

GENERAL LAWS,
AND
MEMORIALS AND RESOLUTIONS
OF THE
TERRITORY OF DAKOTA,

PASSED AT THE FIRST SESSION

OF THE
LEGISLATIVE ASSEMBLY,

COMMENCED AT THE TOWN OF YANKTON, MARCH 17, AND CONCLUDED MAY 15, 1862.

TO WHICH ARE PREFIXED

**A BRIEF DESCRIPTION OF THE TERRITORY AND ITS GOVERNMENT,
THE CONSTITUTION OF THE UNITED STATES, THE
DECLARATION OF INDEPENDENCE, AND THE
ACT ORGANIZING THE TERRITORY.**

PUBLISHED BY AUTHORITY.

YANKTON, DAKOTA TERRITORY:
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P R E F A C E .

THE Territory of Dakota is but a remnant of what was formerly, and for many years, laid down on the maps and known as the "Great North-West Territory." The great states of Iowa, Wisconsin, and Minnesota, and the Territory of Nebraska have, from time to time, been carved from the vast region comprised under that name, and yet the great North-West Territory is little more than half exhausted. Minnesota, while a territory, embraced all that portion of Dakota east of the Missouri river; and the boundaries of Nebraska, prior to 1861, embraced all that portion lying west of the Missouri. The admission of Minnesota as a state in the Union in May, 1858, with its present boundaries, left all the country situated between the Big Sioux and the Red river of the North on the east, and the Missouri on the west, unincorporated in any organized state or territory. This neglected fragment of the public domain was, by general consent, designated by the name of Dakota, from the nation of Indians of that name, who claimed and possessed the soil.

The first cession of lands was made in 1858 by the Yankton and Poncas tribes of Indians. By this purchase the government extinguished the Indian title to over

25,000 square miles of land, lying along the Missouri, Niobrara, and Big Sioux rivers. White settlers were admitted in 1859, and a great portion of the ceded lands were immediately occupied. On account of the critical and disturbed state of public affairs, and the prevailing prejudice in regard to creating more territories, the organization of Dakota was delayed till 1861, when, by law of congress, she was declared a territory in common with her sisters, Colorado and Nevada. The organic law was passed February, 1861, and approved by the executive March 2, 1861. President Lincoln promptly hastened to perfect the government of Dakota, by appointing the following officers, as provided under the organic act: William Jayne, of Illinois, governor; John Hutchinson, of Minnesota, secretary; P. Bliss, of Ohio, chief justice; L. P. Williston, of Pennsylvania, and ——— Williams, of Tennessee, associate justices; W. Gleason, of Maryland, district-attorney; W. F. Shaffer, marshal. By a provision of the organic act, Dakota was made a distinct land district, and G. D. Hill, of Michigan, was appointed surveyor-general. These gentlemen at once assumed the duties of their respective offices, and Dakota may be said to have had a government after June, 1861.

The first general election was held in September following, when the legislature was chosen, and J. B. S. Todd was elected delegate in congress.

The first legislature convened in March, 1862, and the following laws are the result of their sixty days' labor.

Dakota is thus fairly adrift as a Territory of the United States, with good, wholesome laws, competent and faithful officials, and a people orderly, law-abiding, enterprising, and energetic. She will compare most favorably with any of her sisters as a home for the homeless immigrant.

Dakota extends from Minnesota on the east to the Rocky mountains on the west, and from the Niobrara river on the south to the British possessions on the north, comprising nine degrees of latitude, and thirteen degrees of longitude — upwards of 350,000 square miles of land. Except the ceded lands, this vast tract is occupied and roamed over by dwindling tribes of the red man. With the exception of the Crows of the Yellow Stone, and the Black Feet of the Upper Missouri, these Indians are nearly all known as Dakotas, though divided and scattered into numerous tribes and bands. These Indians, for the most part, still subsist by the hunt. Their hunting-grounds are annually narrowed, and their victims are constantly and rapidly diminishing, though immense herds of buffalo, elk, and antelope still range the prairies. The conviction forces itself upon us that Government must soon make final provision for the maintenance of the residue of its red children. The unoccupied lands of the states, and some of the territories, are already the property of speculators, and squatters are, accordingly, debarred from taking advantage of the recent Homestead law within their limits; thus rendering it necessary that Government should so dispose of the Indians in Dakota, as to enable such as desire, to avail themselves of that liberal and beneficent act. The nation has very little valuable agricultural land outside of Dakota, either subject to preemption or available as homesteads.

The Missouri river is one of the leading features of Dakota. More than four hundred miles of the eastern slope of the Rocky mountains discharges its waters into the Missouri near the base of the mountains at Fort Benton. The early confluence of these innumerable streams and rivers render the Missouri navigable almost from its very

source. Its course through the very centre of the territory, from the north-west to the south-east corner, together with its sinuosities, furnish over two thousand miles of navigable river for the largest sized river steamers. Its head of navigation is in convenient proximity to the Salmon river and Bitter Root gold mines of Washington and Oregon, and nearer than any other water communication to the recently discovered gold fields of the Saskatchewan and Cariboo, in Her Majesty's possessions. For many years steamers have made annual trips to Fort Benton, and the trade has increased from year to year. It is now estimated that fifty steamers will be inadequate to supply the trade for 1863. The mineral wealth of the Rocky mountains will, in a few years, make the Missouri one of the most important business arteries on the continent. No state or territory can be better supplied with water and water privileges than Dakota. Its streams are countless, and its waters are pure and healthful. Its large rivers are numerous, among the more important of which are the Big Sioux, Dakota, Niobrara, Yellow Stone, Milk, and Red river of the North. The latter suggests an interesting physiological feature in the fact, that its waters flow into Hudson bay. The Red river of the North is navigable, and regular steamers are engaged in the trade between the American settlements on its head waters, and the forts of the Hudson Bay Company along Lake Winnepeg. The Yellow Stone is the largest tributary of the Missouri. Little is known of its valley. The fountains, brooks, and creeks which supply its waters, ooze from the rocks of the mountains only a few leagues from the sources of the already gold famous Salmon river and Bitter Root. The valley of the Yellow Stone is the sacred hunting-ground of the Indians, but the

time is close at hand when its fertile valleys will echo with the click and stir of civilization, and the indomitable spirit of the Anglo-Saxon will torture from the hidden recesses of the Red Man's forest home, riches which have lain dormant for ages, and upon which this poor child of the prairie has and ever will gaze with indifference, scorn, and contempt. The Big Sioux and Dakota are navigable for about two months in the Spring, and their valleys are among the most fertile in the United States. The Niobrara is a large stream, some four hundred miles in length, flowing its entire length in almost the same latitude, from near the South pass to the Missouri. Its valley is eminently suited to become a great overland thoroughfare, being well watered, well timbered, and, in all respects, practicable for a railroad. Portions of its valley are densely covered with pine timber, as also the White river valley in the neighborhood, and the region of the Black hills.

The Territory of Dakota is not liberally supplied with timber, save upon the streams, but to those who are familiar with prairie country, and have observed how rapidly it grows when protected from fire, the present supply is regarded ample for years to come.

The climate of Dakota is unsurpassed. The air is salubrious and exhilarating. The rarity of the atmosphere, in consequence of the altitude of the country, is always noticeable in contrast with the oppressive moisture of the Eastern and Atlantic states.

Some portions of the territory are marvellously fertile and productive. The growing season is longer than in the same latitude further east, and the products are the same. The winters are sometimes severe, but in most cases temperate and delightful. In the valleys where the autumn

fires have been kept out, stock will subsist and do well all winter without extra forage or attention.

Gold, iron, coal, lead, and salt have been discovered in different localities in the territory, and though comparatively little is known of its mineral wealth, enough has been developed to excite curiosity and provoke adventure. The hardy pioneer is already in the field, and the day is near, aye, is at hand, when the journey of the gold hunter for California and Washington will be shortened by the more glittering attractions of the Black hills and the eastern slope of the Rocky mountains. The history of Dakota is written in the past history of the Western states. This vast *terra incognita* is already undulating with the breath of civilization, and the time cannot be far distant when its noble prairies and fertile valleys must yield up their wealth to the restless, aggressive, and all-conquering energy of the American people.

J. T.

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AUTHENTICATION.

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

I do hereby certify, that the laws contained in this volume are true and correct copies of the original enrolled bills, passed by the Legislative Assembly, at the first session thereof, begun and held at Yankton, March 17th, A. D. 1862, now on file in my office.

Witness my hand and the seal of the territory here-
unto affixed, this fifteenth day of July,
{ L. S. } in the year of our Lord one thousand
eight hundred and sixty-two.

JOHN HUTCHINSON,
Secretary of Dakota Territory.

GENERAL LAWS.

CONSTITUTION
OF
THE UNITED STATES.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America. Preamble

ARTICLE I.

SECTION I.

All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives. Legislative powers vested in congress.

SECTION II.

1. The house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. House of representatives — its members; by whom chosen; qualifications of electors.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen. A representative to be 25; 7 years a citizen of the United States; and an inhabitant of his State when elected.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all Representatives and taxes to be apportioned according to numbers.

Actual enumeration every ten years.

Limitation of the ratio of representation, &c.

First apportionment of representatives.

Writs of election for filling vacancies.

House of representatives to choose speaker, &c., and have power of impeachment.

Senators, how chosen: each to have a vote.

Senate divided into three classes; to be chosen every two years.

Executives of states to fill vacancies in the recess of legislatures, &c.

A senator aged 30; nine years a citizen of the United States and an inhabitant of his state when chosen.

Vice-president to be president of the senate; to vote on an eq. div. only.

The senate to choose their president pro tempore, &c.

The senate have the sole power to try impeachments, &c.

other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SECTION III.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

4. The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

5. The senate shall choose their other officers, and also a president *pro tempore* in the absence of the vice-president, or when he shall exercise the office of president of the United States.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice

shall preside : and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States : but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

Extent of judgment in cases of impeachment ; but the party further liable by indictment at law.

SECTION IV.

1. The times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof ; but the congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

Times, &c. of holding elections for senators and representatives regulated by the states or by congress.

2. The congress shall assemble at least once in every year ; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Congress to assemble annually the 1st Monday in Dec. unless, &c.

SECTION V.

1. Each house shall be the judge of the elections, returns, and qualifications of its own members ; and a majority of each shall constitute a quorum to do business ; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house judge of the election and qualification of its own members. Quorum.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each house to form its own rules and punish its members.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy ; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

Journals of each house. Yeas and nays, how taken.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Adjournment of both houses.

SECTION VI.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same ; and for any speech or debate in either house they shall not be questioned in any other place.

Senators and representatives to be paid, &c. ; privileged from arrest ; not to be questioned for debate, &c. .

Concerning the holding of offices by senators and representatives.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SECTION VII.

Revenue bill to originate in the house of representatives, &c.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

Powers of the president and of congress in the enacting of laws and the forms of proceeding on bills in that respect.

2. Every bill which shall have passed the house of representatives and the senate shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return; in which case it shall not be a law.

Joint resolutions, except for adjournment, to receive the same sanction as bills.

3. Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment), shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him; or, being disapproved by him, shall be repassed by two thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.

Congress shall have power, 1st, to lay taxes, &c.

The congress shall have power,—

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States:

2. Bor. money. 2. To borrow money on the credit of the United States:

- | | |
|--|---|
| <p>3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes :</p> | <p>8. Regulate commerce.</p> |
| <p>4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States :</p> | <p>4. Establish the rule of naturalization and bankrupt laws.</p> |
| <p>5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures :</p> | <p>5. Coin money, &c., and fix weights and measures.</p> |
| <p>6. To provide for the punishment of counterfeiting the securities and current coin of the United States :</p> | <p>6. Provide for punishing counterfeiters.</p> |
| <p>7. To establish post-offices and post-roads :</p> | <p>7. Establish post-offices, &c.</p> |
| <p>8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries :</p> | <p>8. Patent rights.</p> |
| <p>9. To constitute tribunals inferior to the supreme court :</p> | <p>9. To constitute inferior tribunals, &c.</p> |
| <p>10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations :</p> | |
| <p>11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water :</p> | <p>11. To declare war, &c.</p> |
| <p>12. To raise and support armies ; but no appropriation of money to that use shall be for a longer term than two years :</p> | <p>12. Raise armies, &c.</p> |
| <p>13. To provide and maintain a navy :</p> | <p>13. Provide a navy.</p> |
| <p>14. To make rules for the government and regulation of the land and naval forces :</p> | <p>14. Make rules for army and navy.</p> |
| <p>15. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions :</p> | <p>15. Provide for calling forth the militia.</p> |
| <p>16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by congress :</p> | <p>16. Provide for organizing the militia, &c.</p> |
| <p>17. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings : And,</p> | <p>17. Exercise exclusive jurisdiction over a district, and places for forts, &c.</p> |
| <p>18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.</p> | <p>18. Make all laws necessary to the execution of their powers.</p> |

SECTION IX.

1. The migration or importation of such persons as any of the states, now existing, shall think proper to admit, shall not be pro-

Importation of certain persons not to be pro

- hibited until after 1808.
- Habeas corpus.
- No bill of attainder or *ex post facto* law.
- Direct taxes according to census.
- No export duty, nor preference of one State to another in commerce.
- Public moneys, how drawn, &c.
- No titles of nobility. No presents, &c.
- hibited by the congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.
2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.
3. No bill of attainder, or *ex post facto* law, shall be passed.
4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.
5. No tax or duty shall be laid on articles exported from any state. No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.
6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.
7. No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them shall, without the consent of congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

SECTION X.

- Restrictions on the power of the states individually.
- Powers which the states can exercise only under the sanction of congress.
1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility.
2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows :

Executive power vested in a president, &c.

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress ; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Electors of president and vice-president.

3. [Annulled. See Amendments, Art. 12.]

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes ; which day shall be the same throughout the United States.

Congress may fix the time of choosing the electors, &c.

5. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president ; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Qualifications of president.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president ; and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

In case of vacancy in the office of president, the vice-president to act, &c.

7. The president shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected ; and he shall not receive, within that period, any other emolument from the United States, or any of them.

Compensation to the president.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation :

The president to take an oath.

“ I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States.”

Form of the oath.

SECTION II.

The president is commander-in-chief—he may require opinions of executive officers, and may grant pardons, &c.

1. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He may, by advice of the senate, make treaties, appoint ambassadors and other officers; but congress may vest certain appointments otherwise.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments.

President may fill vacancies in recess.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

SECTION III.

President to recommend measures to congress, &c., may convene and adjourn congress on certain occasions, shall receive ambassadors, see the laws executed, and commission officers.

He shall, from time to time, give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors, and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION IV.

President and other officers removable by impeachment.

The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION I.

Judicial power vested in a supreme court,

The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from

CONSTITUTION OF THE UNITED STATES.

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time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

&c.; judges to hold their offices during good behavior.

SECTION II.

1. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, and other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects.

Extent of the judicial power.

2. In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the congress shall make.

Original and appellate jurisdiction of the supreme court.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

Trial of crimes to be by jury.

The venue.

SECTION III.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Definition of treason, &c.

2. The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

Congress to declare the punishment of treason, &c.

ARTICLE IV.

SECTION I.

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other State. And the

Credit to be given in one State to the

public acts, &c. of another. congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECTION II.

Reciprocity of citizenship throughout the states. 1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Criminals flying from one state to another to be delivered up. 2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime.

Runaway slaves, &c. to be delivered up. 3. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION III.

New States may be admitted into the union, &c. 1. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

Congress to have power of territory, &c. 2. The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION IV.

Republican form of government guaranteed to each State, &c. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

Mode of amending the constitution. The congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other

mode of ratification may be proposed by the congress ; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article ; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

1. All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States, under this constitution, as under the confederation.

Assumption of debts incurred under the confederation.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof ; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land ; and the judges in every state shall be bound thereby ; any thing in the constitution or laws of any state to the contrary notwithstanding.

This constitution, acts of congress and treaties, the supreme law — the state judges bound thereby.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution ; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Members of congress and of the state legislatures, &c. bound by oath to support this constitution.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Ratification of nine states, sufficient, &c.

Done in convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President and Deputy from Virginia.

NEW HAMPSHIRE.
JOHN LANGDON,
NICHOLAS GILMAN.

CONNECTICUT.
WM. SAMUEL JOHNSON,
ROGER SHERMAN.

MASSACHUSETTS.
NATHANIEL GORHAM,
RUFUS KING.

NEW YORK.
ALEXANDER HAMILTON.

NEW JERSEY.

WILLIAM LIVINGSTON,
WILLIAM PATTERSON,
DAVID BREARLEY,
JONATHAN DAYTON.

PENNSYLVANIA.

BENJAMIN FRANKLIN,
THOMAS MIFFLIN,
ROBERT MORRIS,
GEORGE CLYMER,
THOMAS FITZSIMONS,
JARED INGERSOLL,
JAMES WILSON,
GOUVERNEUR MORRIS.

DELAWARE.

GEORGE READ,
GUNNING BEDFORD, JR.,
JOHN DICKINSON,
RICHARD BASSETT,
JACOB BROOM.

Attest,

MARYLAND.

JAMES M'HENRY,
DAN'L of ST. THO. JENIFER,
DANIEL CARROLL.

VIRGINIA.

JOHN BLAIR,
JAMES MADISON, JR.

NORTH CAROLINA.

WILLIAM BLOUNT,
RICH. DOBBS SPAIGHT,
HUGH WILLIAMSON.

SOUTH CAROLINA.

JOHN RUTLEDGE,
CHARLES C. PINCKNEY,
CHARLES PINCKNEY,
PIERCE BUTLER.

GEORGIA.

WILLIAM FEW,
ABRAHAM BALDWIN.

WILLIAM JACKSON, *Secretary.*

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

CONGRESS shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

Congress prohibited from interfering with religion, with freedom of speech, of the press, and the right of petition.

ARTICLE II.

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Right of the people to keep and bear arms, &c.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

No soldier to be quartered in any house, during peace, without consent, &c.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

No search warrant to issue, except on probable cause, oath, &c.

ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

No person to be held to answer for a crime, unless on presentment, &c., except in the land or naval forces, nor to answer for the same offence twice, &c.

ARTICLE VI.

Assurance of speedy and public trial by jury, &c. in criminal prosecutions.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ARTICLE VII.

Right of trial by jury in suits at common law, above the value of twenty dollars, &c.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise reëxamined in any court of the United States than according to the rules of the common law.

ARTICLE VIII.

Excessive bail, and unjust and cruel punishments prohibited.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

Rights enumerated not to disparage those retained.

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

Powers not delegated, &c. are reserved to the states or people.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE XI.

Restriction of judicial powers.

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE XII.

Mode of electing the president and vice-president of the United States.

1. The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall

name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each; which lists they shall sign and certify, and transmit, sealed, to the seat of government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president: a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

ARTICLE XIII.

If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall, without the consent of congress, accept or retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

No title of nobility or honor to be accepted, &c.

DECLARATION OF INDEPENDENCE.

IN CONGRESS, July 4, 1776.

By the representatives of the United States in congress assembled.

A DECLARATION.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect for the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, — that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former system of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained ; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature — a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time, after such dissolutions, to cause others to be elected ; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise ; the state remaining, in the mean time, exposed to all the danger of invasion from without and convulsions within.

He has endeavored to prevent the population of these states ; for that purpose obstructing the laws for naturalization of foreigners, refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of and superior to the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution and unacknowledged by our laws ; giving his assent to their acts of pretended legislation, —

For quartering large bodies of armed troops among us :

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States :

For cutting off our trade with all parts of the world :

For imposing taxes on us without our consent :

For depriving us, in many cases, of the benefits of trial by jury :

For transporting us beyond seas, to be tried for pretended offences :

For abolishing the free system of English law in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies :

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our government :

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burned our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries, to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms ; our petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts made by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must therefore acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war — in peace, friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by

the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

Signed by order and in behalf of the congress.

JOHN HANCOCK, *President.*

Attested, CHARLES THOMPSON, *Secretary.*

NEW HAMPSHIRE.
JOSIAH BARTLETT,
WILLIAM WHIPPLE,
MATTHEW THORNTON.

FRANCIS HOPKINSON,
JOHN HART,
ABRAHAM CLARK.

PENNSYLVANIA.

MASSACHUSETTS BAY.
SAMUEL ADAMS,
JOHN ADAMS,
ROBERT TREAT PAINE,
ELBRIDGE GERRY.

ROBERT MORRIS,
BENJAMIN RUSH,
BENJAMIN FRANKLIN,
JOHN MORTON,
GEORGE CLYMER,
JAMES SMITH,
GEORGE TAYLOR,
JAMES WILSON,
GEORGE ROSS.

RHODE ISLAND, &c.
STEPHEN HOPKINS,
WILLIAM ELLERY.

CONNECTICUT.
ROGER SHERMAN,
SAMUEL HUNTINGTON,
WILLIAM WILLIAMS,
OLIVER WOLCOTT.

DELAWARE.
CÆSAR RODNEY,
GEORGE READ,
THOMAS M'KEAN.

NEW YORK.
WILLIAM FLOYD,
PHILIP LIVINGSTON,
FRANCIS LEWIS,
LEWIS MORRIS.

MARYLAND.
SAMUEL CHASE,
WILLIAM PACA,
THOMAS STONE,
CHARLES CARROLL, of Carrollton.

NEW JERSEY.
RICHARD STOCKTON,
JOHN WITHERSPOON,

VIRGINIA.
GEORGE WYTHE,
RICHARD HENRY LEE,

DECLARATION OF INDEPENDENCE.

THOMAS JEFFERSON,	SOUTH CAROLINA.
BENJAMIN HARRISON,	EDWARD RUTLEDGE,
THOMAS NELSON, JR.,	THOMAS HEYWARD, JR.,
FRANCIS LIGHTFOOT LEE,	THOMAS LYNCH, JR.,
CARTER BRAXTON.	ARTHUR MIDDLETON.
NORTH CAROLINA.	GEORGIA.
WILLIAM HOOPER,	BUTTON GWINNETT,
JOSEPH HEWES,	LYMAN HALL,
JOHN PENN.	GEORGE WALTON.

A N A C T

TO PROVIDE A TEMPORARY GOVERNMENT FOR

THE TERRITORY OF DAKOTA,

AND

TO CREATE THE OFFICE OF SURVEYOR-GENERAL THEREIN.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory of the United States included within the following limits, namely: commencing at a point in the main channel of the Red River of the North, where the forty-ninth degree of north latitude crosses the same; thence up the main channel of the same, and along the boundary of the State of Minnesota, to Big Stone lake; thence along the boundary line of the said State of Minnesota to the Iowa line; thence along the boundary line of the State of Iowa to the point of intersection between the Big Sioux and Missouri rivers; thence up the Missouri river, and along the boundary line of the Territory of Nebraska, to the mouth of the Niobrara or Running Water river; thence following up the same, in the middle of the main channel thereof, to the mouth of the Keha Paha or Turtle Hill river; thence up said river to the forty-third parallel of north latitude; thence due west to the present boundary of the Territory of Washington; thence along the boundary line of Washington Territory, to the forty-ninth degree of north latitude; thence east, along said forty-ninth degree of north latitude, to the place of beginning, be, and the same is hereby, organized into a temporary government, by the name of the Territory of Dakota: *Provided,* That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries and constitute no part of the Territory

Territory of Dakota.

Boundaries.

Rights of the Indians not impaired.

Indian territory excepted out of said boundaries.

of Dakota, until said tribe shall signify their assent to the president of the United States to be included within the said territory, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the government to make if this act had never passed: *Provided, further,* That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory into two or more territories, in such manner and at such times as congress shall deem convenient and proper, or from attaching any portion thereof to any other territory or state.

Territory may
be divided.

Executive.

SECT. 2. *And be it further enacted,* That the executive power and authority in and over said Territory of Dakota, shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve all laws passed by the legislative assembly before they shall take effect; he may grant pardons for offences against the law of said territory, and reprieves for offences against the laws of the United States until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed.

Governor —
term of office,
powers, and du-
ties.

Secretary —
term, powers,
and duties.

SECT. 3. *And be it further enacted,* That there shall be a secretary of said territory, who shall reside therein, and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor, in his executive department; he shall transmit one copy of the laws, and one copy of the executive proceedings, on or before the first day of December in each year, to the president of the United States, and, at the same time, two copies of the laws to the speaker of the house of representatives and the president of the senate, for the use of congress; and in case of the death, removal, or resignation, or other necessary absence of the governor from the territory, the secretary shall have, and is hereby authorized and required, to execute and perform all the powers and duties of the governor during such vacancy or necessary absence, or until another governor shall be duly appointed to fill such vacancy.

Legislative
power.

Assembly.

SECT. 4. *And be it further enacted,* That the legislative power and authority of said territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council

and house of representatives. The council shall consist of nine members, which may be increased to thirteen, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall consist of thirteen members, which may be increased to twenty-six, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts for the election of the council and house of representatives, giving to each section of the territory representation in the ratio of its population (Indians excepted) as nearly as may be; and the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district for which they may be elected, respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants of the several counties and districts of the territory to be taken; and the first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and he shall, at the same time, declare the number of the members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The number of persons authorized to be elected, having the highest number of votes in each of said council districts, for members of the council, shall be declared by the governor to be duly elected to the council; and the person or persons authorized to be elected having the greatest number of votes for the house of representatives, equal to the number to which each county or district shall be entitled, shall be declared by the governor to be elected members of the house of representatives: *Provided*, That in case of a tie between two or more persons voted for, the governor shall order a new election, to supply the vacancy made by such tie. And the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the population, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly: *Provided*, That no one session shall exceed the term of forty days, except the first, which may be extended to sixty days, but no longer.

SECT. 5. *And be it further enacted*, That every free white male inhabitant of the United States above the age of twenty-one years, who shall have been a resident of said territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the quali-

Council.

House of representatives.

Apportionment.

Census.

First election.

Proviso.

Subsequent elections.

Length of sessions.

Voters at first election, and eligibility to office.

At subsequent elections. Proviso. fications of voters and of holding office at all subsequent elections shall be such as shall be prescribed by the legislative assembly: *Provided*, That the right of suffrage and of holding office shall be exercised only by citizens of the United States and those who shall have declared on oath their intention to become such, and shall have taken an oath to support the constitution of the United States.

Extent and limits of legislative power. SECT. 6. *And be it further enacted*, That the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents; nor shall any law be passed impairing the rights of private property; nor shall any discrimination be made in taxing different kinds of property; but all property subject to taxation shall be in proportion to the value of the property taxed.

Township, district, and county officers. SECT. 7. *And be it further enacted*, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the governor and legislative assembly of the territory. The governor shall nominate and, by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for; and, in the first instance, the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly, and shall lay off the necessary districts for members of the council and house of representatives, and all other officers.

Persons disqualified to hold office. SECT. 8. *And be it further enacted*, That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of said territory.

Judicial power. Supreme court. SECT. 9. *And be it further enacted*, That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices during the period of four years. The said territory shall be divided

into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such time and place as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of the justices of the peace, shall be limited by law: *Provided*, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common-law jurisdiction, and authority for redress of all wrongs committed against the constitution or laws of the United States, or of the territory, affecting persons or property. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said supreme court shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; and each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States as is vested in the circuit and district courts of the United States; and the said supreme and district courts of the said territory, and the respective judges thereof, shall and may grant writs of *habeas corpus* in all cases in which the same are grantable by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws; and writs of error and appeals in all such cases shall be made to the supreme court of said territory the same as in other cases. The said clerk shall receive, in all such cases, the same fees which the clerks of the district courts of Nebraska Territory now receive for similar services.

District courts.

Jurisdiction.

Of justices of the peace.

Of supreme and district courts.

Clerk of district court, and register in chancery.
Writs of error.
&c.

Clerk of supreme court.

Writs of error.
&c.

Habeas Corpus.

Fees of Clerk.

- Attorney, &c. **SECT. 10.** *And be it further enacted,* That there shall be appointed an attorney for said territory, who shall continue in office for four years, unless sooner removed by the president, and who shall receive the same fees and salary as the attorney of the United States for the present Territory of Nebraska. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees as the marshal of the district court of the United States for the present Territory of Nebraska, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.
- Appointment of governor, &c. **SECT. 11.** *And be it further enacted,* That the governor, secretary, chief justice and associate justices, attorney, and marshal, shall be nominated and, by and with the advice and consent of the senate, appointed by the president of the United States. The governor and secretary to be appointed as aforesaid shall, before they act as such, respectively take an oath or affirmation before the district judge, or some justice of the peace in the limits of said territory duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified, and recorded in such man[n]er and form as may be prescribed by law. The governor shall receive an annual salary of fifteen hundred dollars as governor, and one thousand dollars as superintendent of Indian affairs; the chief justice and associate justices shall each receive an annual salary of eighteen hundred dollars; the secretary shall receive an annual salary of eighteen hundred dollars. The said salaries shall be paid quarterly at the treasury of the United States. The members of the legislative assembly shall be entitled to receive three dollars each per day during their attendance at the session thereof, and three dollars
- How qualified.
- Salaries.
- Pay of the legislature.

for every twenty miles' travel in going to and returning from the said sessions, estimated according to the nearest usually travelled route. There shall be appropriated annually the sum of one thousand dollars, to be expended by the governor, to defray the contingent expenses of the territory. There shall also be appropriated annually a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses; and the secretary of the territory shall annually account to the secretary of the treasury of the United States for the manner in which the aforesaid sum shall have been expended.

Contingent expenses.

Expenses of legislative assembly, &c.

SECT. 12. *And be it further enacted,* That the legislative assembly of the Territory of Dakota shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for said territory at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by the said governor and legislative assembly.

Time and place of first session of legislature.

Seat of government.

SECT. 13. *And be it further enacted,* That a delegate to the house of representatives of the United States, to serve during each congress of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the said house of representatives. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections, the times, places, and manner of holding elections shall be prescribed by law. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly.

Delegate to congress.

Election of, &c.

SECT. 14. *And be it further enacted,* That when the land in said territory shall be surveyed, under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in the states hereafter to be erected out of the same.

School sections of land.

SECT. 15. *And be it further enacted,* That temporarily, and until otherwise provided by law, the governor of said territory may define the judicial districts of said territory and assign the judges who may be appointed for said territory to the several districts, and also

Judicial districts.

appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts by proclamation to be issued by him ; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

Constitution
and laws of
United States
made applicable.

SECT. 16. *And be it further enacted,* That the constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within the said Territory of Dakota as elsewhere within the United States.

Surveyor-gen-
eral.

SECT. 17. *And be it further enacted,* That the president of the United States, by and with the advice and consent of the senate, shall be, and he is hereby, authorized to appoint a surveyor-general for Dakota, who shall locate his office at such place as the Secretary of the Interior shall from time to time direct, and whose duties, powers, obligations, responsibilities, compensation, and allowances for clerk hire, office rent, fuel, and incidental expenses, shall be the same as those of the surveyor-general of Nebraska and Kansas, under the direction of the Secretary of the Interior, and such instructions as he may from time to time deem it advisable to give him.

Land district.

SECT. 18. *And be it further enacted,* That so much of the public lands of the United States in the Territory of Dakota, west of its eastern boundary and east and north of the Niobrara, or Running Water river, be formed into a land district, to be called the Yankton district, at such time as the president may direct, the land-office for which shall be located at such point as the president may direct, and shall be removed from time to time to other points within said district whenever, in his opinion, it may be expedient.

Name and lo-
cation.

Register and
receiver.

SECT. 19. *And be it further enacted,* That the president be, and he is hereby, authorized to appoint, by and with the advice and consent of the senate, a register and receiver for said district, who shall respectively be required to reside at the site of said office, and who shall have the same powers, perform the same duties, and be entitled to the same compensation, as are or may be prescribed by law in relation to other land-offices of the United States.

Dakota river.

SECT. 20. *And be it further enacted,* That the river in said territory heretofore known as the "River aux Jacques," or "James river," shall hereafter be called the Dakota river.

Portions of
Utah and Wash-
ington added to
Nebraska.

SECT. 21. *And be it further enacted,* That, until congress shall otherwise direct, that portion of the territories of Utah and Washington between the forty-first and forty-third degrees of north latitude, and east of the thirty-third meridian of longitude west from Washington, shall be, and is hereby, incorporated into and made a part of the Territory of Nebraska.

Approved March 2, 1861.

GENERAL LAWS
OF
THE TERRITORY OF DAKOTA.

ADMINISTRATORS AND EXECUTORS.

CHAPTER 1.

AN ACT CONCERNING THE ADMINISTRATION AND DISTRIBUTION OF THE ESTATES OF INTESTATES.

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

SECTION 1. When any person shall die, possessed of any personal estate, or of any right or interest therein, not lawfully disposed of by his last will, the same shall be applied and distributed as follows: 1. The widow, if any, shall be allowed all her articles of apparel and ornament, and all the wearing apparel and ornaments of the deceased, the household furniture of the deceased, not exceeding in value two hundred and fifty dollars, and other personal property to be selected by her, not exceeding in value two hundred dollars; and this allowance shall be made as well when the widow receives the provisions made for her in the will of her husband, as when he dies intestate. 2. The widow and children constituting the family of the deceased, shall have such reasonable allowance out of the personal estate, as the probate court shall judge necessary for their maintenance during the progress of the settlement of the estate, according to their circumstances; which, in case of an insolvent estate, shall not be longer than

Estate, how applied and distributed.

one year after granting administration, nor for any time after the dower and personal estate shall be assigned to the widow. 3. When a person shall die, leaving children under seven years of age, having no mother, or when the mother shall die, before the children shall arrive at the age of seven years, an allowance shall be made for the necessary maintenance of such children, until they arrive at the age of seven years, out of such part of the personal estate, and the income of such part of the real estate as would have been assigned to their mother, if she had been living. 4. If, on the return of the inventory of any intestate estate, it shall appear that the value of the whole estate does not exceed the sum of one hundred and fifty dollars, the probate court may, by a decree for that purpose, assign for the use and support of the widow and children of such intestate, or for the support of the children under seven years of age, if there be no widow, the whole of such estate, after the payment of the funeral charges, and expenses of administration. 5. If the personal estate shall amount to more than one hundred and fifty dollars, and more than the allowance mentioned in the preceding sub-divisions of this section, the same shall be applied to the payment of the debts of the deceased, with the charges of his funeral and of settling his estate. 6. The residue, if any, of the personal estate, shall be distributed in the same proportion and to the same persons, and for the same purposes, as prescribed for the descent and disposition of the real estate, except that the widow, if any, shall be entitled to receive the same share of such residue, as a child of such intestate would be entitled to.

Letters of administration granted by what court.

SECT. 2. When any person shall die intestate, being an inhabitant of this territory, letters of administration of his estate shall be granted by the probate court of the county of which he was an inhabitant or resident, at the time of his death. If such deceased person, at the time of death, resides in any other territory, state, or county, leaving estate to be administered in this territory, administration thereof shall be granted by the probate court of any county in which there shall be estate to be administered; and the administration first legally granted, shall extend to all the estate of the deceased in this territory, and shall exclude the jurisdiction of the probate court of every other county.

To whom and when granted.

SECT. 3. Administration of the estate of a person dying in-

testate, shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled to the same in the following order: 1. The widow, or next of kin, or both, as the judge of probate may think proper, or such person as the widow or next of kin may request to have appointed, if suitable and competent to discharge the trust. 2. If the widow or next of kin, or the person selected by them shall be unsuitable or incompetent, or if the widow or next of kin, shall neglect, for thirty days after the death of the intestate, to apply for administration, or to request that administration be granted to some other person, the same may be granted to one or more of the principal creditors, if any such are competent and willing to take it. 3. If there be no such creditor competent and willing to take administration, the same may be committed to such other person or persons as the judge of probate may think proper.

SECT. 4. Every administrator, before he enters upon the execution of his trust, and before letters of administration shall be granted to him, shall give bond to the judge of probate, with such surety or sureties as he shall direct and approve, with the same conditions as required in case of an executor, with such variations only as may be necessary to make it applicable to the case of an administrator.

Administrator to give bond.

SECT. 5. When there shall be a delay in granting letters testamentary or of administration, occasioned by an appeal from the allowance or disallowance of a will, or from any other cause, the judge of probate may appoint an administrator to act in collecting and taking charge of the estate of the deceased, until the question on the allowance of the will, or such other question as shall occasion the delay, shall be terminated, and an executor or administrator be thereupon appointed; and no appeal shall be allowed from the appointment of such special administrator.

When delay in granting letters, special administrator appointed.

SECT. 6. An administrator, appointed according to the provisions of the preceding section, shall collect all the goods, chattels, and debts of the deceased, and preserve the same for the executor or administrator, who may afterwards be appointed, and for that purpose may commence and maintain suits as an administrator, and may sell such perishable and other personal estate as the probate court may order to be sold.

Powers of special administrator.

