county treasury, the sum of not less than thirty dollars nor more than one hundred dollars per annum in the discretion of the board of county commissioners, or in case they are not in session, in the discretion of the clerk of the board of county commissioners ;

Provide

Provided, That no license shall be granted for a less period than six months ;

Provided, further, The applicant for such license shall execute a bond in the penalty of five hundred dollars, with two or more sureties, to be approved by the board or by the register of deeds, conditioned, that the applicant will keep an orderly house and that he will not permit any unlawful gaming or riotous conduct in his house.

Issuing of license

Sec. 3. On the applicant's producing to the board of county commissioners, or if they are not in session, then to the clerk of the board of county commissioners, the receipt of the county

treasurer for the payment of the sum fixed in accordance with the preceding section, the clerk of the board of county commissioners shall issue license for the term the receipt calls for; such license shall describe the house and place where the spirituous liquor is intended to be sold, and no person obtaining such license shall be authorized to sell or vend spirituous liquors in more than one place.

Sec. 4. Upon application for license to sell spirituous liquors ^{Same} the board of county commissioners, or if they be not in session the clerk of the board of county commissioners may grant or reject the same, at discretion.

Sec. 5. The board of county commissioners shall upon complaint being made to them, revoke any license granted to sell any spirituous liquors whenever they may be satisfied that the person or persons in whose name or names any license has been granted, suffer any disorder, drunkenness, or unlawful gaming. ^{License may be revoked}

Sec. 6. If any person or persons shall barter, sell or dispose in any manner, any spirituous liquors without having first obtained a license agreeable to the provisions of this act, he or they shall on conviction thereof be, by indictment in any court having jurisdiction of the same or by complaint before a justice of the peace, fined in any sum not exceeding one hundred dollars, nor not less than ten dollars for the use of the common schools in the county where the offense shall have been committed. ^{Penalty for selling liquor without license}

Sec. 7. That for all fines and costs assessed against any person for any violation of this act the real estate and personal property of such person of any kind without exemption, shall be liable for the payment thereof, and such fine and costs shall be a lien upon such real estate until paid. ^{Property liable for fines}

Sec. 8. And it is hereby made the duty of the county attorney, sheriff, constables and justices of the peace, knowing of any violations of the provisions of this act, to make complaint thereof to the grand jury at the next term of the district court of the county in which the offense may have been committed or to a justice of the peace which justice shall have power to proceed to judgment therein, and the money collected on such judgment except taxable costs, shall be paid to the treasurer of the proper county for the use of the common schools therein. ^{Who to make complaint}

List of licenses
to be furnished
to court

Sec. 9. Every clerk of the board of county commissioners shall on the first day of the term of each district court deliver to the grand jury, an accurate list of all persons holding license under the provisions of this act within the county, which list shall show the date and expiration of such license.

Grand jury to
return bill of
indictment

Sec. 10. It shall be the duty of the grand jury at each and every term of the district court in every county in the Territory to make a strict inquiry and return bills of indictment against every person violating any of the provisions of this act;

Provided, That if a party or parties has or have been convicted and fined for any offense against the provisions of this act, by a justice of the peace, he or they shall not be subject to indictment by the grand jury for the same offense.

Certain laws
repealed

Sec. 11. Chapter eighty-three of the session laws of 1862, and section eight to fifteen inclusive of chapter twenty-three of the session laws of 1863 and 1864, are hereby repealed.

When to take
effect

Sec. 12. This act shall take effect and be in force from and after its passage.

Approved, January 8, 1868.

SETTLERS.

CHAPTER XXXI.

AN ACT RELATING TO SETTLERS UPON LAND WITHOUT THE LEGAL RIGHT THERETO.

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

Section 1. If any person or persons shall settle upon or take possession of any tract of land, or any part thereof being the property of

another person without having the full and complete legal rights so to do, and shall remain thereon four days after being notified by the owner, his agent or attorney, to abandon and quit the same, the owner thereof, his agent or attorney, may appear before any justice of the peace, in and for the county in which the land is situated, and after making oath before such justice that the said settlement was made and possession had without his consent or the consent of his principal as the case may be, and that he is the lawful owner thereof and cause a summons to issue to the person or persons who made the said settlement, and returnable three days thereafter commanding him or them to appear before the said justice and show his or their right to the possession of the land, and if the justice shall after due examination find that the settlement was made and possession held without the full and complete right so to do, he shall render a judgment against the defendant or defendants and in favor of the plaintiff for restitution of premises and costs of suit, and shall at the request of the plaintiff, his agent, or attorney, issue a writ of execution thereon directed to the sheriff or any constable of the county, commanding him forthwith to remove the defendant or defendants from the premises, and collect costs of suit.

Proceedings
necessary to
remove unlaw-
ful settlers

Sec. 2. The officers shall within five 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 returns as in other executions.

Execution of
writ

Sec. 3. If the person or persons so removed, shall thereafter return upon the said land or any part thereof, for the purpose of settlement or possessing the same, without consent of the owner, his agent or attorney, in writing, he or they shall be deemed guilty of a misdemeanor, and on due conviction thereof before the district court of said county, shall pay a fine of not less than fifty dollars nor more than five hundred dollars in proportion to the amount of the damages he or they may have occasioned, for the benefit of the common school fund, as well as the costs of the prosecution or imprisonment in the county jail not less than twenty days or more than six months.

Who deemed
guilty of mis-
demeanor

Sec. 4. It shall be the duty of every judge or justice of the peace, before whom any complaint shall be made under oath of any violation of the previous sections to issue the necessary warrant of arrest for the person or persons complained against, and commit him or them to custody for trial at the next term of the district court, unless the said accused person or persons shall furnish good and sufficient bail in a sum to be fixed by the said judge or justice of the peace;

When judge to
issue warrant
of arrest

Provided however, That nothing in this act shall take away or impair the rights to damages, or other legal remedy which the owner of the land may now have under the laws of this Territory.

Justice to
certify proceed-
ings to district
court

Sec. 5. Nothing in this act contained, shall be held to authorize a justice of the peace to try the issue in any action where the title to real estate comes in question and whenever the answer of the defendant in any case alleges title in himself or other party from whom he derives his right of possession the justice of the peace shall immediately certify the proceedings to the district court of the county in which said action is pending, and in such district court the action shall proceed the same as in cases of appeal.

Proceedings to
be verified

Sec. 6. All pleadings in actions arising under the provisions of this act shall be verified by the affidavit of the party, his agent or attorney.

When to take
effect

Sec. 7. This act shall take effect and be in force from and after its passage.

Approved January 8, 1868.

SCHOOLS.

CHAPTER XXXII.

AN ACT TO PROVIDE COMMON SCHOOLS FOR THE TERRITORY OF DAKOTA.

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

James S. Foster
appointed
Territorial
Superintendent
of Public
Instruction

Section 1. That James S. Foster is hereby appointed superintendent of Public Instruction for the Territory of Dakota, and shall hold his office for the term of one year from January 1st, 1868, and until his successor is elected and qualified.

Sec. 2. The superintendent of Public Instruction, shall, before entering upon the discharge of the duties of his office, take and subscribe an oath to support the Constitution of the United States, and the Organic Act of this Territory, and to faithfully discharge the duties of his office, which oath shall be filed with the clerk of the supreme court of the Territory of Dakota.

Superintendent
to take oath

Sec. 3. It shall be the duty of the superintendent of Public Instruction to keep a record of his official acts, and to exert himself constantly and faithfully to promote the interests of education in the Territory, and to this end he shall confer with county superintendents and visit schools in company with them and furnish to them blank forms for collecting statistics of the various schools in the Territory. He shall prepare and present to the legislature during the first week of the session, in each year, a report of his official doings for the preceding year with a full statement of the condition of common schools in the Territory, and the expenditure of the public school moneys and shall make such suggestions for the improvement and support of common schools together with such other information in regard to the modes of instruction and systems of the organization of schools in other States and countries as he shall deem proper.

To keep a record
of his acts

Sec. 4. The superintendent of public instruction, shall also have power to grant certificates of qualification to teachers of proper learning and ability to teach in any public school in the Territory, and to regulate the grade of county certificates.

To grant certi-
ficates

Sec. 5. There shall be elected at each regular Delegate election in this Territory, a superintendent of public instruction, who shall hold his office for two years and until his successor is elected and qualified.

Election of
Superintendent

Sec. 6. The compensation of superintendent of public instruction for his services shall be the sum of four dollars per day for the time spent in the discharge of his official duties, and the expense of procuring blank forms, postage, stationery and such books as are necessary for the use of his office, and the publication of his annual report, all of which allowances shall be paid by the Territorial treasurer on the certificate of the Territorial auditor.

Compensation

Sec. 7. It shall be the duty of the Territorial superintendent of public instruction to recommend the introduction of the most approved text books, and as far as practicable to secure uniformity in the use of text books in the common schools throughout the Territory.

Duties

To discourage the use of sectarian books, and sectarian instruction in the schools;

To advise in the selection of books for school district libraries, and to open such correspondence abroad as may enable him to obtain, so far as practicable, information relative to the system of common schools and their improvements in other states and countries, which he shall embody in his annual report to the Legislature, or so much thereof as shall be deemed of sufficient importance;

He shall prescribe rules and regulations for the management of school district libraries, and the penalties which shall be imposed by the district boards for any violation of such rules and regulations.

He shall prepare for the use of the common school officers suitable forms for making reports and contracting all necessary proceedings, and he shall cause the laws relating to common schools with the rules, regulations and forms aforesaid and such instructions as he shall deem necessary to be printed, together with a suitable index in pamphlet form at the expense of the Territory; and he shall cause the same to be distributed among the several school districts and other officers having the care of common schools throughout the Territory.

He shall examine and determine all appeals duly made to him from the decision of any county superintendent, in forming or altering any school district or concerning any other matter under the common school law of this Territory, and his decision shall be final.

The superintendent of public instruction shall annually prepare a sufficient number of his annual report to be distributed as follows:

One copy to each member of the legislature.

One copy to each county superintendent of schools.

One copy to each school district officer, and

One copy to each teacher in the Territory whose certificate of qualification has not expired, and such other of the county and Territorial officers as may be by him deemed proper, not to exceed five hundred copies in one year.