SECT. 7. Such special administrator shall not be liable to

Same not liable to action.

an action by any creditor, or to be called upon in any other way to pay the debts against the deceased.

Same give
bond.

SECT. 8. Every such special administrator shall, before entering upon the duties of his trust, give a bond to the judge of probate as he shall direct, with a condition that he will make and return a true inventory of all the goods, chattels, rights, credits, and effects of the deceased, which shall come to his possession or knowledge; and that he will truly account for all the goods, chattels, debts, and effects of the deceased, which shall be received by him, whenever required by the probate court, and will deliver the same to the person who shall afterwards be appointed executor or administrator of the deceased, or to such other person as shall be legally authorized to receive the same.

Upon granting
letters his powers
to cease.

SECT. 9. Upon granting letters testamentary or of administration on the estate of the deceased, the power of such special administrator shall cease, and he shall forthwith deliver to the executor or administrator, all the goods, chattels, money, and effects of the deceased, in his hands, and the executor or administrator may be admitted to prosecute to final judgment any suit commenced by such special administrator.

If any person
embezzles any
money, goods,
&c., of deceased.

SECT. 10. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, such person shall stand chargeable, and be liable to the action of the executor or administrator of such estate for double the value of the property so embezzled or alienated, to be recovered for the benefit of such estate.

When executor
or administrator
dies.

SECT. 11. When any sole executor or administrator shall die without having fully administered the estate, the probate court may grant letters of administration, with the will annexed, or otherwise, as the case may require, to some suitable person, to administer the goods and estate of the deceased, not already administered.

When adminis-
trator may be
removed.

SECT. 12. If an administrator shall reside out of this territory, or shall neglect, after due notice by the judge of probate to render his account, and to settle the estate according to law, or to perform any decree of such court, or shall abscond or become insane, or otherwise unsuitable or incapable to discharge the trust, the probate court may, by an order therefor, remove such administrator.

SECT. 13. When an unmarried woman, who is administratrix, alone, or jointly with another person, shall marry, her marrying shall extinguish her authority as administratrix.

When unmarried woman marry, her rights as administratrix extinguished.

SECT. 14. When an administrator shall be removed or his authority shall be extinguished, the remaining administrator, if any, may execute the trust; if there shall be no other, the court of probate may commit administration of the estate, not already administered, to some suitable person, as in the case of the death of a sole administrator.

Remaining administrator may execute duties, or new one appointed.

SECT. 15. An administrator appointed in the place of any former executor or administrator, for the purpose of administering the estate not already administered, shall have the same powers and shall proceed in settling the estate in the same manner as the former executor or administrator should have had or done, and may prosecute or defend any action commenced by or against the former executor or administrator, and may have execution or any judgment recovered in the name of the former executor or administrator.

Powers of new administrator.

SECT. 16. If, after the granting of letters of administration by any probate court on the estate of any deceased person, as if he had died intestate, a will of such deceased person shall be duly proved and allowed by such court, the first administration shall, by decree of said court, be revoked, and the powers of the administrator shall cease, and he shall thereupon surrender his letters of administration into the probate court, and render an account of his administration within such time as the court shall direct.

If, after letters granted, a will is proved.

SECT. 17. The executor of the will shall, in such case, be entitled to demand, sue for and collect all the goods, chattels, rights, and credits of the deceased remaining unadministered, and may be admitted to prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

Executor may complete unfinished administration.

SECT. 18. All acts of an executor or administrator as such, before the revocation of his letters testamentary or of administration, shall be as valid to all intents and purposes as if such executor or administrator had continued lawfully to execute the duties of his trust.

All previous acts of administrators legalized.

SECT. 19. When two or more persons shall be appointed administrators on any estate, the judge of probate may take a

When two or more, separate bonds may be taken.

separate bond from each, with sureties or a joint bond with sureties from all.

Notice of application for letters, &c., to be given.

SECT. 20. When application shall be made to the judge of probate for the appointment of an administrator of an intestate estate, or for letters of administration with the will annexed, he shall cause notice of the same and of the time and place of hearing thereof, to be published for three successive weeks in such newspaper as he may direct.

Laws relating to exemption to apply to estates of intestates.

SECT. 21. Any laws now existing or hereafter passed, exempting property from execution by seizure and sale shall also apply to the property of the estates of intestates.

Take effect, when.

SECT. 22. This act to take effect from and after its passage and approval by the governor.

Approved May 8, 1862.

W. JAYNE, *Governor.*

CHAPTER 2.

AN ACT RELATING TO INVENTORY AND COLLECTION OF THE EFFECTS OF DECEASED PERSONS.

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

Return inventory of real estate, &c.

SECTION 1. Every executor or administrator shall, within three months after his appointment, make and return into the probate court a true inventory of the real estate, and of all the goods, chattels, rights, and credits of the deceased, which shall have come to his possession or knowledge; excepting, only, that an executor who shall be a residuary legatee and shall have given bond to pay all the debts and legacies, as provided by the law, shall not be required to return an inventory.

To be appraised by two disinterested persons.

SECT. 2. The estate and effects, comprised in the inventory, shall be appraised by two or more disinterested persons, appointed by the judge of probate for that purpose, who shall be sworn to the faithful discharge of their trust; and if any part of such estate or effects shall be in any other county, appraisers thereof may be appointed, either by the judge of

probate having jurisdiction in the case, or by a disinterested justice of the peace of such other county.

SECT. 3. When appraisers shall be appointed by a justice of the peace, he shall issue an order to them, in substance as follows: Order issued to appraisers.

Territory of Dakota, }
 County of } ss.

To , of , in said county:

You are hereby appointed to appraise, on oath, the estate and effects of , late of , deceased, which may be in said county; and when you have performed that service, you are required to deliver this order, and your doings in pursuance thereof, to , executor (or administrator, as the case may be,) of said deceased.

Given under my hand this . day of , in the year
 ————, *Justice of the Peace.*

SECT. 4. The appraisers shall set down opposite to each item in such inventory, distinctly, in figures, the value thereof in money, and deliver the same, certified by them, together with their appointment, if made by a justice of the peace, to the executor or administrator. Appraisal carefully noted and certified.

SECT. 5. A separate and distinct inventory and appraisal shall be made and returned, as aforesaid, of all the household furniture and other personal property, which may be allowed to the widow, pursuant to law; but the same shall not be considered assets in the hands of the executor or administrators. A separate inventory of personal property allowed the widow.

SECT. 6. The personal estate of the deceased, which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights, and credits, in the hands of the executor or administrator, shall not be sufficient to pay the debts of the deceased and the expense of administration, the whole of his real estate, not exempt by law, except the widow's dower, or so much thereof as may be necessary, may be sold for that purpose by the executor or administrator, after obtaining license therefor, in the manner provided by law. Debts paid out of personal estate; if not sufficient, then out of real estate.

Have possession of all real estate, and keep in tenable repair.

SECT. 7. The executor or administrator shall have a right to the possession of all the real as well as personal estate of the deceased, and may receive the rents, issues, and profits of the real estate, until the estate shall have been settled, or until delivered over by order of the probate court, to the heirs or devisees; and shall keep in good tenable repair, all houses, buildings, and fences thereon, which are under his control.

If complaint made of embezzlement, &c., person may be cited to appear and answer.

SECT. 8. If any executor or administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the judge of probate, on oath, that any person is suspected to have concealed, embezzled, carried away, or disposed of any money, goods, or chattels of the deceased, or that such person has in his possession or knowledge, any deeds, conveyances, bonds, contracts, or other writings, which contain evidence of or tend to disclose the right, title, interest, or claim of the deceased to any real or personal estate, or any claim or demand, or any last will and testament of the deceased, the said judge may cite such suspected person to appear before the court of probate, and may examine him on oath upon the matter of such complaint.

If person cited does not appear.

SECT. 9. If the person so cited shall refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the common jail of the county, there to remain in close custody until he shall submit to the order of the court; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined, and filed in the probate court.

Person intrusted with parts of estate required to report, when.

SECT. 10. The judge of probate, upon the complaint, on oath, of any executor or administrator, may cite any person who shall have been intrusted by such executor or administrator with any part of the estate of the deceased person, to appear before such court, and may require such person to render a full account, on oath, of any money, goods, chattels, bonds, accounts, or other papers belonging to such estate, which shall have come to his possession, in trust for such executor or administrator, and of his proceedings thereon; and if the person so cited shall refuse to appear and render such

account, the court may proceed against him as provided in the preceding section.

SECT. 11. When any debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the judge of probate, may compound with such debtor and give him a discharge upon receiving a fair and just dividend of his effects.

When debtor unable to pay all his debts.

SECT. 12. When any mortgagee of real estate, or any assignee of such mortgagee, shall die without having foreclosed the right of redemption, all the interest in the mortgaged premises conveyed by such mortgage and the debts secured thereby, shall be considered as personal assets in the hands of the executor or administrator, and he may foreclose the same, and have any other remedy for the collection of such debts which the deceased could have had if living; or may continue any proceedings commenced by the deceased for that purpose.

When mortgagee die without foreclosing.

SECT. 13. In case of the redemption of any such mortgage, or the sale of the mortgaged premises, by virtue of a power of sale contained therein, or otherwise, the money paid thereon shall be received by the executor or administrator, and he shall thereupon give all necessary releases and receipts; and if, upon the sale of the mortgaged premises, the same shall be bid in by the executor or administrator for such debt, he shall be seized of the sum for the same persons, whether creditors, next of kin, or others who would have been entitled to the money if the premises had been redeemed or purchased at such sale by some other person.

In case of redemption or sale.

SECT. 14. Any real estate so held by an executor or administrator, or which may be purchased by him as such, upon a sale on execution for the recovery of a debt due the estate, may be sold for the payment of debts or legacies, and the charges of administration, in the same manner as if the deceased had died seized thereof, upon obtaining a license therefrom from the probate court, in the manner provided by law.

Real estate so held may be sold for payment of debts and legacies.

SECT. 15. If any land so held by an executor or administrator, as mentioned in the preceding section, shall not be sold by him, as therein provided, it shall be assigned and distributed to the same persons and in the same proportions as if it had been part of the personal estate of the deceased; and if upon

If not sold may be partitioned among legatees.

such distribution the estate shall come to two or more persons, partition thereof may be made between them, in like manner as if it were real estate which the deceased held in his lifetime.

When there is deficiency of assets.

SECT. 16. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall, in his lifetime, have conveyed any real estate, or any right or interest therein, with the intent to defraud his creditors, or to avoid any right, debt, or duty of any person, or shall have so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence and prosecute to final judgment, any proper action or suit, at law, or in chancery, for the recovery of the same, and may recover for the benefit of the creditors, all such real estate so fraudulently conveyed; and may also, for the benefit of the creditors, sue and recover for all goods, chattels, rights, or credits which may have been so fraudulently conveyed [by] the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

Not bound to sue for estates, unless urged by creditors, and unless they give security.

SECT. 17. No executor or administrator shall be bound to sue for such estates, as mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors of the deceased, nor unless the creditors making the application shall pay such part of the costs and expenses, or give such security to the executor or administrator therefor, as the probate court shall judge just and equitable.

All real estate recovered to be sold for payment of debts.

SECT. 18. All real estate so recovered, as provided in the sixteenth section of this act, shall be sold for the payment of debts in the same manner as if the deceased had died seized thereof, upon obtaining a license therefor from the probate court, and the proceeds of all goods, chattels, rights, and credits, recovered as aforesaid, shall be appropriated in payment of the debts of the deceased, in the same manner as other assets in the hands of the executor or administrator.

Property exempted.

SECT. 19. All property, real and personal, goods and chattels, rights and credits, interests and estates, exempt by law from seizure and sale under execution; and all property, real and personal, reserved by law to widows and minor children, be and the same is exempt as provided by law, any thing in this act to the reverse notwithstanding.

SECT. 20. This act shall take effect from and after its pas- Take effect,
when.
sage and approval by the governor.

Approved May 15, 1862.

W. JAYNE, *Governor.*

APPORTIONMENT.

CHAPTER 3.

AN ACT TO APPORTION THE REPRESENTATION TO THE
RED RIVER DISTRICT.

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

SECTION 1. That all that portion of territory lying on the Apportioned
one councilman
and two repre-
sentatives.
Red River, including the settlements of Pembina and St. Joseph, shall constitute the seventh council district of Dakota, and shall be entitled to one councilman, and two representatives in the legislative assembly of this territory.

SECT. 2. This act shall take effect and be in force from and Take effect,
when.
after its passage and approval by the governor.

Approved April 21, 1862.

W. JAYNE, *Governor.*

ASSOCIATION OF OLD SETTLERS.

CHAPTER 4.

AN ACT TO INCORPORATE "THE OLD SETTLERS' HISTORICAL ASSOCIATION."

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

Names of members of incorporation.

SECTION 1. That J. B. S. Todd, J. S. Gregory, James Tufts, W. W. Brookings, E. Stutsman, J. H. Shober, Reuben Wallace, D. Gifford, E. Gifford, N. McDonalds, C. F. Picotte, John Stanage, J. B. Amidon, G. P. Waldron, B. M. Smith, A. C. Vanmiter, J. Deuel, J. H. Hanson, A. G. Fuller, D. T. Bramble, M. K. Armstrong, J. M. Allen, Austin Cole, F. Carman, J. Wherry, H. C. Ash, John L. Tiernon, J. M. Stone, W. P. Lyman, W. H. Granger, C. W. Cooper, R. M. Johnson, Norman W. Kitson, L. M. Griffith, F. J. Dewitt, J. C. McBride, Christopher Maloney, H. S. Donaldson, James McPetridge, William Matthews, M. Ryan, John McClellan, J. B. Laplant, A. Mason, Peter Arpin, John Brulliard, W. W. Benedict, Ole Bottleson, Ole Anderson, C. Lawson, A. B. Smith, Geo. Brown, Moses Herrick, J. McLeese, John Lafevr, Felix LaBlanch, Geo. Bourett, H. Bradley, Joseph Chattelion, and A. W. Puett, and their associates, be and are hereby constituted a body politic and corporate, to all intents and purposes, by the name of the "Old Settlers' Historical Association," and by that name may sue and be sued, plead and be impleaded, answer and be answered unto; may purchase, hold, and convey, both personal and real property, to any amount, not exceeding twenty thousand dollars, and the same to lease, grant, mortgage, and sell, or otherwise dispose of, for the benefit of the society; and to receive donations, to be applied as the donor or donors may direct; and to devise and keep a common seal, with the right to alter the same at pleasure; and to make and enforce such by-laws, rules, and regulations as they may choose, not repugnant to the laws of the

territory, or of the United States, and to enjoy all the privileges and franchises incident to a corporation.

SECT. 2. No person shall become a member of this society Who may be members. who first became an inhabitant of the territory after the passage of the organic act.

SECT. 3. The object of this association shall be to provide Objects of association. a fund for the support and assistance of such of the old settlers of Dakota who may be deemed worthy of support; and, also, to collect and disseminate all useful information in relation to the early history and settlement of Dakota; and it shall be the duty of said association to record and preserve the names of its members, and the date of their arrival in the territory, the state or territory and county from which they emigrated, together with such other information relating to the early history of the Territory of Dakota and its early settlers as may be of interest to the people of the territory.

SECT. 4. It shall be the duty of the members of said association to meet together, at least once in each year (at such When to meet and where. place in the town of Yankton as may be designated by the association), so long as any members thereof shall live or reside in the territory or future State of Dakota.

SECT. 5. At the first meeting called by any five members of First meeting, how called, and what to do. the association, the time and place of the first annual meeting shall be designated; and, at such annual meeting, under such rules and regulations as they may adopt, there shall be elected one president, two vice-presidents, one secretary, and one treasurer. Said officers, so elected, shall hold their respective offices until their successors are chosen, which shall be at the next annual meeting.

SECT. 6. Seven members of the association shall, at any Quorum meeting, form a quorum for the transaction of any business.

SECT. 7. The legislature may alter or amend this act at Legislature may alter or amend this act. any time: *Provided*, That there be no amendment of the time herein specified, prescribing eligibility to membership.

SECT. 8. This act to take effect from and after its passage. Take effect, when.

Approved May 7, 1862.

W. JAYNE, *Governor.*

ATTORNEYS.

CHAPTER 5.

AN ACT REGULATING THE ADMISSION OF ATTORNEYS.

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

Qualifications
of attorneys.

SECTION 1. That any person twenty-one years of age, who can produce satisfactory evidence of a good moral character, and pass an examination before either of the judges of the district court, or before the judges of the supreme court of this territory, shall be licensed to practise as attorney at law and solicitor in chancery in all the courts of the territory.

Citizen may
attend to his own
case.

SECT. 2. Every citizen of this territory may attend to his own case in all said courts.

Supreme court
may make rules.

Proviso.

SECT. 3. The supreme court of this territory may make such rules and regulations as they may deem proper in relation to the admission of attorneys: *Provided*, No rules shall be made which conflict with any enactment of the legislative assembly.

Take effect,
when.

SECT. 4. This act to take effect and be in force from and after its passage.

Approved April 10, 1862.

W. JAYNE, *Governor*.

BASTARDS.

CHAPTER 6.

TO PROVIDE FOR THE SUPPORT OF BASTARD CHILDREN.

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

Upon com-
plaint, accused
person brought
before justice.

SECTION 1. That on complaint being made to any justice of the peace of any female who shall be delivered of a bastard

child, or who shall be pregnant with a child which, if born alive might be a bastard, accusing any person of being the father of such child, the justice shall take such complaint in writing under the oath of such female, and shall thereupon issue his warrant against the person accused, directed to the sheriff or any constable of the county, commanding him forthwith to bring such accused person before the justice to answer such complaint.

SECT. 2. On the return of such warrant, if the accused be in custody, or shall appear, the justice shall proceed to examine the complainant under oath, respecting the cause of the complaint, and such accused person shall be allowed, by himself or attorney, to ask the complainant, when under oath, any questions necessary for his justification or defence; and such questions, and the answers, with every part of the proceeding, shall be reduced to writing by the justice. Examination, how conducted.

SECT. 3. If such accused person shall pay or secure to be paid to the female complaining, such sum or sums of money, or other property, as she may agree to receive in full satisfaction, and as shall be approved by the commissioners of the county, of which agreement and approval the justice shall make a memorandum upon his docket; and if the accused shall also enter into bonds, with sufficient sureties, to be approved by the justice, to the commissioners of the county in which such female shall reside, and their successors in office, conditioned to secure and indemnify such county from all charges for the maintenance of such child, and shall also pay all expenses, if any, incurred by such county, for the lying-in, and support and attendance upon the mother of such child during her sickness, and the costs of prosecution; then the justice shall discharge such accused person. When accused may be discharged.

SECT. 4. In case any person accused as aforesaid, does not comply with the provisions of the preceding section, the justice before whom the complaint shall be made, shall bind such person in a recognizance, with two or more sufficient sureties, to be approved by the justice, in a sum not less than one hundred dollars, nor more than five hundred dollars, to appear at the next term of the district court for the proper county, to answer the said complaint and abide the order of said court thereon; and on his neglect or refusal to find such If accused fails to comply with law.

security, the justice shall cause him to be committed to the jail of the county, there to be held to answer to such complaint at the next term of such court; and such justice shall thereupon certify the examination so taken before him, and shall return the same, and all process and papers in the case, to the clerk of said court.

If complainant cannot attend, case continued, &c.

SECT. 5. If, at the next term of said court, the complainant shall not have been delivered or shall not be able to attend, or if at any time there shall be any other sufficient reason therefor, the court may order a continuance of the cause from term to term, as shall be judged necessary; and upon such continuance, shall order the renewal of the recognizance, and when renewed, the same shall remain in full force until final judgment: *Provided*, That, if the sureties in the recognizance shall, at any term of said court, object to being any longer held liable, or if the court shall, for any cause deem it proper, such court may order a new recognizance to be taken, and the defendant shall stand committed until he give such new recognizance.

Proviso.

Upon trial, mother of bastard admitted as witness.

SECT. 6. Upon the trial of the cause, the mother of the bastard shall be admitted as a witness, unless she have been convicted of a crime which would by law render her incompetent as a witness in any other suit; and the issue shall be, whether the accused is guilty or not guilty; and if he shall be found guilty, or if he shall admit the truth of the accusation, he shall be adjudged to be the father of such child, and shall stand chargeable with the maintenance thereof, in such sum or sums, or in such manner as the court may direct, and the payment of all the costs of prosecution; and the examination taken before the justice, shall in all cases be read to the jury, when the reading of the same shall be demanded by the accused.

If accused guilty.

Persons adjudged guilty to give bond, &c., or be imprisoned.

SECT. 7. The person so adjudged to be the father of such child, shall give bonds to the commissioners of the proper county with sufficient sureties to the satisfaction of the court for the performance of such order, and also for the payment of all expenses incurred by such county for the lying-in and attendance upon the mother of such child prior to the giving of such bond; and in case he shall neglect or refuse to give such bond, and pay the costs of prosecution, he shall be

committed to the jail of the county, there to remain until he shall comply with the order of the court, or until he shall be discharged therefrom as provided by law.

SECT. 8. Any man who shall have been imprisoned ninety days for having failed to comply with the orders of the district court, as provided in this chapter, shall have the benefit of the law for the relief of prisoners committed on execution issued for the collection of fines in criminal cases.

If imprisoned
ninety days.

SECT. 9. When the mother of a bastard child commences any such proceedings as are provided for in this act, and fails to prosecute the same to judgment and final termination, the commissioners of the proper county, or any person interested in the support of such bastard, may prosecute the proceedings commenced by the mother, to final judgment.

If mother fails
to prosecute to
final judgment.

SECT. 10. If any female shall be delivered of a bastard child, which shall be a public charge, or likely to become a public charge, or shall be pregnant of a child likely to be born a bastard and to become a public charge, the board of commissioners of the county where such female shall reside, or any of them may, upon application for aid in supporting such child, by the mother thereof, or if they deem proper without such application, apply to some justice of the peace of the same county to make inquiry into the facts and circumstances of the case.

If child be-
comes public
charge, commis-
sioners may in-
quire into facts.

SECT. 11. Such justice shall examine such female on oath respecting the father of such child, the time when and the place where she was begotten with child, and such other circumstances as the justice may deem necessary for the discovery of the truth; and shall thereupon issue his warrant to apprehend the reputed father; and the same proceedings shall thereupon be had, as if complaint had been made by such female, as prescribed in the foregoing provisions of this act, and with the like effect; any warrant issued under the provisions of this act may be executed in any part of this territory, and, in all cases, said commissioners and the accused may require the attendance of such female to testify, the same as witnesses in other cases.

Proceedings in
such case.

SECT. 12. The county commissioners of any county in this territory, shall have power to make such compromise and arrangement with the putative father of any bastard child in such county, relative to the support of such child, as they

Commissioners
may compromise
with putative
father.

shall deem equitable and just ; and, thereupon, may discharge such putative father from all liability for the support of such bastard.

Take effect,
when.

SECT. 13. This act shall take effect and be in force from and after its passage.

Approved May 12, 1862.

W. JAYNE, *Governor.*

BOATS AND VESSELS.

CHAPTER 7.

AN ACT TO PROVIDE FOR PROCEEDINGS FOR THE COLLECTION OF DEMANDS AGAINST BOATS AND VESSELS.

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

Boats and ves-
sels liable for
what.

SECTION 1. Every boat or vessel, used in navigating the waters of this territory, shall be liable: 1st. For all debts contracted by the master, owner, agent, or consignee thereof, on account of supplies furnished for the use of such boat or vessel; on account of work done or services rendered on board of such boat or vessel, or on account of labor done or material furnished by mechanics, tradesmen, or others, in and for building, repairing, fitting out, furnishing, or equipping such boat or vessel. 2d. For all sums due for wharfage or anchorage of such boat or vessel in this territory. 3d. For all demands or damages accruing from the non-performance of any contract of affreightment, or any contract touching the transportation of persons or property, entered into by the master, owner, agent, or consignee of the boat or vessel, on which said contract is to be performed; and for all injuries done to persons or property by such boat or vessel.

Suit may be
instituted against
boat or vessel.

SECT. 2. Any person having a demand as aforesaid, instead of proceeding for the recovery thereof against the master, owner, agent, or consignee of a boat or vessel, may, at his option, institute suit against the boat or vessel by name.

SECT. 3. Any plaintiff wishing to institute suit against a boat or vessel, shall file his complaint against such boat or vessel by name, with the clerk of the district court of the county in which such boat or vessel shall be or lie.

How commenced.

SECT. 4. The complaint shall set forth the plaintiff's demand in all its particulars, and on whose account the same accrued; it shall be verified by the plaintiff, or some credible person for him.

The complaint.

SECT. 5. Whenever any complaint, as aforesaid, shall be filed in the office of the clerk of the district court, it shall be his duty to issue a warrant returnable in twenty days, directing and authorizing the sheriff to seize the boat or vessel mentioned in the complaint, and detain the same in his custody, together with its tackle, apparel, and furniture, until discharged from such custody by due course of law.

Warrant to be issued, when.

SECT. 6. Upon the return of any warrant, issued by virtue of the next preceding section, proceedings shall be had before the district court, against the boat or vessel seized, in the same manner as if suit had been instituted against the person on whose account the demand accrued.

Return of warrant.

SECT. 7. The master, owner, or consignee of the boat or vessel, may appear on behalf of such boat or vessel, and answer the complaint.

Master, owner, &c., may appear.

SECT. 8. If [in] any action, commenced under the provisions of this act, the master, owner, agent, or consignee of the said boat or vessel shall not appear and answer the complaint in twenty days after the said action shall be commenced, the plaintiff may proceed to take judgment, in the same manner and under the same restrictions as in a civil action against a natural person: if an issue of facts should be joined, the proceedings shall be had as in other cases.

If he does not appear.

SECT. 9. If the master, owner, agent, or consignee shall, before final judgment in any suit instituted by virtue of this act, give bonds to the plaintiff in such suit, with sufficient sureties, to be approved by the court or the judge or clerk thereof in vacation, conditioned to satisfy the amount that shall be adjudged to be owing and due to the plaintiff, in the determination of the suit, together with all costs accruing, such boat or vessel, with the tackle, apparel, and furniture belonging thereto, shall be discharged from further detention by the sheriff.

Boat, &c., discharged, when satisfactory security is given.

Court may order sale, when.

SECT. 10. If judgment shall be rendered against any boat or vessel, in favor of the plaintiff, the court shall make an order, directed to the sheriff, commanding him to sell such boat or vessel, together with its tackle, apparel, and furniture, to satisfy the judgment, and all costs that may have accrued in the cause, which order shall be executed and returned in the same manner as executions.

If bond is given, execution issue against principal and security.

SECT. 11. If bond and security shall have been entered into according to the ninth section of this act, and judgment shall have been rendered in favor of the plaintiff, execution shall be issued for the amount of judgment and costs in favor of the plaintiff, against the principal and security in such bond.

Justices have cognizance, when.

SECT. 12. Justices of the peace within their respective counties, shall have cognizance of all cases arising under this act, when the demand claimed shall not exceed the jurisdiction of a justice of the peace.

Justices, how governed.

SECT. 13. In all their proceedings, justices of the peace shall conform to the provisions of the law governing justices' courts, and as near as may be to the provisions of this act, as they apply in the district court.

Warrants returnable forthwith. Decided in a summary manner.

SECT. 14. Each warrant issued by a justice of the peace under this act, shall be returnable forthwith; and upon the return of such warrant it shall be the duty of the justice of the peace to hear and determine the complaint of the plaintiff in a summary manner.

Warrants served and returned, how.

SECT. 15. All warrants issued by the provisions of this act, shall be served and returned as writs of attachments are served and returned.

Officer may sell such part as may be necessary.

SECT. 16. Whenever an order of sale shall be made for the sale of a boat or vessel, with its tackle, apparel, and furniture, the sheriff or constable shall have power to sell such part thereof, or such material therein, as shall be necessary to satisfy the amount of judgment rendered in favor of the plaintiff, and all the costs that may have accrued.

Continuance granted, when and for what cause.

SECT. 17. Upon good and sufficient cause shown by the master, owner, agent, or consignee of any boat or vessel sold under this act, the court or justice of the peace may grant a continuance of the cause; but no such continuance shall operate as a discharge of such boat or vessel from the custody of the sheriff or constable.

SECT. 18. No continuance under this act shall be granted to the plaintiff. No continuance to plaintiff.

SECT. 19. Sheriffs, constables, and other officers shall receive the same compensation for their services under this act, as are allowed them in cases of suits of attachment. Compensation of officers.

SECT. 20. In all cases arising under this act, if judgment shall have been rendered in favor of the plaintiff, the master, owner, or consignee of the boat or vessel, or other person interested, may appeal from the judgment, as if they or either of them had been sued. Appeals may be taken.

SECT. 21. All actions against a boat or vessel, under the provisions of this act, shall be commenced and sued within one year after the cause of such action shall have accrued. Actions commenced within one year.

SECT. 22. This act shall take effect from and after its passage and approval by the governor. Take effect, when.

Approved May 2, 1862.

W. JAYNE, *Governor.*

CIVIL PROCEDURE.

CHAPTER 8.

AN ACT TO ESTABLISH A CODE OF CIVIL PROCEDURE.

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

PRELIMINARY PROVISIONS.

SECTION 1. This act shall be known as the code of civil procedure of the Territory of Dakota. Style of act.

SECT. 2. The rule of the common law, that statutes in derogation thereof, are to be strictly construed, has no application to this code. Its provisions, and all proceedings under it, shall be liberally construed, with a view to promote its object, and assist the parties in obtaining justice. Rule of construction.

TITLE I.

FORM OF CIVIL ACTIONS.

- Form of action. **SECT. 3.** There shall be but one form of action, which shall be called a civil action.
- Parties, how known. **SECT. 4.** In such action, the party complaining shall be known as the plaintiff, and the adverse party as the defendant.
- No feigned issues. Question of fact, how tried. **SECT. 5.** There can be no feigned issues; but a question of fact, not put in issue by the pleadings, may be tried by a jury, upon an order for the trial, stating, distinctly and plainly, the question of fact to be tried, and such order is the only authority necessary for a trial.

TITLE II.

TIME OF COMMENCING CIVIL ACTIONS.

CHAPTER I. *Actions for the Recovery of Real Property.* — II. *Actions other than for the Recovery of Real Property.* — III. *General Provisions.*

CHAPTER I.—ACTIONS FOR THE RECOVERY OF REAL PROPERTY.

- Actions for recovery of title brought within 21 years. **SECT. 6.** An action for the recovery of the title, or the possession of lands, tenements, or hereditaments, can only be brought within twenty-one years after the cause of such action shall have accrued.
- If person is under age, married woman, insane, &c., when action to be brought. **SECT. 7.** If a person, entitled to commence any action for the recovery of the title or possession of any lands, tenements, or hereditaments, be, at the time his right or title shall first descend, or accrue, within the age of twenty-one years, a married woman, insane, or imprisoned, every such person may, after the expiration of twenty-one years from the time his right or title first descended, or accrued, bring such action within ten years after such disability is removed, and at no time thereafter.
- Action for forcible entry and detention, when brought. **SECT. 8.** An action for the forcible entry and detention, or forcible detention only, of real property, can only be brought within two years after the cause of such action shall have accrued.

CHAPTER II.—ACTIONS OTHER THAN FOR THE RECOVERY OF REAL PROPERTY.

SECT. 9. Civil actions, rather than for the recovery of real property, can only be brought within the following periods after the cause of action shall have accrued. Civil actions for other than real property brought, when.

SECT. 10. Within fifteen years: An action upon a specialty, or any agreement, contract, or promise in writing. Same.

SECT. 11. Within six years: An action upon a contract not in writing, express or implied. An action upon a liability created by statute, other than a forfeiture or penalty. Same.

SECT. 12. Within four years: An action for trespass upon real property. An action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property. An action for an injury to the rights of the plaintiff not arising on contract, and not hereinafter enumerated. An action for relief on the ground of fraud; the cause of action in such case shall be deemed to have accrued, until the discovery of the fraud. Same.

SECT. 13. Within one year: An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment. An action upon a statute for the penalty or forfeiture; but where the statute, giving such action, prescribes a different limitation, the action may be brought within the period so limited. Same.

SECT. 14. An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff, or any other officer; or upon the bond or undertaking given in attachment, injunction, arrest, or in any case whatever required by statute, can only be brought within ten years after the cause of action shall have accrued; but this section shall be subject to the qualification in section six. Same.

SECT. 15. An action for relief not hereinbefore provided for, can only be brought within ten years after the cause of action shall have accrued. Same.

SECT. 16. If a person, entitled to bring any action mentioned in this chapter, except for a penalty or forfeiture, be, at the time the cause of action accrued, within the age of twenty-one years, a married woman, insane, or imprisoned, every such person shall be entitled to bring such action within the If under age, married woman, &c.

respective times limited by this chapter, after such disability shall be removed.

CHAPTER III.—GENERAL PROVISIONS.

Actions, when commenced.

SECT. 17. An action shall be deemed commenced within the meaning of this title, as to each defendant, at the date of the summons, which is served on him, or on a co-defendant, who is a joint contractor, or otherwise united in interest with him; where service by publication is proper, the action shall be deemed commenced at the date of the first publication, which publication must be regularly made. An attempt to commence an action, shall be deemed equivalent to the commencement thereof, within the meaning of this title, when the party faithfully, properly, and diligently endeavors to procure a service; but such attempt must be followed by service within sixty days.

If defendant absconds or conceals himself, time not to be computed.

SECT. 18. If when a cause of action accrues against a person, he be out of the territory, or have absconded, or concealed himself, the period limited for the commencement of the action shall not begin to run until he comes into the territory, or while he is so absconded or concealed; and if after the cause of action accrues, he depart from the territory, or abscond or conceal himself, the time of his absence or concealment shall not be computed as any part of the period within which the action must be brought.

Where cause of action has arisen in another state.

SECT. 19. Where the cause of action has arisen in another state or country between non-residents of this territory and by the laws of the state or country where the cause of action arose, an action cannot be maintained thereon by reason of lapse of time, no action can be maintained thereon in this territory.

If plaintiff fails other than upon merits, may renew action within one year.

SECT. 20. If an action be commenced within due time, and a judgment therein for the plaintiff be reversed, or if the plaintiff fail in such action otherwise than upon the merits, and the time limited for the same shall have expired, the plaintiff, or, if he die and the cause of action survive, his representatives may commence a new action within one year after such reversal or failure.

Cases founded on contract, partly acknowledged.

SECT. 21. In any case, founded on contract, when any part of the principal or interest shall have been paid, or an ac-

knowledge of an existing liability, debt, or claim, or any promise to pay the same shall have been made, an action may be brought on such case within the period prescribed for the same, after such payment, acknowledgment, or promise.

TITLE III.

PARTIES TO CIVIL ACTIONS.

SECT. 22. Every action must be prosecuted in the name of the real party in interest, except as otherwise provided in section twenty-five. Actions in name of real party.

SECT. 23. 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 now allowed; but this section shall not apply to negotiable bonds, promissory notes, or bills of exchange, transferred in good faith and upon good consideration, before due. In case of assignment of thing in action.

SECT. 24. An executor, administrator, guardian, trustee of an express trust, a person with whom, or in whose name a contract is made for the benefit of another, or a person expressly authorized by statute, may bring an action without joining with him the person for whose benefit it is prosecuted. Officers may sue and be sued in such name as is authorized by law, and official bonds may be sued upon in the same way. Exceptions to sect. 22.

SECT. 25. Where a married woman is a party, her husband must be joined with her; except when the action concerns her separate property, she may sue without her husband, by her next friend. When the action is between herself and her husband, she may sue or be sued alone; but in every such action, other than for a divorce or alimony, she shall prosecute and defend by her next friend. Where a married woman is a party.

SECT. 26. If a husband and wife be sued together, the wife may defend for her own right, and if the husband neglect to defend, she may defend for his right also. If a husband and wife together.

SECT. 27. The action of an infant must be brought by his guardian or next friend. When the action is brought by his next friend, the court has power to dismiss it, if it is not for the benefit of the infant; or, to substitute the guardian of the infant, or any person as the next friend. If an infant.

Guardian or friend liable for costs.

SECT. 28. The guardian or the next friend is liable for the costs of the action brought by him, and, when he is insolvent, the court may require security for costs. Either may be a witness in an action brought by him.

The defence of an infant.

SECT. 29. The defence of an infant must be by a guardian for the suit, who may be appointed by the court, in which the action is prosecuted, or by a judge thereof, or by a probate or county judge. The appointment cannot be made until after service of the summons in the action, as directed by this code.

Guardian for suit, how appointed.

SECT. 30. The appointment may be made upon the application of the infant, if he be of the age of fourteen years, and apply within twenty days after the return of the summons. If he be under the age of fourteen, or neglect to so apply, the appointment may be made upon the application of any friend of the infant, or on that of the plaintiff in the action.

All persons interested may join in suit as plaintiffs.

SECT. 31. 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.

Any person interested may be made defendant.

SECT. 32. 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 question involved therein.

Parties united in interest must be joined.

SECT. 33. Of the parties to the action, those who are united in interest must be joined, as plaintiffs or defendants; but if the consent of one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason being stated in the petition.

When parties are numerous, one may sue or defend for all.

SECT. 34. 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 all.

Persons severally liable included in same action.

SECT. 35. 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 does not abate by death, marriage, &c.

SECT. 36. An action does not abate by the death, marriage, or other disability of the party, or by the transfer of any interest therein, during its pendency, if the cause of action sur-

vive or continue. In the case of the marriage of female party, the fact being suggested on the record, the husband may be made a party with his wife; and in the case of the death or other disability of a party, the court may allow the action to continue by or against his representative or successor in interest. In case of any other transfer of interest, the action may 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.

SECT. 37. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a determination of the controversy cannot be had without the presence of other parties, the court must order them to be brought in.

Court may determine, when.

SECT. 38. When, in an action for the recovery of real or personal property, any person having an interest in the property, applies to be made a party, the court may order it to be done.

When persons interested made parties.

SECT. 39. Upon the affidavit of a defendant before answer in an action upon contract, or for the recovery of personal property, that some third party, without collusion with him, has or makes a claim to the subject of the action, and that he is ready to pay or dispose of the same, as the court may direct, the court may make an order for the safe keeping, or for the payment, or deposit in court, or delivery of the subject of the action, to such person as it may direct, and an order requiring such third party to appear in a reasonable time and maintain or relinquish his claim against the defendant. If such third party, being served with a copy of the order, by the sheriff or such other person as the court may direct, fail to appear, the court may declare him barred of all claim in respect to the subject of the action, against the defendant therein. If such third party appear, he shall be allowed to make himself defendant in the action, in lieu of the original defendant, who shall be discharged from all liability to either of the other parties in respect to the subject of the action, upon his compliance with the order of court for the payment, deposit, or delivery thereof.

When court may make order for delivery, &c., of subject of action, upon claim of third person.

SECT. 40. The provisions of the last section shall be applicable to an action brought against a sheriff, or other officer,

Provisions of last section otherwise applicable.

for the recovery of personal property taken by him under execution, or for the proceeds of such property so taken and sold by him; and the defendant in such action shall be entitled to the benefit of those provisions against the party, in whose favor execution issued, upon exhibiting to the court the process under which he acted, with his affidavit that the property, for the recovery of which, or its proceeds, the action is brought, was taken under such process.

Change in parties, how made.

SECT. 41. In an action against a sheriff, or other officer, for the recovery of property taken under an execution, and replevied by the plaintiff in such action, the court may, upon application of the defendant and the party in whose favor the execution issued, permit the latter to be substituted as the defendant, security for the costs being given.

TITLE IV.

THE COUNTY IN WHICH ACTIONS ARE TO BE BROUGHT.

Actions brought, in what county.

SECT. 42. Actions for the following causes, must be brought in the county in which the subject of the action is situated, except as provided in section forty-four: 1. For the recovery of real property, or of an estate or interest therein. 2. For the partition of real property. 3. For the sale of real property under a mortgage, lien, or other incumbrance or charge.

Same.

SECT. 43. If the real property, the subject of the action, be an entire tract and situated in two or more counties, or if it consists of separate tracts situated in two or more counties, the action may be brought in any county in which any tract, or part thereof, is situated, unless it be an action to recover the possession thereof. And if the property be an entire tract, situated in two or more counties, an action, to recover the possession thereof, may be brought in either of such counties; but if it consists of separate tracts in different counties, the possession of such tracts must be recovered by separate actions brought in the counties where they are situated. An action to compel the specific performance of a contract of sale of real estate, may be brought in the county where the defendants, or any of them, reside.

Same.

SECT. 44. Actions for the following causes must be brought in the county where the cause, or some part thereof, arose:

1. An action for the recovery of a fine, forfeiture, or penalty, imposed by a statute; except that, when it is imposed for an offence committed on a river, or other stream of water, or road, which is the boundary of two or more counties, the action may be brought in any county bordering on such river, water-course, or road, and opposite to the place where the offence was committed. 2. An action against a public officer, for an act done by him in virtue, or under color of, his office, or for a neglect of official duty. 3. An act on the official bond or undertaking of a public officer.

SECT. 45. An action other than one of those mentioned in the first three sections of this chapter, against a corporation created by the laws of this territory, may be brought in the county in which it is situated, or has its principal office or place of business; but if such corporation be an insurance company, the action may be brought in the county where the cause of action, or some part thereof, arose. Same.

SECT. 46. An action against a railroad company, or an owner of a line of mail stages, or other coaches, for an injury to person or property upon the road or line, or upon a liability as a carrier, may be brought in any county, through or into which the road or line passes. Same.

SECT. 47. An action other than one of those mentioned in the first three sections of this chapter, against a turnpike-road company, may be brought in any county in which any part of the road lies. Same.

SECT. 48. The provisions of this chapter shall not apply in the case of any corporation created by a law of this territory, whose charter prescribes a place, where alone suit against such corporation may be brought. Same.

SECT. 49. An action other than one of those mentioned in the first three sections of this chapter, against a non-resident of this territory or a foreign corporation, may be brought in any county in which there may be property of, or debts owing to, said defendant, or where said defendant may be found; but if said defendant be a foreign insurance company, the action may be brought in any county where the cause, or some part thereof, arose. Same.

SECT. 50. Every other action must be brought in the county in which the defendant or some one of the defendants resides, or may be summoned. Same.

When and how
case may be re-
moved to another
county.

SECT. 51. In all cases in which it shall be made to appear by affidavit to the satisfaction of the court, that a fair and impartial trial cannot be had in the county where the suit is pending, the court may change the place of trial to some adjoining county, wherein such impartial trial can be had; but if the objection shall be against all the counties of the district, then to the nearest county in the adjoining district.

TITLE V.

COMMENCEMENT OF A CIVIL ACTION.

CHAPTER I. *Manner of commencing Civil Actions.*—II. *Services of Summons.*

CHAPTER I.—MANNER OF COMMENCING CIVIL ACTIONS.

How com-
menced.

SECT. 52. A civil action must be commenced by filing in the office of the clerk of the proper court a petition, and causing a summons to be issued thereon.

Plaintiff file a
precipe.

SECT. 53. The plaintiff shall also file, with the clerk of the court, a precipe, stating the names of the parties to the action, and demanding that a summons issue thereon.

The summons.

SECT. 54. The summons shall be issued by the clerk, shall be under the seal of the court from which the same shall issue, and shall be signed by the clerk. Its style shall be, "The Territory of Dakota, — county," and it shall be dated the day it is issued. It shall be directed to the sheriff of the county, and command him to notify the defendant or defendants named therein, that he or they have been sued and must answer the petition filed by the plaintiff, giving his name, at the time stated therein, or the petition will be taken as true, and judgment rendered accordingly. And where the action is for the recovery of money only, there shall be indorsed on the writ the amount to be furnished in the precipe, for which, with interest, judgment will be taken, if the defendant fail to answer. If the defendant fail to appear, judgment shall not be rendered for a larger amount and the costs.

Summons to
any other county,
when.

SECT. 55. Where the action is rightly brought in any county, according to the provisions of title four, a summons

shall be issued to any other county, against any one or more of the defendants, at the plaintiff's request.

SECT. 56. Where the time for bringing parties into court is not fixed by statute, the summons shall be returnable on the first day of the next term after the day of its date. It shall state the day of the month on which it is returnable.

Summons,
when returnable.

SECT. 57. When a writ is returned "not summoned," other writs may be issued until the defendant or defendants shall be summoned; and when defendants reside in different counties, writs may be issued to such counties at the same time.

When returned
"not summoned."

CHAPTER II.—SERVICE OF SUMMONS.—ACTUAL SERVICE.

SECT. 58. The summons shall be served by the officer to whom it is directed, who shall indorse on the original writ the time and manner of service. It may also be served by any person not a party to the action, appointed by the officer to whom it is directed. The authority of such person shall be indorsed on the writ. When the writ is served by a person appointed by the officer to whom it is directed, or when the service is made out of this territory, the return shall be verified by oath or affirmation.

Summons, how served.

SECT. 59. The service shall be by delivering a copy of the summons to the defendant personally, or by leaving one at his usual place of residence, at any time before the return day.

Same.

SECT. 60. In all cases the return must state the time and manner of service.

Return state what.

SECT. 61. The officer to whom the summons is directed must return the same at the time therein stated.

Returned at the time stated.

SECT. 62. An acknowledgment on the back of the summons, or the voluntary appearance of a defendant, is equivalent to a service.

Acknowledgment or appearance equivalent to service.

SECT. 63. A summons against a corporation may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or, if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office or last usual place of business of such corporation.

Summons against corporation, how served.

Against an agency.

SECT. 64. Where the defendant is an incorporated insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency.

Against agent of foreign corporation.

SECT. 65. Where the defendant is a foreign corporation, having a managing agent in this territory, the service may be upon such agent.

Against a minor.

SECT. 66. When the defendant is a minor under the age of fourteen years, the service must be upon him, and upon his guardian or father; or, if neither of these can be found, then upon his mother, or the person having the care or control of the infant, or with whom he lives. If neither of these can be found, or if the minor be more than fourteen years of age, service on him alone shall be sufficient. The manner of service may be the same as in the case of adults.

CONSTRUCTIVE SERVICE.

Service by publication, in what cases.

SECT. 67. Service may be made by publication in either of the following cases: In actions brought under the forty-second and forty-third sections of this code, where any or all of the defendants reside out of the territory. In actions brought to establish or set aside a will, where any or all of the defendants reside out of the territory. In actions brought against a non-resident of this territory, or a foreign corporation, having in this territory property or debts owing to them, sought to be taken by any of the provisional remedies, or to be appropriated in any way. In actions which relate to, or the subject of which is, real or personal property in this territory, where any defendant has or claims a lien or interest, actual or contingent therein, or the relief demanded consists wholly or partially in excluding him from any interest therein, and such defendant is a non-resident of the territory or a foreign corporation. And in all actions where the defendant, being a resident of the territory, has departed therefrom, or from the county of his residence, with intent to delay or defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with like intent.

Affidavit necessary that other service cannot be made.

SECT. 68. Before the service can be made by publication, an affidavit must be filed, that service of a summons cannot be made within this territory, on the defendant or defendants, to be served by publication, and that the case is one of

those mentioned in the preceding section. When such affidavit is filed, the party may proceed to make service by publication.

SECT. 69. The publication must be made four consecutive weeks, in some newspaper printed in the county where the petition is filed, if there be any printed in such county; and if there be not, in some newspaper printed in this territory of general circulation in that county. It must contain a summary statement of the object and prayer of the petition, mention the court wherein it is filed, and notify the person or persons thus to be served, when they are required to answer.

Publication,
how made.

SECT. 70. Service by publication shall be deemed complete, when it shall have been made in the manner and for the time prescribed in the preceding section; and such service shall be proved by the affidavit of the printer, or his foreman or principal clerk, or other person knowing the same.

Publication,
when complete,
and how proved.

SECT. 71. In all cases where service may be made by publication, personal service of a copy of the summons and complaint may be made out of the territory.

Personal ser-
vice may be made
out of territory.

SECT. 72. A party against whom a judgment or order has been rendered, without other service than by publication in a newspaper, may, at any time within five years after the date of the judgment or order, have the same opened, and be let in to defend. Before the judgment or order shall be opened, the applicant shall give notice to the adverse party of his intentions to make such an application, and shall file a full answer to the petition, pay all costs, if the court require them to be paid, and make it appear to the satisfaction of the court, by affidavit, that during the pendency of the action, he had no actual notice thereof, in time to appear in court and make his defence; but the title to any property, the subject of the judgment or order sought to be opened, which, by it, or in consequence of it, shall have passed to a purchaser in good faith, shall not be affected by any proceeding under this section, nor shall they affect the title of any property sold before judgment under an attachment. The adverse party, on the hearing of an application to open a judgment or order, as provided by this section, shall be allowed to present counter affidavits, to show that during the pendency of the action, the applicant had notice thereof, in time to appear in court and make his defence.

When and how
a case may be
opened after
judgment, in case
of publication
only.

In case of unknown heirs or devisees.

SECT. 73. In actions where it shall be necessary to make the heirs or devisees of any deceased person defendants, and it shall appear by the affidavit of the plaintiff annexed to his petition, that the names of such heirs or devisees, or any of them, and their residence, are unknown to the plaintiff, proceedings may be had against such unknown heirs or devisees, without naming them, and the court shall make such order respecting service, as may be deemed proper; if service by publication be ordered, the publication shall not be less than four weeks.

In case one only of several defendants is served.

SECT. 74. Where the action is against two or more defendants, and one or more shall have been served, but not 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 defendants served, unless the court otherwise direct. 2. If the action be against defendants severally liable, he may, without prejudice to his rights against those not served, proceed against the defendants served in the same manner as if they were the only defendants.

Action pending, and third persons excluded, when.

SECT. 75. When the summons has been served or publication made, the action is pending, so as to charge third persons with notice of its pendency, and while pending, no interest can be acquired by third persons in the subject-matter thereof, as against the plaintiff's title.

When part of real property is situated in another county.

SECT. 76. When any part of the real property, the subject-matter of an action, is situated in any other county or counties than the one in which the action is brought, a certified copy of the judgment in such action must be recorded in the register's office of such other county or counties, before it shall operate therein as a notice, so as to charge third persons as provided in the preceding section. It shall operate as such notice, without record, in the county where it is rendered; but this section shall not apply to actions or proceedings under any statute now in force, which does not require such record.

TITLE VI.

JOINDER IN ACTIONS.

Plaintiff may unite several causes, when.

SECT. 77. The plaintiff may unite several causes of action in the same petition, when they are included in either one of

the following classes: 1. The same transaction or transactions connected with the same subject of action. 2. Contracts, express or implied. 3. Injuries, with or without force, to person and property, or either. 4. Injuries to character. 5. Claims to recover the possession of personal property, with or without damages for the withholding thereof. 6. Claims to recover real property, with or without damages for the withholding thereof, and the rents and profits of the same. 7. Claims against a trustee, by virtue of a contract, or by operation of law.

SECT. 78. The causes of action so united, must affect all the parties to the action, and not require different places of trial. Affect all parties, and same place of trial.

TITLE VII.

PLEADINGS IN CIVIL ACTIONS.

CHAPTER I. *Pleadings in General.*—II. *The Petition.*—III. *Demurrer.*—IV. *Answer.*—V. *Reply.*—VI. *General Rules of Pleading.*—VII. *Mistakes in Pleading and Amendments.*

CHAPTER I.—PLEADINGS IN GENERAL.

SECT. 79. The pleadings are the written statements by the parties of the facts constituting their respective claims and defences. The pleadings.

SECT. 80. The forms of pleading in civil actions in courts of record, and the rules by which their sufficiency may be determined, are those prescribed by this code. Forms, as prescribed by this code.

SECT. 81. The only pleadings allowed, are: 1. The petition by the plaintiff. 2. The answer or demurrer by the defendant. 3. The demurrer or reply by the plaintiff. Only pleadings allowed.

CHAPTER II.—THE PETITION.

SECT. 82. The petition must contain: 1. The name of the court and the county in which the action is brought, and the names of the parties, plaintiff and defendant, followed by the word "Petition." 2. A statement of the facts constituting the cause of action, in ordinary and concise language, and without repetition. 3. A demand of the relief to which the The petition contains what.

party supposes himself entitled. If the recovery of money be demanded, the amount thereof shall be stated; and if interest thereon be claimed, the time from which interest is to be computed shall also be stated.

When more than one cause of action.

SECT. 83. Where the petition contains more than one cause of action, each shall be separately stated and numbered.

CHAPTER III.—DEMURRER.

Defendant demur, when

SECT. 84. The defendant may demur to the petition only when it appears on its face, either: 1. That the court has no jurisdiction of the person of the defendant, or the subject of the action. 2. That the plaintiff has not legal capacity to sue. 3. That there is another action pending between the same parties for the same cause. 4. That there is a defect of parties, plaintiff or defendant. 5. That several causes of action are improperly joined. 6. That the petition does not state facts sufficient to constitute a cause of action.

Shall specify, what.

SECT. 85. The demurrer shall specify distinctly the grounds of objection to the petition. Unless it do so, it shall be regarded as objecting only, that the petition does not state facts sufficient to constitute a cause of action.

Objection by answer. If by neither demurrer or answer.

SECT. 86. When any of the defects enumerated in section eighty-four, do not appear upon the face of the petition, the objection may be taken by answer; and if no objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, except only the objection to the jurisdiction of the court, and that the petition does not state facts sufficient to constitute a cause of action.

When demurrer is sustained on ground of misjoinder.

SECT. 87. When a demurrer is sustained on the ground of misjoinder of several causes of action, the court, on motion of the plaintiff, shall allow him, with or without costs, in its discretion, to file several petitions, each including such of said causes of action as might have been joined; and an action shall be docketed for each of said petitions, and the same shall be proceeded in without further service.

Defendant may demur to one or more, and answer remainder.

SECT. 88. The defendant may demur to one or more of the several causes of action stated in the petition, and answer as to the residue.

CHAPTER IV.—ANSWER.

SECT. 89. The answer shall contain: 1. A general or specific denial of each material allegation of the petition controverted by the defendant. 2. A statement of any new matter constituting a defence, counter claim, or set-off in ordinary and concise language, and without repetition.

Answer contain, what.

SECT. 90. The defendant may set forth in his answer, as many grounds of defence, counter claim, and set-off as he may have. Each must be separately stated and numbered, and they must refer in an intelligible manner to the cause of action which they are intended to answer.

Same.

SECT. 91. 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 the contract or transaction set forth in the petition as the foundation of the plaintiff's claim, or connected with the subject of the action.

Counter claim.

SECT. 92. If the defendant omit to set up the counter claim or set-off, he cannot recover costs against the plaintiff on any subsequent action thereon; but this section shall not apply to causes of action which are stricken out of, or withdrawn from the answer, as provided in sections ninety-three and one hundred and sixteen.

If defendant omits to set up counter claim or set-off.

SECT. 93. When it appears that a new party is necessary to a final decision upon the counter claim, the court may either permit the new party to be made by a summons, to reply to the counter claim, or may direct the counter claim to be stricken out of the answer, and made the subject of a separate action.

When new party is necessary to decision of counter claim.

SECT. 94. A set-off can only be pleaded in an action founded on contract, and must be a cause of action arising upon contract, or ascertained by the decision of the court.

Set-off.

SECT. 95. When it appears that a new party is necessary to a final decision upon the set-off, the court shall permit the new party to be made, if it also appear that, owing to the insolvency or non-residence of the plaintiff, or other cause, the defendant will be in danger of losing his claim, unless permitted to use it as a set-off.

When new party is necessary to decision of set-off.

SECT. 96. When cross demands have existed between per-

When cross demands have existed.

sons under such circumstances, that if one had brought an action against the other, a counter claim or set-off could have been set up, neither can be deprived of the benefit thereof, by the assignment or death of the other, but the two demands must be deemed compensated, so far as they equal each other.

Guardians or attorneys shall answer.

SECT. 97. The guardian of an infant or person of an unsound mind, or attorney for a person in prison, shall deny in the answer all material allegations of the petition prejudicial to such defendant.

CHAPTER V.—REPLY.

No reply, except when.

SECT. 98. There shall be no reply, except upon the allegation of a counter claim or set-off in the answer.

Reply contain, what.

SECT. 99. When the answer contains new matter, constituting a counter claim or set-off, the plaintiff may reply to such new matter, denying generally or specifically each allegation controverted by him; and he may allege, in ordinary and concise language and without repetition, any new matter not inconsistent with the petition, constituting a defence to such new matter in the answer; or he may demur to the same for insufficiency, stating in his demurrer the grounds thereof; and he may demur to one or more of such defences set up in the answer, and reply to the residue.

CHAPTER VI.—GENERAL RULES OF PLEADING.

Papers filed, when.

SECT. 100. The answer or the demurrer by the defendant, and the reply or demurrer by the plaintiff, shall be filed within such times as may be required by rules to be adopted by the court in which the action is pending.

Time may be extended.

SECT. 101. The court or the judge thereof in vacation, for good cause shown, may extend the time for filing an answer or reply, upon such terms as may be just.

Pleadings must be subscribed.

SECT. 102. Every pleading in a court of record must be subscribed by the party or his attorney.

Pleading of fact must be verified by affidavit.

SECT. 103. Every pleading of fact must be verified by the affidavit of the party, his agent or attorney. A pleading verified as herein required shall not be used against a party in any criminal prosecution or action or proceeding for a penalty

or forfeiture, as proof of a fact admitted or alleged in such pleading; and such verification shall not make other or greater proof necessary on the side of the adverse party.

SECT. 104. The verification mentioned in the last section shall not be required to the answer of a guardian defending for an infant or person of unsound mind, or a person imprisoned; nor in any case where the admission of the truth of a fact stated in the pleading might subject the party to a criminal or penal prosecution. Verification not required, when.

SECT. 105. If there be several persons united in interest and pleading together, the affidavit may be made by any one of such parties. Affidavit may be made by one of several parties.

SECT. 106. The affidavit shall be sufficient if it state that the affiant believes the facts stated in the pleading to be true. Belief of affiant sufficient.

SECT. 107. In all cases where the party pleading is a non-resident of the county in which the action is brought, or if he shall be absent from the county where the pleading is filed, an affidavit made before filing the pleading, stating the substance of the facts afterwards inserted in the pleading, shall be a sufficient verification. Such affidavit shall be filed with the pleading intended to be verified thereby. Affidavit by non-resident or absentee.

SECT. 108. The affidavit verifying pleadings may be made before any person before whom a deposition might be taken, and must be signed by the party making the same; and the officer before whom the same was taken, shall certify that it was sworn to or affirmed before him, and signed in his presence. The certificate of such officer, signed officially by him, shall be evidence that the affidavit was duly made, that the name of the officer was written by himself, and that he was such officer. Affidavit made before whom.

SECT. 109. The verification of the pleading does not apply to the amount claimed, except in actions founded on contracts express or implied, for the payment of money only. Verification does not apply to amount claimed.

SECT. 110. When the affidavit is made by the agent or attorney, it must set forth the reason why it is not made by the party himself. It can be made by the agent or attorney only. 1. When the facts are within the personal knowledge of the agent or attorney. 2. When the plaintiff is an infant, or of unsound mind, or imprisoned. 3. When the pleading to be verified is founded upon a written instrument for the payment of money only, and such instrument is in the pos- When made by agent or attorney.

session of the agent or attorney. 4. When the party is not a resident of or is absent from the county.

Construction of pleading liberal.

SECT. 111. In the construction of any pleading, for the purpose of determining its effects, its allegations shall be liberally construed, with a view to substantial justice between the parties.

Fictions abolished.

SECT. 112. All fictions in pleading are abolished.

Title cannot be changed.

SECT. 113. The title of a cause shall not be changed in any of its stages.

In action relating to account, note, bill, &c., copy must be attached.

SECT. 114. If the action, counter claim or set-off be founded on an account, or on a note, bill, or other written instrument, as evidence of indebtedness, a copy thereof must be attached to and filed with the pleading, excepting in actions founded upon notes issued to circulate as money. If not so attached and filed, the reason thereof must be shown in the pleading.

When pleading may be altered.

SECT. 115. If redundant, scandalous, or irrelevant matter be inserted in any pleading, it may be stricken out on motion of the party prejudiced thereby. And when the allegations of a pleading are so indefinite and 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.

When and how counter claim or set-off may be withdrawn and made subject of new action.

SECT. 116. The court, at any time before the final submission of the case, on motion of the defendant, may allow a counter claim or set-off, set up in the answer, to be withdrawn, and the same may become the subject of another action. On motion of either party, to be made at the time such counter claim or set-off is withdrawn, an action on the same shall be docketed and proceeded in as in like cases after process served; and the court shall direct the time and manner of pleading therein. If an action be not so docketed, it may afterwards be commenced in the ordinary way.

Special jurisdiction, how established.

SECT. 117. In pleading a judgment or other determination of a court or officer of special jurisdiction, it shall be sufficient to state that such judgment or determination was duly given or made. If such allegation be controverted, the party pleading must establish, on the trial, the facts conferring jurisdiction.

Performance of conditions, how established.

SECT. 118. In pleading the performance of conditions precedent in a contract, it shall be sufficient to state, that the

party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing such performance.

SECT. 119. In an action, counter claim or set-off, founded upon an account, promissory note, bill of exchange, or other instrument, for the unconditional payment of money only, it shall be sufficient for the party to give a copy of the account or instrument, with all credits and indorsements thereon, and to state that there is due to him on such account or instrument, from the adverse party, a specified sum, which he claims with interest. When others than the makers of a promissory note, or the acceptors of a bill of exchange, are parties in the action, it shall be necessary to state also the kind of liability of the several parties, and the facts, as they may be, which fix their liability.

In action upon account, promissory note, &c., copy sufficient, &c.

SECT. 120. 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.

Pleading a private statute.

SECT. 121. In an action for a libel or slander, it shall be sufficient to state generally, that the defamatory matter was published or spoken of the plaintiff, and if the allegation be denied, the plaintiff must prove on the trial, the facts, showing that the defamatory matter was published or spoken of him.

Actions for libel or slander.

SECT. 122. In the actions mentioned in the last section, the defendant may allege the truth of the matter charged as defamatory, and may prove the same, and any mitigating circumstances to reduce the amount of damages, or he may prove either.

Same.

SECT. 123. In an action for the recovery of real property, it shall be described with sufficient certainty, as will enable an officer holding an execution to identify it.

Action for recovery of real property.

SECT. 124. Every material allegation of the petition not controverted by the answer, and every material allegation of new matter in the answer, constituting a counter claim or set-off, not controverted by the reply, shall, for the purposes of the action, be taken as true; but the allegation of new matter in the answer, not relating to a counter claim or set-off, or of new matter in reply, shall be deemed to be controverted by the adverse party, as upon a direct denial or avoidance, as

Material allegations not controverted, taken as true.

- Exception. the case may require. Allegations of value, or of amount of damage, shall not be considered as true, by failure to controvert them.
- A material allegation is what. SECT. 125. A material allegation in a pleading, is one essential to the claim or defence, which could not be stricken from the pleading, without leaving it insufficient.
- What need not be stated in pleading. SECT. 126. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in the pleading.
- If original pleading is lost. SECT. 127. If an original pleading be lost, or withheld by any person, the court may allow a copy thereof to be substituted.

CHAPTER VII.—MISTAKES IN PLEADING AND AMENDMENTS.

- Variance between pleading and proof. SECT. 128. No variance between the allegation in pleading and the proof, is to be deemed material, unless it have actually misled the adverse party to his prejudice, in maintaining his action or defence upon the merits. Whenever it is alleged, that a party has been so misled, that fact must be proved to the satisfaction of the court, and it must also be shown in what respect he has been misled; and thereupon the court may order the pleading to be amended, upon such terms as may be just.
- When variance not material. SECT. 129. When the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, and may order an immediate amendment without costs.
- When allegation in general is unproved. SECT. 130. When, however, the allegation of the claim or defence, to which the proof is directed, is unproved, not in some particular, or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance within the last two sections, but a failure of proof.
- Petition may be amended, when and how. SECT. 131. The plaintiff may amend his petition without leave, at any time before the answer is filed, without prejudice to the proceeding; but notice of such amendment shall be served upon the defendant, or his attorney, and the defendant shall have the same time to answer or demur thereto, as to the original petition.
- Adverse party may amend within ten days. SECT. 132. At any time within ten days after a demurrer is filed, the adverse party may amend, of course, on payment of costs since filing the defective pleading. Notice of filing

an amended pleading, shall be forthwith served upon the other party, who shall have the same time thereafter to answer, or reply thereto, as to an original pleading.

SECT. 133. Upon a demurrer being overruled, the party who demurred may answer or reply, if the court be satisfied that he has a meritorious claim or defence, and did not demur for delay.

If demurrer overruled, party may answer or reply.

SECT. 134. The court may, before 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 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. And whenever any proceeding taken by a party fails to conform, in any respect, to the provisions of this code, the court may permit the same to be made conformable thereto, by amendment.

Court may amend, what and when.

SECT. 135. The court, in every stage of an action, must disregard any error or defect in the pleadings or proceedings, which does not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect.

Court must disregard errors or defects which do not affect rights.

SECT. 136. If the demurrer be sustained, the adverse party may amend, if the defect can be remedied by way of amendment, with or without cost, as the court in its discretion shall direct.

Demurrer sustained, adverse party may amend.

SECT. 137. When either party shall amend any pleading or proceeding, and the court shall be satisfied by affidavit, or otherwise, that the adverse party could not be ready for trial in consequence thereof, a continuance may be granted to some day in term, or to another term of the court.

In case of amendment requiring time, continuance may be granted.

SECT. 138. 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 description; and when his true name is discovered, the pleading or proceeding may be amended accordingly. The plaintiff in such case must state, in the verification of his petition, that he could not discover the true name, and the summons must

When name of defendant unknown.

contain the words, "real name unknown," and a copy thereof must be served personally upon the defendant.

Supplemental
petition, answer
or reply.

SECT. 139. Either party may be allowed, on notice, and on such terms as to costs as the court may prescribe, to file a supplemental petition, answer, or reply, alleging facts material to the case, occurring after the former petition, answer or reply.

When two or
more actions
pending may be
joined.

SECT. 140. Whenever two or more actions are pending in the same court, which might have been joined, the defendant may, on motion and notice to the adverse party, require him to show cause why the same shall not be consolidated; and if no such cause be shown, the said several actions shall be consolidated.

Order for con-
solidation, how
made.

SECT. 141. The order for consolidation may be made by the court, or by a judge thereof, in vacation.

SECT. 142. * * * SECT. 143. * * * SECT. 144. * * * SECT. 145. * * * SECT. 146. * * * SECT. 147. * * * SECT. 148. * * * SECT. 149. * * * SECT. 150. * * * SECT. 151. * * * SECT. 152. * * * SECT. 153. * * * SECT. 154. * * * SECT. 155. * * * SECT. 156. * * * SECT. 157. * * * SECT. 158. * * * SECT. 159. * * * SECT. 160. * * * SECT. 161. * * * SECT. 162. * * * SECT. 163. * * * SECT. 164. * * * SECT. 165. * * * SECT. 166. * * * SECT. 167. * * * SECT. 168. * * * SECT. 169. * * * SECT. 170. * * *

[TITLE VIII.]

CHAPTER II.—REPLEVIN OF PROPERTY.

Specific per-
sonal property
may be demand-
ed, when.

SECT. 171. The plaintiff in an action to recover the possession of specific personal property, may, at the commencement of the suit, or at any time before answer, claim the immediate delivery of such property, as provided in this chapter.

Order for same,
when and how
made.

SECT. 172. An order for the delivery of property to the plaintiff, shall be made by the clerk of the court in which the action is brought, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing: 1. A description of the property claimed. 2. That the plaintiff is the owner of the property or has a special ownership or interest therein, stating the facts in relation thereto, and that he is

entitled to the immediate possession of the property. 3. That the property is wrongfully detained by the defendant. 4. That it was not taken in execution or any order or judgment against said plaintiff, or for the payment of any tax, fine, or amercement, assessed against him, or by virtue of an order of delivery issued under this chapter, or any other mesne or final process issued against the plaintiff.

SECT. 173. The order for the delivery of the property to the plaintiff shall be addressed and delivered to the sheriff. It shall state the names of the parties, the court in which the action is brought, and command the sheriff to take the property, describing it, and deliver it to the plaintiff, and to make return of the order on a day to be named therein. Same.

SECT. 174. The return day of the order of delivery, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be twenty days after it issued. Return day of order.

SECT. 175. The sheriff shall execute the order by taking the property therein mentioned. He shall also deliver a copy of the order to the person charged with the unlawful detention of the property, or leave such copy at his usual place of residence. Order, how executed.

SECT. 176. The sheriff or other officer shall not deliver to the plaintiff, his agent or attorney, the property so taken, until there has been executed by one or more sufficient sureties of the plaintiff, a written undertaking to the defendant, in at least double the value of the property taken, to the effect that the plaintiff shall duly prosecute the action and pay all costs and damages which may be awarded against him. The undertaking shall be returned with the order. Property delivered, when.

SECT. 177. For the purpose of fixing the amount of the undertaking, the value of the property taken shall be ascertained by the oath of two or more responsible persons, whom the sheriff or other officer shall swear truly to assess the value thereof. Value, how ascertained.

SECT. 178. If the undertaking, required by section one hundred and seventy-six, be not given within twenty-four hours from the taking of the property under said order, the sheriff or other officer shall return the property to the defendant. And if the sheriff or other officer deliver any property so taken to the plaintiff, his agent or attorney, or If undertaking not given.

keep the same from the defendant, without taking such security within the time aforesaid, or if he take insufficient security, he shall be liable to the defendant in damages.

Defendant may
except to sure-
ties.

SECT. 179. The defendant may, within twenty-four hours from the time the undertaking, referred to in the preceding section, is given by the plaintiff, give notice to the sheriff that he excepts the sufficiency of the sureties. If he fail to do so, he must be deemed to have waived all objections to them. When the defendant excepts, the sureties must justify upon notice, as bail on arrest. The sheriff, or other officer, shall be responsible for the sufficiency of the sureties, until the objection to them is waived as above provided, or until they justify. The property shall be delivered to the plaintiff when the undertaking, required by section one hundred and seventy-six, has been given.

If judgment
be then rendered
against the
plaintiff.

SECT. 180. If the property has been delivered to the plaintiff and judgment be rendered against him on demurrer, or if he otherwise fail to prosecute his action to final judgment, the court shall, on application of the defendant or his attorney, impanel a jury to inquire into the right of property and right of possession of the defendant to the property taken. If the jury shall be satisfied that said property was the property of the defendant, at the commencement of the action, or if they shall find that the defendant was entitled to the possession only of the same at such time, then, and in either case, they shall assess such damages for the defendant as are right and proper; for which, with costs of suit, the court shall render judgment for the defendant.

Judgment for
defendant in
such case.

SECT. 181. In all cases when the property has been delivered to the plaintiff, where the jury shall find upon issue joined for the defendant, they shall also find whether the defendant had the right of property, or the right of possession only, at the commencement of the suit; and if they find either in his favor, they shall assess such damages as they think right and proper for the defendant; for which, with costs of suit, the court shall render judgment for the defendant.

Judgment for
plaintiff in such
case.

SECT. 182. In all cases when the property has been delivered to the plaintiff, where the jury shall find for the plaintiff, on an issue joined, or on inquiry of damages upon a judgment by default, they shall assess adequate damages to the

plaintiff for the illegal detention of the property, for which, with costs of suit, the court shall render judgment for defendant.

SECT. 183. When the property claimed has not been taken, or has been returned to the defendant by the sheriff, for want of the undertaking required by section one hundred and seventy-six, the action may proceed as one for damages only, and the plaintiff shall be entitled to such damages as are right and proper; but if the property be returned for want of the undertaking required by section one hundred and seventy-six, the plaintiff shall pay all costs made by taking the same.

When property claimed has been returned.

SECT. 184. An order may be directed to any other county than the one in which the action is brought, for the delivery of the property claimed. Several orders may issue at the same time, or successively, at the option of the plaintiff; but only one of them shall be taxed in the costs, unless otherwise ordered by the court.

An order for delivery may be directed to any other county.

SECT. 185. The sheriff or other officer in the execution of the order of delivery, may break open any building or inclosure, in which the property claimed, or any part thereof, is concealed; but not until he has been refused an entrance into said building or inclosure, and the delivery of the property, after having demanded the same.

Officer may break open building or inclosure.

SECT. 186. No suit shall be instituted on the undertaking given under section one hundred and seventy-six, before an execution issued on a judgment in favor of the defendant in the action shall have been returned, that sufficient property, whereon to levy and make the amount of such judgment, cannot be found in the county.

No suit instituted on undertaking, except when.

SECT. 187. Any order for the delivery of property issued under section one hundred and seventy-two, without the affidavit required thereby, shall be set aside at the cost of the clerk issuing the same, and such clerk, as well as the plaintiff, shall also be liable in damages to the party injured.

An order issued without affidavit to be set aside.

CHAPTER III. ATTACHMENT.—Article I. *General Attachment.*—II.
Attachment in Certain Actions.

ARTICLE I. GENERAL ATTACHMENT.—Subdivision 1. *Grounds of Attachment.*—
2. *How Attachment obtained.*—3. *Execution and Return thereof.*—4. *Disposition*
of Attached Property.—5. *Proceedings upon Attachment.*—6. *General Pro-*
visions.

—
SUBDIVISION 1.—*Grounds of Attachment.*

Plaintiff may
have attachment,
when.