Territorial
teachers institute

Sec. 8. The Territorial superintendent of public instruction with the several county superintendents shall hold annually at some convenient place, a Territorial Teachers Institute for the instruction and advancement of teachers; said Institute not to continue less than four days and not to exceed ten days, which Institute shall be free to all teachers and those preparing to teach in this Territory.

Election of
county Superintendent

Sec. 9. The several counties of this Territory, shall at the same time and in the same manner as other county officers are elected elect a suitable person to be superintendent of public schools, within such county, who shall hold his office for two years from the first of

January next succeeding his election, unless, he shall be elected to fill a vacancy, in which case he may immediately qualify into office, and shall hold his office until his successor is elected and qualified, and who shall receive three dollars for each day spent in the discharge of his official duties, and a reasonable compensation for his annual report to the superintendent of public instruction, and every superintendent of schools shall make out in detail his account for official service, stating the date and time spent as well as the kind of service rendered, and make oath or affirmation to the correctness of the same, before some justice of the peace in the county in which he resides, which oath or affirmation shall be certified by said justice before such superintendent's account shall be presented to the county commissioners for allowance, who shall audit and allow the same, or so much thereof as is just and reasonable, and the same shall be paid out of the county treasury upon the order of the county commissioners who are empowered to draw orders for the same; but no order shall be drawn to any superintendent until he shall have filed with the auditor, the receipt of the superintendent of public instruction for the statistical returns of the preceding school year, in pursuance of the requirements of section twenty, of this act.

Sec. 10. The county superintendent of public schools shall 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 county clerk's office. He shall also execute a bond with approved security, payable to the board of county commissioners, for the use of common schools in said county, in the penal sum of five hundred dollars. Said bond must be approved by the county commissioners, and filed in the register of deeds office.

Superintendent
to take oath and
give bond

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 when petitioned by a respectable number of the citizens thereof, and to furnish the county commissioners of such county with a written description of the boundaries of each district, which description must be filed in the register of deeds office, before such district shall be entitled to proceed with its organization by the election of school district officers. 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

His duties

part of the proposed joint district shall be situated, to unite in laying out such joint district; and each county superintendent so assisting shall file a description of said joint district in the register of deeds office of his county.

Judge of Probate to pay out school money upon order of Superintendent

Sec. 12. It shall be the duty of the judge of probate, on the first Monday of March, in each year, to furnish the county superintendent of public schools with a statement of the amount of money in the county treasury, belonging to the school fund, and he shall pay the same upon the order of said superintendent, to the proper district officers.

Superintendent to make apportionment of school money

Sec. 13. It shall be the duty of the county superintendent of public schools, on the second Monday in March, 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;

Provided, No district shall be entitled to receive any portion of the common school fund in which a common school has not been taught at least three months during the year.

Further 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 in each year; or 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 the course of study to be pursued therein, and shall adopt all requisite measures for the inspection, examination and regulation of the schools, and for the improvement of the 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 county commissioners of the county, in which such superintendent was elected or appointed, on or before the day previous to the annual county election next after the election or appointment of such

superintendent, and the same shall be filed and kept in the office of the register of deeds.

Sec. 15. He shall see that the annual reports of the clerks of the same several school districts in his county are made correctly and in due time, and shall hear and determine all appeals from the decision of district boards.

Sec. 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 examination and grant certificates

Sec. 17. Whenever a school district shall be formed in any county, the county superintendent of schools of such county shall, within fifteen days thereafter, prepare a notice of the formation of such district, describing its boundaries, and stating the number thereof, and appointing a time and place for the district meeting. He shall cause the notice thus prepared to be posted in at least five public places in the district; at least ten days before the time appointed for such meeting, that a majority of the voters in any school district being dissatisfied with the formation of any school district shall have the right to appeal from the superintendent to the board of county commissioners, and from the board of county commissioners to the superintendent of public instruction.

To post notices of formation of districts

Sec. 18. The county superintendent of public schools shall perform all other duties of said office that now are or hereafter may be prescribed by law; and he shall deliver to his successor, within ten days after the expiration of his term of office, all the books appertaining to his office.

When to deliver up books &c; to success

Sec. 19. If a vacancy occur in the office of county superintendent of public schools, by death, resignation or otherwise, notice thereof shall be given by the register of deeds to the county commissioners who shall, as soon as practicable appoint some suitable person to fill the vacancy, and the person receiving such appointment shall, before entering upon the discharge of the duties of his office, file his oath or affirmation in the county clerk's office, hereinbefore provided, and

County commissioners to fill vacancies

shall discharge all the duties of the office of county superintendent of public schools until a successor is elected and qualified. He shall also give a like bond to that required by this act to be given by the county superintendent of schools.

Superintendent
to make report
annually to
Territorial
Superintendent

Sec. 20. The county superintendent shall make full and complete annual returns to the superintendent of public instruction, between the first and tenth day of November of each year, of the number of children between the ages of five and twenty, in the school district 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

Powers of
electors at
school district
meetings

Sec. 21. The inhabitants qualified to vote at a school district meeting, lawfully assembled, shall have power ;

1, to appoint a chairman to preside at said meeting in the absence of the director.

2, To adjourn from time to time.

3, To choose a director, clerk, and treasurer, who shall possess the qualifications of voters as prescribed in the next section of this act, at the first and each annual meeting thereafter.

4, To designate by vote a site for a district school house.

5, To vote a tax annually, not exceeding one per cent. on taxable property in the district, as the meeting shall deem sufficient to purchase or lease a site and to build, hire or purchase a school house, and to keep in repair and furnish the same with necessary fuel, stoves and benches.

6, To vote a district tax annually, not exceeding one-half of one per cent. on taxable property in the district for pay of teachers' 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 blackboards, outline maps, and apparatus necessary for illustrating the principles of science, or to discharge any debts or liabilities of the district, lawfully incurred;

Provided, That said tax shall not exceed one per cent. per annum, and may be applied to any other purpose by a vote of the district at any regularly called meeting.

9, To give such direction and make such provisions as may be deemed necessary in relation to the prosecution or defense of any suit or proceeding in which the district may be a party.

10, To alter or repeal their proceedings from time to time as occasion may require, and to do any other business contemplated in this act.

11, To vote a tax not exceeding \$25, in any one year, to procure a district library consisting of such books as they may direct any person to procure.

Sec. 22. The following persons shall be entitled to vote at any district meeting; all persons possessing the qualifications of electors, as defined by the laws of the Territory, and who shall be actual residents of the district at the time of offering to vote at such election.

Who entitled to
vote at such
meeting

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:

Challenging
voters

“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.

ORGANIZATION OF DISTRICTS

Sec. 24. Every school district shall be deemed duly organized when the officers constituting the district board shall be elected. Each school district officer shall signify his acceptance.

When district
considered as
organized

ance of his office to the county superintendent in writing, within twenty days after he shall be notified of his election by any person voting at such meeting, which acceptance shall be filed with such superintendent, and upon filing such acceptance, said party shall be deemed to have duly qualified. 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.

Officers of
district

Sec. 25. The officers of each school district, shall be a director, clerk, and treasurer, who shall constitute the district board, and who shall hold their respective offices until the annual meeting next following their election or appointment, and until their successors are elected and qualified.

School districts
bodies corporate

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 and personal estate as it may come in possession of by will or otherwise, or is authorized to be purchased by the provisions of this act.

Annual school
meeting when
held

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 purpose 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.

District clerk to
post notices of
special meetings

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 meet-

ing 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 respective offices until the next annual meeting, and until their successors are elected and qualified.

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.

Who to determine length of school terms

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 the reports made by him to the county superintendent, and he shall keep and preserve all records, books and papers belonging to his office, and deliver the same to his successor in office.

Clerk to record acts of district board

Sec. 32. The said clerk shall be clerk of all district meetings when present; but if such clerk shall not be present at such district meeting, the voters present may appoint a clerk of

To be clerk of district meeting

such meeting, who shall certify the proceedings thereof, and the same shall be recorded by the clerk of the district.

To give notice of meetings by posting bills

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.

To draw orders on treasurers

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 teacher's 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 a district board, agreeable to the provisions of this act.

To make out tax list

Sec. 35. It shall be the duty of the clerk to make out the 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 to collect the sums therein named.

To make 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, for each county in which any part of his district may lie; showing,

what report 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 treasury within the year, and the manner in which the same has been applied.

5, The amount of money raised by the district, in such year, and the purposes for which it was raised.

6, The kind of books used in the school, and such other facts and statistics in regard to the district schools as the county superintendent may require.

Sec. 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.

In case of district that shall lie partly in two or more counties

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 bonds 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.

Treasurer to give bonds

Sec. 39. If the treasurer shall fail to give bonds as required in this act, or from sickness or any other cause, shall be unable to attend to the duties of said office, the district board shall appoint a treasurer, who shall possess all the powers of the district treasurer, and shall before entering upon the duties of said office, give bonds as the district treasurer is required to give.

In case of failure to give bond

His duties

Sec. 40. The treasurer of each district shall apply for and receive from the county treasurers all school moneys 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 directors of such district, all money so received or collected by the said treasurer.

Forfeiture of bond

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.

Money lost to be refunded

Sec. 42. If by neglect of any treasurer any school moneys shall be lost to any school district, which might have been received from the county treasurer, or collected from the district tax assessed, said treasurer shall forfeit to such district the full amount of money so lost.

Treasurer to make annual report

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 therefor, which report shall be recorded by the clerk, and if it shall appear that any balance of money is in his hands at the time of making such report, he shall immediately pay such balance to his successor.

DISTRICT BOARD

Duties of district 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.

Sec. 45. The district board shall have the care and keep-

ing 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. Their powers

Sec. 46. The district board shall have power to admit scholars from adjoining districts, and remove scholars for disorderly conduct, and when scholars are admitted from other districts, the district board may in their discretion require a tuition fee from such scholars. SAR.

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. To hire teachers

Sec. 48. The district board shall provide the necessary appendages for the school house, during the time school is taught therein, and shall keep an accurate account of all expenses thus incurred, and present the same for allowance at any regular district meeting. To provide necessary appendages &c

Sec. 49. The district schools established under the provisions of this act, shall at all times be equally free and accessible to all children resident therein over five and under the age of twenty-one years, subject to such regulations as the district board in each may prescribe. District school under this act to whom free

Sec. 50. In every school district there shall be taught orthography, reading, writing, English grammar, geography and arithmetic, if desired, during the time the school shall be kept, and such other branches of education as may be determined by the district board. Branches to be taught

Sec. 51. If a vacancy should occur in the district board, in any district, the county superintendent shall appoint some suitable person to fill such vacancy. Vacancy in district board how filled

DISTRICT TAXES.