SECT. 188. The plaintiff, in a civil action for the recovery of money, may, at or after the commencement thereof, have an attachment against the property of the defendant and upon the grounds herein stated: 1. When the defendant, or one of several defendants, is a foreign corporation, or a non-resident of this territory; or, 2. Has absconded with the intent to defraud his creditors; or, 3. Has left the county of his residence, to avoid the service of a summons; or, 4. So conceals himself that a summons cannot be served upon him; or, 5. Is about to remove his property, or a part thereof, out of the jurisdiction of the court, with the intent to defraud his creditors; or, 6. Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or, 7. Has property, or rights in action, which he conceals; or, 8. Has assigned, removed, or disposed of, or is about to dispose of his property, or a part thereof, with the intent to defraud his creditors; or, 9. Fraudulently contracted the debt, or incurred the obligation for which suit is about to be, or has been brought. But an attachment shall not be granted on the ground that the defendant is a foreign corporation or a non-resident of this territory, for any claim other than a debt or demand arising upon contract, judgment, or decree.

SUBDIVISION 2.—*How an Attachment is obtained.*

Order of at-
tachment, when
made.

SECT. 189. An order of attachment shall be made by the clerk of the court, in which the action is brought, in any case mentioned in the preceding section, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing: 1. The nature of the plaintiff's claim. 2. That it is just. 3. The amount which the affiant believes the plaintiff ought to recover; and 4. The existence of some one of the grounds for attachment, enumerated in the preceding section.

SECT. 190. When the ground of the attachment is, that the defendant is a foreign corporation, or a non-resident of this territory, the order of attachment may be issued without an undertaking. In all other cases, the order of attachment shall not be issued by the clerk, until there has been executed in his office, by one or more sufficient sureties of the plaintiff, to be approved by the clerk, an undertaking not exceeding double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay the defendant all damages, which he may sustain by reason of the attachment, if the order be wrongfully obtained.

Nature of undertaking, and when necessary.

SECT. 191. The order of attachment shall be directed and delivered to the sheriff. It shall require him to attach the lands, tenements, goods, chattels, stocks, or interest in stocks, rights, credits, moneys, and effects of defendant in his county, not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable costs of the action, not exceeding fifty dollars.

Directed to sheriff, and its substance.

SECT. 192. Orders of attachment may be issued to the sheriffs of different counties; and several of them may, at the option of the plaintiff, be issued at the same time, or in succession; but such only as have been executed, shall be taxed in the costs, unless otherwise directed by the court.

Orders may be issued to different sheriffs.

SECT. 193. The return day of the order of attachment, when issued at the commencement of the action, shall be the same as that of the summons; when issued afterwards, it shall be twenty days after it issued.

Return day.

SUBDIVISION 3. — *Execution and Return thereof.*

SECT. 194. When there are several orders of attachment against the same defendant, they shall be executed in the order in which they were received by the sheriff.

If several issued, executed in order.

SECT. 195. The order of attachment shall be executed by the sheriff without delay. He shall go to the place where the defendant's property may be found, and there, in the presence of two residents of the county, declare that by virtue of said order, he attaches said property at the suit of such plaintiff; and the officer, with the said residents, who shall be first sworn or affirmed by the officer, shall make a true inventory and appraisement of all the property attached, which shall be

When and how executed.

signed by the officer and residents, and returned with the order. Where the property attached is real property, the officer shall leave with the occupant thereof, or, if there be no occupant, in a conspicuous place thereon, a copy of the order. Where it is personal property and accessible, he shall take the same into his custody, and hold it subject to the order of the court.

Property released on execution of undertaking.

SECT. 196. The sheriff shall deliver the property attached to the person in whose possession it was found, upon the execution by such person, in the presence of the sheriff, of an undertaking to the plaintiff, with one or more sufficient sureties, resident in the county, to the effect that the parties to the same are bound, in double the appraised value thereof, that the property or its appraised value in money, shall be forthcoming to answer the judgment of the court in the action; but if it shall appear to the court that any part of said property has been lost or destroyed by unavoidable accident, the value thereof shall be remitted to the person so bound.

If property cannot be reached, garnishee ordered to answer.

SECT. 197. When the plaintiff, his agent, or attorney, shall make oath in writing that he has good reason to and does believe that any person or corporation, to be named and within the county where the action is brought, has property of the defendant (describing the same) in his possession, if the officer cannot come at such property, he shall leave with such garnishee a copy of the order of attachment, with a written notice, that he appear in court at the return of the order of attachment, and answer as provided in section two hundred and eleven.

Order on garnishee, how served.

SECT. 198. The copy of the order and the notice shall be served upon the garnishee, as follows: If he be a person, they shall be served upon him personally, or left at his usual place of residence; if a corporation, they shall be left with the president or other officer of the same, or a managing agent thereof.

Different attachments may be made by same officer.

SECT. 199. Different attachments of the same property may be made by the same officer, and one inventory and appraisal shall be sufficient, and it shall not be necessary to return the same with more than one order.

If attached under subsequent orders.

SECT. 200. Where the property is under attachment, it shall be attached under subsequent orders as follows: 1. If it

be real property, it shall be attached in the manner prescribed in section one hundred and ninety-five. 2. If it be personal property, it shall be attached as in the hands of the officer, and subject to any previous attachment. 3. If the same person or corporation be made a garnishee, a copy of the order and notice shall be left with him, in the manner prescribed in section one hundred and ninety-seven.

SECT. 201. The officer shall return upon every order of attachment what he has done under it. The return must show the property attached, and the time it was attached. When garnishees are served, their names, and the time each was served, must be stated. The officer shall also return with the order all undertakings given under it. Officer's return.

SECT. 202. An order of attachment binds the property attached from the time of service, and the garnishee shall stand liable to the plaintiff in attachment for all property, moneys, and credits in his hands, or due from him to the defendant, from the time he is served with the written notice mentioned in section one hundred and ninety-seven; but where the property is attached in the hands of a consignee, his lien thereon shall not be affected by the attachment. Property bound from time of service, &c.

SUBDIVISION 4.—*Disposition of Attached Property.*

SECT. 203. The court, or any judge thereof during vacation, may, on the application of the plaintiff, and on good cause shown, appoint a receiver, who shall take an oath faithfully to discharge his duty, and shall give an undertaking to the Territory of Dakota, in such sum as the court or judge may direct, and with such security as shall be approved by the clerk of the court, for the faithful performance of his duty as such receiver, and to pay over all money, and account for all property, which may come into his hands by virtue of his appointment, at such times and in such manner as the court may direct. Receiver appointed; to give bond.

SECT. 204. Such receiver shall take possession of all notes, due-bills, books of account, accounts, and all other evidences of debt that have been taken by the sheriff or other officer, as the property of the defendant in attachment, and shall proceed to settle and collect the same. For that purpose, he may commence and maintain actions in his own name as His duties.

such receiver; but in such actions no right of defence shall be impaired or affected.

Same.

SECT. 205. Such receiver shall forthwith give notice of his appointment to the persons indebted to the defendant in attachment. The notice shall be written or printed, and shall be served on the debtor or debtors, by copy personally, or by copy left at the residence; and from the date of such service, the debtors shall stand liable to the plaintiff in attachment for the amount of moneys and credits in their hands, or due from them to the defendant in attachment, and shall account therefor to the receiver.

Subject to order of court.

SECT. 206. Such receiver shall, when required, report his proceedings to the court, and hold all moneys collected by him, and property which may come into his hands, subject to the order of the court.

When receiver not appointed, officer to act as such.

SECT. 207. Where a receiver is not appointed by the court or a judge thereof, as provided in section two hundred and three, the sheriff or other officer attaching the property shall have all the powers and perform all the duties of a receiver appointed by the court or a judge, and may, if necessary, commence and maintain actions in his own name as such officer. He may be required to give security, other than his official undertaking.

Court may make orders for preservation of property.

SECT. 208. The court shall make proper orders for the preservation of the property, during the pendency of the suit. It may direct a sale of property, when, because of its perishable nature or the costs of keeping it, a sale will be for the benefit of the parties. In vacation, such sale may be ordered by the judge of the court. The sale shall be public, after such advertisement as is prescribed for the sale of like property on execution, and shall be made in such manner, and upon such terms of credit, with security, as the court [or] judge, having regard to the probable duration of the action, may direct. The proceeds, if collected by the sheriff, with all the moneys received by him from garnishees, shall be held and paid over by him, under the same requirement and responsibilities of himself and sureties, as are provided in respect to money deposited in lieu of bail.

SUBDIVISION 5. — *Proceedings upon Attachment.*

SECT. 209. If the defendant, or any other person on his behalf, at any time before judgment, cause an undertaking to be executed to the plaintiff by one or more sureties, resident in the county, to be approved by the court, in double the amount of the plaintiff's claim as stated in his affidavit, to the effect that the defendant shall perform the judgment of the court, the attachment in such action shall be discharged, and restitution made of any property taken under it, or the proceeds thereof. Such undertaking shall also discharge the liability of a garnishee in such action for any property of the defendant in his hands.

Attachment discharged upon execution of undertaking.

SECT. 210. The undertaking mentioned in the last section, may, in vacation, be executed in the presence of the sheriff having the order of attachment in his hands, or, after the return of the order, before the clerk, with the same effect as if executed in court; the sureties in either case to be approved by the officer before whom the undertaking is executed.

Undertaking, how executed.

SECT. 211. The garnishee shall appear as follows: If the order of attachment be returned during a term of court, he shall appear at that term; if the order be returned during vacation, he shall appear at the term next after its return. He shall appear and answer, under oath, all the questions put to him touching the property of every description and credits of the defendant, in his possession or under his control, and he shall disclose truly the amount owing by him to the defendant, whether due or not, and in case of a corporation, any stock therein held by or for the benefit of the defendant at or after the service of notice.

When garnishee shall appear.

SECT. 212. A garnishee may pay the money owing to the defendant by him, to the sheriff having the order of attachment, or into court. He shall be discharged from liability to the defendant, for any money so paid, not exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of the claim against him; and if he disclose the property in his hands or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs.

Privileges of garnishee.

SECT. 213. If the garnishee do not appear in court and answer, as required by section two hundred and eleven, the court may proceed against him by attachment as for a contempt.

If garnishee do not appear.

If garnishee appear and answer.

SECT. 214. If the garnishee appear and answer, and it is discovered on his examination, that at or after the service of the order of attachment and notice upon him, he was possessed of any property of the defendant, or was indebted to him, the court may order the delivery of such property and the payment of the amount owing by the garnishee, into the court; or the court may permit the garnishee to retain the property or the amount owing, upon the execution of an undertaking to the plaintiff by one or more sufficient sureties, to the effect, that the amount shall be paid, or the property forthcoming, as the court may direct.

If he fail to appear, or if his disclosure is unsatisfactory.

SECT. 215. If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure is not satisfactory to the plaintiff, or if he fail to comply with the order of the court, to deliver the property and pay the money owing into court, or give the undertaking required in the preceding section, the plaintiff may proceed against him in an action, by filing a petition in his own name, as in other cases, and causing a summons to be issued upon it; and thereupon such proceedings may be had as in other actions, and judgment may be rendered in favor of the plaintiff, for the amount of the property and credits, of every kind, of the defendant in the possession of the garnishee, and for what shall appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, the plaintiff shall pay the costs of such action. The judgment in this action may be enforced as judgments in other cases. When the claims of the plaintiffs in attachment are satisfied, the defendant in attachment may, on motion, be substituted as the plaintiff in the judgment.

Final judgment against garnishee postponed, when. If garnishee deliver property, &c.

SECT. 216. Final judgment shall not be rendered against the garnishee, until the action against the defendant in attachment has been determined; and if in such action judgment be rendered for the defendant in attachment, the garnishee shall be discharged and recover costs. If the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all the property, moneys, and credits of the defendant in his possession, and pay all the moneys

from him due, as the court may order, the garnishee shall be discharged, and the costs of the proceedings against him shall be paid out of the property and moneys so surrendered, or as the court may think right and proper.

SECT. 217. If judgment be rendered in the action for the defendant, the attachment shall be discharged, and the property attached, or its proceeds shall be returned to him.

If judgment rendered for defendant.

SECT. 218. If judgment be rendered for the plaintiff, it shall be satisfied as follows: So much of the property remaining in the hands of the officer, after applying the moneys arising from the sale of perishable property, and so much of the personal property and lands and tenements, if any, whether held by legal or equitable title, as may be necessary to satisfy the judgment, shall be sold by order of the court, under the same restrictions and regulations as if the same had been levied on by execution; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs. If there be not enough to satisfy the same, the judgment shall stand, and the execution may issue thereon for the residue, in all respects as in other cases. Any surplus of the attached property, or its proceeds, shall be returned to the defendant.

If judgment rendered for plaintiff, how satisfied.

SECT. 219. The court may compel the delivery to the sheriff, for sale, of any of the attached property for which an undertaking may have been given, and may proceed summarily on such undertaking, to enforce the delivery of the property, or the payment of such sum as may be due upon the undertaking, by rules and attachments, as in cases of contempt.

Proceedings on undertaking.

SECT. 220. The court may order the sheriff to repossess himself, for the purpose of selling it, any of the attached property which may have passed out of his hands, without having been sold or converted into money; and the sheriff shall, under such order, have the same power to take the property as he would have under an order of attachment.

Sheriff may repossess himself of attached property.

SECT. 221. If personal property which has been attached be claimed by any person other than the defendant, it shall be the duty of the officer to have the validity of such claim tried, and such proceedings must be had thereon, with the like effect as in case the property had been seized upon execution, and claimed by a third person.

If attached personal property be claimed by another person.

Where several attachments are executed on same property.

SECT. 222. Where several attachments are executed on the same property, or the same persons are made garnishees, the court, on the motion of any of the plaintiffs, may order a reference to ascertain and report the amounts and priorities of the several attachments.

SUBDIVISION 6.— *General Provisions.*

Court acquires jurisdiction when. If defendant dies, or charter expires.

SECT. 223. From the time of the issuing of the order of attachment, the court shall be deemed to have acquired jurisdiction and to have control of all subsequent proceedings under this chapter; and if, after the issuing of the order, the defendant being a person, should die, or a corporation, and its charter should expire by limitation, forfeiture, or otherwise, the proceeding shall be carried on; but in all such cases, other than where the defendant was a foreign corporation, his legal representatives shall be made parties to the action.

Defendant may ask for additional security, when.

SECT. 224. The defendant may, at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion, the court is satisfied that the surety in the plaintiff's undertaking has removed from this territory, or is not sufficient for the amount thereof, it may vacate the order of attachment and direct restitution of any property taken under it, unless, in a reasonable time, to be fixed by the court, sufficient security is given by the plaintiff.

Defendant may move discharge of attachment.

SECT. 225. The defendant may, at any time before judgment, upon reasonable notice to the plaintiff, move to discharge an attachment, as to the whole or a part of the property attached.

If made on affidavits and papers.

SECT. 226. If the motion be made upon affidavits on the part of the defendant, or papers and evidence in the case, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to that on which the order of attachment was made.

ARTICLE II.— ATTACHMENTS IN CERTAIN ACTIONS.

Attachment in cases of fraudulent intent.

SECT. 227. 1. Where a debtor has sold, conveyed, or otherwise disposed of his property, with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts; or, 2. Is about to make such

sale, conveyance, or disposition of his property, with such fraudulent intent; or, 3. Is about to remove his property, or a material part thereof, with the intent, or to the effect, of cheating or defrauding his creditors, or of hindering and delaying them in the collection of their debts, a creditor may bring an action on a claim before it is due, and have an attachment against the property of the debtor.

SECT. 228. The attachment authorized by the last section, may be granted by the court in which the action is brought, or by a judge thereof, but before such action shall be brought, or such attachment shall be granted, the plaintiff, his agent or attorney shall make an oath in writing, showing the nature and amount of the plaintiff's claim, that it is just, when the same shall become due, and the existence of some one of the grounds for attachment, enumerated in the preceding section.

Certain oath necessary before attachment is granted.

SECT. 229. If the court or judge refuse to grant an order of attachment, the action shall be dismissed, but without prejudice to a future action; and in all such actions, application for an attachment must be made.

If court refuse to grant order.

SECT. 230. The order of the court or judge granting the attachment, shall specify the amount for which it is allowed, not exceeding a sum sufficient to satisfy the plaintiff's claim and the probable costs of the action.

Order to specify amount for which it is granted.

SECT. 231. The order of attachment, as granted by the court or judge, shall not be issued by the clerk until there has been executed, in his office, such undertaking on the part of the plaintiff, as is directed by section one hundred and ninety.

Undertaking by plaintiff before order is issued.

SECT. 232. The plaintiff in such action shall not have judgment on his claim, before it becomes due, and the proceedings on attachment may be conducted without delay.

No judgment before claim is due.

SECT. 233. The proceedings in the first article of this chapter, subsequent to section one hundred and ninety, shall, so far as they are applicable, regulate the attachments authorized by this article.

Attachment under this article, how regulated.

CHAPTER IV.—INJUNCTION.

SECT. 234. The injunction provided by this code is a command to refrain from a particular act. It may be the final

The injunction. Writ of, abolished.

judgment in an action, or may be allowed as a provisional remedy; and when so allowed, it shall be by order. The writ of injunction is abolished.

A temporary injunction, when granted.

SECT. 235. When it appears by the petition 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 great or irreparable injury to the plaintiff, or when, during litigation, it appears that the defendant is doing or threatens, or is about to do, or is procuring, or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of action, and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act. It may also be granted in any case where it is specially authorized by statute.

By whom and when.

SECT. 236. The injunction may be granted at the time of commencing the action, or at any time afterwards, before judgment, by the supreme court or any judge thereof, the district court or any judge thereof, upon its appearing satisfactorily to the court or judge, by the affidavit of the plaintiff or his agent, that the plaintiff is entitled thereto.

Parties may be heard.

SECT. 237. If the court or judge deem it proper that the defendant, or any party to the suit, should be heard before granting the injunction, it may direct a reasonable notice to be given to such party to attend for such purpose at a specified time and place, and may, in the mean time, restrain such party.

Not granted against party who answers.

SECT. 238. An injunction shall not be granted against a party who has answered, unless upon notice; but such party may be restrained until the decision of the application for an injunction.

Not operative, unless undertaking is given.

SECT. 239. No injunction, unless provided by special statute, shall operate until the party obtaining the same shall give an undertaking, executed by one or more sufficient sureties, to be approved by the clerk of the court granting such injunction, in an amount to be fixed by the court or judge allowing the same, to secure to the party enjoined the damages he may sustain, if it be finally decided that the injunction ought not to have been granted.

If "injunction allowed."

SECT. 240. The order of injunction shall be addressed to

the party enjoined, shall state the injunction, and shall be issued by the clerk. Where the injunction is allowed at the commencement of the action, the clerk shall indorse upon the summons, "injunction allowed," and it shall not be necessary to issue the order of injunction; nor shall it be necessary to issue the same, where notice of the application therefor has been given to the party enjoined. The service of the summons so indorsed, or the notice of the application for an injunction, shall be notice of its allowance.

SECT. 241. Where the injunction is allowed during the litigation and without notice of the application therefor, the order of injunction shall be issued, and the sheriff forthwith serve the same upon each party enjoined, in the manner prescribed for serving a summons, and make return thereof without delay.

If allowed during litigation and without notice.

SECT. 242. An injunction binds the party, from the time he has notice thereof, and the undertaking required by the applicant therefor, is executed.

When binding.

SECT. 243. No injunction shall be granted by a judge, after a motion therefor has been overruled on the merits of the application, by his court.

Not granted after motion is overruled.

SECT. 244. An injunction granted by a judge may be enforced, as the act of the court. Disobedience of an injunction may be punished as a contempt, by the court or any judge, who might have granted it in vacation. An attachment may be issued by the court or judge, upon being satisfied by affidavit of the breach of the injunction, against the party guilty of the same; and he may be required, in the discretion of the court or judge, to pay a fine not exceeding two hundred dollars for the use of the county, to make immediate restitution to the party injured, and give further security to obey the injunction; or in default thereof, he may be committed to close custody, until he shall fully comply with such requirement, or be otherwise legally discharged.

Its enforcement.

SECT. 245. A party enjoined may, at any time before judgment, upon reasonable notice to the party who has obtained the injunction, move the court for additional security; and if it appear that the surety in the undertaking has removed from the territory, or is insufficient, the court may vacate the injunction, unless in a reasonable time sufficient security be given.

Party enjoined may move the court for additional security.

Affidavits may be read in hearing.

SECT. 246. On the hearing of an application for an injunction, each party may read affidavits. All affidavits shall be filed.

If granted without notice, defendant may move to vacate or modify.

SECT. 247. If the injunction be granted without notice, the defendant, at any time before the trial, may apply, upon notice, to the court in which the action is brought, or any judge thereof, to vacate or modify the same. The application may be made upon the petition and affidavits upon which the injunction is granted, or upon affidavits on the part of the party enjoined, with or without answer. The order of the judge allowing, dissolving, or modifying an injunction, shall be returned to the office of the clerk of the court in which the action is brought, and recorded and obeyed, as if made by the court.

If application on affidavits.

SECT. 248. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same to affidavits or other evidence, in addition to that on which the injunction was granted.

Injunction upon an answer, how.

SECT. 249. A defendant may obtain an injunction upon an answer in the nature of a counter claim. He shall proceed in the manner prescribed in this chapter.

CHAPTER V.—RECEIVERS AND OTHER PROVISIONAL REMEDIES.

Receiver may be appointed by whom and in what cases.

SECT. 250. A receiver may be appointed by the supreme court, or district court or by any judge of either: 1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or of any party whose right to or interest in the property or fund, or the process thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured. 2. In an action by a mortgagee for the foreclosure of his mortgage, and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgaged debt. 3. After judgment to carry the judgment into effect. 4. After the 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 refuses to apply the property in satisfaction of the judgment. 5. 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. 6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

SECT. 251. No party or attorney or person interested in an action shall be appointed receiver therein. No interested person appointed.

SECT. 252. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and, with one or more sureties, approved by the court or judge, execute an undertaking to such person and in such sum as the court or judge shall direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein. Receiver to be sworn and execute undertaking.

SECT. 253. The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver, to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers and generally to do such acts respecting the property as the court may authorize. His powers.

SECT. 254. Funds in the hands of a receiver may be invested upon interest, by order of the court; but no such order shall be made except upon the consent of all parties to the action. Funds in his hands, when invested.

SECT. 255. 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 discretion of the court. When ownership admitted.

SECT. 256. Whenever, in the exercise of its authority, a court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing disobedience as for a contempt, may make an order, requiring the sheriff to take the money or thing and When order of court is disobeyed.

deposit or deliver it in conformity with the direction of the court.

TITLE IX.

TRIAL.

CHAPTER I. *Issue.*—II. *Trial.*

CHAPTER I.—ISSUE.

Issues, nature
of.

SECT. 257. Issues arise on the pleadings, where a fact, or conclusion of law, is maintained by one party and controverted by the other. They are of two kinds: 1. Of law. 2. Of fact.

Issue of fact

SECT. 258. An issue of fact arises: 1. Upon a material allegation in the petition denied by the answer. 2. Upon a set-off or counter claim presented in the answer and denied by the reply. 3. Upon material new matter in the answer or reply, which shall be considered as controverted by the opposite party without further pleading.

CHAPTER II. TRIAL.—Article. I. *Trial in General.*—II. *Trial by Jury.*—III. *Trial by the Court.*—IV. *Trial by Referees.*—V. *Exceptions.*—VI. *New Trials.*—VII. *General Provisions.*—VIII. *Time of Trial.*

ARTICLE I.—TRIAL IN GENERAL.

The trial.

SECT. 259. A trial is a judicial examination of the issues, whether of law or of fact, in an action.

Issues of law
tried by court.
Of certain facts,
by jury.

SECT. 260. Issues of law must be tried by the court, unless referred as provided in section two hundred and seventy-eight. Issues of fact, arising in actions for the recovery of money, or of specific real or personal property, shall be tried by a jury, unless a jury trial is waived, or a reference be ordered as hereinafter provided.

Other issues of
fact.

SECT. 261. All other issues of fact shall be tried by the court, subject to its power to order any issue or issues to be tried by a jury, or referred, as provided in this code.

ARTICLE II. TRIALS BY JURY.—Subdivision 1. *Formation of the Jury.*—2. *Conduct of the Trial.*—3. *Verdict.*

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SUBDIVISION 1.—*Formation of the Jury.*

SECT. 262. The general mode of summoning, empanneling, challenging, and swearing a jury, shall be as otherwise provided by law. Jury formed according to law.

SUBDIVISION 2.—*Conduct of the Trial.*

SECT. 263. When the jury has been sworn, the trial shall proceed in the following order, unless the court for special reasons otherwise direct: 1. The plaintiff must briefly state his claim, and he may briefly state the evidence by which he expects to sustain it. 2. The defendant must then briefly state his defence, and may briefly state the evidence he expects to offer in support of it. 3. The party who would be defeated, if no evidence were given on either side, must first procure his evidence; the adverse party will then produce his evidence. 4. The parties will then be confined to rebutting evidence, unless the court, for good reasons, in furtherance of justice, permits them to offer evidence in their original case. 5. When the evidence is concluded, either party may request instructions to the jury on points of law, and be heard upon the same, which shall be given or refused by the court; which instructions shall be reduced to writing, if either party require it. 6. The parties may then submit or argue the case to the jury. In the argument, the party required first to produce his evidence, shall have the opening and conclusion. If several defendants, having separate defences, appear by different counsel, the court shall arrange their relative order. 7. The court may again charge the jury after the argument is concluded. Trial proceed, how.

SECT. 264. Whenever, in the opinion of the court, it is proper for the jury to have a view of property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person other than the person so appointed, shall speak to them on any subject connected with the trial. When view of property is necessary.

The jury may decide in court or retire. If they retire.

SECT. 265. When the case is finally submitted to the jury, they may decide in court or retire for deliberation. If they retire, they must be kept together in some convenient place, under the charge of an officer until they agree upon a verdict, or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night, and at their meals. The officer having them under his charge, shall not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, unless by order of the court, and he shall not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

If jury separate.

SECT. 266. If the jury are permitted to separate either during the trial, or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by any other person, on any subject of the trial, and that it is their duty not to form or express any opinion thereon, until the cause is finally submitted to them.

If jury disagree as to law or evidence.

SECT. 267. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed as to any part of the law arising in the case, they may request the officer to conduct them to the court, where the information upon the point of law shall be given, and the court may give its recollection as to the testimony on the point in dispute, in the presence of, or after notice to the parties or their counsel.

Jury may be discharged, when.

SECT. 268. The jury may be discharged by the court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing.

New trial may be had, when.

SECT. 269. In all cases where the jury are discharged during the trial, or after the cause is submitted to them, it may be tried again immediately, or at a future time, as the court may direct.

When and how verdict is announced.

SECT. 270. When the jury have agreed upon their verdict, they must be conducted into court, their names called by the clerk, and the verdict rendered by the foreman. When the verdict is announced, either party may require the jury to be polled, which is done by the clerk asking each juror if it is

his verdict. If any one answers in the negative, the jury must again be sent out for further deliberation.

SECT. 271. The verdict shall be written, signed by the foreman, and read by the clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagrees, the jury must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete, and the jury discharged from the case. If, however, the verdict be defective in form only, the same may, with the assent of the jury before they are discharged, be corrected by the court.

Verdict to be written and signed. If defective.

SUBDIVISION 3. — *Verdict.*

SECT. 272. The verdict of a jury is either general or special. A general verdict is that by which they pronounce 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 finds the facts only. It must present the facts as established by the evidence, and not the evidence to prove them; and they must be so presented as that nothing remains to the court, but to draw from them conclusions of law.

General and special verdicts.

SECT. 273. 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 must be filed with the clerk and entered on the journals.

In what cases rendered.

SECT. 274. When the special finding of facts is inconsistent with the general verdict, the former controls the latter, and the court may give judgment accordingly.

If finding facts inconsistent with general verdict.

SECT. 275. When, by the verdict, either party is entitled to recover money of the adverse party, the jury, in their verdict, must assess the amount of recovery.

Jury must assess amount of money recoverable.

ARTICLE III. — TRIAL BY THE COURT.

SECT. 276. The trial by jury may be waived by the par-

Trial by jury may be waived, when.

ties in the action arising on contract, and with the assent of the court, in other actions, in the following manner: 1. By the consent of the party appearing, when the other party fails to appear at the trial by himself or attorney. 2. By written consent in person, or by attorney, filed with the clerk. 3. By oral consent in open court entered on the journal.

Upon trial of questions of fact, court need not state finding, except when.

SECT. 277. Upon the trial of questions of fact by the court, it shall not be necessary for the court to state its finding, except, generally, for the plaintiff or defendant, unless one of the parties request it, with the view of excepting to the decision of the court upon the questions of law involved in the trial; in which case the court shall state in writing the conclusions of fact found, separately, from the conclusions of law.

ARTICLE IV.—TRIAL BY REFEREES.

May be referred, when.

SECT. 278. All or any of the issues in the action, whether of fact or law, or both, may be referred, upon the written consent of the parties, or upon their oral consent in court entered upon the journal.

When parties do not consent, court may direct reference, in what cases.

SECT. 279. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a referee in either of the following cases: 1. Where the trial of an issue of fact shall require the examination of mutual accounts, or where the account is on one side only, and it shall be made to appear to the court, that it is necessary that the party on the other side should be examined as a witness to prove the account; in which cases the referees may be directed to hear and report upon the whole issue, or upon any specific question of fact involved therein; or, 2. Where the taking of an account shall be necessary for the information of the court before judgment, in cases which may be determined by the court, or for carrying a judgment into effect; or, 3. Where a question of fact, other than upon the pleadings, shall arise upon motion or otherwise, in any stage of the action.

Trial before referees, how conducted.

SECT. 280. The trial before referees is conducted in the same manner as a trial by the court. They have the same power to summon and enforce the attendance of witnesses, to administer all necessary oaths in the trial of the case, and to grant adjournments, as the court, upon such trial. They

must state the facts found and the conclusions of law separately, and their decision must be given, and may be excepted to and reviewed in like manner. The report of the referees upon the whole issue stands 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 has the effect of a special verdict.

SECT. 281. In all cases of reference, the parties, except when an infant may be a party, may agree upon a suitable person or persons, not exceeding three, and the reference shall be ordered accordingly; and, if the parties do not agree, the court shall appoint one or more referees, not exceeding three, who shall be free from exception.

Parties may agree upon referees, or court may appoint.

SECT. 282. A reference as provided in this chapter cannot be ordered by any court inferior to the district court, except by consent of parties to the reference and referees.

Reference cannot be ordered, by what courts.

SECT. 283. It shall be the duty of the referees to sign any true exceptions taken to any order or decision by them made in the case, and return the same with their report to the court making the reference.

Referees sign true exceptions, and return same to court.

SECT. 284. A judge in vacation, upon the written consent of the parties, may make any order of reference which the court, of which he is a member, could make in term time. In such case, the order of reference shall be made on the written agreement of the parties to refer, and shall be filed with the clerk of the court with the other papers in the [case].

Judge may make order of reference, when and how.

SECT. 285. The referees must be sworn or affirmed well and faithfully to hear and examine the cause, and to make a just and true report therein according to the best of their understanding. The oath may be administered by any person authorized to take depositions.

Referees to be sworn or affirmed.

SECT. 286. The referees shall be allowed such compensation for their services as the court may deem just and proper, which shall be taxed as a part of the costs in the case.

Compensation of referees.

ARTICLE V.—EXCEPTIONS.

SECT. 287. An exception is an objection taken to a decision of the court upon a matter of law.

An exception

Exception taken at the time decision is made.

SECT. 288. The party objecting to the decision must except at the time the decision is made, and time may be given to reduce the exception to writing, but not beyond the term.

Form of exception.

SECT. 289. No particular form of exception is required. The exception must be stated, with so much of the evidence as is necessary to explain it, and no more, and the whole as briefly as possible.

When decision objected to is recorded.

SECT. 290. When the decision objected to is entered on the record, and the grounds of objection appear in the entry, the exception may be taken by the party causing to be noted, at the end of the decision, that he excepts.

When not recorded.

SECT. 291. Where the decision is not entered on the record, or the grounds of objection do not sufficiently appear in the entry, the party excepting must reduce his exception to writing, and present to the court for its allowance. If true, it shall be the duty of a majority of the judges composing the court, to allow and sign it, whereupon it shall be filed with the pleadings as part of the record, but not spread at large on the journal. If the writing is not true, the court shall correct it, or suggest the correction to be made, and it shall then be signed as aforesaid.

Not regarded, when.

SECT. 292. No exception shall be regarded, unless it is material, and prejudicial to the substantial rights of the party excepting.

Withdrawn, when.

SECT. 293. Exceptions taken to the decision of any court of record may, by leave of such court, be withdrawn from the files by the party taking the same, at any time before proceedings in error are commenced, and before the exceptions are recorded.

ARTICLE VI.—NEW TRIAL.

A new trial. May be granted, when.

SECT. 294. A new trial is a reëxamination in the same court of an issue of fact after a verdict by a jury, report of a referee, or a decision by the court. The former verdict, report, or decision shall be vacated, and a new trial granted, on the application of the party aggrieved for any of the following causes affecting materially the substantial rights of such party: 1. Irregularity in the proceedings of the court, jury, referee, or prevailing party, or any order of the court, or referee, or abuse of discretion, by which the party was prevented

from having a fair trial. 2. Misconduct of the jury or prevailing party. 3. Accident or surprise, which ordinary prudence could not have guarded against. 4. Excessive damages, appearing to have been given under the influence of passion or prejudice. 5. Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract, or for the injury or detention of property. 6. That the verdict, report, or decision, is not sustained by sufficient evidence, or is contrary to law. 7. Newly discovered evidence material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial. 8. Error of law occurring at the trial, and excepted to by the party making the application.

SECT. 295. A new trial shall not be granted on account of the smallness of damages in an action for an injury in the person or reputation, nor any other action where the damages shall equal the actual pecuniary injury sustained.

New trial not granted, when.

SECT. 296. The application for a new trial must be made at the term the verdict, report, or decision is rendered, and except for the cause of newly-discovered evidence, material for the party applying, which he could not with reasonable diligence have discovered and produced at the trial, shall be within three days after the verdict or decision was rendered, unless unavoidably prevented.

Application for, when.

SECT. 297. The application must be by motion upon written grounds, filed at the time of making the motion. The causes enumerated in subdivisions two, three, and seven, of section two hundred and ninety-four, must be sustained by affidavits showing their truth, and may be controverted by affidavits.

Motion upon written grounds.

SECT. 298. Where the grounds for a new trial could not, with reasonable diligence, have been discovered before, but are discovered after the term at which the verdict, report of referee, or decision was rendered, or made, the application may be made by petition, filed as in other cases; on which a summons shall issue, be returnable and served, or publication made as prescribed in section sixty-nine. The facts stated in the petition shall be considered as denied without answer, and if the service shall be complete in vacation, the case shall be heard and summarily decided at the ensuing term. The case shall be placed on the trial docket, and the witnesses

Where grounds for new trial are discovered after term.

shall be examined in open court, or their depositions taken as in other cases, but no such petition shall be filed more than one year after the final judgment was rendered.

ARTICLE VII.—GENERAL PROVISIONS.

When damages are recoverable. **SECT. 299.** Whenever damages are recoverable, the plaintiff may claim and recover any rate of damages to which he may be entitled for the cause of action established.

Provisions respecting trials by jury apply to trials by court. **SECT. 300.** The provision of this title respecting trials by jury apply, so far as they are in their nature applicable, to trials by court.

ARTICLE VIII.—TIME OF TRIAL.

Books to be kept by the clerk. **SECT. 301.** The clerk of the district court shall keep at least five books, to be called the "appearance docket," the "trial docket," the "journal," the "record," and "execution docket."

The appearance docket. **SECT. 302.** On the appearance docket, he shall enter all actions in the order in which they were brought, the date of the summons, the time of the return thereof by the officer and his return thereon, the time of filing the petition, and all subsequent pleadings.

The trial docket. **SECT. 303.** The trial docket shall be made out by the clerk of the court, at least twelve days before the first day of each term of the court; and the actions shall be set for particular days in the order in which the issues were made up, whether of law or of fact, and so arranged that the cases set for each day shall be tried as nearly as may be on that day. For the purpose of arranging said docket, an issue shall be considered as made up, when either party is in default of a pleading.

Trials, in what order. Motions. **SECT. 304.** The trial of an issue of fact, and the assessment of damages in any case shall be in the order in which they are placed on the trial docket, unless by consent of the parties, or the order of the court, they are continued or placed at the heel of the docket. The time of hearing all other cases shall be in the order in which they are placed on the docket, unless the court in its discretion shall otherwise direct. The court may in its discretion hear, at any time, a motion; and may by rule prescribe the time for hearing motions.

SECT. 305. In any civil action, wherein the defendant shall answer or demur on or before the first day of the term next succeeding the service of process, such first term shall be the appearance term, and such cause shall be continued, on the application of either party, to the next term, at which time the same shall be tried, unless for good cause the court shall continue the same.

SECT. 306. In actions wherein default is made, judgment shall be rendered at the first term after the service of process, provided service shall be made not less than ten days before the term.

SECT. 307. The clerk shall make out a copy of the trial docket for the use of the bar before the first day of the term of court.

TITLE X.

EVIDENCE.

CHAPTER I. *Competency of Witnesses.*—II. *Means of producing Witnesses.*—III. *Mode of taking their Testimony.*—IV. *Admission, Inspection, and Production of Documents and General Provisions.*—V. *Perpetuation of Testimony.*

CHAPTER I.—COMPETENCY OF WITNESSES.

SECT. 308. Every human being of sufficient capacity to understand the obligations of an oath, is a competent witness in all cases, both civil and criminal, except as herein otherwise declared; and no person shall be disqualified as a witness in any civil action or proceeding, by reason of his or her interest in the result of the same, as a party or otherwise; but such interest may be shown for the purpose of affecting his or her credibility.

SECT. 309. No party to a suit shall be allowed to testify in his own behalf, by virtue of the last section, when the adverse party is the executor, administrator, or heir of a deceased person, where the facts to be proved transpired before the death of such deceased person.

SECT. 310. Facts which have heretofore caused the exclusion of testimony may still be shown for the purpose of lessening its credibility.

Husband and wife testify, when.

SECT. 311. 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 the one against the other.

Same.

SECT. 312. Neither husband or wife can be examined in any case as to any communication made by the one to the other, while married, nor as to any fact learned in consequence of the marriage relation; nor shall they, after such relation ceases, be permitted to reveal, in testimony, any such communication or fact.

Attorney, physician, minister, &c., not allowed to disclose confidential communication.

SECT. 313. No attorney, counsellor, physician, surgeon, minister of the gospel, or priest, shall be allowed, in giving testimony, to disclose any confidential communication, properly intrusted to him in his professional capacity, and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline.

Last prohibition not applicable when waived.

SECT. 314. The prohibitions of the last section do not apply to cases where the party, in whose favor they are enacted, waives the rights thereby conferred.

Public officer cannot be examined, when.

SECT. 315. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

Witness not excused from answering, when.

SECT. 316. A witness is not excused from answering a question upon the mere ground that he would be thereby subjected to a civil liability.

Not compelled to answer, when.

SECT. 317. But when the matter sought to be elicited would tend to render him criminally liable, or to expose him to public ignominy, he is not compelled to answer, except as provided in the next section.

Witness may be questioned as to previous convictions of felony.

SECT. 318. A witness may be interrogated as to his previous convictions for a felony. But no other proof of such conviction is competent except the record thereof.

When parts of acts, writing, &c., are given in evidence, the remainder may be called out.

SECT. 319. When the part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other; thus, when a letter is read, all other letters on the same subject between the same parties may be given. And when a

detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, or writing, which is necessary to make it fully understood, or to explain the same, may also be given in evidence.

SECT. 320. When an instrument consists partly of written and partly of printed form, the former controls the latter, where the two are inconsistent.

When instrument partly written and partly printed.

SECT. 321. When the terms of an agreement have been intended in a different sense by the parties to it, that sense is to prevail against either party in which he had reason to suppose the other understood it.

If terms of agreement misunderstood.

SECT. 322. Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are presumptive evidence of facts of general notoriety or interest.

Books, maps, and charts presumptive evidence.

SECT. 323. When a subscribing witness denies or does not recollect the execution of the instrument to which his name is subscribed as such witness, its execution may be proved by other evidence.

When witness denies his signature.

SECT. 324. Evidence respecting handwriting may be given by comparisons made by experts or by the jury with writings of the same persons, which are proved to be genuine.

Evidence of handwriting by comparison.

SECT. 325. The entries and other writings of a person deceased, made at or near the time of the transaction, and in a position to know the facts therein stated, are presumptive evidence of such facts, when the entry was made against the interest of the person so making it, or when made in a professional capacity, or in the ordinary course of professional conduct, or when made in the performance of a duty specially enjoined by law.

Entries and writings of persons deceased.

SECT. 326. Books of account, containing charges by one party against the other, made in the ordinary course of business, are receivable in evidence only under the following circumstances, subject to all just exceptions to their credibility: 1. The books must show a continuous dealing with persons generally, or several items of charges at different times against the other party, in the same book. 2. It must be shown by the party's oath, or otherwise, that they are his books of original entries. 3. It must be shown, in like manner, that the charges were made at or near the time of the transaction therein entered, unless satisfactory reasons appear for

Books of accounts receivable in evidence, when.

not making such proof. 4. The charges must also be verified by the party or the clerk who made the entries, to the effect that they believe them just and true, or a sufficient reason must be given why the verification is not made.

Private writing, acknowledged properly, admissible evidence.

SECT. 327. Every private writing, except a last will and testament, after being acknowledged or proved and certified in the manner prescribed for the proof of acknowledgment of conveyances of real property, may be read in evidence without further proof.

Judge of court competent witness.

SECT. 328. The judge of the court is a competent witness for either party, and may be sworn upon the trial. But in such a case it is in his discretion to order the trial to be postponed or suspended, and to take place before another judge.

Protest of notary public evidence, when.

SECT. 329. The usual protest by a notary public, without proof of his signature or notarial seal, is evidence of the dishonor and notice of a bill of exchange or promissory note.

CHAPTER II.—MEANS OF PRODUCING WITNESSES.

Subpœna, how issued and served.

SECT. 330. The clerks of the several district courts, and judges of the other courts, shall, on application of any person having a cause or any matter pending in court, issue a subpœna for witnesses under the seal of the court, inserting all the names required by the applicant in one subpœna, which may be served by any person not interested in the action, or by the sheriff, coroner, or constable; but when served by any person other than a public officer, proof of service shall be shown by affidavit; but no costs of serving the same shall be allowed except when served by an officer.

Subpœna contains, what.

SECT. 331. The subpœna shall be directed to the person therein named, requiring him to attend at a particular time and place, to testify as a witness; and it may contain a clause, directing the witness to bring with him any book, writing, or other thing under his control, which he is bound by law to produce as evidence.

When issued by officer taking depositions.

SECT. 332. When the attendance of the witness before any officer, authorized to take depositions, is required, the subpœna shall be issued by such officer.

How served.

SECT. 333. The subpœna shall be served either by reading or by copy, delivered to the witness, or left at his usual place

of residence; but such copy need not contain the name of any other witness.

SECT. 334. A witness shall not be obliged to attend for examination on the trial of a civil action, except in the county of his residence, nor to attend to give his deposition out of the county where he resides, or where he may be when the subpœna is served upon him. Witness obliged to attend, where.

SECT. 335. A witness may demand his travelling fees, and fee for one day's attendance, when the subpœna is served upon him, and if the same be not paid, the witness shall not be obliged to obey the subpœna. The fact of such demand and non-payment shall be stated in the return. Witness may demand fees before attending.

SECT. 336. Disobedience of a subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe a deposition, when lawfully ordered, may be punished as a contempt of the court or officer, by whom his attendance or testimony is required. Contempt.

SECT. 337. When a witness fails to attend in obedience to a subpœna (except in case of a demand and failure to pay his fees), the court or officer before whom his attendance is required, may issue an attachment to the sheriff, coroner, or constable of the county, commanding him to arrest and bring the person therein named, before the court or officer, at a time and place to be fixed in the attachment, to give his testimony and answer for the contempt. If the attachment be not for immediately bringing the witness before the court or officer, a sum may be fixed in which the witness may give an undertaking with surety for his appearance. Such sum shall be indorsed on the back of the attachment, and if no such sum is fixed and indorsed, it shall be one hundred dollars. If the witness be not personally served, the court may, by a rule, order him to show cause why an attachment should not issue against him. When witness fails to attend in obedience to subpœna.

SECT. 338. The punishment for the contempt mentioned in section three hundred and thirty-six, shall be as follows: Punishment for contempt.
When the witness fails to attend, in obedience to the subpœna (except in case of a demand and failure to pay his fees), the court or officer may fine the witness in a sum not exceeding fifty dollars. In other cases, the court or officer may fine a witness in a sum not exceeding fifty nor less than five dollars, or may imprison in the county jail, there to re-

main until he shall submit to be sworn, testify, or give his deposition. The fine imposed by the court, and that imposed by the officer, shall be paid into the common school fund of the county. The witness shall also be liable to the party injured, for any damages occasioned by his failure to attend, or his refusal to be sworn, testify, or give his deposition.

Witness discharged from imprisonment, when.

SECT. 339. A witness so imprisoned by an officer before whom his deposition is being taken, may apply to a judge of the supreme court, district court, or county court, who shall have power to discharge him, if it appear that his imprisonment is illegal.

Attachment or order must be under seal of court or officer, &c.

SECT. 340. Every attachment for the arrest or order of commitment to prison of a witness, by a court or officer, pursuant to this chapter, must be under the seal of the court or officer, if he have an official seal, and must specify particularly the cause of the arrest or commitment; and if the commitment be for refusing to answer a question, such question must be stated in the order. Such order of commitment may be directed to the sheriff, coroner, or any constable of the county where such witness resides or may be at the time, and shall be executed by committing him to the jail of such county, and delivering a copy of the order to the jailer.

Testimony of a person in prison.

SECT. 341. A person confined in any prison in this territory may, by order of any court of record, be required to be produced for oral examination in the county where he is imprisoned; but in all other cases his examination must be by deposition.

In whose custody, while deposition is taken.

SECT. 342. While a prisoner's deposition is being taken, he shall remain in the custody of the officer having him in charge, who shall afford reasonable facilities for the taking of the deposition.

Witness not liable to be sued, when.

SECT. 343. A witness shall not be liable to be sued in a county in which he does not reside, by being served with a summons in such county while going, returning, or attending in obedience to a subpoena.

Witness may demand fees daily, in advance.

SECT. 344. At the commencement of each day after the first day, a witness may demand his fees, for that day's attendance, in obedience to a subpoena, and if the same be not paid, he shall not be required to remain.

Witness to be sworn, how.

SECT. 345. Before testifying, the witness shall be sworn to testify the truth, the whole truth, and nothing but the truth.

The mode of administering an oath shall be such as is most binding upon the conscience of the witness.

CHAPTER III. MODE OF TAKING THE TESTIMONY OF WITNESSES.—

Article 1. *Affidavit.*—2. *Deposition.*

SECT. 346. The testimony of witnesses is taken in three modes: 1. By affidavit. 2. By deposition. 3. By oral examination. Testimony, how taken.

SECT. 347. An affidavit is a written declaration under oath, made without notice to the adverse party. An affidavit.

SECT. 348. A deposition is a written declaration under oath, made upon notice of the adverse party for the purpose of enabling him to attend and cross-examine; or upon written interrogatories. A deposition.

SECT. 349. An oral examination is an examination in the presence of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal from the lips of the witness. Oral examination.

ARTICLE I.—AFFIDAVIT.

SECT. 350. An affidavit may be used to verify a pleading, to prove the service of a summons, notice, or other process in an action, to obtain a provisional remedy, an examination of a witness, a stay of proceedings or upon a motion, and in any other case permitted by law. Affidavit may be used, how.

SECT. 351. An affidavit may be made in and out of this territory before any person authorized to take depositions, and must be authenticated in the same way, except as provided in section one hundred and eight. How made and authenticated.

ARTICLE II. DEPOSITIONS.—Subdivision 1. *When to be used.*—2. *Officers who may take them.*—3. *Manner of taking and authenticating them.*—4. *Exceptions to Depositions.*

SUBDIVISION 1.—*When to be used.*

SECT. 352. The deposition of any witness may be used only in the following cases: 1. When the witness does not reside in the county where the action or proceeding is pending, or is sent for trial, by change of venue; or is absent Depositions be used, how.

therefrom. 2. When, from age, infirmity, or imprisonment, the witness is unable to attend court, or is dead. 3. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required.

Commence taking, when.

SECT. 353. Either party may commence taking testimony by depositions, at any time after service upon the defendants.

SUBDIVISION 2.— *Officers who may take them.*

Taken by whom in territory.

SECT. 354. Depositions may be taken in this territory, before a judge or clerk of the supreme court, the district court or county court, before a justice of the peace, notary public, mayor, or chief magistrate of any city or town corporate, or before a master commissioner, or any person empowered by a special commission; but depositions taken in this territory, to be used therein, must be taken by an officer or person whose authority is derived within the territory.

Taken by whom out of territory.

SECT. 355. Depositions may be taken out of the territory by a judge, justice, or chancellor of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, a commissioner appointed by the governor of this territory to take depositions, or any person authorized by a special commission from this territory.

Officer taking must not be interested.

SECT. 356. The officer before whom depositions are taken, must not be a relative or attorney of either party, or otherwise interested in the event of the action or proceeding.

Commissions may be granted to take deposition, by whom and how.

SECT. 357. Any court of record of this territory, or any judge thereof, is authorized to grant a commission to take depositions within or without the territory. The commission must be issued to a person or persons therein named, by the clerk, under the seal of the court granting the same, and depositions under it must be taken upon written interrogations, unless the parties otherwise agree.

SUBDIVISION 3.— *Manner of taking and authenticating them.*

Notice of taking to be given, how.

SECT. 358. Prior to the taking of any deposition, unless taken under a special commission, a written notice, specifying the action or proceeding, the name of the court or tribunal in which it is to be used, and the time and place of taking the same, shall be served upon the adverse party, his agent, or attorney of record, or left at his usual place of abode. The notice shall be served so as to allow the adverse party suffi-

cient time, by the usual route of travel, to attend, and one day for preparation, exclusive of Sundays and the day of service, and the examination may, if so statéd in the notice, be adjourned from day to day.

SECT. 359. When the party against whom the deposition is to be read, is absent from, or a non-resident of the territory, and has no agent, or attorney of record therein, he may be notified of the taking of the deposition by publication. The publication must be made three consecutive weeks, in some newspaper printed in the county where the action or proceeding is pending, if there be any printed in such county; and if not, in some newspaper printed in this territory, of general circulation in that county. The publication must contain all that is required in a written notice, and may be proved in the manner prescribed in section seventy-two.

Notice by publication.

SECT. 360. The deposition shall be written in the presence of the officer taking the same, either by the officer, the witness, or some disinterested person, and subscribed by the witness.

Deposition to be written, in whose presence, and signed.

SECT. 361. The deposition so taken shall be sealed up and indorsed with the title of the cause and the name of the officer taking the same, and by him addressed and transmitted to the clerk of the court where the action or proceeding is pending. It shall remain under seal until opened by the clerk, by order of the court, or at the request of a party to the action or proceeding, or his attorney.

To be sealed and remain so, how long.

SECT. 362. Depositions taken pursuant to this article shall be admitted in evidence, on the trial of any civil action or proceeding, pending before any justice of the peace, mayor, or other judicial officer of a city, or town corporate, or before any arbitrators or referees, and such deposition shall be sealed up, indorsed with the title of the action or proceeding, the name of the officer taking the same, and addressed and transmitted by such officer to such justice, mayor, or other judicial officer, arbitrator, or referees.

Depositions thus taken, evidence in what cases, and how.

SECT. 363. When a deposition has once been taken, it may be read in any stage of the same action or proceeding, or in any other action or proceeding upon the same matter, between the same parties, subject, however, to all such exceptions as may be taken thereto under the provisions of this title.

May be read in any stage of action.

Depositions sufficiently authenticated, when.

SECT. 364. Depositions taken pursuant to this article, by any judicial or other officer herein authorized to take depositions, having a seal of office, whether resident in this territory or elsewhere, shall be admitted in evidence upon the certificate and signature of such officer, under the seal of the court of which he is an officer, or his official seal, and no other or further act or authentication shall be required. If the officer taking the same have no official seal, the deposition, if not taken in this territory, shall be certified and signed by such officer, and shall be further authenticated, either by parol proof, adduced in court, or by the official certificate and seal of any secretary or other officer of state keeping the great seal thereof, or of the clerk or prothonotary of any court having a seal, attesting that such judicial or other officer was, at the time of taking of the same, within the meaning of this chapter, authorized to take the same. But, if the deposition be taken within this territory by an officer having no seal, or within or without this territory, under a special commission, it shall be sufficiently authenticated by the official signature of the officer or commissioner taking the same.

Officer's certificate to contain, what.

SECT. 365. The officer taking the deposition shall annex thereto a certificate showing the following facts: That the witness was first sworn to testify the truth, the whole truth, and nothing but the truth. That the deposition was reduced to writing by some proper person (naming him). That the deposition was written and subscribed in the presence of the officer certifying thereto. That the deposition was taken at the time and place specified in the notice.

The court must be satisfied that witness cannot be procured.

SECT. 366. When a deposition is offered to be read in evidence, it must appear to the satisfaction of the court, that for any cause specified in section three hundred and fifty-two, the attendance of the witness cannot be procured.

Depositions filed one day before trial.

SECT. 367. Every deposition intended to be read in evidence on the trial, must be filed at least one day before the trial.

Fees for taking depositions.

SECT. 368. The following fees shall be allowed for taking depositions in the territory, namely: Swearing each witness, five cents; for each subpoena, attachment, or order of commitment, fifty cents; for each hundred words contained in such deposition and certificate, ten cents and no more; and

such officer may retain the same until such fees are paid. Such officer shall also tax the costs of the sheriff, or other officer, who shall serve the process aforesaid, and fees of the witnesses, and may also, if directed by the persons entitled thereto, retain such deposition until the said fees are paid.

SUBDIVISION 4. — *Exceptions to Depositions.*

SECT. 369. Exceptions to depositions shall be in writing, specifying the grounds of objection, and filed with the papers in the cause. Exceptions to depositions.

SECT. 370. No exception other than for incompetency or irrelevancy shall be regarded, unless made and filed before the commencement of the trial. Exceptions regarded, when.

SECT. 371. The court shall, on motion of either party, hear and decide the questions arising on exceptions to depositions, before the commencement of the trial. Questions arising decided before trial.

SECT. 372. Errors of the court in its decisions upon exceptions to depositions are waived unless excepted to. Errors in decisions waived, when.

CHAPTER IV. — ADMISSION, INSPECTION, AND PRODUCTION OF DOCUMENTS, AND GENERAL PROVISIONS.

SECT. 373. Either party may exhibit to the other or to his attorney, any time before the trial, any paper or document material to the action, and request an admission of writing in genuineness. If the adverse party or his attorney fail to give the admission in writing, within four days after the request, and if the party exhibiting the paper or document be afterwards put to any cost or expense to prove its genuineness, and the same be finally proved or admitted on the trial, such costs and expenses, to be ascertained at the trial, shall be paid by the party refusing to make the admission, unless it shall appear, to the satisfaction of the court, that there were good reasons for the refusal. Papers or documents in evidence, and their genuineness.

SECT. 374. Either party, or his attorney, may demand of the adverse party, an inspection and copy, or permission to take a copy of a book, paper, or document, in his possession or under his control, containing evidence relating to the merits of the action or defence therein. Such demand shall be in writing, specifying the book, paper, or document, with sufficient particularity to enable the other party to distinguish Either party may demand of the other inspection or copy of book, paper, or document.

it, and if compliance with the demand within four days be refused, the court or judge, on motion and notice to the adverse party, may in their discretion order the adverse party to give the other, within a specified time, an inspection and copy or permission to take a copy of such book, paper, or document; and on failure to comply with such order, the court may exclude the paper or document from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume it to be such, as the party by affidavit alleges it to be. This section is not to be construed to prevent a party from compelling another to produce any book, paper, or document when he is examined as a witness.

Either party may demand copy of deed, writing, &c.

SECT. 375. Either party, or his attorney, if required, shall deliver to the other party or his attorney, a copy of any deed, instrument, or other writing, whereon the action or defence is founded, or which he intends to offer in evidence at the trial. If the plaintiff or defendant shall refuse to furnish the copy or copies required, the party so refusing shall not be permitted to give in evidence at the trial, the original, of which a copy has been refused. This section shall not apply to any paper, a copy of which is filed with the pleading.

Printed copies in volumes of statutes, code, or law admitted as evidence, when.

SECT. 376. Printed copies in volumes of statutes, code, or other written law, enacted by any other territory or state, 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 or tribunals of such territory, state, or government, shall be admitted by the courts and officers of this territory on all occasions, as presumptive evidence of such laws. The unwritten or common law of any other territory, state, or foreign government, may be proved as facts by parol evidence; and the books of reports of cases adjudged in their courts may also be admitted as presumptive evidence of such law.

CHAPTER V.—PROCEEDINGS TO PERPETUATE TESTIMONY.

Testimony of witness, how perpetuated.

SECT. 377. The testimony of a witness may be perpetuated in the following manner.

Petition to contain what.

SECT. 378. The applicant shall file in the office of the clerk of the district court a petition, to be verified, in which

shall be set forth, specially, the subject-matter, relative to which testimony is to be taken, and the names of the persons interested, if known to the applicant; and if not known, such general description as he can give of such persons, as heirs, devisees, alienees, or otherwise. The petition shall also state the names of the witnesses to be examined, and the interrogatories to be propounded to each; that the applicant expects to be a party to an action in a court of this territory, in which such testimony will, as he believes, be material, and the obstacles preventing the immediate commencement of the action, where the applicant expects to be plaintiff.

SECT. 379. The court or judge thereof, may forthwith make an order allowing the examination of such witnesses. Order for examination. The order shall prescribe the time and place of the examination, how long the parties interested shall be notified thereof, and the manner in which they shall be notified.

SECT. 380. When it appears satisfactorily to the court or judge that the parties interested cannot be personally notified, such court or judge shall appoint a competent attorney to examine the petition and prepare and file cross interrogatories to those contained therein. Cross interrogatories, when. The witnesses shall be examined upon the interrogatories of the applicant, and upon cross interrogatories, where they are required to be prepared, and no others shall be propounded to them; nor shall any statement be received which is not responsive to some one of them. The attorney filing the cross interrogatories shall be allowed a reasonable fee therefor, to be taxed in the bill of costs.

SECT. 381. Such depositions shall be taken before some one authorized by law to take depositions, or before some one specially authorized by the court or judge, and shall be returned to the clerk's office of the court in which the petition was filed. Such depositions, before whom.

SECT. 382. The court or judge, if satisfied that the depositions have been properly taken, and as herein required, shall approve the same and order them to be filed; and if a trial be had between the parties named in the petition, or their privies or successors in interest, such depositions, or certified copies thereof, may be given in evidence by either party, where the witnesses are dead or insane, or where their attendance for oral examination cannot be obtained or required; but such depositions shall be subject to the same objections Court approve and order them filed. May be given in evidence.

for irrelevancy and incompetency as may be made to depositions taken pending an action.

Applicant pay costs.

SECT. 383. The applicant shall pay the costs of all proceedings under this chapter.

TITLE XI.

JUDGMENT.

CHAPTER I. *Judgment in General.*—II. *Judgment upon Failure to Answer.*—III. *Judgment by Confession.*—IV. *Manner of giving and entering Judgment.*—V. *Conveyance by Commissioners.*

CHAPTER I.—JUDGMENT IN GENERAL.

A judgment.

SECT. 384. A judgment is the final determination of the rights of the parties in action.

How given.

SECT. 385. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; it may determine the ultimate rights of the parties on either side, as between themselves, and it may grant to the defendant any affirmative relief to which he may be entitled. In an action against several defendants, the court may, at 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. The court may also dismiss the petition 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.

Action dismissed, when.

SECT. 386. An action may be dismissed without prejudice to a future action. 1. By the plaintiff before the final submission of the case to the jury, or to the court, where the trial is by the court. 2. By the court, where the plaintiff fails to appear on the trial. 3. By the court, for want of necessary parties. 4. By the court, on the application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence. 5. By the court, for disobedience by the plaintiff of an order concerning the proceedings in the action. In all other cases, upon the trial of the action, the decision must be upon the merits.

SECT. 387. In any case where a set-off or counter claim has been presented, the defendant shall have the right of proceeding to the trial of his claim, although the plaintiff may have dismissed the action, or failed to appear. Defendant may proceed to trial, when.

CHAPTER II.—JUDGMENT UPON FAILURE TO ANSWER.

SECT. 388. If the taking of an account, or the proof of a fact, or the assessment of damages be necessary, to enable the court to pronounce judgment upon a failure to answer, or after a decision of an issue of law, the court may, with assent of the party not in default, take the account, hear the proof, or assess the damages; or may, with the like assent, refer the same to a referee or master commissioner, or may direct the same to be ascertained or assessed by a jury. If a jury be ordered, it shall be on or after the day on which the action is set for trial. Judgment upon failure to answer.

CHAPTER III.—JUDGMENT BY CONFESSION.

SECT. 389. Any person indebted, or against whom a cause of action exists, may personally appear in a court of competent jurisdiction, and, with the assent of the creditor, or person having cause of action, confess judgment therefor; whereupon judgment shall be entered accordingly. When permitted.

SECT. 390. The debt or cause of action shall be briefly stated in the judgment, or in a writing to be filed as pleadings in other actions. Debt, or cause to be stated.

SECT. 391. Such judgment shall authorize same proceedings for its enforcement, as judgments rendered in actions regularly brought and prosecuted; and the confession shall operate as a release of errors. To authorize proceedings for enforcement.

SECT. 392. Every attorney, who shall confess judgment in any case, shall, at the time of making such confession, produce the warrant of attorney for making the same, to the court before which he makes the confession, and the original or a copy of the warrant shall be filed with the clerk of the court in which the judgment shall be entered. If attorney confess judgment.

SECT. 393. If any person be in custody in a civil action at the suit of another, no warrant of attorney executed by the person in custody, to confess judgment in favor of the person Warrant of attorney of no force unless properly witnessed.

at whose suit he is in custody, shall be of any force, unless some attorney expressly named by the person in custody, be present and sign the warrant of attorney as witness.

CHAPTER IV.—MANNER OF GIVING AND ENTERING JUDGMENT.

When trial by jury, judgment how rendered.

SECT. 394. When a trial by jury has been had, judgment must be rendered by the clerk in conformity to the verdict, unless it is special, or the court order the case to be reserved for future argument or consideration.

When verdict is special.

SECT. 395. Where the verdict is special, or where there has been a special finding or particular questions of fact, or where the court has ordered the case to be reserved, it shall order what judgment shall be entered.

When judgment contrary to verdict.

SECT. 396. Where, upon the statement in the pleadings, one party is entitled by law to judgment in his favor, judgment shall be so rendered by the court, though a verdict has been found against such party.

If counter claim or set-off exceeds claim.

SECT. 397. If the counter claim or set-off, established at the trial, exceeds the plaintiff's claim so established, judgment for the defendant must be given for the excess; or if it appear that the defendant is entitled to any affirmative relief, judgment shall be given therefor.

Infant may show cause against order after arriving at age of 21.

SECT. 398. It shall not be necessary to reserve in a judgment or order, the right of an infant to show cause against it, after his attaining full age; but in any case in which, but for this section, such reservation would have been proper, the infant, within one year after arriving at the age of twenty-one years, may show cause against such order or judgment.

Judgment and orders to be entered on journal.

SECT. 399. All judgments and orders must be entered on the journal of the court, and specify clearly the relief granted or order made in the action.

Clerk make complete record, when.

SECT. 400. The clerk shall make a complete record of every cause, as soon as it is finally determined, unless such record or some part thereof be duly waived.

To be made in vacation, and signed by judge at next term.

SECT. 401. He shall make up such record in each case, in the vacation next after the term at which the same was determined, and the presiding judge of such court shall, at its next term thereafter, subscribe the same.

Made up from what.

SECT. 402. The records shall be made up from the petition, the process, return, the pleadings subsequent thereto,

reports, verdicts, orders, judgments, and all material acts and proceedings of the court; but if the items of an account or the copies of a paper attached to the pleadings be voluminous, the court may order the record to be made by abbreviating the same, or inserting a pertinent description thereof, or by omitting them entirely. Evidence must not be recorded.

SECT. 403. When the judicial acts or other proceedings of any court have not been regularly brought up and recorded by the clerk thereof, such court shall cause the same to be made up and recorded within such time as it may direct. When they are made up, and upon examination found to be correct, the presiding judge of such court shall subscribe the same.

When acts and proceedings of court have not been brought up.

SECT. 404. No complete record shall be made: 1. In criminal prosecutions where the indictment has been quashed, or where the prosecuting attorney shall have entered a nolle prosequi on the indictment. 2. In cases where an action has been dismissed without prejudice to a future action. 3. In actions in which, in open court, at the term at which the final order of judgment shall be made, both parties shall declare their agreement that no record shall be made.

No complete record made, when.

SECT. 405. In cases where an action has been dismissed without prejudice to a future action, the clerk shall make a complete record of the proceedings, upon being paid for making the same by the party desiring the record to be made.

Where action has been dismissed without prejudice to future action, record may be made.

SECT. 406. A complete record shall be made in the case mentioned in section three hundred and eighty-seven, unless waived by the parties.

Complete record in certain case.

CHAPTER V.—CONVEYANCE BY COMMISSIONERS.

SECT. 407. Real property may be conveyed by master commissioners as hereinafter provided: 1. When by an order or judgment in an action or proceeding, a party is ordered to convey such property to another, and he shall neglect or refuse to comply with such order or judgment. 2. When specific real property is required to be sold under an order or judgment of the court.

Real property conveyed, when.

SECT. 408. A sheriff may act as master commissioner under the second subdivision of the preceding section. Sales

Sheriff as commissioner. Sales conform to law.

made under the same shall conform in all respects to the laws regulating sales of land upon execution.

Commissioner's deed.

SECT. 409. The deed of a master commissioner shall contain the like recital, and shall be executed, acknowledged, and recorded, as the deed of a sheriff, of real property sold under execution.

TITLE XII.

CAUSES OF ACTION WHICH SURVIVE, AND ABATEMENT OF ACTIONS.

Causes of action which survive.

SECT. 410. In addition to the causes of action which survive at common law, causes of action for mesne profits, or for an injury to real or personal estate, or for any deceit or fraud, shall also survive, and the action may be brought notwithstanding the death of the person entitled or liable to the same.

What actions shall abate, and when.

SECT. 411. No action pending in any court shall abate by the death of either or both the parties thereto, except an action for libel, slander, malicious prosecution, assault, or assault and battery, for a nuisance, or against a justice of the peace for misconduct in office, which shall abate by the death of the defendant.

TITLE XIII.

REVIVOR.

CHAPTER I. *Revivor of Actions.* — II. *Revivor and New Parties to Judgment.*

CHAPTER I.—REVIVOR OF ACTIONS.

In case one of several plaintiffs or defendants dies.

SECT. 412. Where there are several plaintiffs or defendants in an action, and one of them dies, or his powers as a personal representative cease, if the right of action survive to or against the remaining parties, the action may proceed; the death of the party, or the cessation of his powers, being stated on the record.

Same.

SECT. 413. Where one of several plaintiffs or defendants dies, or his powers as a personal representative cease, if the

cause of action do not admit of a survivorship, and the court is of opinion, that the merits of the controversy can be properly determined, and the principles applicable to the case fully settled, it may proceed to try the same as between the remaining parties; but the judgment shall not prejudice any who were not parties at the time of the trial.

SECT. 414. When one of the parties to an action dies, or his powers as a personal representative cease before the judgment, if the right of action survive in favor of, or against his representatives or successor, the action may be revived, and proceed in their names.

When one of the parties dies.

SECT. 415. The revivor shall be, by a conditional order of the court, if made in term, or by a judge thereof, if made in vacation, that the action be revived in the names of the representatives, or successor of the party who died, or whose powers ceased, and proceed in favor of, or against them.

To be revived in names of representatives.

SECT. 416. The order may be made on motion of the adverse party, or of the representatives or successor of the party who died, or whose powers ceased, suggesting his death, or the cessation of his powers, which, with the names and capacities of his representatives or successor, shall be stated in the order.

Order may be made, on whose motion.

SECT. 417. If the order is made by consent of the parties, the action shall forthwith stand revived; and if not made by consent, the order shall be served in the same manner, and returned within the same time as a summons, upon the party adverse to the one making the motion, and if sufficient cause be not shown against the revivor, the action shall stand revived.

If by consent. If not by consent.

SECT. 418. When the plaintiff shall make an affidavit, that the representatives of the defendant, or any of them in whose name the action may be ordered to be revived, are non-residents of the territory, or have left the same to avoid the service of the order, or so concealed themselves that the order cannot be served upon them, or that the names and residence of the heirs or devisees of the person against whom the action may be ordered to be revived, or some of them, are unknown to the affiant, a notice may be published for four consecutive weeks, as provided by section sixty-nine, notifying them to appear on a day therein named, not less than ten days after the publication is complete, and show

If representatives of defendant are non-residents or conceal themselves.

cause why the action should not be revived against them; and if sufficient cause be not shown to the contrary, the action shall stand revived.

Upon death of plaintiff, how revived.

SECT. 419. Upon the death of a plaintiff in an action, it may be revived in the names of his representatives, to whom his right has passed. Where his right has passed to his personal representative, the revivor shall be in his name; where it has passed to his heirs or devisees, who could support the action if brought anew, the revivor may be in their names.

Upon death of defendant, revivor against representative or heirs.

SECT. 420. Upon the death of a defendant in an action, wherein the right, or any part thereof, survives against his personal representative, the revivor shall be against him; and it may also be against the heirs or devisees of the defendant, or both, when the right of action or any part thereof survives against them.

Same, in an action for recovery of real property.

SECT. 421. Upon the death of a defendant in an action for the recovery of real property only, or which concerns only his rights or claims to such property, the action may be revived against his heirs or devisees, or both, and an order therefor may be forthwith made, in the manner directed in the preceding sections of this title.

Order within one year, if against representative of defendant.

SECT. 422. An order to revive an action against the representatives or successor of a defendant, shall not be made without the consent of such representatives or successor, unless in one year from the time it could have been first made.

Order, when made in other cases.

SECT. 423. An order to revive an action in the names of the representatives or successor of a plaintiff, may be made forthwith, but shall not be made without the consent of the defendant, after the expiration of one year from the time the order might have been first made; but where the defendant shall also have died, or his power have ceased in the mean time, the order of revivor on both sides may be made in the period limited in the last section.

When action may be stricken from docket.

SECT. 424. When it appears to the court by affidavit, that either party to an action has been dead, or where a party sues, or is sued as a personal representative, that his powers have ceased for a period so long that the action cannot be received [revived] in the names of his representative or successor, without the consent of both parties, it shall order the action to be stricken from the docket.

SECT. 425. At any term of the court succeeding the death of the plaintiff, while the action remains on the docket, the defendant, having given to the plaintiff's proper representatives, in whose names the action might be revived, ten days' notice of the application therefor, may have an order to strike the action from the docket, and for costs against the estate of the plaintiff, unless the action is forthwith revived.

Defendant may move an order to strike from the docket, when.

SECT. 426. When, by the provisions of the preceding sections, an action stands revived, the trial thereof shall not be postponed by reason of the revivor, if the action would have stood for trial at the term the revivor is complete, had no death or cessation of powers taken place.

When an action stands revived, it shall proceed as if no cessation had occurred.

CHAPTER II.—REVIVOR AND NEW PARTIES TO JUDGMENT.

SECT. 427. When a judgment is recovered against one or more persons, jointly indebted upon contract, those who were not originally summoned may be made parties to the judgment by action.

When persons may be made parties to judgment.

SECT. 428. If either or both the parties die after judgment, and before satisfaction thereof, their representatives, real or personal, or both, as the case may require, may be made parties to the same, in the same manner as prescribed for reviving actions before judgment; and such judgment may be rendered and execution awarded as might or ought to be given or awarded against the representatives, real or personal, or both, of such deceased party.

If parties die after judgment.

SECT. 429. If a judgment becomes dormant, it may be revived in the same manner as prescribed for reviving actions before judgment.

If judgment become dormant.

TITLE XIV

EXECUTIONS.

CHAPTER I. *Executions against the Property of a Judgment Debtor.*—

II. *Proceedings in aid of Execution.*—III. *Executions against the Person.*—IV. *Executions for the delivery of Real Property.*—V. *Judgment before Justices of the Peace.*

SECT. 430. Executions shall be deemed process of the court, and shall be issued by the clerk and directed to the

Executions, how issued and directed.

sheriff of the county. They may be directed to different counties at the same time.

Kinds of executions.

SECT. 431. Executions are of three kinds: 1. Against the property of the judgment debtor. 2. For the delivery of the possession of real property, with damages for withholding the same, and costs.

CHAPTER I.—EXECUTIONS AGAINST THE PROPERTY OF THE JUDGMENT DEBTOR.

Executions against property of judgment debtor.

SECT. 432. Lands, tenements, goods, and chattels, not exempt by law, shall be subject to the payment of debts, and shall be liable to be taken on execution, and sold as hereinafter provided.

Lands, goods, and chattels bound from time of seizure.

SECT. 433. All lands, as well as goods and chattels of the debtor, not exempt by law from levy, seizure, and sale under an execution, shall be bound from the time they shall be seized in execution.

Execution must be sued out within five years.