Sec. 52. The amount of district taxes shall not exceed two per cent. per annum. It shall be the duty of the county or town assessor of each Amount of tax to be raised

Manner of
raising tax &c

county or town, at the time of making the annual assessment, to levy a tax of one dollar on each elector in the county or town, for the support of district schools; and a further tax of two mills on the dollar, upon the taxable property of the county or town, to be applied to the same purpose, to be collected at the time and in the manner prescribed by law for the collection of taxes; which tax, when collected, shall be distributed to the several school districts, in proportion to the number of children over five and under twenty-one years of age therein; and shall be drawn from the county treasury upon the order of the superintendent of schools. When there shall have been districts laid out, and not organized, it shall be the duty of the county superintendent to ascertain the number of children between the ages of five and twenty one years, and apportion to and deposit with the county treasurer such amounts as said unorganized districts would have been entitled to if duly organized, which may be drawn on the order of the district board, when said district shall have been duly organized, and a public school maintained three months, if within two years from the time said money is deposited with the county treasurer, and if not organized as above, the county superintendent may apportion the money so deposited among the organized districts of said county in his next annual report;

Provided, If any scholars of any organized or unorganized district shall attend the district school of any other district, there being no school in the district to which they belong, the superintendent shall apportion them *pro rata* to the district to which they attend school.

On what kind of
property tax to
be raised

Sec. 53. All taxes raised and collected in any school district for any of the purposes authorized in this act, shall be assessed on the same kind of property as taxes for county purposes are assessed.

What tax list to
contain

Sec. 54. The clerk of the school district, in making out any tax list, shall enter therein the names of all persons liable to pay a school tax, the amount of personal property to be taxed to each person, and a description of all taxable real estate in the district distinguishing that owned by non-residents of the district, and he shall set opposite to each description of taxable property, the valuation of the same, and the amount of tax charged upon such property, and to each person respectively, or tract of land owned by non-residents; and such description and valuation of taxable property shall be ascertained as far as possible from the last assessment roll of the county or town.

When district
board to appor-
tion taxes

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.

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 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.

Collection of taxes

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 warrant may be delivered for collection of a tax list, shall possess the like powers in the execution of the same as are provided by law for the collection of county taxes. If any tax in any tax list delivered to the treasurer of any district, shall remain unpaid at the time he is required by law to return his warrant to the clerk of the district, such treasurer shall within ten days, make out and deliver to the county treasurer a statement in writing, containing the amount of the personal property, and a description of the lots and pieces of land upon which such taxes remain unpaid together with the amount of tax assessed on each, and he shall attach thereto an affidavit, that the taxes mentioned in such statement remain unpaid, and after diligent efforts he has been unable to collect the same, and whenever any school district shall embrace parts of more than one county, such treasurer shall make his return as aforesaid to the county treasurer of both counties in which the parts of such district shall be situated. The county treasurer upon delivery to him of such statement shall give a certificate to the treasurer of the district, of the amount of taxes so remaining unpaid as the same shall appear from such statement, which certificate shall be deposited by the district treasurer with the district clerk, and shall be

Force of warrants for collection of taxes

filed by such clerk, and such county treasurer shall immediately add such delinquent taxes to the delinquent tax list received by him from the county collector and collect the same as other delinquent taxes are collected, and when so collected shall pay over the same (less his fees for the collection thereof) to the district in which said taxes were levied, upon the order of the district board.

Correction of tax list

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.

Payment of tax by tenant

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.

Register of deeds to give description of taxable property to each district

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.

GRADED SCHOOLS.

Establishment of 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 their respective districts, call a meeting of the voters of such district at some convenient place, by posting up notices thereof in like manner as provided for calling district 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.

Powers of board of directors

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.

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.

Funds of union district

Sec. 64. The said union district may levy taxes for the purpose of purchasing a building, or furnishing proper building for the accommodation of the school, or for the purpose of defraying necessary expenses and paying teachers but shall be governed, in all respects, by the law herein provided for levying and collecting district taxes.

Union district may levy tax for the purpose of paying expenses

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 thereof.

Clerk of union district to make report to the treasurers of the uniting districts

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.

To make report to county superintendent

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.

Treasurer of union district his duty

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:

What schools to receive public funds

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 superintendent of 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.

Single district may establish graded schools

Sec. 70. The county treasurer shall collect all moneys due the county for school purposes, from fines, forfeitures or proceeds from the sale of estrays, and all moneys paid by persons as equivalent for exemption from military duty, and he shall pay the same to the said district treasurer, as prescribed

What moneys to be collected by the county treasurer for school purposes

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 said 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 punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year.

MISCELLANEOUS.

When teacher to
make report to
district board

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 each of said branches. Any teacher who shall neglect or refuse to comply with the requirements of this section, shall forfeit his or her wages for teaching such school, at the discretion of the district board.

Penalty for
clerk signing
false report

Sec. 72. Every clerk of a district board, who shall wilfully sign a false report to the county superintendent of his county, shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding three months.

Penalty for
district officer
neglecting to
deliver up books
&c to successor

Sec. 73. Every school district clerk or treasurer who shall neglect or refuse to deliver to their successors in office, all records and books belonging severally to their offices, shall be subject to a fine not exceeding fifty dollars.

In case of
judgment
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.

In what cases
justices of
peace shall have
jurisdiction

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.

Sec. 76. No school district officer mentioned in this act shall receive any compensation for his services, out of the Territorial or county school fund. But a regularly convened district school meeting, may by vote, allow the district board such compensation as they shall deem proper;

Compensation
of school
officers

Provided, The amount so allowed does not exceed two per cent. of the money collected by said board for school purposes.

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.

Penalty for
district officers
refusing to
qualify

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.

Fines and
Penalties how
collected

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.

In case of school
money being
donated for
school purposes

FORMS

Sec. 80. The form of notice of the first school district meeting may be substantially as follows:

First school
district meeting

It—— a house holder, in school district number—:

The county commissioners have formed school district number——, in the county of——, of which the following is a

description———, and you are hereby directed to post this notice in at least five public places in the said district,, notifying the voters of said district to attend 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——186—.

County Sup't Pub. Instruction.

Notice of annual district meeting

Sec. 81. The form of notice for annual district meeting may be as follows :

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.

Form of order on district treasurer

Sec. 82. The form of order on district treasurer may be as follows :

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.

Form of bond on district treasurer

Sec. 83. The form of bond of district treasurer may read as follows :

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, for the payment of which we bind ourselves severally and jointly, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this——day of——A. D., 186—.

The condition of the above obligation is such, that if said ——, treasurer as aforesaid, shall faithfully discharge the duties of his office as treasurer of school district number——, county —— as prescribed by law, then this obligation to be void; otherwise to remain in full force.

Signed, sealed and delivered in presence of

_____ [seal.]

_____ [seal.]

Sec. 84. The form of warrant for the collection of district tax may be as follows :

Form of warrant for collection of district tax

To——, treasurer of school district number——, county of——.

This is to authorize and require you to demand, within twenty days from the date of this warrant, of every person or corporation named in the annexed duplicate of school tax of said district, the sum wherewith such person or corporation stands charged, and if any such tax be not paid within thirty days from the date of this warrant, you are required to proceed to collect the same as authorized by law, by distress and sale of property, and make due return according to law.

Given under my hand, this —— day of —— A. D., 186—.

_____,
District Clerk.

Sec. 85. Vouchers may be in the following form :

Vouchers

Received ——, 186—, of ——, treasurer of school district number ——, county of ——, —— dollars for services rendered as teacher in the said district, for the term of —— months.

_____,
Teacher.

Sec. 86. The form of contract between district and teacher may read as follows :

Form of contract between district and teacher

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.

Form of annual
report of dis-
trict treasurer

Sec. 87. The form of annual report of district treasurer may be substantially as follows:

I _____, treasurer of school district number _____, county of _____, submit the following report of all moneys received and disbursed by me since the last annual meeting:

Amount received from my predecessor,	\$ _____
Amount received from county treasurer,	\$ _____
Amount raised by tax in the district and collected,	\$ _____
Total amount received,	\$ _____
Paid out, on order of district clerk (date of order),	\$ _____
On order of district clerk _____,	\$ _____
Balance on hand,	\$ _____

This _____ day of _____, A. D. 186—.

_____,
Treasurer.

Form of report
of district clerk
to county
superintendent

Sec. 88. The form of report of district clerk to the county superintendent of public instruction 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 teachers' wages, \$——
 Amount raised by district tax for building school
 house, \$——
 Amount raised by district tax for furnishing school
 house, \$——
 Amount paid for teachers' wages, \$——
 Amount expended for building school house, \$——
 Amount expended for furnishing school house, \$——
 This ——— day of ———, 186—.

—————,
District Clerk.

To which may be added a copy of teachers' report, giving the names, age and total number of male and female pupils, number of days taught, the kind of text books used, the number of scholars in each branch of study, and the greatest number of miles to be traveled by scholars living on the borders of the district.

Sec. 89. A school teachers' certificate may be in the following form: Teachers certificate

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.

Sec. 90. Form of deed of school property may be as follows: Deed of school property

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, parties of the second

part, witnesseth, that the said parties of the first part, in consideration of ----- dollars, to them duly paid before the delivery 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 property,) with the appurtenances and all the estate, title, and interest of the said parties of the first part, therein, and the said parties of the first part do hereby covenant and agree with the said parties of the second part, that at the time of the delivery hereof the said parties of the first part were the lawful owners of the premises above granted, and seized thereof, in fee simple absolute and they will warrant and defend the above granted premises, in the peaceful possession of the said parties of the second part, and their successors and assigns forever.

Sealed and delivered in presence of

-----,
-----,

-----, [SEAL.]
-----, [SEAL.]

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--.

Certain acts
repealed

Sec. 91. Chapter 10, of the session laws of 1866-7, and all acts and parts of acts heretofore passed in relation to common schools are hereby repealed.

Proviso

Provided, however, That such repeal shall not affect any rights or liabilities that have accrued under and by virtue of said act or acts; and

Provided, further, That all officers, that have been duly elected and qualified in accordance with the provisions of said

act, shall continue to hold and discharge the duties of their respective offices until their successors are duly elected and qualified.