SECT. 434. If execution shall not be sued out within five years from the date of any judgment, that now is or may hereafter be rendered in any court of record in this territory; or if five years shall have intervened between the date of the last execution issued on such judgment and the time of suing out another writ of execution thereon, such judgment shall become dormant, and shall cease to operate as a lien on the estate of the judgment debtor.

Contents of the writ of execution.

SECT. 435. The writ of execution against the property of the judgment debtor, issuing from any court of record in this territory, shall command the officer, to whom it is directed, that of the goods and chattels of the debtor, he cause to be made the money specified in the writ; and for want of goods and chattels, he cause the same to be made of the lands and tenements of the debtor; and the exact amount of the debt, damages, and costs, for which the judgment is entered, shall be indorsed on the execution.

When two or more writs against same debtor shall be delivered to officer at or about same day, &c.

SECT. 436. When two or more writs of execution against the same debtor shall be sued out during the term in which judgment was rendered, or within ten days thereafter, and when two or more writs of execution against the same debtor shall be delivered to the officer on the same day, no preference shall be given to either of such writs; but if a sufficient sum

of money be not made to satisfy all executions, the amount made shall be distributed to the several creditors in proportion to the amount of their respective demands. In all other cases the writ of execution first delivered to the officer shall be first satisfied. And it shall be the duty of the officer to indorse on every writ of execution the time when he received the same. No judgment shall be a lien upon the lands, goods, or chattels of a judgment debtor, until said lands, goods, or chattels shall be levied upon or seized in execution.

SECT. 437. The officer to whom a writ of execution is delivered, shall proceed immediately to levy the same upon the goods and chattels of the debtor; but if no goods and chattels can be found, the officer shall indorse on the writ of execution, "no goods," and forthwith levy the writ of execution upon the lands and tenements of the debtor, which may be liable to satisfy the judgment.

In what order property shall be levied upon.

SECT. 438. If the officer, by virtue of any writ of execution, issued from any court of record in this territory, shall levy the same on any goods and chattels claimed by any person other than the defendant, it shall be the duty of said officer forthwith to give notice in writing to some justice of the peace in the county, in which shall be set forth the names of the plaintiff and defendant, together with the name of the claimant; and at the same time he shall furnish the said justice of the peace with a schedule of the property claimed. And it shall be the duty of such justice of the peace, immediately upon the receipt of such notice and schedule, to make an entry of the same upon his docket, and issue a writ of summons, directed to the sheriff, or any constable of the county, commanding him to summon five disinterested men, having the qualifications of electors, who shall be named in said summons, to appear before him, the said justice, at the time and place therein mentioned, which time shall not be more than three days after the date of said writ, to try and determine the right of the claimant to the property in controversy. And it shall be the duty of the claimant to give two days' notice, in writing, to the plaintiff or other party for whose benefit such execution was issued and levied as aforesaid, his agent or attorney, if within the county, of the time and place of such trial; and he shall, moreover, prove to the satisfaction of said justice that such notice was given, or that

If officer levies upon property claimed by other than defendant. jury of disinterested men to be summoned, &c.

the same could not be given by reason of the absence of the party, his agent or attorney.

Jury to be sworn, and their duties.

SECT. 439. The jury summoned as aforesaid, shall be sworn to try and determine the right of the claimant to the property in controversy, and a true verdict to give, according to the evidence. If the jury shall find the right to said goods and chattels, or any part thereof, to be in the claimant, they shall also find the value thereof, and the justice shall render judgment upon such finding of the jury, for the claimant, that he recover his costs against the plaintiff in execution, or other party to the same, for whose benefit the execution issued, and also that he have restitution of said goods and chattels, or any part thereof, according to the finding of the jury. But if the right of the said goods and chattels, and every part thereof, shall not be in the claimant according to the finding of said jury, then the said justice shall render judgment on such finding, in favor of the plaintiff in execution, or other party for whose benefit the same was issued and levied, against said claimant for costs, and award execution thereon. Such justice of the peace, in the taxation of costs accruing by reason of such claim and trial, shall allow each juror summoned and sworn, the sum of fifty cents; and for the sheriff, constable, or other officer, and witnesses, and for himself, he shall tax such fees as are allowed by law, to each, respectively, for like services rendered in other cases. Such judgment for the claimant (unless an undertaking shall be executed, as provided in the next section), shall be a justification of the officer in returning "no goods" to the writ of execution, by virtue of which the levy has been made, as to such part of the goods and chattels as were found to belong to such claimant.

Their duties.

SECT. 440. If the jury shall find the property or any part thereof to be in the claimant, and the plaintiff in execution shall, at any time within three days after such trial, tender to the sheriff or other officer having such property in his custody on execution, an undertaking with good and sufficient sureties, payable to such claimant, in double the amount of the value of such property as assessed by the jury, to the effect that they will pay all damages sustained by reason of the detention or sale of such property, then the sheriff or other officer shall deliver said undertaking to claimant, and proceed

to sell such property, as if no such trial of the right of property had taken place, and shall not be liable to the claimant therefor.

SECT. 441. In all cases where a sheriff, coroner, or other officer shall, by virtue of an execution, levy upon any goods and chattels, which shall remain upon his hands unsold, for want of bidders, for the want of time to advertise and sell, or any other reasonable cause, the officer may, for his own security, take of the defendant an undertaking, with security in such sum as he may deem sufficient, to the effect that the said property shall be delivered to the officer holding an execution for the sale of the same, at the time and place appointed by said officer, either by notice given in writing to said defendant in execution, or by advertisement, published in a newspaper printed in the county, naming therein the day and place of sale. If the defendant shall fail to deliver the goods and chattels at the time and place mentioned in the notice to him given, or to pay to the officer holding the execution the full value of said goods and chattels, or the amount of said debt and costs, the undertaking, given as aforesaid, shall be considered as broken, and may be proceeded on as in other cases.

In case goods and chattels remain unsold.

SECT. 442. The officer who levies upon goods and chattels, by virtue of an execution issued by a court of record, before he proceeds to sell the same, shall cause public notice to be given of the time and place of sale, for at least ten days before the day of sale. The notice shall be given by advertisement, published in some newspaper printed in the county, or, in case no newspaper be printed therein, by setting up advertisements in five public places in the county; two advertisements shall be put up in the precinct where the sale is to be held. And where goods and chattels levied upon cannot be sold for want of bidders, the officer making such return shall annex to the execution a true and perfect inventory of such goods and chattels; and the plaintiff in such execution may thereupon sue out another writ of execution directing the sale of the property levied upon as aforesaid; but such goods and chattels shall not be sold, unless the time and place of sale be advertised, as hereinbefore provided.

Officer to give notice of sale. Style of notice.

SECT. 443. When any writ shall issue, directing the sale of property previously taken in execution, the officer issuing

If property unsold be deemed insuffi-

cient to satisfy judgment.

said writ shall, at the request of the person entitled to the benefit thereof, his agent or attorney, add thereto a command to the officer to whom such writ shall be directed, that, if the property remaining in his hands, not sold, shall, in his opinion, be insufficient to satisfy the judgment, he shall levy the same upon the lands and tenements, goods and chattels, or either, as the law shall permit, being the property of the judgment debtor, sufficient to satisfy the debt.

If execution levied upon lands and tenements, the same shall be appraised, how.

SECT. 444. If execution be levied on lands and tenements, the officer levying such execution shall call an inquest of three disinterested freeholders, who shall be resident within the county where the lands taken in execution are situate, and administer to them an oath, impartially to appraise the property so levied upon, upon actual view; and such freeholders shall forthwith return to the said officer, under their hands, an estimate of the real value, in money, of said property.

A copy of their return deposited with clerk of court.

SECT. 445. The officer receiving such return shall forthwith deposit a copy thereof with the clerk of the court from which the writ issued, and immediately advertise and sell such real estate, agreeably to the provisions of this title.

If two thirds of appraised value sufficient to satisfy execution.

SECT. 446. If, upon such return, as aforesaid, it appear, by the inquisition, that two thirds of the appraised value of said lands and tenements so levied upon is sufficient to satisfy the execution, with costs, the judgment on which such execution issued shall not operate as a lien, on the residue of the debtor's estate, to the prejudice of any other judgment creditor. But no tract of land shall be sold for less than two thirds of the value returned in the inquest: *Provided*, That nothing in this section contained shall in anywise extend to affect the sale of lands by the territory, but all lands therein the property of individuals, indebted to the territory for any debt or taxes, or in any other manner, shall be sold without valuation, for the discharge of such debt or taxes, agreeably to the laws for such case made and provided.

Proviso.

If property of certain public officers is levied upon on certain accounts.

SECT. 447. If the property of any clerk, sheriff, coroner, justice of the peace, constable, or any collector of territorial, county, town, or township tax, shall be levied on, for, or on account of any moneys that now are, or may hereafter be by them collected or received, in their official capacity, the property so levied on shall be sold without valuation.

SECT. 448. Lands and tenements, taken in execution, shall not be sold, until the officer cause public notice of the time and place of sale to be given, for at least thirty days before the day of sale, by advertisement, in some newspaper printed in the county, or, in case no newspaper be printed in the county, in some newspaper in general circulation therein, and by putting up an advertisement upon the court house door, and in five other public places in the county, two of which shall be in the precinct where such lands and tenements lie. All sales made without such advertisement shall be set aside, on motion, by the court to which the execution is returnable.

Lands and tenements not to be sold without certain public notice.

SECT. 449. If the court, upon the return of any writ of execution, for the satisfaction of which any lands and tenements have been sold, shall, after having carefully examined the proceedings of the officer, be satisfied that the sale has, in all respects, been made in conformity to the provisions of this title, the court shall direct the clerk to make an entry on the journal, that the court is satisfied of the legality of such sale, and an order that the officer make to the purchaser a deed for such land and tenements; and the officer, on making such sale, may retain the purchase-money in his hands, until the court shall have examined his proceedings, as aforesaid, when he shall pay the same to the person entitled thereto, agreeable to the order of the court.

If court is satisfied of legality of sale, a deed shall be given by the officer.

SECT. 450. The sheriff or other officer, who, upon such writ or writs of execution, shall sell the said lands and tenements, or any part thereof, shall make to the purchaser or purchasers thereof, as good and sufficient a deed of conveyance of lands and tenements sold, as the person or persons, against whom such writ or writs of execution were issued, could have made of the same, at, or any time after they became liable to the judgment. The deed shall be sufficient evidence of the legality of such sale, and the proceedings therein, until the contrary be proved, and shall vest in the purchaser as good and as perfect an estate in the premises therein mentioned, as was vested in the party at or after the time when such lands and tenements became liable to the satisfaction of the judgment. And such deed of conveyance, to be made by the sheriff, or other officer, shall recite the execution or executions, or the substance thereof, and the names of

Officer shall make deed in certain form.

the parties, the amount and date of term of rendition of such judgment, by virtue whereof the said lands and tenements were sold as aforesaid; and shall be executed, acknowledged, and recorded, as is or may be provided by law, to perfect the conveyance of real estate in other cases.

Officer may refuse to publish notice until party to be benefited advances printer's fees.

SECT. 451. The officer who levies upon goods and chattels, or lands and tenements, or who is charged with the duty of selling the same by virtue of any writ or execution, may refuse to publish a notice of the sale thereof by advertisement in a newspaper, until the party for whose benefit such execution issued, his agent or attorney, shall advance to such officer so much money as will be sufficient to discharge the fees of the printer for publishing such notice.

In such case, officer shall demand the fees.

SECT. 452. Before any officer shall be excused from giving the notification mentioned in the last section, he shall demand of the party for whose benefit the execution was issued, his agent or attorney (provided either of them reside in the county), the fees in said section specified.

Sales made at court house or other stated place.

SECT. 453. All sales of lands or tenements under execution, shall be held at the court house, if there be one in the county in which such lands and tenements are situated, and if there be no court house, then at the door of the house in which the district court was last held. No sheriff, or other officer, making the sale of property, either personal or real, nor any appraiser of such property, shall either directly or indirectly purchase the same; and every purchase so made, shall be considered fraudulent and void.

No officer making sale shall purchase property.

If lands and tenements not sold, other executions may issue.

SECT. 454. If lands and tenements, levied on as aforesaid, are not sold upon one execution, other executions may be issued to sell the lands so levied upon.

In case two or more executions shall be put into hands of sheriff, and officer is required to make separate levy.

SECT. 455. In all cases, when two or more executions shall be put into the hands of any sheriff, or other officer, and it shall be necessary to levy on real estate to satisfy the same, and either of the judgment creditors in whose favor one or more of said executions is issued, shall require the sheriff, or other officer, to make a separate levy to satisfy his execution or executions, it shall be the duty of the sheriff, or other officer, to levy said executions, or so many thereof as may be required, on separate parcels of real property, of the judgment debtor or debtors; giving to the officer making the levy on behalf of the creditor, whose execution may, by the pro-

visions of this chapter, be entitled to a preference, the choice of such part of the real property of the judgment debtor or debtors, as will be sufficient, at two thirds the appraised value, to satisfy the same. And in all cases where two or more executions, which are entitled to no preference over each other, are put in the hands of the same officer, it shall be the duty of the officer when required, to levy the same on separate parcels of the real property of the judgment debtor or debtors, when in the opinion of the appraisers the same may be divided without material injury; and if the real property of said debtors will not be sufficient, at two thirds of its appraised value, to satisfy all the executions chargeable thereon, or such part of the same as shall be levied on to satisfy each execution, as will bear the same proportion in value to the whole, as the amount due on the execution bears to the amount of all the executions chargeable thereon, as near as may be, according to the appraised value of each separate parcel of said real property.

SECT. 456. If the term of service of the sheriff, or other officer, who has made, or shall hereafter make sale of any lands and tenements, shall expire; or if the sheriff or other officer shall be absent, or be rendered unable by death, or otherwise, to make a deed of conveyance of the same, any succeeding sheriff or other officer, on receiving a certificate from the court from which the execution issued for the sale of said lands and tenements, signed by the clerk, by order of said court, setting forth that sufficient proof has been made to the court, that such sale was fairly and legally made, and, on tender of the purchase-money, or if the same, or any part thereof, be paid, then, on proof of such payment and tender of the balance, if any, may execute to the said purchaser or purchasers, or his or their legal representatives, a deed of conveyance of said lands and tenements so sold. Such deed shall be as good and valid in law, and have the same effect, as if the sheriff or other officer who made sale, had executed the same.

If term of service of officer expire, or he be absent or die before making deed.

SECT. 457. If, on any sale made as aforesaid, there shall be in the hands of the sheriff or other officer, more money than is sufficient to satisfy the writ or writs of execution, with interests and costs, the sheriff or other officer shall, on demand,

If there be more money than is sufficient to satisfy execution.

pay the balance to the defendant in execution, or his legal representatives.

If judgments are reversed after sale, title not to be affected.

SECT. 458. If any judgment or judgments, in satisfaction of which any lands or tenements are sold, shall at any time thereafter be reversed, such reversal shall not defeat or affect the title of the purchaser or purchasers; but in such case, restitution shall be made, by the judgment creditor, of the moneys, for which such lands or tenements were sold, with lawful interest from the day of sale.

In case real estate is twice offered and not sold.

SECT. 459. In all cases where real estate has been or may hereafter be taken on execution and appraised, and twice advertised and offered for sale, and shall remain unsold for want of bidders, it shall be the duty of the court from which such execution issued, on motion of the plaintiff, to set aside such appraisement, and order a new one to be made, or to set aside such levy and appraisement, and award a new execution to issue, as the case may require.

Writ of execution to be returned within sixty days.

SECT. 460. The sheriff or other officer, to whom any writ of execution shall be directed, shall return such writ to the court to which the same is returnable, within sixty days from the date thereof.

In case judgment is rendered against two or more persons severally bound, &c.

SECT. 461. In all cases where judgment is rendered in any court of record within this territory, upon any other instrument of writing, in which two or more persons are jointly and severally bound, and it shall be made to appear to the court, by parol or other testimony, that one or more of said persons so bound, signed the same as surety or bail for his or their co-defendant, it shall be the duty of the clerk of said court, in recording the judgment thereon, to certify which of the defendants is principal debtor, and which are sureties or bail. And the clerk of the court aforesaid shall issue execution on such judgment, commanding the sheriff or other officer to cause the money to be made of the goods and chattels, lands and tenements, of the principal debtor, but for want of sufficient property of the principal debtor, to make the same, that he cause the same to be made of the goods and chattels, lands and tenements of the surety or bail. In all cases the property, both personal and real, of the principal debtor, within the jurisdiction of the court, shall be exhausted before any of the property of the surety or bail shall be taken in execution.

SECT. 462. Each freeholder summoned to appraise real estate under the provisions of this chapter, shall be allowed and receive for his services the sum of fifty cents for each day he may be so engaged as such appraiser, to be collected on the execution, by virtue of which the property appraised was levied on, if claimed at the time of making the return of such appraisement. And when any freeholder, summoned as aforesaid, shall fail to appear at the time and place appointed by the officer, and discharge his duty as appraiser, he shall, on complaint being made to any justice of the peace of the precinct in which such freeholder resides, forfeit and pay the sum of fifty cents for every such neglect, unless he can render a reasonable excuse. Such sum shall be collected by said justice, and paid into the county treasury for the use of the county.

Fees of appraisers. If he fails to attend.

SECT. 463. If any sheriff or other officer shall refuse or neglect to execute any writ of execution to him directed, which has come to his hands; or shall neglect or refuse to sell any goods and chattels, lands and tenements, or shall neglect to call an inquest, and return a copy thereof forthwith to the clerk's office; or shall neglect to return any writ of execution to the proper court, on or before the return day thereof; or shall neglect to return a just and perfect inventory of all and singular the goods and chattels by him taken in execution, unless the said sheriff or other officer shall return that he has levied and made the amount of the debt, damages, and costs; or shall refuse or neglect on demand to pay over to the plaintiff, his agent or attorney of record, all moneys by him collected or received, for the use of said party, at any time after collecting or receiving the same, except as provided in section four hundred and forty-nine; or shall neglect or refuse, on demand made by the defendant, his agent or attorney of record, to pay over all moneys by him received for any sale made, beyond what is sufficient to satisfy the writ or writs of execution, with interest and legal costs, such sheriff or other officer shall, on motion in court and two days' notice thereof in writing, be amerced in the amount of said debt, damages, and costs, with ten per centum thereon, to and for the use of said plaintiff or defendant, as the case may be.

If a sheriff or other officer shall refuse or neglect to execute papers directed to him, &c., he shall be subjected to certain penalty.

SECT. 464. If any clerk of a court shall neglect or refuse, on demand made by the person entitled thereto, his agent or

If clerk shall fail in his duty.

attorney of record, to pay over all money by him received, in his official capacity, for the use of such person, every such clerk may be amerced; and the proceedings against him and his sureties shall be the same as provided for in the foregoing section against sheriffs and their sureties.

When the cause is for refusing to pay over money.

SECT. 465. When the cause of amercement is for refusing to pay over money collected as aforesaid, the said sheriff or other officer shall not be amerced in a greater sum than the amount so withheld, with ten per centum thereon.

When directed to officer of another county he may return same by mail.

SECT. 466. When execution shall be issued in any county in this territory, and directed to the sheriff or coroner of another county, it shall be lawful for such sheriff or coroner having the execution, after having discharged all the duties required of him by law, to inclose such execution, by mail, to the clerk of the court who issued the same. On proof being made by such sheriff or coroner, that the execution was mailed soon enough to have reached the office where it was issued, within the time prescribed by law, the sheriff or coroner shall not be liable for any amercement or penalty, if it do not reach the office in due time.

Shall not forward money unless directed to do so.

SECT. 467. No sheriff shall forward, by mail, any money made on any such execution, unless he shall be specially instructed to do it by the plaintiff, his agent or attorney of record. In all cases of a motion to amerce a sheriff or other officer of any county other than the one from which the execution issued, notice in writing shall be given to such officer, as hereinbefore required, by leaving it with him, or at his office, at least fifteen days before the first day of the term at which such motion shall be made, or by transmitting the notice by mail, at least sixty days prior to the first day of the term at which such motion shall be made. All amercements so procured shall be entered on the record of the court, and shall have the same force and effect as a judgment.

In case of amercement of officers of another county.

Sureties of officer to be made parties to execution. Their goods and chattels, &c., not liable, until when.

SECT. 468. Each and every surety of any sheriff or other officer may be made a party to the judgment rendered as aforesaid, against the sheriff or other officer, by action, to be commenced and prosecuted as in other cases. But the goods and chattels, lands and tenements of any such surety, shall not be liable to be taken on execution, when sufficient goods and chattels, lands and tenements of the sheriff or other officer, against whom execution may be issued, can be found

to satisfy the same. Nothing herein contained shall prevent either party from proceeding against such sheriff or other officer, by attachment, at his election.

SECT. 469. In cases where a sheriff or other officer may be amerced, and shall not have collected the amount of the original judgment, he shall be permitted to sue out an execution, and collect the amount of said judgment in the name of the original plaintiff, for his own use.

In case officer amerced shall not have collected amount of original judgment.

CHAPTER II.—PROCEEDINGS IN AID OF EXECUTION.

SECT. 470. When a judgment debtor has not personal or real property subject to levy on execution, sufficient to satisfy the judgment, any interest which he may have in any banking, turnpike, bridge, or other joint-stock company, or any interest he may have in any money contracts, claims, or choses in action, due or to become due to him, or in any judgment or decree; or any money, goods, or effects which he may have in possession of any person, body politic or corporate, shall be subject to the payment of such judgment, by proceedings in equity, or as in this chapter prescribed.

When there is not sufficient personal and real property.

SECT. 471. When an execution against the property of a judgment debtor, or one of several debtors in the same judgment, is issued to the sheriff of a county where he resides, or if he do not reside in the territory, to the sheriff of the county where the judgment was rendered, or a transcript of a justice's judgment has been filed, is returned unsatisfied, in whole or in part, the judgment creditor is entitled to an order from a judge of the district court of the county to which the execution was issued, requiring such debtor to appear and answer concerning his property, before such judge, or a referee appointed by such judge, at a time and place specified in such order, within the county to which the execution was issued.

When an execution is returned unsatisfied.

SECT. 472. After the issuing of an execution against property, and upon proof by affidavit of the judgment creditor or otherwise, to the satisfaction of the district court, or a judge thereof, that the judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by order, require the judgment debtor to appear at a time and place in said county, to answer concerning the same. And such proceed-

If court is satisfied that judgment debtor has property which he refuses to apply.

ings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are prescribed in this chapter.

SECT. 473.

No person excused from testifying, on ground of fraud, &c.

SECT. 474. 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 a fraud, but his answer shall not be used as evidence against him in a criminal prosecution for such fraud.

How execution may be satisfied.

SECT. 475. 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 may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid, or directed to be credited by the judgment creditor on the execution.

When persons or corporations may be called upon to testify as to property in their hands.

SECT. 476. 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 proof, by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him, 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 within the county in which such person or corporation may be served with the order to answer, and answer concerning the same. The judge may, also, in his discretion, require notice of such proceeding to be given to any party in the action, in such manner as may seem to him proper.

Witnesses may be required by order of judge or subpoena.

SECT. 477. Witnesses may be required, upon the order of the judge, or by a subpoena issued by the clerk of the district court, to appear and testify upon any proceedings in this chapter, in the same manner as upon the trial of an issue.

Shall attend before whom.

SECT. 478. 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 must be taken by the referee and certified by the judge. All examinations and answers before a judge or referee, under this chapter, must be on oath; but when a corporation answers, the answer must be on the oath of an officer thereof.

SECT. 479. The judge may order any property of the judgment debtor, not exempt by law, in the hands of either himself or any other person or corporation, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; but the earnings of the debtor for his personal services, at any time within three months next preceding the order, cannot be so applied, where 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.

What may be applied in satisfaction of judgment.

SECT. 480. The judge may also, by order, appoint the sheriff of the proper county, or other suitable person, 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. The judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor, not exempt by law, and any interference therewith.

Judge may appoint receiver.

SECT. 481. If the sheriff shall be appointed receiver, he and his sureties shall be liable to his official bond for the faithful discharge of his duties as such receiver. If any other person shall be appointed receiver, he shall give a written undertaking in such sum as shall be prescribed by the judge, with one or more sureties, to the effect that he will faithfully discharge his duties of receiver, and he shall also take an oath to the same effect, before acting as such receiver. The undertaking mentioned in this section shall be to the Territory of Dakota, and actions may be prosecuted for a breach thereof, by any person interested, in the same manner as upon a sheriff's official bond.

If sheriff is appointed receiver.

SECT. 482. The judge or referee, acting under the provisions of this chapter, shall have power to continue his proceedings from time to time until they are completed.

Proceedings may be continued.

SECT. 483. The judge may, in his discretion, order a reference to a referee agreed upon or appointed by him, to report the evidence of the facts.

Judge may order referee to report on facts.

SECT. 484. 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 contempt.

If orders of judge or referee are disobeyed.

SECT. 485. The orders to judgment debtors and witnesses, provided for in this chapter, shall be in writing and signed by

Orders to be in writing and signed. To be filed.

the judge making the same, and shall be served as a summons in other cases. The judge shall reduce all his orders to writing, which, together with a minute of his proceedings signed by himself, shall be filed with the clerk of the court of the county in which the judgment is rendered, or the transcript of the justice filed, and the clerk shall enter on his execution docket the time of filing the same.

Fees to officers. SECT. 486. The judge shall allow to clerks, sheriffs, referees, receivers, and witnesses, such compensation as is allowed for like services in other cases, to be taxed as costs in the case, and shall enforce by order the collection thereof from such party or parties as ought to pay the same.

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CHAPTER IV.—EXECUTIONS FOR THE DELIVERY OF REAL PROPERTY.

If the execution is for the delivery of real property.

SECT. 496. If the execution be for the delivery of the possession of real property, it shall require the officer to deliver the same, particularly describing the property, to the party entitled thereto, and may at the same time require the officer to satisfy any costs or damages recovered in the same judgment, out of the goods and chattels of the party against whom it was rendered, and for want of such goods and chattels, then out of the lands and tenements; and in this respect it shall be deemed an execution against the property.

If not for money or real property.

SECT. 497. When the judgment is not for the recovery of money or real property, the same may be enforced by attachment by the court rendering the judgment, upon motion made, or by a rule of the court upon the defendant; but in either case, notice of the motion, or a service of a copy of the rule, shall be made on the defendant a reasonable time before the order of attachment is made.

CHAPTER V.—JUDGMENT BEFORE JUSTICES OF THE PEACE.

Judgments rendered by justices to be recorded with clerk of district court.

SECT. 498. In all cases in which judgment shall be rendered by a justice of the peace, the party in whose favor the judgment shall be rendered may file a transcript of such judg-

ment in the office of the clerk of the district court of the county in which the judgment was rendered, and thereupon the clerk shall, on the day on which the same shall be filed, enter the case on the execution docket, together with the amount of the judgment and the time of filing the transcript.

SECT. 499. Such judgment, if the transcript shall be filed in term time, shall have a lien on the real estate of the judgment debtor from the first day of the term; if filed in vacation, as against the judgment debtor, said judgment shall have a lien from the day of the filing, and as against subsequent judgment creditors — at the next succeeding term, and other transcripts filed in vacation, said judgment shall have lien from the first day of the next term of the court in the same manner and to the same extent as if the judgment had been rendered in the district court.

Judgment have lien from when.

SECT. 500. Execution may be issued thereon to the sheriff by the clerk of the court, in the same manner as if the judgment had been taken in court, and the sheriff shall execute and return the same, as other executions; and, in case of sale of real estate, his proceedings shall be examined and approved by the court, as in other cases.

Execution issued to sheriff same as in court.

SECT. 501. The justice of the peace shall certify, on the transcript, the amount, if any, paid on such judgment. The costs of the transcript, the filing of the same, and the entry of the case on the execution docket shall be paid by the party filing the same, and be taxed in the costs.

Justice shall certify amount paid on judgment. Costs paid by whom.

TITLE XV.

MISCELLANEOUS PROCEEDINGS.

CHAPTER I. *Offer to Compromise.* — II. *Submitting a Controversy.* — III. *Offer to confess Judgment.* — IV. *Motions and Orders.*

CHAPTER I.—OFFER TO COMPROMISE.

SECT. 502. The defendant in an action for the recovery of money only, may, at any time before the trial, serve upon the plaintiff or his attorney, an offer, in writing, to allow judgment to be taken against him for the sum specified therein.

Offer to compromise, how paid.

If the plaintiff accept the offer, and give notice thereof to the defendant or his attorney, within five days after the offer was served, the offer, and an affidavit that the notice of acceptance was delivered in the time limited, may be filed by the plaintiff, or the defendant may file the acceptance, with a copy of the order, verified by affidavit; and, in either case, the offer and acceptance shall be noted in the journal, and judgment shall be rendered accordingly. If the notice of acceptance be not given in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence, or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, he shall pay the defendant's costs from the time of the offer.

Making of offer not cause for continuance or postponement.

SECT. 503. The making of an offer, pursuant to the provisions contained in the foregoing section, shall not be a cause for a continuance of an action, or a postponement of a trial.

CHAPTER II.—SUBMITTING A CONTROVERSY.

How parties may submit a controversy.

SECT. 504. Parties to a question which might be the subject of a civil action, may, without action, agree 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 proceedings in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment, as if an action were pending.

What constitutes the record

SECT. 505. The case, the submission, and the judgment shall constitute the record.

Judgment of same force as in an action.

SECT. 506. The judgment shall be with costs, may be enforced, and shall be subject to reversal in the same manner as if it had been rendered in an action, unless otherwise provided in the submission.

CHAPTER III.—OFFER TO CONFESS JUDGMENT.

Proceedings in an offer to confess judgment.

SECT. 507. After an action for the recovery of money is brought, the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action. Whereupon, if the plaintiff, being present,

refuse to accept such confession of judgment in full of his demands against the defendant in the action, or having had such notice that the offer would be made, of its amount, and of the time of making it, as the court shall deem reasonable, fail to attend, and, on the trial, do not recover more than was so offered to be confessed, such plaintiff shall pay all the costs of the defendant incurred after the offer. The offer shall not be deemed to be an admission of the cause of action or amount to which the plaintiff is entitled, nor be given in evidence upon the trial.

SECT. 508. Before an action for the recovery of money is brought against any person, he may go into the court of the county of his residence, or of that in which the person having the cause of action resides, which would have jurisdiction of the action, and offer to confess judgment in favor of such person for a specified sum on such cause of action. Whereupon, if such person having had such notice that the offer would be made, of its amount, and of the time and place of making it, as the court shall deem reasonable, do not attend to accept the confession, or, attending, refuse to accept it, and shall afterwards commence an action upon such cause and not recover more than the amount so offered to be confessed, he shall pay all the costs of the action; and on the trial thereof, the offer shall not be deemed to be an admission of the cause or action, or amount to which the plaintiff is entitled, nor be given in evidence. Same.

CHAPTER IV.—MOTIONS AND ORDERS.

SECT. 509. A motion is an application for an order addressed to the court or a judge in vacation, by any party to a suit or proceeding, or one interested therein. A motion.

SECT. 510. Several objects may be included in the same motion if they all grow out of, or are connected with, the action or proceeding in which it is made. Several objects may be included.

SECT. 511. Where notice of a motion is required, it must be in writing, and shall state the names of the parties to the action or proceeding in which it is made, the name of the court or judge before whom it is to be made, the place where, and the day on which it will be heard, the nature and terms of the order or orders to be applied for, and if affidavits are to If required, it must be in writing, and contain what.

be used on the hearing, the notice shall state the fact. It shall be served a reasonable time before the hearing.

Notices of motions, how served.

SECT. 512. Notices of motions mentioned in this chapter may be served by a sheriff, coroner, or constable, or by any disinterested person, and the return of any such officer, or affidavit of any such person, shall be proof of service. The service shall be on the party or his attorney of record, if the said party or his attorney be resident within the county in which the motion is made, and in case there is more than one party adverse to such motion, service shall be made upon each party or his attorney.

Same as summons.

SECT. 513. The service of a notice shall be made as is required by law for the service of a summons, and when served by an officer, he shall be entitled to like fees.

Motions to strike papers from files may be with or without notice.

SECT. 514. Motions to strike pleadings and papers from the files may be made with or without notice, as the court or judge shall direct.

Every direction of a court, in writing, an order.

SECT. 515. Every direction of a court or judge made or entered in writing and not included in a judgment, is an order.

Orders, made out of court, entered in journal.

SECT. 516. Orders made out of court shall be forthwith entered by the clerk in the journal of the court, in the same manner as orders made in term.

TITLE XVI.

ERROR IN CIVIL CASES.

Judgments and orders of inferior courts may be reversed, &c., by district court.

SECT. 517. A judgment rendered, or final order made, by a justice of the peace or any other tribunal, board, or officer, exercising judicial functions, and inferior in jurisdiction to the district court, may be reversed, vacated, or modified by the district court.

Final orders which may be vacated, &c.

SECT. 518. An order affecting a substantial right in an action, when such order in effect determines the action and prevented a judgment, and an order affecting a substantial right made in a special proceeding, or upon a summary application in action after judgment, is a final order which may be vacated, modified, or reversed, as provided in this title.

Judgments and orders of dis-

SECT. 519. A judgment rendered or final order made by

the district court, may be reversed, vacated, or modified by the supreme court, for errors appearing on the record.

SECT. 520. A judgment rendered or final order made by any court, board, or tribunal, mentioned in the preceding sections, may be reversed, vacated, or modified, by the supreme court, for errors appearing on the record; but the petition in error, in such case, can be filed only by leave of the supreme court, or a judge thereof.

SECT. 521. The proceedings to obtain such reversal, vacation, or modification, shall be by petition, to be entitled, "petition in error," filed in a court having power to make such reversal, vacation, or modification, setting forth the error complained, and there upon a summons shall be issued and served or publication made, as in the commencement of an action. A service on the attorney of record in the original case shall be sufficient. The summons shall notify the adverse party, that a petition in error has been filed in a certain case, naming it, and shall be made returnable on or before the first day of the term of the court, if issued in vacation; if issued in term time, it shall be returnable on a day therein named; if the last publication or service of the summons shall be made ten days before the end of the term, the case shall stand for hearing at the term.

SECT. 522. The summons mentioned in the last section, shall, upon the written precept of the plaintiff in error or his attorney, be issued by the clerk of the court in which the petition is filed, to the sheriff of any county in which the defendant in error or his attorney of record may be; and if the writ issue to a foreign county, the sheriff thereof may return the same by mail to the clerk, and shall be entitled to the same fees as if the same had been returnable to the district court of the county in which such officer resides. The defendant in error, or his attorney, may waive in writing the issuing or service of the summons.

SECT. 523. The plaintiff in error shall file with his petition, a transcript of the proceedings containing the final judgment or order sought to be reversed, vacated, or modified.

SECT. 524. Justices of the peace, and other judicial tribunals having no clerk, and the clerks of every court of record, shall upon request and being paid the lawful fees therefor,

district court may be reversed, &c., by supreme court.

Reversals, &c., by supreme court, how petitioned for.

Proceedings on such reversals, &c.

Summons, how issued.

Transcript of proceedings to be filed with petition.

Justices shall furnish transcripts, when.

furnish an authenticated transcript of the proceedings, containing the judgment or final order of said courts, to either of the parties to the same, or to any person interested in procuring such transcript.

No proceedings to reverse, &c., of district court shall stay execution, unless plaintiff in error executes undertaking.

SECT. 525. No proceeding to reverse, vacate, or modify any judgment or final order rendered in the county court, or district court, except as provided in the next section, and the fourth subdivision of this section, shall operate to stay execution, unless the clerk of the court in which the record of said judgment or final order shall be, shall take a written undertaking, to be executed on the part of the plaintiff in error to the adverse party, with one or more sufficient sureties, as follows: 1. When the judgment or final order sought to be reversed, directs the payment of money, the written undertaking shall be in double the amount of the judgment or order, to the effect that the plaintiff in error will pay the condemnation-money and costs, in case the judgment or final order shall be affirmed in whole or in part. 2. When it directs the execution of a conveyance, or other instrument, the undertaking shall be in such sum as may be prescribed by any court of record in this territory, or any judge thereof, to the effect that the plaintiff in error will abide the judgment, the same shall be affirmed, and pay the costs. 3. When it directs the sale or delivery of possession of real property, the undertaking shall be in such sum as may be prescribed by any court of record of this territory, or any judge thereof to the effect, that during the possession of such property by the plaintiff in error, he will not commit or suffer to be committed any waste thereon, and if the judgment be affirmed, he will pay the value of the use and occupation of the property from the date of the undertaking until the delivery of the possession, pursuant to the judgment, and all costs. [4.] When it directs the assignment or delivery of documents, they may be placed in the custody of the clerk of the court in which the judgment was rendered, to abide the judgment of the appellate court, or the undertaking shall be in such sum as may be prescribed as aforesaid, to abide the judgment and pay costs, if the same shall be affirmed.

Undertaking must be approved by court.

SECT. 527. Before the written undertaking herein mentioned in section five hundred and twenty-five, shall operate to stay execution of the judgment or order, the execution of

the undertaking and the sufficiency of the sureties must be approved by the court in which the judgment was rendered or order made, or by the clerk thereof; and the clerk shall indorse said approval, signed by himself, upon the undertaking, and file the same in his office, for the defendant in error.

SECT. 528. No proceeding for reversing, vacating, or modifying judgments or final orders, shall be commenced, unless within three years after the rendition of the judgment, or making the final order complained of; or, in case the person entitled to such proceeding be an infant, a married woman, a person of unsound mind, or imprisoned, within three years, as aforesaid, exclusive of the time of such disability.

Proceeding must be commenced within three years,—with exceptions.

SECT. 529. No proceeding to reverse, vacate, or modify any judgment rendered, or final order made by a justice of the peace, shall operate as a stay of execution, unless the clerk of the district court shall take a written undertaking to the defendant, executed on the part of the plaintiff in error, by one or more sufficient sureties, to the effect that the plaintiff will pay all the costs which have accrued, or may accrue on such proceedings in error, together with the amount of any judgment that may be rendered against such plaintiff in error, either on the further trial of the case, after the judgment of the court below shall have been set aside or reversed, or upon and after the affirmance thereof in the district court. The person entitled to such proceeding shall have the same time for prosecuting the same, before he is barred, as is provided in section five hundred and twenty-eight, unless the said judgment has been paid off or satisfied prior to the commencement of such proceeding.

No proceedings to reverse, &c., of justice, shall stay execution unless plaintiff execute understanding.

SECT. 530. When a judgment or final order shall be reversed, either in whole or in part, in the supreme court, the court reversing the same shall proceed to render such judgment as the court below should have rendered, or remand the cause to the court below, for such judgment; and the court reversing such judgment, or final order, shall not issue execution in causes that are removed before them on error, on which they pronounced judgment, as aforesaid, but shall send a special mandate to the court below, as the case may require, to award execution thereupon; and such court, to which such special mandate is sent, shall proceed in such cases in the

When judgment is reversed.

same manner as if such judgment or final order had been rendered therein. And, on motion and good cause shown, it may suspend any execution made returnable before it, by order of the supreme court, in the same manner as if such execution had been issued from its own court, but such power shall not extend further than to stay proceedings until the matter can be further heard by the supreme court.

Same.

SECT. 531. When a judgment or final order is reversed, the plaintiff in error shall recover his costs, and when reversed in part, and affirmed in part, costs shall be equally divided between the parties.

When it is affirmed.

SECT. 532. When a judgment or final order shall be affirmed in the supreme court, the said court shall also render judgment against the plaintiff in error, for five per cent. upon the amount due from him to the defendant in error, unless the court shall enter upon its minutes that there was reasonable ground for the proceedings in error.

Mistake, &c., of clerk shall not be ground of error unless.

SECT. 533. A mistake, neglect, or omission of the clerk shall not be a ground of error, until the same has been presented and acted upon in the court in which the mistake, neglect, or omission occurred.

Rendering judgment before action stood for trial, shall be deemed clerical error.

SECT. 534. Rendering judgment before the action stood for trial, according to the provisions of this code, shall be deemed a clerical error.

Certain writs abolished, and certain powers retained.

SECT. 535. Writs of error and certiorari, to reverse, vacate, or modify judgments or final orders in civil cases, are abolished, but courts shall have the same power to compel, complete, and perfect transcripts of the proceedings containing the judgment or final order sought to be reversed, to be furnished, as they heretofore had under writs of error and certiorari.

If judgment of justice be affirmed.

SECT. 536. If the judgment of a justice of the peace, taken on error, as herein provided, to the district court be affirmed, it shall be the duty of such court to render judgment against the plaintiff in error, for the costs of suit, and to award execution therefor; and the court shall thereupon order its clerk to certify its decision in the premises, to the justice, that the judgment affirmed may be enforced, as if such proceedings in error had not been taken; or such court may award execution to carry into effect the judgment of such justice, in the

same manner as if such judgment had been rendered in the district court.

SECT. 537. When the proceedings of a justice of the peace are taken, on error, to the district court, in manner aforesaid, and the judgment of such justice shall be reversed or set aside, the court shall render judgment of reversal and for the costs that have accrued up to that time, in favor of the plaintiff in error, and award execution therefor; and the cause shall be retained by the court for trial and final judgment, as in cases of appeal.

When judgment reversed or set aside.

PROCEEDINGS TO REVERSE, VACATE, OR MODIFY JUDGMENTS AND ORDERS IN THE COURTS IN WHICH THEY ARE RENDERED.

SECT. 538. A district court shall have power to vacate, or modify its own judgments or orders, after the term at which such judgment or order was made: 1. By granting a new trial for the cause, within the time and in the manner prescribed in section two hundred and ninety-eight. 2. By a new trial granted in proceedings against defendants constructively summoned, as provided in section sixty-seven. 3. For mistake, neglect, or omission of the clerk, or irregularity in obtaining a judgment or order. 4. For fraud practised by the successful party in obtaining the judgment or order. 5. For erroneous proceedings against an infant, married woman, or person of unsound mind, where the condition of such defendant does not appear in the record, nor the error in the proceedings. 6. For death of one of the parties before the judgment in the action. 7. For unavoidable casualty or misfortune, preventing the party from prosecuting or defending. 8. For errors in a judgment shown by an infant in twelve months after arriving at full age, as prescribed in section three hundred and ninety-seven. 9. For taking judgments upon warrants of attorney, for more than was due to the plaintiff, when the defendant was not summoned or otherwise legally notified of the time and place of taking such judgment.

A district court may vacate or modify its own judgments, &c., how.

SECT. 539. The proceedings to vacate or modify the judgment or order on the grounds mentioned in the subdivisions four, five, six, seven, eight, and nine, of the last preceding section, shall be by petition verified by affidavit, setting forth the

The proceedings.

judgment, or order, the grounds to vacate or modify it, and the defence to the action, if the party applying was defendant. On such petition a summons shall issue and be served as in the commencement of an action: *Provided*, Such summons shall not issue in any case in which there is, upon the minutes of the court, or among the files of the case, a waiver of error by the party or his attorney, unless the court or a judge thereof shall indorse upon the petition permission to issue such summons.

Proceedings to correct mistakes and omissions of clerks.

SECT. 540. The proceedings to correct mistakes or omissions of the clerk, or irregularity in obtaining a judgment or order, shall be by motion, upon reasonable notice to the adverse party or his attorney in the action. The motion to vacate a judgment because of its rendition before the action regularly stood for trial, can be made only in the first three days of the succeeding term.

Court may first try the grounds to vacate, &c.

SECT. 541. The court may first try and decide upon the grounds to vacate or modify a judgment or order, before trying or deciding upon the validity of the defence or cause of action.

A judgment shall not be vacated until when.

SECT. 542. A judgment shall not be vacated on motion or petition, until it is adjudged that there is a valid defence to the action in which the judgment is rendered; or if the plaintiff seeks its vacation, that there is a valid cause of action; and where a judgment is modified, all liens and sureties obtained under it, shall be preserved to the modified judgment.

Party seeking to vacate, &c., may obtain injunction.

SECT. 543. The party seeking to vacate or modify a judgment or order, may obtain an injunction suspending proceedings on the whole or part thereof, which injunction may be granted by the court, or any judge thereof, upon its being rendered probable, by affidavit or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified.

When the judgment was rendered before the action stood for trial.

SECT. 544. When the judgment was rendered before the action stood for trial, the suspension may be granted as provided in the last section, although no valid defence to the action is shown; and the court shall make such orders concerning the executions to be issued on the judgment, as shall give to the defendants the same rights of delay he would have had if the judgment had been rendered at the proper time.

SECT. 545. Proceedings to vacate or modify a judgment or order, for the causes mentioned in subdivisions four, five, and seven of section five hundred and thirty-eight, must be commenced within two years after the judgment was rendered or order made, unless the party entitled thereto be an infant, married woman, or person of unsound mind, and then within two years after removal of such disability. Proceedings for the causes mentioned in subdivisions three and six of the same action, shall be within three years, and in subdivision nine within one year after the defendant has notice of the judgment.

Proceedings to vacate and modify, when commenced.

SECT. 546. The provisions of this title subsequent to section five hundred and thirty-seven shall apply to the supreme court, so far as the same may be applicable to the judgments or final orders of such court.

Provisions applying to supreme court.

SECT. 547. Cases pending in appellate courts on writs of error or otherwise, when this code takes effect, shall be conducted to final judgment, as if it had not been adopted, and the liens of judgments and decrees rendered when it takes effect shall be preserved.

Cases pending conducted to final judgment.

TITLE XVII.

COSTS.

CHAPTER I.

SECT. 548. In cases in which the plaintiff is a non-resident of the county in which the action is to be brought, before commencing such action, the plaintiff must furnish a sufficient surety for costs. The surety must be a resident of the county where the action is to be brought, and approved by the clerk. His obligation shall be complete, simply by indorsing the summons, or signing his name on the complaint as security for costs. He shall be bound for the payment [of] all costs, which may be adjudged against the plaintiff in the court, in which the action is brought, or in any other to which it may be carried, and for costs of the plaintiff's witnesses, whether the plaintiff obtained judgment, or not.

Surety for costs given, when.

SECT. 549. An action in which security for costs is required by the last section, and has not been given, shall be

Action dismissed, when security for costs not given.

dismissed on the motion and notice by the defendant at any proper time before judgment, unless in a reasonable time to be allowed by the court, such security for costs be given.

If plaintiff becomes non-resident.

SECT. 550. If the plaintiff in an action, after its commencement, become a non-resident of the county in which it is brought, he shall give security for the costs in the manner and under the restrictions provided in the two preceding sections.

Defendant may move for additional security for costs, when.

SECT. 551. In an action in which security for costs has been given, the defendant may at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion, the court be satisfied that the surety has removed from this territory, or is not sufficient, the action may be dismissed, unless in a reasonable time to be fixed by the court, sufficient surety be given by the plaintiff.

After final judgment, how costs secured.

SECT. 552. After final judgment has been rendered in an action, in which security for costs has been given, as required by this chapter, the court, on motion of the defendant, or any other person having a right to such costs or any part thereof, after ten days' notice of such motion, may enter up judgment in the name of the defendant or his legal representatives, against the surety for costs, his executors or administrators, for the amount of the costs adjudged against the plaintiff, or so much thereof as may be unpaid. Execution may be issued on such judgment, as in other cases, for the use and benefit of the person entitled to such costs.

If any informer, entitled to part of penalty, shall dismiss suit.

SECT. 553. If any informer, under a penal statute, to whom the penalty, or any part thereof, if recovered, is given, shall dismiss his suit or prosecution, or fail in the same, he shall pay all costs accruing on such suit or prosecution, unless he be an officer, whose duty it is to commence the same.

If defendants disclaim title, they shall recover costs.

SECT. 554. Where defendants disclaim having any title or interest in land or other property, the subject-matter of the action, they shall recover their costs unless for special reasons the court decide otherwise.

Other costs, how taxed and paid.

SECT. 555. Unless otherwise provided by statute, the costs of motions, continuances, amendments, and the like, shall be taxed and paid, as the court in its discretion may direct.

Where not otherwise provided, costs allowed to plaintiff.

SECT. 556. Where it is not otherwise provided by this and other statutes, costs shall be allowed of course to the

plaintiff upon a judgment in his favor, in actions for the recovery of money only, or for the recovery of specific real or personal property.

SECT. 557. If it shall appear that a justice of the peace has jurisdiction of an action, and the same has been brought in any other court, the plaintiff shall not recover costs; and in all actions for libel, slander, malicious prosecution, assault, assault and battery, false imprisonment, criminal conversation, or seduction, actions for nuisance, or against a justice of the peace for misconduct in office, if the damages assessed be under five dollars, the plaintiff shall not recover any costs.

If action brought in wrong jurisdiction, plaintiff shall not recover. Costs in certain other cases.

SECT. 558. Costs shall be allowed of course, to any defendant upon a judgment in his favor in the actions mentioned in the last two sections.

When costs allowed to defendant.

SECT. 559. In other actions the court may award and tax costs, and apportion the same between the parties on the same or adverse sides, as in its discretion it may think right and equitable.

In other actions court may award and tax costs.

SECT. 560. Where several actions are brought on one bill of exchange, promissory note, or other obligation or instrument in writing against several parties, who might have been joined as defendants in the same action, as allowed by section thirty-five, no costs shall be recovered by the plaintiff in more than one of such actions, if the parties proceeded against in the other actions were, at the commencement of the previous action, openly within the territory.

Where several actions are brought on one bill of exchange, &c.

SECT. 561. When a summons is issued to another county than that in which the action or proceeding is pending, it may be returned by mail, and the sheriff shall be entitled to the same fees, as if the summons had issued in the county of which he is sheriff.

When summons is issued to another county, sheriff entitled to what fees.

TITLE XVIII.

ACTIONS AND PROCEEDINGS IN PARTICULAR CASES.

CHAPTER I. *Actions concerning Real Property.*—II. *Actions on Official Securities.*—III. *Actions for the Partition of Real Property*—IV. *Proceedings upon Mandamus.*

CHAPTER I.—ACTIONS CONCERNING REAL PROPERTY.

What to be stated in petition for recovery of real property.

SECT. 562. In an action for the recovery of real property, it shall be sufficient, if the plaintiff state in his petition, that he has a real estate therein and is entitled to the possession thereof, describing the same, as required by section one hundred and twenty-three, and that the defendant unlawfully keeps him out of the possession. It shall not be necessary to state how the plaintiff's estate or ownership is derived.

What shall be sufficient answer.

SECT. 563. It shall be sufficient, in such action, if the defendant in his answer deny, generally, the title alleged in the petition, or that he withholds the possession, as the case may be; but if he deny the title of the plaintiff, possession by the defendant shall be taken as admitted. Where he does not defend for the whole premises, the answer shall describe the particular part for which defence is made.

In an action by a tenant in common.

SECT. 564. In an action by a tenant in common of real property, against a co-tenant, the plaintiff must state in addition to what is required in the first section of this chapter, that the defendant either denies the plaintiff's right or did some act amounting to such denial.

Verdict and judgment in an action for recovery of real property.

SECT. 565. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover for withholding the property.

Defeated party may demand new trial, when.

SECT. 566. In an action for the recovery of real property, the party against whom judgment is rendered, may, at any time during the term at which the judgment is rendered, demand another trial by notice on the journal, and thereupon the judgment shall be vacated, and the action shall stand for trial at the next term.

SECT. 567. No further trial can be had in such action, except upon appeal, unless for good cause shown, as in other actions.

No further trial except upon appeal.

SECT. 568. The parties in an action for the recovery of property may avail themselves, if entitled thereto, of the relief of the statutes in force for the relief of occupying claimants of land.

Parties may avail themselves of statutes for relief of land claimants.

SECT. 569. If a guardian, tenant for life or years, joint tenant, or tenant in common, of real property, commit waste thereon, he is liable to pay three times the damages which have resulted from such waste to the person who is entitled to sue therefor.

If guardian or tenant commit waste.

SECT. 570. Judgment of forfeiture and conviction may be rendered against the defendant, whenever the amount of damages so recovered is more than two thirds the value of the interest such defendant has in the property wasted, and when the action is brought by the person entitled to the reversion.

Judgment of forfeiture and conviction rendered, when.

SECT. 571. Any person whose duty it is to prevent waste, and who has not used reasonable care and diligence to prevent it, is deemed to have committed it.

Person deemed to have committed waste, when.

SECT. 572. For wilful trespass, injuring any timber, tree, or shrub on the land of another, or in the street or highway in front of another's cultivated ground, yard, or town lot, or on the public grounds of any town, or any land held by this territory, for any purpose whatever, the trespasser shall pay treble damages, at the suit of any person entitled to protect or enjoy the property aforesaid.

Treble damages in certain cases.

SECT. 573. Nothing herein contained authorizes the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of a public highway or bridge, upon the land in its immediate neighborhood.

Not more than just value recoverable.

SECT. 574. The owner of an estate in remainder or reversion, may maintain either of the aforesaid actions for injuries done to the inheritance, notwithstanding any intervening estate for life or years.

The owner may maintain action, even if there be intervening estate.

SECT. 575. An heir, whether a minor or of full age, may maintain these actions for injuries done in the time of his ancestors, as well as in his own time, unless barred by the statute of limitations.

Heir may maintain actions, when.

SECT. 576. Where lands or tenements are sold by virtue

When lands are sold by virtue.

of execution,
purchaser may
maintain action.

of an execution, the purchaser at such sale may maintain his action against any person, for either of the causes above mentioned, occurring or existing after his purchase.

Not intended
to interfere with
ordinary hus-
bandry.

SECT. 577. This provision is not intended to prevent the person who occupies the lands, in the mean time, from using them in the ordinary course of husbandry, or from using timber, for the purpose of making suitable repairs thereon.

If he use supe-
rior timber.

SECT. 578. But if, for this purpose, he employ timber superior to that required for this occasion, he will be deemed to have committed waste, and will be liable accordingly.

CHAPTER II.—ACTIONS ON OFFICIAL SECURITIES.

When an
officer forfeits his
bond, how to be
proceeded
against.

SECT. 579. When an officer, executor, or administrator within this territory, by misconduct or neglect of duty, forfeits his bond or renders his sureties, any person injured thereby, or who is by law entitled to the benefit of the security, may bring an action thereon, in his own name, against the officer, executor, or administrator and his sureties, to recover the amount to which he may be entitled by reason of the delinquency. The action may be instituted and proceeded in on a certified copy of the bond, which copy shall be furnished by the person holding the original thereof.

One judgment
against security
does not preclude
another action on
same.

SECT. 580. A judgment in favor of a party for one delinquency, does not preclude the same or another party from an action on the same security for another delinquency.

CHAPTER III.—ACTIONS FOR THE PARTITION OF REAL PROPERTY.

Actions for
partition of real
property.

SECT. 581. The provisions of the existing statutes relating to the partition of lands, tenements, and hereditaments, are not affected by this code, and partition may be made under the same, as heretofore, until the legislature shall otherwise provide. The provisions of such statutes shall also 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.—PROCEEDINGS UPON MANDAMUS.

SECT. 582. The writ of mandamus may be issued to any inferior tribunal, corporation, board, or person, to compel the performance of an act, which the law specially enjoins as a duty resulting from an office, trust, or station. But though it may require an inferior tribunal to exercise its judgment, or proceed to the discharge of any of its functions, it cannot control judicial discretion.

Writ of mandamus issued to whom, and its effect.

SECT. 583. This writ may not be issued in any case, where there is a plain and adequate remedy in the ordinary course of the law. It may issue on the information of the party beneficially interested.

Not issued when there is other remedy.

SECT. 584. The writ is either alternative or peremptory. The alternative writ must state concisely the facts showing the obligation of the defendant to perform the act, and his omission to perform it, and command him, that immediately upon the receipt of the writ, or at some other specified time, he do the act required to be performed, or show cause before the court whence the writ issued, at a specified time and place, why he has not done so; and that he, then and there return the writ, with his certificate of having done as he is commanded. The peremptory writ must be in a similar form, except that the words requiring the defendant to show cause why he has not done as commanded, must be omitted.

Alternative or peremptory writ.

SECT. 585. When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance. In all other cases the alternative writ must be first issued.

Which issues first.

SECT. 586. The motion for the writ must be made upon affidavit, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

Motion for writ, how made.

SECT. 587. The allowance of the writ must be indorsed thereon, signed by a judge of the court granting it, and the writ must be served personally upon the defendant. If the defendant duly served neglect to return the same, he shall be proceeded against, as for a contempt.

Allowance indorsed, served personally. Contempt.

When and how answered.

SECT. 588. On the return day of the alternative writ, or such further day, as the court may allow, the party, on whom the writ shall have been served, may show cause by answer made, in the same manner as an answer to a petition in a civil action.

If no answer be made. If answer made.

SECT. 589. If no answer be made, a peremptory mandamus must be allowed against the defendant. If an answer be made containing new matter, the same shall not, in any respect, conclude the plaintiff, who may, on the trial or other proceeding, avail himself of any valid objection to its sufficiency, or may countervail it by proof, either in direct denial or by way of avoidance.

No other pleading allowed.

SECT. 590. No other pleading or written allegation is allowed, than the writ and answer. These are the pleadings in the case, and have the same effect and are to be construed, and may be amended in the same manner as pleadings in a civil action; and the issues thereby joined must be tried, and the further proceedings thereon had in the same manner as in a civil action.

If judgment is given for plaintiff.

SECT. 591. If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained, to be ascertained by the court, or a jury, or by referees, in a civil action, and costs; and a peremptory mandamus shall, also, be granted to him, without delay.

A recovery, bar to another action.

SECT. 592. A recovery of damages by virtue of this chapter, against a party who shall have made a return to a writ of mandamus, is a bar to any other action against the same party, for the making of such return.

If public officer, body or board receiving mandamus, neglect duty.

SECT. 593. Whenever a peremptory mandamus is directed to any public officer, body, or board, commanding the performance of any public duty, specially enjoined by law, if it appear to the court that such officer, or any member of such body or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine not exceeding five hundred dollars, upon every such officer or member of such body or board. Such fine, when collected, shall be paid into the treasury of the county, where the duty ought to have been performed, for the use of common schools; and the payment thereof is a bar to an action for any penalty incurred by such officer or member of such

body or board, by reason of his refusal or neglect to perform the duty so enjoined.

GENERAL PROVISIONS APPLICABLE TO THE
WHOLE CODE.

CHAPTER I. *Process.* — II. *Duties of Clerks.* — III. *Duties of Sheriffs.* —
IV. *Miscellaneous Provisions.* — V. *Provisions respecting existing Actions.*
— VI. *Provisions as to the Operations of the Code.*

CHAPTER I. — PROCESS.

SECT. 594. The style of all process shall be "The Territory of Dakota, ——— county." It shall be under the seal of court from whence the same shall issue, shall be signed by the clerk, and dated the day it issued.

Style of all process. Sealed, signed, and dated.

SECT. 595. An order for the provisional remedy or any other process, in an action wherein the sheriff is a party or is interested, shall be directed to the coroner. If both these officers are interested, the process shall be directed to and executed by a person appointed by the court or judge.

If sheriff interested party, coroner acts for him.

If both interested.

SECT. 596. The court or judge, for good cause, may appoint a person to serve a particular process or order, who shall have the same power to execute it which the sheriff has. The person may be appointed on the motion of the party obtaining the process or order, and the return must be verified by affidavit. He shall be entitled to the fees allowed to the sheriff for similar services.

Court may appoint special officer. Fees same as sheriff's.

CHAPTER II. — DUTIES OF CLERKS.

SECT. 597. All writs and orders for provisional remedies, and process of every kind, shall be issued by the clerks of the several courts. Before they shall be issued, a precipe shall be filed with the clerk demanding the same; which precipe shall be for the direction of the clerk, and not material to the papers in the case, after the issuing of such writ or process.

Writs and orders for provisional remedies.

SECT. 598. It is the duty of the clerk of each of the courts to file together and carefully preserve, in his office, all papers

Shall file all papers.

delivered to him, for that purpose, in every action or special proceeding.

Shall indorse
time of filing and
return.

SECT. 599. He shall indorse upon every paper filed with him the day of filing it; and upon every order for a provisional remedy and upon every undertaking given under the same, the day of its return to his office.

Enter names of
defendant sum-
moned and day
served.

SECT. 600. He shall, upon the return of every summons served, enter upon the docket the name of the defendant or defendants summoned, and the day of service upon each one. The entry shall be evidence of the service of the summons, in case of the loss thereof.

Keep records,
books, &c.

SECT. 601. He shall keep the records and books and papers appertaining to the court, and record its proceedings.

Certain rules
of district courts
apply to other
courts.

SECT. 602. The provisions of article eight, of title nine, prescribing the duties of clerks of the district court, shall, as far as they are applicable, apply to the clerks of other courts of record.

Other powers
and duties.

SECT. 603. The clerk of each of the courts shall exercise the powers and perform the duties conferred and imposed upon him by other provisions of this code, by other statutes, and by the common law. In the performance of his duties he shall be under the direction of his court.

CHAPTER III.—DUTIES OF SHERIFFS.

Shall indorse
time of receipt on
papers.

SECT. 604. The sheriff shall indorse upon every summons, order of arrest, or for the delivery of property, or of attachment or injunction, the day and hour it was received by him.

Shall execute
summons, &c.
If he fails to do
so.

SECT. 605. He shall execute every summons, order, or other process, and return the same as required by law; and if he fail to do so, unless he make it appear to the satisfaction of the court, that he was prevented by inevitable accident from so doing, he shall be amerced by the court in a sum not exceeding one thousand dollars, and shall be liable to the action of any person aggrieved by such failure.

Other powers
and duties.

SECT. 606. The sheriff shall exercise the powers and perform the duties conferred and imposed upon him by other provisions of this code, by other statutes, and by the common law.

CHAPTER IV.—MISCELLANEOUS PROVISIONS.

SECT. 607. Any duty enjoined by this code upon a ministerial officer, and any act permitted to be done by him may be performed by his lawful deputy.

Duties may be performed by deputy.

SECT. 608. Whenever an oath is required by this code, the affirmation of a person conscientiously scrupulous of taking an oath, shall have the same effect.

Affirmation same effect as oath.

SECT. 609. 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 may be Sunday, it shall be excluded.

Time, how computed.

SECT. 610. Section three hundred and eighty-eight shall not be construed to impair the right of a party to a jury, if he appear at the trial by himself or attorney, and demand the same.

Right to a jury not impaired, when.

SECT. 611. The ministerial officer, whose duty it is to take security in any undertaking provided for by this code, shall have the right to require the person offered as surety, to make an affidavit of his qualifications, which affidavit may be made before such officer. The taking of such affidavit shall not exempt the officer from any liability to which he might otherwise be subject, for taking insufficient security.

Officer taking undertaking may require affidavit of qualifications.

SECT. 612. The surety in every undertaking provided for by this code, must be a resident of this territory, and worth double the sum to be secured, beyond the amount of his debts, and have property liable to execution in this territory equal to the sum to be secured. Where there are two or more sureties in the same undertaking, they must in the aggregate have the qualifications prescribed in this section.

Qualifications of sureties.

SECT. 613. The judges of the supreme court shall, at the first session of the supreme court, after this code shall take effect, and every two years thereafter, revise their general rules, and make such amendments thereto as may be necessary to carry into effect the provisions of this code; and they shall make such further rules, consistent therewith, as they may deem proper. The rules so made shall apply to the supreme court and the district courts.

Judges of supreme court may revise their rules, when. Same rules apply to district courts.

CHAPTER V.—PROVISIONS AS TO THE OPERATIONS OF THE CODE.

Cases arising
not covered by
this code.

SECT. 614. Rights of civil action, given or secured by existing laws, shall be prosecuted in the manner provided by this code. If a case ever 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 code, the practice heretofore in use may be adopted, so far as may be necessary to prevent a failure of justice.

SECT. 615.

When actions
shall be con-
ducted in con-
formity to this
code.

SECT. 616. Where, by statute, a civil action, legal or equitable, is given, and the mode of proceeding therein is prescribed, this code shall not affect the proceedings under such statute, until the legislature shall otherwise provide; but, in all such cases, as far as it may be consistent with the statute giving such action, and practicable under this code, the proceedings shall be conducted in conformity thereto. Where the statute designates, by name or otherwise, the kind of action, but does not prescribe the mode of proceeding therein, such action shall be commenced and prosecuted in conformity to this code; where the statute gives an action, but does not designate the kind of action, or prescribe the mode of proceeding therein, such action shall be held to be the civil action of this code, and proceeded in accordingly.

Take effect,
when.

SECT. 617. This act shall take effect from and after its passage.

Approved May —, 1862.

W. JAYNE, *Governor.*

CRIMINAL PROCEDURE.

CHAPTER 9.

AN ACT TO ADOPT AND ESTABLISH A CRIMINAL CODE FOR
THE TERRITORY OF DAKOTA.

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

THAT the provisions of this act shall regulate the proceedings in all prosecutions and penal actions in all the courts of this territory, from and after the passage hereof, and shall be known as the Criminal Code.

PERSONS CAPABLE OF COMMITTING CRIMES.

SECTION 1. A crime or misdemeanor consists in a violation of a public law, in the commission of which there shall be a union of joint operation of act and intention, or criminal negligence. A crime or misdemeanor.

SECT. 2. Intention is manifested by the circumstances connected with the perpetration of the offence, and the sound mind and discretion of the person accused. Intention.

SECT. 3. A person shall be considered of sound mind who is neither an idiot nor lunatic, nor affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person knew the distinction between good and evil. Sound mind.

SECT. 4. An infant under the age of ten years shall not be found guilty of any crime or misdemeanor. Infant, when found guilty.

SECT. 5. A lunatic or insane person, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged: *Provided*, The act so charged as criminal shall have been committed in the condition of insanity. Lunatic found guilty, when.
Proviso.

SECT. 6. An idiot shall not be found guilty, or punished An idiot, when found guilty.

for any crime or misdemeanor with which he or she may be charged.

Person counselling, advising, or encouraging infant, lunatic, or idiot found guilty of crime.

SECT. 7. Any person counselling, advising, or encouraging an infant, under the age of ten years, lunatic, or idiot, to commit any offence, shall be prosecuted for such offence, when committed, as principal, and, if found guilty, shall suffer the same punishment that would have been inflicted on such person counselling, advising, or encouraging as aforesaid, had he or she committed the offence directly, without the intervention of such infant, lunatic, or idiot.

Married woman, when acting under threats of husband, not to be found guilty.

SECT. 8. A married woman, acting under the threats, command, or coercion of her husband, shall not be guilty of any crime or misdemeanor not punishable with death, provided it appear, from all the facts and circumstances of the case, that violent threats, command, or coercion were used; and in such case the husband shall be prosecuted as principal, and receive the punishment which would otherwise have been inflicted on the wife, if she had been found guilty.

Drunkenness no excuse for crime, except when.

SECT. 9. Drunkenness shall not be an excuse for any crime or misdemeanor, unless such drunkenness be occasioned by the fraud, contrivance, or force of some other person or persons, for the purpose of causing the perpetration of an offence; in which case the person or persons so causing said drunkenness, for such malignant purposes, shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offence, if he, she, or they had been possessed of sound reason and discretion.

Misfortunes or accidents.

SECT. 10. Acts committed by misfortune or accident shall not be deemed criminal where it satisfactorily appears that there was no evil design or intention, or culpable negligence.

Persons committing crimes under dangerous threats.

SECT. 11. A person committing a crime or misdemeanor, not punishable with death, under threats or menaces which sufficiently show that his or her life or member was in danger; or that he or she had reasonable cause to believe, and did believe, that his or her life or member was in danger, shall not be found guilty; and such threats or menaces, being proved and established, the person or persons compelling, by such threats or menaces, the commission of the offence, shall be considered as principal or principals, and suffer

the same punishment as if he or she had perpetrated the offence.

SECT. 12. A person that becomes lunatic or insane after the commission of a crime or misdemeanor, ought not to be tried for the offence during the continuance of the lunacy or insanity. If, after verdict of guilty, and before judgment pronounced, such person become lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue. And if, after judgment and before execution of the sentence, such person become lunatic or insane, then, in case the punishment be capital, the execution thereof shall be stayed until the recovery of said person, from insanity or lunacy. In all of these cases it shall be the duty of the court to impanel a jury to try the question, whether the accused be, at the time of impaneling, insane or lunatic.

If person becomes insane after commission of crime.

ACCESSORIES TO CRIME.

SECT. 13. An accessory is he or she who stands by and aids, abets, or assists; or who, not being present aiding, abetting, or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets, or assists, advises or encourages, shall be deemed and considered as principal, and punished accordingly.

Accessories. When deemed principals.

SECT. 14. An accessory after the fact is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with, or found guilty of, the crime. Any person being found guilty of being an accessory after the fact, shall be imprisoned for any term not exceeding two years, and fined in a sum not exceeding five hundred dollars, in the discretion of the court, to be regulated by the circumstances of the case and the enormity of the crime.

Accessories after the fact. How punished.

WHO MAY BE WITNESSES IN CRIMINAL CASES.

SECT. 15. The party or parties injured shall, in all cases, be competent witnesses, unless he, she, or they shall be rendered incompetent by reason of his, her, or their infamy, or other legal incompetency other than that of interest. The

Parties injured may be witnesses, when.

credibility of all such witnesses shall be left to the jury, as in other cases.

Competency of witnesses.

SECT. 16. All persons capable of understanding the nature of an oath (except negroes and Indians) shall be competent witnesses unless otherwise declared by law.

Affirmation sufficient. If false, same as perjury.

SECT. 17. The solemn affirmation of witnesses shall be deemed sufficient. A false and corrupt affirmation shall subject the witness to all the penalties and punishment provided for those who commit wilful and corrupt perjury.

OFFENCES AGAINST THE PERSONS OF INDIVIDUALS.

Murder is what.

SECT. 18. Murder is the unlawful killing of a human being, with malice aforethought, either expressed or implied. The unlawful killing may be perpetrated by poisoning, striking, starving, drowning, stabbing, shooting, or by any other of the various forms or means by which human nature may be overcome, and death thereby occasioned.

Express malice.

SECT. 19. Express malice is that deliberate intention unlawfully to take away the life of a fellow-creature, which is manifested by external circumstances capable of proof.

Implied malice. Penalty, death.

SECT. 20. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. The punishment of any person or persons convicted of the crime of murder shall be death.

Manslaughter.

SECT. 21. Manslaughter is the unlawful killing of a human being, without malice, express or implied, and without any deliberation whatever. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible or involuntary, in the commission of an unlawful act, or a lawful act, without due caution or circumspection.

The cause of voluntary manslaughter.

SECT. 22. In cases of voluntary manslaughter, there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing.

Killing must be without interval for reasoning.

SECT. 23. The killing must be the result of that sudden, violent impulse of passion, supposed to be irresistible; for if

there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and punished as a murder.

SECT. 24. Involuntary manslaughter shall consist in the killing of a human being without any intent so to do, in the commission of an unlawful act, or a lawful act, which probably might produce such a consequence, in an unlawful manner: *Provided, always,* That where such involuntary killing shall happen in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offence shall be deemed and adjudged to be murder.

Involuntary manslaughter.

Proviso.

SECT. 25. Every person convicted of the crime of manslaughter shall be punished by imprisonment in the penitentiary for a term not exceeding ten years.

Punishment.

SECT. 26. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered, in the computation of which the whole of the day on which the hurt was done shall be reckoned the first.

Killing, murder only, when the party hurt dies within a year and a day.

SECT. 27. If the injury be inflicted in one county and the party die within another county or without the territory, the accused shall be tried in the county where the cause of death was administered. And if the party killing shall be in one county and the party killed be in another county, at the time the cause of death shall be administered, the accused may be tried in either county.

If injured in one county and dies in another.

SECT. 28. Justifiable homicide is the killing of a human being in necessary self-defence, or in the defence of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a known felony such as murder, rape, robbery, burglary, and the like, upon either person or property, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

Justifiable homicide.

SECT. 29. A bare fear of these offences, to prevent which the homicide is alleged to have been committed, shall not be

Bare fear not sufficient to justify.

sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of those fears and not in a spirit of revenge.

Self-defence.

SECT. 30. If a person kill another in self-defence, it must appear that the danger was so urgent and pressing, that, in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear also, that the person killed was the assailant, or that the slayer had really, and in good faith, endeavored to decline any further struggle before the mortal blow was given.

When public officer may kill and be justified.

SECT. 31. If an officer in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer attempts to take a person charged with treason, murder, rape, burglary, robbery, arson, perjury, forgery, counterfeiting, or other crime, denominated felony by this code, and he be resisted in the endeavor to take the person accused, and to prevent the escape of the accused by reason of such resistance, he kill the person accused, the officer so killing shall be justified: *Provided*, That such officer, previous to such killing, shall have used all reasonable efforts to take the accused without success, and that, from all probability, there was no prospect of being able to prevent injury from such resistance, and the consequent escape of such accused person.

Proviso.

Same.

SECT. 32. Justifiable homicide may also consist in unavoidable necessity, without any will or desire, and without any inadvertence or negligence in the party killing. An officer who, in the execution of public justice, puts a person to death in virtue of a judgment of a competent court of justice, shall be justified. The officer must, however, in the performance of his duty, proceed according to the sentence and the law of the land.

Excusable homicide.

SECT. 33. Excusable homicide, by misadventure, is when a person is doing a lawful act, without any intention of killing, yet unfortunately kills another.

Other instances of homicide.

SECT. 34. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

SECT. 35. The homicide appearing to be justifiable or ex-

cusable, the person indicted shall, upon his trial, be fully acquitted and discharged. If justifiable, party to be fully acquitted.