Sec. 92. This act shall take effect from and after its passage and approval. When to take effect

Approved, January 3, 1838.

SUFFRAGE.

CHAPTER XXXIII.

AN ACT TO STRIKE THE WORD "WHITE" OUT OF THE ELECTION LAWS OF DAKOTA TERRITORY.

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

Section 1. That the word "white" wherever it occurs in the election laws of this Territory, relating to the qualification of voters, be, Election law amended and the same is hereby stricken out of said election laws;

Provided, No person shall have the right to vote by the reason of Proviso the passage of this act, except such persons as are declared to be citizens of the United States by act of Congress of April 9, 1855.

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

Approved December 39, 1867.

SUPREME COURT.

CHAPTER XXXIV.

AN ACT TO PROVIDE FOR THE MEETING OF THE SUPREME COURT.

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

When court to meet

Section 1. That the supreme court shall be held at Yankton annually on the second Tuesday in January, of each year.

When to take effect

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

Approved January 10, 1868.

TAXABLE LANDS.

CHAPTER XXXV.

AN ACT DEFINING LANDS SUBJECT TO TAXATION.

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

What lands to be taxed

Section. 1. That all lands entered at the United States land office, in this Territory, at private entry, or under the homestead or pre-emption law of the United States, or under or by authority of any law of the United States, and all land acquired by any person or persons by reason of any treaty or grant whereby full and complete title to land is obtained, shall be subject to taxation on and after the perfection of such title or entry;

Provided, however, That no tax shall be levied on such lands for Provis the year in which said entry or acquisition was perfected ;

Provided, That the word entry as used in this act shall be so construed as to apply only to lands claimed by parties who have complied with all the conditions of the law, under which such title is acquired and final certificate of entry is obtained ;

Provided, That this act shall not be so construed as to interfere with the present exemption law, relating to lands exempt from taxation.

Sec. 2. This act to take effect on and after its passage and approval. When to take effect

Approved, December 24, 1867.

TOWNSHIPS.

CHAPTER XXXVI.

AN ACT TO DIVIDE THE COUNTY OF UNION INTO TOWNSHIPS AND TO PROVIDE FOR THE ELECTION OF CERTAIN OFFICERS THEREIN.

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

Section 1. That all that portion of the county south of the north line of township No. eighty-nine north, and east of range forty-nine west, lying between the Big Sioux and the Missouri rivers, shall be known as Big Sioux township and shall be entitled to one county commissioner. Big Sioux township

Sec. 2. All that portion of the county north of the south line of township No. ninety, and south of the north line of the same township, lying between the Big Sioux and the Missouri rivers, together with all of township eighty-nine north, range forty-nine west, shall be known as Jefferson township and shall be entitled to one county commissioner. Jefferson township

Elk point
township

Sec. 3. All that portion of the county in range forty-nine and fifty west, township ninety-one north, lying between the Big Sioux and the Missouri rivers, shall be known as Elk Point township, and shall be entitled to one county commissioner.

Brule township

Sec. 4. That all that portion of the county in range forty-nine and fifty west, township ninety-two north, lying between the Big Sioux and Missouri rivers, shall be known as Brule township and shall be entitled to one county commissioner.

Sioux valley
township

Sec. 5. All that portion of the county north of the south line of township No. ninety-three north, shall be known as Sioux Valley township, and shall be entitled to one county commissioner.

County commis-
sioners

Sec. 6. At the next annual election in said county, there shall be elected one county commissioner in each civil township by the qualified electors thereof who shall hold their offices for two years and until their successors are elected and qualified, and when so elected and qualified shall supercede the present incumbents in office, and shall proceed in the transaction of business as now provided by law.

Justice of
peace, constables &c

Sec. 7. And at said annual election there shall be elected two justices of the peace and two constables in each civil township by the qualified electors thereof, who shall hold their offices for two years or until their successors are elected and qualified.

Road supervi-
sors

Sec. 8. And there shall be elected at said election in each civil township in said county, by the qualified electors thereof, one supervisor of roads for each road district in the township, who shall hold their office for one year and until their successors are elected and qualified.

Assessors

Sec. 9. And at said annual election there shall be elected in each civil township in said county, by the qualified electors, one township assessor, who shall hold his office for two years or until his successor is elected and qualified.

Penalty on
failure of
officers to
qualify

Sec. 10. If any of the officers herein provided for, shall fail or neglect to qualify after having been duly elected, they shall be fined the sum of ten dollars, to be recovered in an action brought before a justice of the peace of the township where the party resides; complaint may be made by any citizen of the township, and the fine when collected shall go to the school fund of the county.

Duties of the
assessor

Sec. 11. Each township assessor shall be required to assess all the property of his township, both real and personal, and to take the census of his township, and to proceed in the transaction of all business pertaining to his office in all respects as now required by

law, and he shall be entitled to receive such compensation for his services as the sheriff has heretofore had for rendering like services.

Sec. 12. If the assessor of any township shall fail or neglect to perform any of the duties required of him by law, at the time and in the manner specified, he shall be fined a sum not exceeding three hundred nor less than twenty dollars, to be recovered as provided in chapter twenty-four, section twenty, of the laws of 1865-66, and the fine when collected, to go to the common school fund.

Penalty for neglect of the assessor to discharge his duties

Sec. 13. This act shall not be so construed as to interfere with the duties of any county officer;

How this act shall be construed

Provided, however, That the sheriff shall no longer be assessor, but the same shall be done by the assessors of the several townships, but in all other respects the duties of the sheriff shall be as heretofore provided by law.

Sec. 14. *And be it further provided,* That nothing in this act shall be so construed as to prevent any person who was elected at the October election of 1867, to any of the offices herein mentioned, from serving out their full term of office.

Same

Sec. 15. Each and every assessor of the several townships, shall on the first Monday in January, or within one week thereafter, appear before the clerk of the board of county commissioners and take the oath of office and give bond with one or more sufficient sureties conditioned that they will perform all the duties of assessors of their several townships as provided by law. The bond of each assessor shall be the sum of three hundred dollars.

Assessor to take oath and give bond

Sec. 16. The county commissioners are hereby authorized to fill all vacancies which may occur in any of the township offices by appointing some suitable person, resident of the township wherein such vacancy occurs, and the person or persons so appointed shall take the oath of office, and give such bonds as provided in section fifteen of this act.

County commissioners to fill vacancies &c

Sec. 17. The act entitled an act to organize a system of township government in Union county, is hereby repealed.

Act repealed

Sec. 18. This act to take effect on and after its passage and approval by the governor.

When to take effect

Approved, January 4, 1868.

TOWNSITES.

CHAPTER XXXVII:

AN ACT IN RELATION TO TOWNSITES ENTERED AS SUCH UNDER
THE ACT OF CONGRESS, APPROVED MARCH 2, 1867.

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

Plotting of
townsite &c

Section 1. That whenever any tract of land shall have been settled upon and entered as a Townsite under the provisions of the act of Congress, approved March 2, 1867, it shall be the duty of the person so entering the same, or his successor in office, to immediately cause the same to be plotted into lots with streets and alleys as near as may be in conformity with the municipal improvements already made on said tract of land and to cause said plot to be duly recorded in the office of the register of deeds of the county in which said tract of land may be situated, and to cause a census to be made of the occupants of said tract by some competent person, which census after its correctness shall be proven by the affidavit of the person making the same endorsed thereon, shall be filed with the said register of deeds. In case of any error in making said census, said person so entering or his successor in office may correct the same by adding to or striking therefrom the names of such persons as are or are not, as the case may be, occupants of said tract of land.

Meeting of
occupants

Sec. 2. As soon as said census shall be completed, said person entering said land or his successor in office shall call a meeting of the occupants of said tract of land so entered as aforesaid, to be held at some convenient place on said land, by giving at least ten days notice thereof by publication in some newspaper published in the county in which the said land may be situated if there be one, and by posting notices in at least three of the most public places upon said tract of land, of the time and place and the object of such meeting as provided hereafter.

Sec. 3. At the meeting of the occupants called as before provided; the person so entering said land or his successor in office, shall preside, and there shall be from among the attendants a secretary appointed by a majority attending, whose duty it shall be to keep a record of the proceedings of such meeting and file the same with the register of deeds of the county. There shall be selected by the persons present at such meeting, three disinterested persons not occupants of the land in question, to act as commissioners, and whose duties shall be as hereinafter provided, and such persons shall be notified by the secretary of such meeting of their selection ;

Proceedings of
meeting &c

Provided, however, That in case of a failure by said meeting to select such commissioners, or in case a selection shall be made and the persons so selected fail or refuse to act, then in that case the person so entering or his successor in office shall make such selection of either or all of them.

Sec. 4. After said commissioners shall be so selected, they shall have power to determine the respective interest of the several claimants in and to said tract of land so entered as a townsite, and for that purpose shall meet together at some convenient place on said tract of land, first giving at least ten days notice of the time and place and object of such meeting in the manner prescribed for the meeting of the occupants. Before entering upon the discharge of their duties on the premises, they shall each be duly sworn to honestly and faithfully determine the respective interest of the several claimants to the land so entered as a townsite according to the evidence that may be presented to them, and they shall immediately proceed to hear any and all testimony that may be offered by the respective claimants in support of their claims, and upon such evidence determine the rights of such claimants as to any and what portion of said land so entered as a townsite, awarding to each claimant only such part of said lands as he or she may have under improvement, leaving the vacant lots thereon to be disposed of as hereinafter provided.

Commissioners
to investigate
rights of
claimants

Sec. 5. The decision of said commissioners shall be made in writing and shall be by them filed in the office of the register of deeds of said county.

Their decision
to be in writing

Sec. 6. In case any party in interest shall feel aggrieved by the decision of said commissioners, an appeal may be taken from such decision in the same manner and under the same rule and regulations as to time, filing of bonds, &c , as appeals are taken from judgments of justices of the peace, and for that purpose the register of deeds is required to file with the clerk of the district court a certified copy of

Aggrieved party
may take an
appeal

so much of such decision as may be appealed from, and in such district court issues shall be made up and tried the same as though the action originated in said court and the said judgment of the court shall determine the respective interests of the parties to the action in the said lands so entered as a townsite.

Commissioners
to make deed

Sec. 7. After such decision of said commissioners shall be filed in the register of deeds office, the person so entering said lands or his successor in office shall immediately execute and deliver to the parties who shall be so determined to be the occupant of said land good and sufficient deeds for so much of said lands as said commissioners shall so determine they are entitled to receive, except in those cases where appeals have been taken to the district court and in those cases the deeds shall be made according to the judgment of the court.

Appeal may be
taken to su-
preme court

Sec. 8. Appeals may be taken from the judgment of the district court to the supreme court, as in other cases.

Powers of
commissioners

Sec. 9. In hearing and determining the respective rights of the claimants as above provided, the said commissioners shall have all the powers pertaining to the courts of justice in compelling the attendance of witnesses, production of testimony, punishing for contempt, &c., and for that purpose shall have power to issue summons and other process, directed to the sheriff of the county, whose duty it shall be to execute said process.

Who to make
estimate of
expenses

Sec. 10. The person so entering said land or his successor in office shall after the decision of the commissioners shall be filed with the register of deeds, make a calculation of the expenses attendant upon the entry and division of said land and for that purpose is authorized to audit all accounts that may be presented and fix the proportion thereof which each occupant should pay according to his or her interest in said tract, and upon the delivery of the deed require a payment of such proportionate amount together with two dollars each for expenses of making and executing the deed including the cost of the stamps.

In case of
vacant lots

Sec. 11. If there shall remain any lots or parcels of said tract not claimed or awarded to claimants as before provided, the title to the same shall remain in the person so entering or his successor in office until said town shall be incorporated, when the same shall be at once transferred to the corporate authorities by their corporate name.

Same

Sec. 12. When said remaining lots shall be so transferred or in case the entry shall be made by the corporate authorities of a town, said corporate authorities shall have power by a vote of the common council, trustees or other corporate authority as may be designated

by law, to lay out a reasonable portion thereof, into public squares, and from time to time to sell the lots as to them shall seem best for the interests of the town, and to appropriate the proceeds thereof in building or repairing public buildings, in grading, paving, macadamizing and otherwise repairing and improving the streets and alleys and levees of said town, upon said tract so entered as aforesaid.

Sec. 13. In case a sale shall be made by said corporate authorities, at least thirty days notice of such sale shall be given by publication in some newspaper printed in the county, if there be one, and by posting notices in at least four of the most public places in said town, giving the time, place and the terms of such sale, and such sale shall be at public auction to the highest bidder and may be as such corporate authorities shall determine, either for cash or for part cash, and part on credit, if credit be given such credit shall not exceed one year.

Sale of vacant lots

Sec. 14. The decision of any two of said commissioners shall be considered and held to be the decision of the commissioners as before provided.

What to constitute decision of commissioners

Sec. 15. The commissioners shall each be entitled to receive for their services as such, the sum of three dollars per day for each and every day they shall be necessarily engaged in the discharge of their duties, to be audited and paid by the person entering said land or his successor in office, out of the funds collected from the claimants as heretofore provided.

Compensation of commissioners

Sec. 16. The judge of probate of each county shall be deemed and held to be the judge of the county court in and for their respective counties for all the purposes required in the act of Congress entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867.

Judge of probate to be considered county judge

Sec. 17. The acts and doings of Alpheus G. Fuller, probate judge of Yankton county, Dakota Territory, relating or pertaining to the plotting, disposition or conveyance by him, of any and all lots of land in the town of Yankton, Territory of Dakota, situated and being upon that tract of land known and designated as lot No. four, (4) in section No. eighteen (18), township No. ninety-three (93), range fifty five (55), the same having been entered as a townsite under the provisions of said act of Congress, approved March 2, 1867, are hereby ratified, confirmed, legalized, and rendered valid and binding in law and equity;

Acts legalized

Provided, however, That nothing in this section contained shall be held to legalize any acts or doings of said Fuller, in the disposition or conveyance of any lot or lots where there was or is any person

claiming any lot or lots adversely to the party or parties to whom he may have conveyed;

Provided, further, That said adverse claimants shall within thirty days from the taking effect of this act, make known their claims to the said lot or lots, by filing notice thereof in the office of the register of deeds of Yankton county and serving a copy thereof upon said Fuller or his successor in office, and the person to whom he may have conveyed, and in case such notice shall be filed and served as aforesaid, or in case there are other instances where no title has yet been made, the successor of said Fuller shall upon receiving such notice immediately proceed to call a meeting of the occupants of said land, and the same proceedings shall thereafter be had so far as the disputed claims and those where no title has been made are concerned; such proceedings to commence with the calling of such meeting.

When to take
effect

Sec. 18. This act shall take effect and be in force from and after its passage and approval.

Approved, December 18, 1867.

PRIVATE LAWS.

CHANGE OF NAME.

CHAPTER I.

AN ACT TO CHANGE THE NAME OF MILO K. LINEDOLPH.

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

Section 1. That the name of Milo K. Linedolph, shall here-
after be Milo Mills, by which name he shall be known in all
intents and purposes. Change of name

Sec. 2. This act shall take effect from and after its passage
and approval. When to take effect

Approved, January 2, 1868.

CHAPTER II.

AN ACT TO CHANGE THE NAME OF GUNDER GUNDERSON.

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

Section 1. That the name of Gunder Gunderson, shall here-
after be Julius Gunderson, by which name he shall be called
and known in all legal intents and purposes. Change of name

When to take
effect

Sec. 2. This act shall take effect from and after its passage and approval.

Approved, December 27, 1867.

CITIZENSHIP.

CHAPTER III.

AN ACT TO CONFER THE RIGHTS OF CITIZENSHIP ON JOHN, CHARLES AND ALEXANDER CORDIER, MINOR CHILDREN OF J. VICTOR CORDIER.

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

When to become
citizen

Section 1. That John Cordier, aged seventeen years; Charles Cordier, aged fifteen years; and Alexander Cordier, aged eight years, minor children of J. Victor Cordier be, and are hereby created citizens of this Territory, on their respectively arriving at the age of twenty one years, with all the rights and privileges of other citizens of this Territory.

When to take
effect

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

Approved, December 27, 1867.

CHAPTER IV.

AN ACT CONFERRING THE RIGHTS OF CITIZENSHIP UPON CERTAIN HALFBREEDS IN DAKOTA TERRITORY.

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

Section 1. That Charles Bruguier, Joseph Bruguier and Eugene Bruguier, residents of the Territory of Dakota, be, and are hereby declared citizens of said Territory, and shall be entitled to all the rights and privileges of citizens thereof. Right of citizenship conferred

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

Approved, January 4, 1868.

YANKTON COUNTY

CHAPTER V.

AN ACT TO LEGALIZE THE ASSESSMENT AND COLLECTION OF THE TAXES OF YANKTON COUNTY FOR THE YEAR 1867, AND FOR OTHER PURPOSES.

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

Section 1. That the assessment of taxes and the revision of the same for the year 1867, by the county commissioners of Yankton county be, and the same is hereby legalized notwithstanding any irregularities that may have been made in the assessment and revision of the same. Tax legalized

Time for com-
pletion ex-
tended

Sec. 2. That the time of the final completion of the same be, and is hereby extended to the first day of March, 1868, and all irregularities in the collection of the taxes for Yankton county for the year 1867, be, and is hereby legalized, and that the time for the sale of lands and real estate as provided by the 34th section of the tax laws of 1866-67, be, and is hereby fixed on the first Monday of February, 1868, for the county of Yankton, for the delinquent taxes of the year 1867.

When to take
effect

Sec. 3. This act shall take effect and be in force from and after the passage of this act and approval of the same.

Approved, January 6, 1868.

MEMORIALS AND RESOLUTIONS.

ARMORY.

NUMBER 1.

JOINT RESOLUTION.

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

[Sec. 1.] That the Territorial auditor and treasurer, be, and are hereby authorized to cause to be erected a suitable building in the town of Yankton, in which to store the arms and ammunition belonging to the Territory of Dakota ;

Certain officers
authorized to
build armory

Provided, however, That the cost of such building shall not exceed the sum of two hundred dollars ; and

Provided, further, That the town of Yankton, shall donate a lot to the Territory of Dakota, on which to erect such building.

Sec. 2. The Territorial auditor is hereby instructed to issue territorial warrants in payment of the cost of the building provided for in section one (1,) of this act.

Approved, January 10, 1868.

ENROLLING CLERK.

NUMBER 2.

JOINT RESOLUTION.

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

Appropriation
for enrolling
clerk

Section 1. That there be allowed H. J. Brisbine, one hundred and twenty dollars (\$120.00) for his services as enrolling clerk for the council and house of representatives.

Sec. 2. The Territorial auditor is hereby instructed to issue a territorial warrant to the said H. J. Brisbine, for the amount above stated in this resolution.

Approved, January 10, 1863.

CAPITOL BUILDING.

NUMBER 3.

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:*

Your memorialists, the Legislative Assembly of the Territory of Dakota, again respectfully ask that an appropriation be

made by your honorable bodies for the erection of a capitol building at the seat of government of said Territory, and urge in support of this memorial;

Asking an appropriation to erect a capital building

That the building now used and occupied by the Legislative Assembly, is wholly unsuitable and unfit for such a purpose.

That said building and those used by the several federal officers of this Territory, are rented of private individuals, and are wooden tenements, in all respects unsafe and liable at any time to be destroyed by fire together with their valuable contents.

That the legislative, executive and judicial records, files libraries, furniture and other valuables are at all times in consequence, liable to injury and total destruction, and we regard their preservation of vital importance to our Territory.

That the rent now paid (which must increase as the value of property increases) for the several offices, the Executive's, the Secretary's, the Surveyor General's, the Marshal's, the U. S. Attorney's and the U. S. court room and Legislative Halls, would, in a very few years, pay the expense of erecting a suitable building for the accommodation of the various federal officers, and the Legislative Assembly, and therefore the expenditure of a sum sufficient for that purpose would be absolute economy.

Your memorialists regard this matter of great importance to Dakota; and would therefore most earnestly pray that an appropriation of not less than forty thousand dollars be made for the purpose before stated.

And your memorialists will, as in duty bound, ever pray.

CODIFICATION OF LAWS.

NUMBER 4.

A MEMORIAL TO CONGRESS ASKING FOR AN APPROPRIATION TO CODIFY THE LAWS OF DAKOTA TERRITORY.

*To the Honorable the Senate and House of Representatives of
the United States in Congress assembled.*

Asking an
appropriation
to codify the
law

Your Memorialists, the Legislative Assembly of the Territory of Dakota, would respectfully represent, that the laws of Dakota enacted since the first Legislature are in a state of confusion, so much so that it is almost impossible to tell what laws are in force and effect, and what laws are repealed or rendered void by subsequent legislation. The laws now on our statute books, are the enactments of six Legislatures. Until the laws are codified this uncertainty will continue and increase.

Your memorialists would further recommend and pray that an appropriation be made by Congress of eight thousand dollars to compensate a commission of competent persons to codify and revise the laws of this Territory, or that such an amount may be appropriated for such codification and revision as to your honorable bodies shall seem proper.

And your memorialists 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 subject of this memorial to the immediate attention of Congress, and use all honorable means to bring about the asked for appropriation.

GRANT OF LANDS.

NUMBER 5.

A MEMORIAL TO THE CONGRESS OF THE UNITED STATES, PRAYING FOR A GRANT OF LAND TO THE MINNESOTA AND MISSOURI RIVER RAILROAD COMPANY, TO AID IN THE CONSTRUCTION OF A RAILROAD FROM THE MINNESOTA STATE LINE TO THE MISSOURI RIVER, AT YANKTON, DAKOTA TERRITORY.

Your memorialists, the legislative assembly of the Territory of Dakota, would most respectfully represent, that by an act of Congress, approved July 4th, 1866, a grant of land was given to the State of Minnesota, to aid in the construction of a railroad through the southern portion of that State, terminating on the eastern boundary of this Territory.

Asking a grant of lands for railroad purposes

That said road was evidently encouraged and projected by Congress, with a view of eventually tapping the large and growing trade of the upper Missouri valley and the mineral fields of northwestern Dakota and eastern Montana, and making the coal and pine of that region tributary to the rich prairies of southern Dakota and Minnesota ;

That said road is rapidly approaching completion, and unless it can be continued to the Missouri river at an early day, the evident object of the enterprise will be retarded.

Again, the continuation of the said road to the Missouri river, would open to rapid settlement and cultivation, one of the most fertile sections of the great west, and therefore add greatly to the revenue of the country ;

That while other Territories and States have been treated with the greatest liberality by Congress, in the way of aid in building railroads through their borders, this Territory has never received any practical benefit from this spirit of liberality so often exhibited by Congress.

Your memorialists would further represent, that by an act of the legislative assembly of the Territory of Dakota, approved January 11th, 1867, a charter was granted to the Minnesota and Missouri

Asking a grant
of lands for rail-
road purposes

River Railroad Company, to construct a railroad from the point of intersection of the southern Minnesota railroad with the eastern boundary of this Territory, to the town of Yaukton, on the Missouri river. Believing as we do, that a grant of land to aid in the construction of such a road would be of absolute general benefit, in an early development of a rich agricultural country, that without it will remain undeveloped for many years ;

Your memorialists respectfully but earnestly pray that your honorable bodies grant every alternate section of land to the amount of not less than five miles on each side of the line of such road, to aid in the construction thereof, and that such grant be made to said Minnesota and Missouri River Railroad Company, with the proper restrictions, limitations and forfeitures, upon such company furnishing sufficient guarantees for an early completion of the road, or upon their failure so to do, to some other company that will furnish such guarantee.

And your memorialists will ever pray.

NUMBER 6.

A MEMORIAL TO THE CONGRESS OF THE UNITED STATES,
PRAYING FOR A GRANT OF LAND TO AID IN THE CONSTRUCTION
OF A RAILROAD FROM SIOUX CITY, IOWA, TO THE MOUTH OF
THE BIG SHEYENNE RIVER, IN DAKOTA TERRITORY.

Your Memorialists, the Legislative Assembly of the Territory
of Dakota, would most respectfully represent :

Asking a grant
of lands for rail-
road purposes

That Congress has heretofore given munificent grants of public lands to the State of Iowa to aid in the construction of railroads in that State, two of which roads are projected towards and near to the southeastern boundary of this Territory, one of which is now very nearly completed. It seems to have been the evident intention of Congress in the encouragement and projection of these roads to assist in developing the natural wealth of the great Missouri Valley. That even a temporary suspension of the enterprise thus projected would greatly retard the growth and prosperity of a large section of country, rich in

agricultural and mineral wealth. That while liberal grants of land have been given to the States of Minnesota and Iowa to aid in building railroads to the boundary of this Territory, no practical aid has as yet been given for the building of railroads within our boundaries, and regarding the matter of absolute general benefit tending to greatly increase the revenue of the country, your memorialists respectfully but earnestly pray your honorable bodies to pass an act, granting lands to the extent of every alternate section for five miles on each side of the road, to aid in the construction of a railroad from Sioux City, Iowa, *via* the Big Sioux bridge crossing, Elk Point, Vermillion, Yankton and Bon Homme, up the Missouri Valley to the mouth of the Big Sheyenne river in Dakota Territory, and if consistent with the rule adopted by Congress, to place said grant under the control of the Territory with the proper limitations and restrictions, or if not to give it direct to some properly constituted and responsible company that will furnish sufficient guarantees for the completion of said road, *via* the points above named to Yankton, the Capitol of Dakota Territory, a distance of sixty-two miles, within two years from the reception of the grant, and to the point of termination within a reasonable time thereafter.

Asking a grant
of lands for rail-
road purposes

And your memorialists will ever pray.

INDIANS.

NUMBER 7.

MEMORIAL AND JOINT RESOLUTION OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF DAKOTA RELATIVE TO INDIAN AFFAIRS IN DAKOTA TERRITORY.

Your memorialists the Legislature of the Territory of Dako-

Relative to
Indian affairs

ta believing that the vital interests of our Territory as also the entire upper Missouri valley, depends in a great measure upon the disposition that may be made of the various Indian tribes within our borders, most respectfully represent to your Hon. bodies their views upon this important subject.

For the better enforcement of the laws of Congress concerning the trade and intercourse with the various Indian tribes, as also for the more convenient and economical management of the Indians in that portion of Dakota, west of the State of Nebraska, and south of the Territory of Montana, the same being almost wholly unconnected and having no interests in common with the other settled portion of the Territory, should be at once organized into a new Territory.

The present population of that portion of Dakota is between five and ten thousand, and rapidly increasing, a portion of it being very rich in mineral resources.

If the system of small reservations is to be abandoned, and the Indians consolidated and given a Territory in Dakota for their exclusive use and benefit, that territory should be located north of the forty-fifth parallel of north latitude. This section of country is capable of containing and supporting all the Indians in Dakota.

The soil of the valleys of all the streams as well as much of the upland prairies is rich, and well adapted to the growing of wheat, rye, barley, oats, peas, beans and the varieties of Indian corn. In support of this statement your memorialists quote from the report of the explorations of Lieut. G. K. Warren in 1855, in which he says: "Three tribes of Indians on the Missouri are somewhat of an agricultural people. The Minetares at Fort Berthold raised in 1854, ten thousand bushels of corn, and beans and pumpkins in proportion. The Mandans, sixty miles below, one thousand five hundred bushels, and the Aricaires at Fort Clark four thousand bushels."

The history of the last ten years intercourse with the Indians of the upper Missouri, clearly establishes the fact that as good crops can be produced by the Indians north of latitude forty-five as south of this line. The game country of the northwest lies north of this line, and east and west of the Missouri river; countless herds of Buffalo, Antelope, Elk, Deer, pasture

throughout the year in this portion of Dakota, indicating it to be equally as well adapted to domestic stock growing, and since the Indians will rely partly for years to come for support in the chase, and should be gradually brought from the chase to a pastoral life and then to agricultural pursuits, the portion of Dakota referred to is admirably adapted for an Indian territory.

Relative to
Indian affairs

Your Memorialists respectfully but most earnestly protest against the proposed plan of including in the Indian territory to be created for the exclusive benefit and habitation of the Indians, that portion of Dakota known as the Black Hills; not only Dakota but northern Nebraska and Iowa, all have material interests antagonistical to such an act. The entire valley of the upper Missouri must have pine timber, known to exist in the Black Hills of Dakota, in order to settle the vast prairies of the Northwest.

The section of country immediately south of latitude forty-five is known to be very rich in minerals, such as gold, silver, iron and coal. Gold has been discovered in largely paying quantities in the Black Hills, Snow and Big Horn mountains, and in all the heads of streams flowing from the mountains. While this country is indispensable to the future growth and prosperity of the entire Northwest it is of no particular value to the Indians. Your memorialists believe that the difficulties with the Indians which have cost the country so much treasure and precious blood is owing mainly to the want of a simplification of the manner of dealing with this peculiar people and the promiscuous manner in which agents have been appointed to preside over them.

It is not unfrequent that a man is selected as agent who never saw an Indian and knows nothing of their peculiarity of character and disposition, besides it often happens that such agents are men destitute of every principle of honesty, morality, men of broken fortunes, sent out among the Indians not for the benefit of the Indians but to renew their own fortunes.

These inexperienced agents barely have sufficient time to gain the knowledge necessary to a satisfactory and safe administration of his affairs before he is displaced and some new man sent to the Indians to commence educating, not the Indians, but himself.

Relative to
Indian affairs

Your memorialists believe that the surest remedy for all evils would be the transfer of the general management of Indian affairs to the states and territories within the limits of which the tribes or bands may respectively reside. Delays in the transaction of Indian business, now so frequently fatal to many undertakings would thus be avoided, while the management of their affairs would be conducted by those familiar with the peculiarities and requirements of the identical Indians with whom they deal. This is not and cannot be so correctly understood by those managing their affairs, situated a thousand miles away from the field of operation.

Far more could be done for the Indians under such an arrangement with the same amount of money than under the present system. The Indian goods when purchased by the Indian Departments at Washington, generally cost about one-third more when delivered to the Indians than the same goods are selling at retail at such places. Firmly believing this to be the best way to a lasting settlement of this question, your memorialists most earnestly implore Congress to cut the gordian knot of Indian difficulties by at once turning the management of the Indians over to the local state and territorial governments and thereby curtail largely the expenses of the general government and materially enhance the welfare of the Indian.

Your memorialists further believe that all moneys appropriated by Congress for the benefit of the Indian should be wholly expended by their local agents. These officers know better than any one who never comes in contact with them, can, the kind, quality and quantity of articles which will best please and aid the Indians under his charge; they would then know when, how and where, they are to receive their goods and thus be made to feel more directly the power their agent exercises over all their affairs and would consequently strive to satisfy and obey him.

The Indians should be made to feel that this power to their benefit or injury rests in the hands of the person who daily comes in contact with them, and overlooks all their actions and affairs. Under the present system in this Territory the Indians rarely receive their goods at the proper time. For two seasons last the steamboats with Indian annuity goods for the upper Mis-

souri have been sunk, thereby causing much disappointment and loss to Indians besides making them more troublesome, and this all results from the system of the Indian Departments at Washington, not purchasing their goods at a proper time, and in shipping them on worthless boats. Relative to indian affairs

Your memorialists would further represent that no good would result from the transfer of the management of Indian affairs to the War Department, that it would be equally as expensive as the present system, besides the Indians are bitterly opposed to such transfer. In the opinion of your memorialists the men of the Army are not the men to lead the Indians from a savage life to a pastoral, agricultural and civilized life. But were they placed under the fostering care of the different States and Territories, the States and Territories could and would at once take measures to have them located on reservations, and ways and means provided for their education and christianization.

The better portion of the people together with the churches would at once have their sympathies enlisted in their behalf, while under the present system there is no encouragement for any one to attempt anything to ameliorate their present condition.

And as in duty bound your memorialists will ever pray.

Resolved, That a copy of this memorial be sent to our Delegate in Congress, to the Speaker of the House of Representatives, President of the Senate, Hon. Wm. Windom and John B. Henderson.

NUMBER 8.

A MEMORIAL TO THE PRESIDENT OF THE UNITED STATES
RELATIVE TO THE REMOVAL OF THE PEMBINA BAND OF CHIP-
PEWA INDIANS.

To his Excellency, the President of the United States:

Your Memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully represent, the Pembina

Relative to the
removal of cer-
tain indians

na band of the Chippewa Indians are still upon the lands on the Dakota side of the Red River of the North, which was ceded by the said Pembina band and the Red Lake band of Chippewa Indians in their treaty with the United States in 1863. And that the occupation of said land by said Pembina band of Chippewa Indians, is a great nuisance to the settlements on the Pembina river, and also retards the establishment and growth of new settlements on the ceded land.

Your memorialists therefore pray that said last named band of Indians be removed from said ceded land and settled upon a reservation, according to the provisions of said treaty.

And your memorialists, as in duty bound, will ever pray.

LAND OFFICE

NUMBER 9.

A MEMORIAL TO CONGRESS RELATIVE TO A U. S. LAND OFFICE IN THE RED RIVER VALLEY.

To the Honorable, the Senate and House of Representatives of the United States in Congress assembled:

Relative to land
office in the
Red River
valley

Your Memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully represent;

1, That that portion of Dakota Territory, known as the "Red River Valley," bounded on the north by the British Possessions, and on the east by the Red River of the north, and which is traversed by the Pembina, Park, Salt, Turtle, Goose, Elm, Sheyenne and Wild Rice rivers, and their tributaries, contains a population of over two thousand citizens; which at this time is chiefly confined to the Pembina and Red rivers, near our northern boundary. And as the streams above named are all well timbered with oak, ash, elm, and lynn, and

water a valley over two hundred miles long by from twenty-five to fifty miles wide; unsurpassed as an agricultural and grazing country, new settlements are being established, which by the tide of immigration must within a few years spread over that entire country, extending along the Red River of the North, from Fort Abercrombie to the British line.

Relative to land office in the Red River valley

2. That many of the citizens of Pembina county are entitled each, to one hundred and sixty acres of land, as a grant under the treaty of 1863 and 1864, between the United States and the Red Lake and Pembina bands of Chippewa Indians.

3. That the Pembina settlements are by a direct line over four hundred miles from the only U. S. Land Office within this Territory. And as there is no communication by a direct route over the unsettled country, (much of which is yet Indian territory,) between the said settlements and the Land Office at Vermillion, on the Missouri river; in order to secure title to their grants, pre-emptions or homesteads, the people of said settlements will have to travel through a great portion of the States of Minnesota and Iowa, as well as this Territory, a distance of over one thousand miles, to reach the Vermillion Land Office; and at an expense equal, or greater than the value of their claims, at one dollar and twenty-five cents per acre. For the reasons briefly above stated, your memorialists most respectfully pray for the establishment of a Land District, to be bounded as follows:

Commencing at the intersection of Parallel of Latitude 49° north, with the Red River of the north; thence up the center of the main channel of said river to its intersection with the line between townships 130 and 131 north of the base line; thence west on said line to its intersection with Parallel of Longitude 27° west from Washington; thence north on said Parallel of Longitude (27° .) to its intersection with the Parallel of latitude 49° north; thence east on said parallel of latitude (49° .) to the place of beginning.

And your memorialists further pray, that there may be a Land Office, with a register and receiver for said district, located at a suitable point in the said Pembina settlements.

And your memorialists, as in duty bound, will ever pray.

MAILS.

NUMBER 10.

A MEMORIAL TO CONGRESS PRAYING FOR THE ESTABLISHMENT
OF A MAIL ROUTE FROM FORT TOTTEN TO ST. JOSEPH, D. T.

*To the Honorable, the Senate and House of Representatives of the
United States in Congress assembled.*

For a mail route
from Fort Totten
to St. Joseph

Your memorialists, the legislative assembly of the Territory of Dakota, would most respectfully represent, that since the erection of Ft. Totten, during the last summer, a thriving settlement has been growing up near Devil's Lake, in this Territory. The people of this settlement, as well as those of the Fort, are without any direct mail communication with the old settlements on the Pembina river. In order to send a letter by mail from Fort Totten to the Pembina settlements, it is first carried nearly 200 miles to Fort Abercrombie, on the Red river, thence down the Red river 200 miles to Pembina, making a distance of nearly 400 miles, when in fact it is less than 100 miles, by a good traveled route from Fort Totten, to St. Joseph, on the Pembina river.

Your memorialists do therefore, most respectfully ask for the establishment of a mail route from Fort Totten, or Devil's Lake to St. Joseph, on the Pembina river, there to connect with the mail now carried between that place and the town of Pembina, on the Red River of the North.

And your memorialists as in duty bound, will ever pray.

NUMBER 11.

A MEMORIAL TO THE HON. ALEXANDER RANDALL, POST MASTER GENERAL, U. S., PRAYING THAT THE MAIL SERVICE ON ROUTE NO. 13801, FROM SIOUX CITY, IOWA, TO FORT RANDALL, DAKOTA TERRITORY, BE INCREASED.

Hon. Sir:

Your memorialists, the legislative assembly of Dakota Territory, would most respectfully represent, that said legislative body, at its sixth annual session, did memorialize the Post Master General U. S., for an increase of mail service, from three to six times a week, on route No. 13801, from Sioux City, Iowa, to Fort Randall, D. T., at the same time urging that such an increase of mail service was absolutely necessary for the public good.

Although the prayer of that memorial was not regarded, we are compelled to again lay this matter before the post office department, and urge such an increase of mail service (from three to six times a week) at once, as a matter of absolute necessity, in order to meet the large and fast increasing demands of the Missouri valley.

Said post route runs from Sioux city, Iowa, (which is supplied with a daily mail) through Yankton, the capital of Dakota Territory, as well as many other thriving towns, to Fort Randall in this Territory, from which place are sent the mails for all the military posts and Indian agencies on the upper Missouri.

A tri-weekly mail has ceased to be sufficient to supply the postal necessities of this country, and your memorialists would therefore request that service be increased to six times a week, as above mentioned.

And as in duty bound, your memorialists will ever pray.

 NUMBER 12.

A MEMORIAL TO CONGRESS PRAYING FOR THE ESTABLISHMENT OF A MAIL ROUTE, FROM FORT RANDALL TO FORT RICE, IN DAKOTA TERRITORY

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

For a mail route
from Fort
Randall to Fort
Rice

Dakota, would most respectfully represent, that Fort Randall is the highest point on the Missouri river to which a mail route has as yet been established.

That the several settlements, military posts, and Indian agencies on the Missouri river above Fort Randall, have to procure their mail matter from that place at a great expense and inconvenience.

That the absence of mail communication between the points above named (Ports Randall and Rice) the public service, civil and military, suffers great inconvenience, and at times, serious loss.

And that the route herein proposed is direct and practicable, having for several years been a well established thoroughfare.

Your memorialists therefore pray that a mail route be established from Fort Randall to Fort Rice, on the Missouri river, and that service, not less than once per week, be ordered thereupon.

And your memorialists, as in duty bound, will ever pray.

NUMBER 13.

A MEMORIAL TO THE POST MASTER GENERAL PRAYING FOR THE ESTABLISHMENT OF A MAIL ROUTE, FROM FORT BRIDGER, IN UTAH TERRITORY, TO SOUTH PASS CITY, DAKOTA TERRITORY.

For a mail route
from Fort bridg-
er to South pass
city

Your memorialists, the legislative assembly of the Territory of Dakota respectfully represent, that there is now a large and rapidly increasing population, at, and in the vicinity of South Pass city, entirely without mail communication except by private conveyance.

That the extreme richness of the gold mines, on being developed in that vicinity and on the Sweetwater, will, beyond any doubt induce a very heavy emigration to that section of this Territory the coming season. It seems to your memorialists only reasonable and just, that those people should be, at as early a day as possible, supplied with mail facilities; therefore your memorialists ask that a mail route be established from Fort Bridger, Utah Territory, the nearest practicable point of intersection with the main mail route across the continent, to South Pass city, Dakota Territory.

And your memorialists will ever pray.

MILITARY POST

NUMBER 14.

A MEMORIAL TO THE SECRETARY OF WAR, PRAYING FOR THE CONSTRUCTION OF A MILITARY POST IN THE RED RIVER VALLEY UNDER THE APPROPRIATION OF MARCH 2, 1861.

To the Honorable Secretary of War :

Your Memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully represent, that in the absence of military protection the persons and property of the settlers on the Pembina and Red rivers near the British American line are placed in continual jeopardy by Indians belonging to the Pembina and Red Lake bands of Chippeways, and Cree Indians residing in the British Territory, while under the influence of intoxicating drinks which they obtain from white men residing just north of the boundary line.

For a military post in the Red River valley

And, further, that without military protection, it is utterly impossible for the custom officers at the post of Pembina, on the Red River of the North, to enforce a due respect for the revenue laws of the United States, along our northern boundary.

Your memorialists would therefore most respectfully call your attention to the act of Congress, entitled "An Act making appropriations for the support of the army, for the year ending 30th June, 1862," approved March 2d, 1861, and more particularly that clause provided as follows :

"For the construction of a military post on or near the valley of the Red River of the North, fifty thousand dollars, or so much thereof as may be deemed necessary by the Secretary of War. The site to be selected and post built under the direction of the Secretary of War."

For the reasons briefly stated above, your memorialists do most respectfully urge the expenditure of the said appropriation in the construction of a military post at some suitable point

on the Pembina River in the valley of the Red River of the North, and near the boundary line between the United States, and Hudson Bay Companies Territory of British America.

And your memorialists, as in duty bound, will ever pray.

NEW TERRITORY.

NUMBER 15.

A MEMORIAL TO CONGRESS ASKING FOR THE ORGANIZATION OF A NEW TERRITORY OUT OF THE SOUTHERN PORTION OF DAKOTA.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled:

For a new
Territory

Your memorialists, the Legislative Assembly of the Territory of Dakota, most respectfully represent, that all that portion of Dakota Territory described as follows, to wit:

Beginning at a point west of the main ridge of the Rocky Mountains in the Green river valley, at the intersection of the thirty-third meridian of longitude west from Washington, with the forty-first parallel of north latitude; thence east along said forty-third parallel to the twenty-seventh meridian of longitude; thence north along said meridian near the western base of the Black Hills to the south-east corner of Montana Territory, on the forty-fifth parallel of latitude; thence west along the south boundary of said Territory to the summit of the Rocky Mountains; thence southwardly along the eastern boundary of Idaho Territory to the aforementioned thirty-third meridian of longitude, and thence south along said meridian to the place of be-

ginning, would be greatly benefitted by being detached from the remaining and eastern portion of said Territory of Dakota, and erected by Congress into a new Territory with a separate organization.

For a new Territory

Your memorialists would further represent, in evidence of the necessity of this our petition, that while the said new Territory is remote from the main line of travel in eastern Dakota, and is separated therefrom by a broad extent of wild Indian country, yet the Union Pacific railroad traverses the entire length of said proposed new Territory giving it direct and easy communication with Nebraska and the States, by means of which several thousand people have already settled along the line of said road, and have established their towns and cities, at a distance of 600 miles by the nearest traveled route from the capital and courts of the Territory of Dakota.

Your memorialists would further represent, that said portion of Dakota comprises an area of Territory equal to 62,526,528 square acres, or nearly one-half the present Territory of Dakota, and no direct lines of travel or communication will, for many years, be opened across the plains connecting these two remote sections of Dakota, so long as the said Pacific railroad gives to the said proposed new Territory such advantages of trade and travel with the east and the Lower Missouri, as is now possessed by that section of the west.

Your memorialists would further represent, that the present illy proportioned and extensive area of Dakota, demonstrates that a division of this Territory by Congress is inevitable, and only a question of time, and sound policy would seem to dictate that all the guards of law and courts afforded by a separate territorial government should be extended to the already populous settlements of the proposed new Territory.

Your memorialists would therefore most earnestly petition your honorable bodies to grant to this important and growing section of Dakota, a separate territorial organization at the present session of Congress.

And your memorialists, as in duty bound, will ever pray.

SUPERINTENDENT OF WAGON ROAD.

NUMBER 16.

A MEMORIAL TO THE SECRETARY OF THE INTERIOR, ASKING FOR THE APPOINTMENT OF HON. HORACE J. AUSTIN, AS SUPERINTENDENT OF THE BIG CHEYENNE WAGON ROAD.

For a superin-
tendent of the
Cheyenne wagon
road

Your memorialists, the Legislative Assembly of the Territory of Dakota would most respectfully represent, that the increased travel from Dakota to Montana imperatively demands that the remainder of the appropriation to open a wagon road, from the mouth of the Big Cheyenne river, to connect with the Niobrara and Montana wagon road, should be expended during the coming spring, and the road completed as provided by the act of Congress entitled an act to provide for the construction of a certain wagon road in the Territories of Idaho, Montana, Dakota and Nebraska, approved March 3d, 1865.

Your memorialists would further recommend, that Hon. Horace J. Austin, of Vermillion, Dakota Territory, be appointed superintendent of said Big Cheyenne wagon road. Mr. Austin is a practical engineer and a thorough business man, honest and upright, served his country as a soldier for three years during the late rebellion and is most deserving of the position as well as being in every way well qualified to perform the duties of the office.

Therefore, your memorialists most respectfully but earnestly ask for Mr. Austin's appointment to the position.

Resolved, That a copy of this memorial be sent to Hon. O. H. Browning, and Hon. W. A. Burleigh.

SURVEY OF LANDS.

NUMBER 17.

A MEMORIAL TO CONGRESS RELATIVE TO THE SURVEY OF PUBLIC LANDS
ON OR NEAR THE RED RIVER OF THE NORTH.

*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 most respectfully represent, that under an appropriation of five thousand dollars, by the Thirty-ninth Congress, at the second session thereof, for the extension of the public surveys to the Pembina settlements of northeast Dakota, near the British boundary, it was found necessary by the Commissioner of the general land office, to direct the extension of the eleventh standard, and 7th guide meridian from the State of Minnesota, west and north—a distance of one hundred and forty miles, through the country on the Dakota side of the Red River of the North, ceded in 1863, by the Red Lake and Pembina bands of Chippewa Indians, in order to reach the said Pembina settlements.

For a survey of
lands on Red
River

That by the extension of said eleventh standard, and seventh guide meridian, the appropriation was necessarily reduced about fifteen hundred dollars, leaving only three thousand five hundred dollars to be expended in the running of township and section lines in said Pembina settlements.

That contrary to the expectation of the commissioner of the general land office, the fifteenth standard parallel fell nineteen and one-half miles south of the international boundary, wherefore it became necessary, under the instructions of the commissioner, to lay off nearly three hundred miles of base and township lines in order to reach the actual settlements along the Pembina river, thus reducing the appropriation to less than two

For a survey of
lands on Red
River

thousand dollars for subdivisional surveys, in consequence of which only about five townships were sectionized.

That in addition to the said unfinished condition of the subdivisional surveys; that entire portion of the Red River valley through which said meridian is established, for a distance of over one hundred miles, is left without any connection, either by base, township or section lines.

That within this intermediate of one hundred miles, said meridian crosses four streams of considerable size, viz: the Goose, Turtle, Salt and Park rivers, all fine streams, well wooded with oak, ash, elm and lynn, and watering one of the very best agricultural and grazing districts of the West.

That by the extension of the thirteenth parallel, if no more, and the survey of townships along Turtle river and the extension of the twelfth and fourteenth standard, and the subdivision of a few townships along the above named streams at their confluence with the Red River, the new settlements would be accommodated; this with the subdivision of the townships on and near the Pembina, could, we believe, be done at a cost of from ten to twelve thousand dollars.

Your memorialists therefore pray, that a sum not less than ten thousand dollars be appropriated for the purposes above stated.

And your memorialists, as in duty bound will ever pray.

WAGON ROAD.

NUMBER 18.

A MEMORIAL TO CONGRESS PRAYING FOR AN APPROPRIATION TO CONSTRUCT A WAGON ROAD FROM FORT ABERCROMBIE DOWN THE RED RIVER OF THE NORTH.

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 most respectfully call your attention to the present ^{For a wagon road on Red River} great and increasing need of a wagon road from Fort Abercrombie, in this Territory, down the Red River of the North, to the Dakota settlements on the Pembina river, and thence to parallel of latitude 49° north, in the direction of the "Selkirk," or Hudson Bay Company's Red River settlements,

Your memorialists would respectfully represent;

1. That according to the official reports of the collector of customs at the post of Pembina, that merchandise passing annually over this route is inspected at that post, amounting to hundreds of thousands of dollars, from which the United States government derives a large revenue. Besides supplies for the American settlements, (with a population of over two thousand) all the supplies for British settlements, containing a population of from twelve to fifteen thousand, as well as supplies for the Hudson Bay Company, and the numerous "Free Traders," are received at, or by way of the city of St. Paul, Minnesota, and pass over the route above mentioned. And all the vast amounts of furs, &c., imported from said British settlements for consumption, or in bond for transshipment, are freighted over said route;

2. That this great thoroughfare of about two hundred miles between Fort Abercrombie and the Pembina settlements, crosses eight streams, varying from fifty to two hundred feet in width, over which the freighters have annually to throw temporary bridges, which are carried off by the first freshet, and hence the same stream is so bridged several times during one season.

For a wagon road
on Red River

3. That the entire route passes over a level valley, and as nature has provided an excellent road, no appropriation will be required for any other purpose than to survey and locate the road, and bridge the streams.

Your memorialists therefore, do most respectfully pray for an appropriation of a sum of money that you, in your wisdom, may deem sufficient to survey and locate a government wagon road from Fort Abercrombie in this Territory, down the valley of the Red River of the North, by the nearest and best route, to the settlements on the Pembina river, and thence to parallel of latitude 49° north, in the direction of the Hudson Bay Company's settlements, and to bridge the Cheyenne, Wild Rice, Elm, Goose, Turtle, Salt, Park and Pembina rivers.

And your memorialists as in duty bound, will ever pray.

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TO THE FOREGOING

L A W S , M E M O R I A L S

AND

RESOLUTIONS,

PASSED AT THE SEVENTH SESSION OF THE

LEGISLATIVE ASSEMBLY,

OF THE

TERRITORY OF DAKOTA.

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ERRATA.

On page 214, chapter XXII, in section 5 of an act entitled an act concerning Mines and Mining, in first proviso commencing in fourth line, leave out the words, "*and who have complied with the general incorporation law of the Territory.*"

In chapter VIII, page 124, section 2, 13th line, under head of Justices of the Peace in place of *N. J. Bond.*" read "*M. C. Browne.*"

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S. L. SPINK,
Secretary.

NEW TERRITORY

memo

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