SECT. 36. The killing being proved, malice shall be presumed, and the burden of proving circumstances of mitigation; or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide. Malice presumed, until justified or excused.

SECT. 37. If any woman shall endeavor, privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which, if born alive, would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother being convicted thereof shall suffer imprisonment in the county jail for a term not exceeding one year: *Provided, however,* That nothing herein contained shall be construed as to prevent such mother from being indicted and punished for the murder of such bastard child. If woman conceal death of her own issue.

SECT. 38. The distinction between petit treason and murder is hereby abolished. Any person who might have been indicted for petit treason, shall hereafter be indicted for murder, and if convicted, be punished accordingly. Distinction between petit treason and murder abolished.

SECT. 39. If any person hereafter shall wilfully and maliciously or by agreement, fight a duel or single combat, with any engine, instrument, or weapon, the probable consequence of which might be the death of either party, and in so doing shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party injured shall die thereof within one year thereafter, every such offender, his second, as well as the second of the person killed, and all aiders, abettors, and counsellors, being thereof duly convicted, shall be considered to have committed a felony, and shall be punished by confinement to labor in the penitentiary for any term not less than ten years, or death, at the discretion of the court. Duelling. Penalty for.

SECT. 40. If any person shall hereafter challenge another to fight a duel with any deadly weapon, or in any manner whatever, the probable issue of which might result in the death of either; or if any person shall accept a challenge or agree to fight a duel, every person so offending shall, upon Challenging to a duel.

conviction thereof, be rendered incapable of holding or being elected to any office of profit, trust, or emolument, either civil or military, under the government of this territory, and be fined in a sum not less than one hundred dollars, and be imprisoned in the penitentiary for a term not less than one year.

Delivering
challenge and
seconding duel.

SECT. 41. If any person shall willingly or knowingly, carry or deliver any written challenge, or verbally deliver any message intended as or purporting to be a challenge, or shall be present at the fighting of any duel as aforesaid, as second or aid, or give countenance thereto, such person being thereof duly convicted, shall be subject to the same fines and disabilities as are provided in the case of sending a challenge as aforesaid. It shall not be necessary in an indictment against any person or persons for fighting a duel, or against their seconds, aiders, abettors, or counsellors, or against any person for sending or accepting a challenge, or for carrying any challenge, or delivering any message intended as or purporting to be a challenge, or for being present at the fighting of any duel as second, or for aiding or giving countenance to any duel, or the sending or accepting any challenge, to specify the nature or kind of the engine, instrument, or weapon with which the duel shall be fought, or intended to be fought, so that it be alleged in the indictment, that the engine, weapon, or instrument was deadly, the probable consequence of fighting with which might be the death of either of the parties.

Poisoning.
Penalty for.

SECT. 42. Every person who shall wilfully and maliciously administer, or cause to be administered to, or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year and not more than seven years. And every person who shall administer, or cause to be administered or taken any such poison, substance, or liquid, with the intention to procure the miscarriage of any woman then being with child, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years, in the penitentiary, and fined not exceeding one thousand dollars.

Mayhem.
Penalty for.

SECT. 43. Mayhem consists in unlawfully depriving a

human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall unlawfully cut out or disable the tongue, put out any eye, slit the nose, ear, or lip, or disable any limb or member of another, or shall voluntarily and of purpose put out an eye or eyes, every such person shall be guilty of mayhem, and on conviction, shall be punished by confinement in the penitentiary for a term not less than one year nor more than three years: *Provided*, That no person shall be found guilty of mayhem where the fact occurred during a fight had by consent, nor unless it appear that the person accused shall have been the assailant, or that the party maimed had, in good faith, endeavored to decline further combat. But in all other cases where the fact shall happen in actual fight, the party accused being thereof duly convicted, shall be adjudged guilty of a felony, and punished by imprisonment in the penitentiary not exceeding one year, and be fined not exceeding one thousand dollars.

Proviso.

SECT. 44. Any person who shall wilfully and maliciously deprive any person of either or both, or of any part of either or both of their testicles, shall be punished by fine in the penitentiary, not less than five, nor more than fifteen years.

Depriving of testicles. Penalty for.

SECT. 45. Rape is the carnal knowledge of a female, forcibly and against her will. Every male person of the age of fourteen years and upward, who shall have carnal knowledge of any female child under the age of ten years, either with or without her consent, shall be adjudged to be guilty of the crime of rape. Every person convicted of the crime of rape shall be punished by confinement in the penitentiary, for a term not less than one year, and may extend to life.

Rape. Penalty for.

SECT. 46. It shall not be necessary to prove emission to convict any person of the crime of rape, or the crime against nature.

Not necessary to prove emission.

SECT. 47. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the penitentiary for a term not less than one year, and may extend to life.

Crime against nature. Penalty for.

SECT. 48. An assault is an unlawful attempt, coupled with a present ability to commit a violent injury on the person of another.

Assault.

SECT. 49. An assault, with an attempt to commit murder, rape, mayhem, robbery, or larceny, shall subject the offender

Assault, with intent to commit crime. Penalty for.

to confinement in the penitentiary, for a term not less than one year nor more than fourteen years. An assault with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall be adjudged to be a felony, and any person thereof duly convicted, shall be fined in a sum not exceeding one thousand dollars, and imprisoned not exceeding one year in the county jail.

Assault and battery.

SECT. 50. An assault and battery is the unlawful beating of another.

False imprisonment. Penalty for.

SECT. 51. False imprisonment is the unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment, shall be fined in any sum not exceeding five hundred dollars, or imprisoned not exceeding one year in the county jail.

Kidnapping.

SECT. 52. Kidnapping is the forcible abduction or stealing away of a man, woman, or child, from his or her own country, and sending or taking him or her into another.

Penalty for."

SECT. 53. Every person who shall forcibly steal, take, or arrest any man, woman, or child, whether white, black, or colored, in this territory, and carry him or her into another country, state, or territory, or who shall take or arrest any person or persons whatsoever, with a design to take him or her out of this territory, without having established a claim according to the laws of the United States, shall, upon conviction, be deemed guilty of kidnapping. Every person found guilty of kidnapping, shall be confined in the penitentiary for a term not less than one year, and not more than seven years, for each person kidnapped or attempted to be kidnapped.

Other kidnapping.

SECT. 54. Every person who shall hire, persuade, entice, decoy, or seduce, by false promises, misrepresentations, and the like, any negro, mulatto, or colored person, not being a slave, to go out of this territory, or to be taken or removed therefrom, for the purpose and with the intent to sell such negro, mulatto, or colored person into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or the use of another, without the free will and con-

sent of such negro, mulatto, or colored person, any person so offending, shall be deemed to have committed the crime of kidnapping, and upon conviction thereof, shall be punished as in the preceding section.

CRIMES AND OFFENCES AGAINST HABITATIONS AND OTHER BUILDINGS.

SECT. 55. Every person who shall wilfully and maliciously burn, or cause to be burned, any dwelling-house, kitchen, office, shop, barn, stable, storehouse, warehouse, malt house, stilling house, factory, mill, pottery, or other building, the property of any other person, or any church, meeting-house, school-house, state house, court house, work-house, jail, or other public building, or any boat or other water craft, or any bridge of the value of fifty dollars, erected across any of the waters of this territory, such person so offending shall be deemed guilty of arson, and upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term not less than one year, nor more than ten years: and should the life or lives of any person or persons be lost in consequence of any such burning, as aforesaid, such offender shall be deemed guilty of murder, and shall be indicted and punished accordingly. Every person who shall wilfully and maliciously set fire to any of the buildings or other property described in the foregoing section, with intent to burn or destroy the same, shall be deemed guilty of a felony, and upon conviction thereof, shall be imprisoned in the penitentiary for a term not exceeding two years, and be fined in a sum not exceeding five hundred dollars.

Arson. Pen-
alty for.

SECT. 56. Every person who shall, in the night time, wilfully and maliciously and forcibly break and enter, or wilfully and maliciously, without force (the doors or windows being open), enter into any dwelling-house, kitchen, office, shop, storehouse, warehouse, malt house, stilling house, mill, pottery, factory, water-craft, church, or meeting-house, with intent to commit murder, robbery, rape, mayhem, larceny, or other felony, shall be deemed guilty of burglary, and upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than ten years.

Burglary.
Penalty for.

CRIMES AND OFFENCES RELATIVE TO PROPERTY.

Robbery.
Penalty for.

SECT. 57. Robbery is the felonious and violent taking of money, goods, or other valuable thing, from the person of another, by force or intimidation. Every person guilty of robbery, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than fourteen years.

Larceny.
Penalty for.

SECT. 58. Larceny is the felonious stealing, taking and carrying, leading, riding, or driving away the personal goods of another. Larceny shall embrace every theft which deprives another of his money, or other personal property, or those means or muniments, by which the right and title to property, real or personal, may be ascertained. Private stealing from the person of another, and from a house in the day-time, shall be deemed larceny. Larceny may also be committed by feloniously taking and carrying away any bond, bill, note, receipt, or any instrument of writing of value to the owner. Every person convicted of larceny, shall be punished by confinement in the penitentiary, for a term not less than one year, and not more than ten years.

Same.

SECT. 59. If any person shall remove, haul, or in any manner take away any claim-house, shanty, or other building, the property of another, he shall be deemed guilty of a larceny, and upon conviction thereof, shall be punished as provided in the last preceding section.

Receiving
stolen goods.
Not condemned
to penitentiary
unless amount
stolen exceeds
five dollars.

SECT. 60. Every person who for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or any thing, the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, shall, upon conviction, be punished by confinement in the penitentiary, for any term not less than one year, nor more than ten years, and every such person may be tried, convicted, and punished, as well before as after the trial of the principal. No person, convicted of larceny, or of buying or receiving goods or other things obtained by larceny, burglary, or robbery, shall be condemned to the penitentiary, unless the money or the value of the things stolen, bought or received, shall amount to five dollars.

SECT. 61. All property obtained by larceny, robbery, or burglary, shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property. Such owner may maintain his action, not only against the felon, but against any person in whose possession he may find the same.

Property restored to rightful owner in every case.

SECT. 62. Every person who shall mark or brand, alter or deface the mark or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat-cattle, or sheep, goat, hog, shoat or pig, not his or her own property, but belonging to some other person, with intent thereby to steal the same, or to prevent identification thereof by the true owner, shall, on conviction thereof, be punished by confinement in the penitentiary for a term not less than one year, nor more than three years: *Provided*, That no person shall be condemned to the penitentiary, under this section, unless the value of the property affected shall amount to five dollars. And in case the value of the property affected by the offences herein described, or by larceny, or by buying or receiving goods or other property obtained by larceny, robbery, or burglary, shall not amount to five dollars, then the offender shall be punished by imprisonment in the county jail, for a term not exceeding three months, and fined not exceeding fifty dollars.

Marking and branding, or defacing mark or brand of animals.

Proviso.

SECT. 63. Every servant, officer, or person employed in any public department, station, or office of the government of this territory, or any county of this territory, or in any office of a corporate body, who shall embezzle, steal, secrete, or fraudulently take and carry away any money, goods, chattels, effects, book or books of record or of account, bond or bonds, promissory note or notes, bank-bills or notes, or any other writing or security for the payment of money or property, of whatever description it may be, being the property of said territory, county, or corporate body, shall, on conviction, be punished by confinement in the penitentiary, for a term not less than one year, nor more than ten years.

Servants, officers, &c., fraudulently acting. how punished.

SECT. 64. If any officer or person who now is, or hereafter may be intrusted by law to collect, disburse, receive, or safely keep any money or moneys, revenue or revenues, belonging to this territory, or any county of this territory, to the school fund of this territory, to the school fund of any county or precinct in this territory, to any canal, turnpike, or railroad

Same

fund of this territory, or any county thereof, or to any fund for the improvement of any public road, river, creek, or other watercourse, bordering on or within this territory, or to any other fund now in being, or hereafter to be established by law for public purposes, and who shall fail or refuse to pay over all moneys, warrants, bills, notes, and orders, which any such officer or person shall receive for disbursement, and has not disbursed, or shall collect, or shall receive, or shall receive for safe keeping, belonging to this territory, to any county of this territory, or to any such fund as aforesaid, when such officer or person shall be thereto required by law, and demand duly made by the successor or successors of such officer or person in office, or by the officer or persons to whom such moneys, warrants, bills, notes, or order, ought by law to be paid over, or by his or their attorney or agent duly authorized, in writing, signed and acknowledged, if such demand be practicable; every such officer or person shall, on conviction thereof, be punished by confinement in the penitentiary, for any term not less than one year, nor more than ten years:

Proviso.

Provided, That no person shall be committed to the penitentiary, under this section, unless the money not paid over shall amount to five dollars, or if it appear that such failure or refusal shall be occasioned by unavoidable loss or accident. Every person convicted under the provisions of this section, shall forever thereafter be ineligible and disqualified from holding any office of honor or profit in this territory.

Damaging papers of value.
Penalty for.

SECT. 65. Every person who shall fraudulently or maliciously tear, burn, efface, cut, or in any other way destroy any deed, lease, bond, will, or any bank-bill or note, check [or] warrant for the payment of money, or other thing, or other security for the payment of money, or the delivery of goods, or any certificate or other public security of this territory, or of the United States, or of any state or any other territory, for the payment of money, or any receipt, acquittance, release, defeasance, discharge of any debt, suit, or other demand of any transfer or assurance of money, stock, goods, chattels, or other property, or any letter of attorney, or other power, or any day-book or other book of account, or any agreement or contract whatsoever, with intent to defraud, prejudice, or injure any person or body corporate, shall, upon conviction thereof, be punished by confinement in the peni-

tentiary, for a term not less than one year, nor more than five years.

SECT. 66. Every person who shall knowingly, maliciously, and fraudulently, cut, fell, alter, or remove any certain boundary tree or other allowed landmark, to the wrong of his neighbor or any other person, shall, on conviction thereof, pay a fine not exceeding one hundred dollars, or be imprisoned in the county jail, for a term not exceeding three months.

Removing boundary or landmark. Penalty for.

SECT. 67. If any clerk, apprentice, or servant, whether bound or hired, to whom any money, bank-bill or note, or goods or chattels, shall be intrusted or delivered by his or her master or mistress, shall withdraw himself or herself from his or her master or mistress, and go away with the said money, bank-bill, or note, or goods or chattels, or any part thereof, with intent to steal the same, and defraud his or her master or mistress thereof, contrary to the trust and confidence in him or her reposed by his or her said master or mistress, or being in the service of his or her said master or mistress, shall embezzle the said money, bank-bill or note, goods or chattels, or any part thereof, or otherwise shall convert the same to his or her own use, with like purpose to steal the same, every such person so offending shall be deemed guilty of larceny, and be punished accordingly.

Clerk, apprentice, or servant, embezzling, &c. Penalty for.

SECT. 68. If any bailee of any money, bank-bill or note, or goods or chattels, shall convert the same to his or her own use, with an intent to steal the same, he shall be deemed guilty of larceny in the same manner as if the original taking had been felonious, and on conviction thereof, shall be punished accordingly.

Bailee appropriating to his own use. Penalty for.

SECT. 69. If any lodger shall take away, with intent to steal, embezzle, or purloin any bedding, furniture, goods, or chattels, which he or she is to use, in or with his or her lodging, he or she shall be deemed guilty of larceny, and on conviction shall be punished accordingly.

Lodger taking away goods. Penalty for.

FORGERY AND COUNTERFEITING.

SECT. 70. Every person who shall falsely make, alter, forge, or counterfeit any record, or other authentic matter, of a public nature, or any charter, letters-patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond,

Counterfeiting and forging. Penalty for.

covenant, bank-bill or note, post note, check, draft, bill of exchange, contract, promissory note, due-bill for the payment of money or property, receipt for money or property, power of attorney, any auditor's warrant for the payment of money at the treasury, county order, or any accountable receipt, or any order or warrant, or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing or acquittance, release, or receipt for money or goods, or any acquittance or release or discharge, for any debt, account, action, suit, demand, or other thing, real or personal, or any transfer or assurance of money, stock, goods, chattels, or other property whatever, or any letter of attorney, or other power, to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien, or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft or order, or assignment of any bond, writing obligatory, or promissory note, for money or other property; or shall counterfeit or forge the seal or handwriting of another, with intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in, or belong to, this territory or not; or shall utter, publish, pass, or attempt to pass, as true and genuine, or cause to be uttered, published, passed, or attempted to be passed as true and genuine, any of the above-named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this territory or not: every person so offending shall be deemed guilty of forgery, and upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than fourteen years.

Counterfeiting
gold and silver
coin. Penalty
for.

SECT. 71. Every person who shall counterfeit any of the species of gold and silver coin now current, or that shall hereafter be current in this territory, or shall pass or give in payment, or offer to give in payment, such counterfeited coin, or permit, cause, or procure the same to be altered or

passed, with intention to defraud any person, body politic or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and being thereof duly convicted, shall be punished by confinement in the penitentiary, for a term not less than one year nor more than fourteen years.

SECT. 72. Every person who shall have in his or her possession, or receive for any other person, any counterfeit gold or silver coin or coins, of the species now current or hereafter to be current in this territory, with intention to utter or pass the same, or to permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by confinement in the penitentiary, not less than one nor more than fourteen years.

Person having possession of counterfeit coin. Penalty for.

SECT. 73. Every person who shall have in his or her possession, or shall receive from any other person, any forged promissory note or notes, or bank-bill, or bills for the payment of money, with intention to utter or pass the same, or to permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body corporate or politic, whether such person or persons, body corporate or politic, reside in, or belong to this territory or not, knowing the same to be forged or counterfeited, or shall have or keep in his possession any blank or unfinished note or bank-bill, made in form or similitude of any promissory note or bill for payment of money, made to be issued by any incorporate bank or banking company in this territory or elsewhere, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause or procure the same to be filled up and completed, in order to utter or pass the same, or to permit, or cause or procure the same to be uttered or passed, to defraud any person or persons, body politic or corporate, whether in this territory or elsewhere, shall, upon conviction thereof, be punished by confinement in the penitentiary, for a term not less than one year nor more than fourteen years.

Person having possession of forged note or bill. Penalty for.

SECT. 74. Every person who shall make, pass, utter, or publish, with an intention to defraud any other person or persons, body politic or corporate, either in this territory or else-

Person making, passing, &c., fictitious bill, note, or check. Penalty for.

where, or with like intention, shall attempt to pass, utter, or publish, or shall have in his or her possession, with like intent to pass, utter, or publish, any fictitious bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of said bank, corporation, copartnership, or individual, when in fact there shall be no such bank, corporation, copartnership, or individual in existence, the said person, knowing the said bill, note, check, or instrument of writing for the payment of money or property to be fictitious, shall be deemed guilty of the crime of forgery, and on conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one nor more than fourteen years.

Persons having possession of dies, plates, and apparatus for counterfeiting. Penalty for.

SECT. 75. Every person who shall make, or knowingly have in his possession, any die or dies, plate or plates, or any apparatus, paper, metal, machine, or thing whatever, made use of in counterfeiting the coin now current, or hereafter to be current in this territory, or in counterfeiting bank-notes or bills, whether such bank be situate in this territory or not, upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year nor more than fourteen years ; and all punch dies, plates, apparatus, paper, metal, or machines, intended for the purposes aforesaid, shall be destroyed.

On trial of said persons, not necessary to prove incorporation by charter.

SECT. 76. On the trial of any person for forging any bill or note, purporting to be the bill or note of some incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of any such bank or company by the charter or act of incorporation, but the same may be proved by general reputation.

Persons of skill competent to prove counterfeits.

SECT. 77. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeited.

Persons fraudulently defacing or counterfeiting seals and signatures. Penalty for.

SECT. 78. Every person who shall fraudulently forge, deface, corrupt, or counterfeit the seal of this territory, or the seal of any court or public officer, or by law entitled to have and use a seal, and shall make use of the same, or shall forge or counterfeit the signature of any public officers, or shall unlawfully and corruptly, or with evil intent, affix any of the said true seals to any commission, deed, warrant, pardon, certificate, or other writing, or who shall have in his possession or custody

any counterfeit seal, and shall wilfully conceal the same, knowing it to be falsely made and counterfeited, and shall thereof be convicted, shall be punished by confinement in the penitentiary, for a term not less than one nor more than fourteen years.

OFFENCES BY PUBLIC OFFICERS.

SECT. 79. If an officer or person who now is or hereafter may be intrusted by law to collect, receive, safely keep, disburse, or pay over any money or moneys, revenue or revenues belonging to this territory, or any county of this territory, to the school fund of this territory, to the school fund of any county or precinct of this territory, to any canal, turnpike, or railroad fund of this territory, or any county thereof, or to any fund for the improvement of any public road, river, creek, or other watercourse bordering on or within this territory, or to any other fund now in being or hereafter to be established by law for public purposes, shall directly or indirectly purchase or procure any order, warrant, certificate, or any other evidence of public indebtedness, to the payment of which such moneys, revenues, or funds, is by law to be applied, at any loss, depreciation, or discount below the value thereof, or shall in any manner obtain any order, warrant, certificate, or other evidence of public indebtedness by any other means or manner than by the payment of the same according to law out of such moneys, revenue, or fund at the full nominal value thereof, he shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than one nor more than three years.

Officers and persons intrusted by law with moneys or revenues, obtaining evidence of indebtedness by improper means, and at less than full nominal value.

SECT. 79a. If any person or persons shall buy, purchase, procure, or in any manner obtain, any order, warrant, certificate, or other evidence of public indebtedness, at any discount or depreciation, with any private moneys, means, or effects of any public officer, or with any such public money, revenue, or fund mentioned in the preceding section, whereby such person or public officer shall reap any gain, profit, or reward, he or they may be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine not exceeding one thousand dollars, and be imprisoned in the county jail not exceeding one year.

Same—through another person.

SECT. 79b. If any person or officer within this territory,

Such person or officer converting

such money into evidence of indebtedness, and depositing same.

charged with the collection, safe keeping, transfer, or disbursement of public money, shall convert any of such public money into any order, warrant, certificate, or any evidence of public indebtedness, and shall deposit the same with any public officer of this territory, in lieu of money, he shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by confinement in the penitentiary, not less than one nor more than three years.

OFFENCES AGAINST PUBLIC POLICY.

Persons interested in circulation of bill, check, &c., as money without legislative authority.

SECT. 80. If any person shall subscribe or become a member of, or be in any way interested in any association or company formed for the purpose of issuing or putting in circulation, any bill, check, ticket, certificate of deposit, promissory note, receipt, or other paper of any bank, to circulate as money in this territory, without being authorized so to do by charter from the general assembly of this territory, he shall be punished by imprisonment in the penitentiary, not more than one year, or by a fine of not more than one thousand dollars.

CRIMES AND OFFENCES AGAINST PUBLIC JUSTICE.

Perjury. Penalty for.

SECT. 81. Every person having taken a lawful oath, or made affirmation in any judicial proceeding, or in any other matter where, by law, an oath or affirmation is required, who shall swear or affirm, wilfully, corruptly, and falsely, in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury or subornation of perjury (as the case may be), and upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than fourteen years.

If perjury causes execution of innocent persons, deemed murder.

SECT. 82. Every person, who, by wilful and corrupt perjury, or subornation of perjury, shall procure the conviction and execution of any innocent persons, shall be deemed and adjudged guilty of murder, and upon conviction thereof, shall suffer the punishment of death.

Indictment for perjury.

SECT. 83. In every indictment for perjury, or subornation of perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and before what

court or authority the oath or affirmation was taken, averring such court or authority to have had full power to administer the same, together with the proper averment or averments to falsify the matter or matters wherein the perjury is assigned, without setting forth any part of the record or proceedings, either in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court, or other authority before whom the perjury was committed, or the form of the oath of affirmation, or the manner of administering the same.

SECT. 84. If any person or persons shall, directly or indirectly, give any sum or sums of money, or any other bribe, present, or reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, or reward, or any other thing, to obtain or procure the opinion, judgment, or decree of any judge or justice of the peace acting within this territory, or to corrupt, induce, or influence such judge, or justice of the peace to be more favorable to one side than to the other, in any suit, matter, or cause depending or to be brought before him or them, or shall, directly or indirectly, give any sum or sums of money, present, or reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, or reward, or other thing, to obtain, procure, or influence the vote of any member of the general assembly, or to incline, induce, or influence any such member of the general assembly, to be more favorable to one side than the other, on any question, election, matter or thing pending, to be brought before the general assembly, or either house thereof, the person so giving any money, bribe, present or reward, promise, contract, obligation, or security, with intent and for the purpose aforesaid, and the judge, justice of the peace, or member of the general assembly, who shall in anywise accept or receive the same, shall be deemed guilty of bribery, and, on conviction, shall be punished by confinement in the penitentiary, not less than one year, nor more than five years.

SECT. 85. If any person shall, directly or indirectly, give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, obligation, or security for the payment of any money, present or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner,

Persons bribing judges, justices, or members of general assembly. Penalty for.

Bribing other officers. Penalty for.

clerk, constable, jailer, attorney, member of the general assembly, or other officer, ministerial or judicial (but such fees as are allowed by law), with intent to induce or influence such officer to appoint any person to office, or to execute any of the powers in him vested, or to perform any duty of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer hath appointed any person to any office, or exercise any power in him vested, or performed any duty of him required, with partiality or favor, or otherwise contrary to law, the person so giving, and the officer so receiving, any money, bribe, present, reward, promise, contract, obligation, or security, with intent or for the purpose or consideration aforesaid, shall be deemed guilty of bribery, and, on conviction, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than five years.

Persons bribing and proposing to receive bribe to be fined.

SECT. 86. Every person who shall offer or attempt to bribe any member of the general assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney-general, district-attorney, or other ministerial or judicial officer, in any of the cases mentioned in either of the two preceding sections; and every member of the general assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney-general, district-attorney, or other ministerial or judicial officer, who shall propose or agree to receive a bribe in any of the cases mentioned in either of the two preceding sections, shall, on conviction, be fined in a sum not exceeding five hundred dollars.

Officers and persons injuring, destroying, or concealing important papers, &c. Penalty for.

SECT. 87. If any judge, justice of the peace, sheriff, coroner, clerk, recorder, or other public officer, or any person whatsoever, shall steal, embezzle, alter, corrupt, withdraw, falsify, or avoid any record, process, charter, gift, grant, conveyance, bond, or contract, or shall knowingly or wilfully take off, discharge, or conceal any issue, forfeited recognizance, or other forfeiture, or shall forge, deface or falsify, any document or instrument recorded, or any registry, acknowledgment, or certificate, or shall alter, deface, or falsify any minute, document, book, or any proceeding whatever, of or belonging to any public office within this territory, the person so offending, and being thereof duly convicted, shall be pun-

ished by confinement in the penitentiary, for a term not less than one year, nor more than seven years.

SECT. 88. Every jailer who shall be guilty of wilful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding five hundred dollars, and be removed from office.

Inhuman jailer, how punished.

SECT. 89. If any officer, whose office shall be abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he shall have resigned or been legally removed from his office, shall wilfully and unlawfully withhold or detain from his successor or other person entitled thereto by law, the records, papers, documents, or other writing appertaining or belonging to his office, or mutilate, destroy, or take away the same, the person so offending shall, on conviction, be punished by confinement in the penitentiary, for a term not less than one year, nor more than five years. The provisions of this section shall apply to any person or persons who shall have records, documents, papers, or other writings in his, her, or their possession, and who shall wilfully mutilate, destroy, withhold, or detain the same as aforesaid.

Officer withholding records, papers, &c., improperly.

Same applies to other persons.

SECT. 90. If any person shall, without due authority so to do, acknowledge or confess, or procure to be acknowledged or confessed, any fine, common recovery, deed, bond, power of attorney, mortgage, recognizance, bail or judgment, in the name of any other person, by personating any such other person, the person so offending, on conviction thereof, shall be punished by confinement in the penitentiary for any term not less than one year, nor more than ten years.

Personating another and committing fraud thereby. Penalty for.

SECT. 91. If any person shall knowingly and wilfully obstruct, resist, or oppose any sheriff, deputy-sheriff, coroner, constable, or other officer of this territory, or other person duly authorized, in serving or attempting to serve any lawful process or order of any court, judge, or justice of the peace, or any other legal process whatsoever, or shall assault or beat any sheriff, deputy-sheriff, coroner, constable, or other officer, or person duly authorized, in serving or executing, or attempting to serve or execute any process, or order aforesaid, or for having served or executed, or attempted to serve or execute the same, every person so offending shall be fined in any sum not exceeding five hundred dollars, and imprisoned

Persons opposing officer or person in execution of lawful process or order. Penalty for.

Proviso. for a term not exceeding one year: *Provided*, Any officer or person whatever that may or shall assault or beat any individual, under color of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment.

Setting at liberty person subject to death penalty.

Same person subject to penitentiary confinement.

If person charged with such offence is liberated.

If keeper or guard of prisoner fraudulently permit prisoner to escape penalty

SECT. 92. If any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is death, such person, on conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than fourteen years; and if any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is confinement in the penitentiary, whether such person be in custody of an officer or in the penitentiary, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

SECT. 93. If any person shall so set at liberty or rescue any person who, before conviction, stands charged or committed for any capital offence, or any crime punishable by confinement in the penitentiary, such person so offending shall be, on conviction, fined in a sum not exceeding one thousand dollars, and imprisoned in the penitentiary for a term not exceeding three years; and if the person rescued or set at liberty stands charged, committed, or convicted of any misdemeanor, or other offence punishable by fine or imprisonment, or both, the person convicted of such rescue, or setting at liberty, shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty, if he or she had been found guilty.

SECT. 94. If the warden of the penitentiary, or any servant, officer, or agent, belonging to, or in employment at the same, or any sheriff, deputy-sheriff, or jailer, or any person employed by them as a guard, shall fraudulently contrive, procure, aid, connive at, or otherwise voluntarily suffer the escape of any convict in custody or in said penitentiary committed, every such person, on conviction, shall be punished by confinement in said penitentiary, to solitary confinement, for a term not exceeding three months, and by confinement to hard labor for a term not exceeding ten years.

SECT. 95. If the warden of the penitentiary, or other person, as aforesaid, shall negligently suffer any convict committed, or in custody as aforesaid, under sentence of solitary imprisonment, to be at large without the cell or apartment assigned to such convict, or to be there visited, conversed with, comforted or relieved, contrary to the rules and regulations of the penitentiary, or shall negligently suffer such convict, or any other convict committed to the penitentiary, under sentence of confinement to hard labor, to be at large without the precincts of the penitentiary, or contrary to the rules and regulations thereof, to be out of close confinement, the warden or other person neglecting his duty in the premises, being thereof duly convicted, shall be punished by fine not exceeding two hundred dollars.

If warden or guard allow prisoners certain unlawful privileges.

SECT. 96. If any person shall convey to any convict in custody, or committed to the penitentiary, into the penitentiary, or other place where such convict may be confined, any tool, weapon, or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, every person so offending, on conviction thereof, shall be punished by fine not exceeding five hundred dollars, and imprisoned in the penitentiary not exceeding six months.

If person convey to convict tool, weapon, &c., enabling him to escape.

SECT. 97. If any person or persons shall rescue another in legal custody, on civil process, such person or persons shall on conviction be fined in any sum not exceeding the sum for which said civil process issued.

If persons rescue one in legal custody. Penalty.

SECT. 98. If any person shall aid or assist a prisoner, lawfully committed or detained in any jail, for any offence against this territory, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from jail, though no escape be actually made, or if any person shall convey or cause to be delivered to such prisoner, any disguise, instrument, or arms, proper to facilitate the escape of such prisoner, any person so offending (although no escape or attempt to escape be actually made) shall, on conviction, be punished by fine not exceeding five hundred dollars, and imprisoned in the county jail for a term not exceeding one year.

If aided, and escape be not made from confinement. Penalty.

SECT. 99. If any person shall aid or assist any prisoner to attempt to escape, or shall rescue, or attempt to rescue, any prisoner from the custody of any sheriff, deputy-sheriff,

If person shall aid or assist in escape of prisoner. Penalty.

coroner, constable, officer, or other person, who shall have the lawful custody of such prisoner; every person so offending shall, upon conviction thereof, be fined not exceeding one thousand dollars, and imprisoned in the county jail not exceeding one year.

Officer voluntarily permitting escape of prisoner. Penalty.

SECT. 100. If any sheriff, coroner, jailer, keeper of a prison, constable, or other officer or person whatever, having any prisoner in his legal custody, before conviction, shall voluntarily suffer or permit such prisoner to escape or go at large; every such officer or person so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned in the county jail for any term not exceeding six months: *Provided*, That if such prisoner be in custody charged with murder, or other capital offence, then such officer or person suffering or permitting such escape, shall be punished by confinement in the penitentiary for any term not less than one year, nor more than ten years. A negligent escape of a person charged with a criminal offence, before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and punished by fine not exceeding five hundred dollars.

Proviso.

Negligent escape. Penalty.

Proper officer refusing to receive prisoner. Penalty.

SECT. 101. If any sheriff, coroner, keeper of a jail, constable, or other officer, shall wilfully refuse to receive or arrest any person charged with a criminal offence, then such sheriff, coroner, jailer, constable, or other officer, shall, on conviction, be fined not exceeding five hundred dollars, and imprisoned not exceeding six months, in the common jail.

If person shall compound criminal offence. Penalty.

SECT. 102. If any person shall take money, goods, chattels, lands, or other reward, or promise thereof, to compound any criminal offence, such person or persons shall be fined in double the sum or value of the thing agreed for or taken, but no person shall be debarred from taking his goods or property from the thief or felon, or receiving compensation for the private injury occasioned by the commission of any such criminal offence.

Persons procuring false indictment for criminal offence. Penalty.

SECT. 103. If any two or more persons shall conspire or agree, falsely or maliciously, to charge or indict, or cause or procure to be charged or indicted, any person for any criminal offence, each of the persons so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned not exceeding one year.

SECT. 104. If any person shall take upon himself to exercise or officiate in any office or place of authority in this territory, without being lawfully authorized thereto, he shall, upon conviction, be fined in any sum not exceeding two hundred dollars.

If person shall unlawfully officiate in place of authority. Penalty.

SECT. 105. Embracery is an attempt to influence a juror or jurors corruptly on one side by threats or menaces, or by promises, persuasions, entreaties, money, entertainments, and the like. Every embracer who shall procure any juror to take money, gain, or profit, or shall corruptly influence any juror by persuasions, promises, entreaties, or by any other improper means, or shall threaten or menace any juror, shall be fined not exceeding five hundred dollars, and imprisoned in the penitentiary not exceeding one year. And any juror convicted of taking money, gain, or profit, or corruptly being influenced as aforesaid, shall suffer the like punishment, and be forever disqualified to act as juror. This section shall apply as well to the grand as the petit jurors.

Embracery. Penalty for.

SECT. 106. If any person or persons shall wickedly and wilfully excite and stir up any suits or quarrels between the people of this territory, either at law or otherwise, with a view to promote strife and contention, every such person so offending, shall be deemed to have committed the crime of "common barratry," and, upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars; and if he be an attorney or counsellor at law, he shall be suspended from the practice for any time not exceeding six months.

If person shall wickedly stir up suits or quarrels. Penalty.

SECT. 107. If any person shall officiously intermeddle in any suit at common law or in chancery, that in nowise belongs to, or concerns such person, by maintaining or assisting either party with money or otherwise, to prosecute or defend such suit, with a view to promote litigation, every such person so offending, shall be deemed to have committed the crime of "maintenance," and, upon conviction thereof, shall be fined and punished as in cases of "common barratry:" *Provided*, That it shall not be considered "maintenance" for a man to maintain the suit of his kinsman or servant, or poor neighbor, out of charity.

Intermeddling improperly in suits deemed "maintenance." Penalty.

Proviso.

SECT. 108. If any judge, justice of the peace, sheriff, coroner, constable, clerk, or other officer of this territory, ministerial or judicial, shall wilfully or corruptly receive or take

If public officer shall receive or demand improper fee or reward.

any fee or reward, to execute or do his duty as such officer, except such as is or shall be allowed by law, or if any such officer shall wilfully or corruptly ask or demand as a condition precedent to the performance of his duty as such officer, any fee or reward, except such as shall be allowed by law, every such officer so offending shall be deemed guilty of extortion, and, on conviction thereof, shall be fined in any sum not exceeding two hundred dollars.

Public officers palpably omitting duty, &c. Penalty.

SECT. 109. Every clerk, sheriff, coroner, constable, county commissioner, justice of the peace, recorder, county surveyor, attorney-general, or district attorney, who shall be guilty of any palpable omission of duty, or who shall wilfully or corruptly be guilty of oppression, malfeasance, or partiality in the discharge of his official duties, shall, upon conviction thereof, be fined in a sum not exceeding two hundred dollars, and the court shall have power, upon the recommendation of the jury, to add to the judgment of the court, that any officer so convicted, shall be removed from office. The court shall have power, whenever any clerk of the district or supreme court, attorney-general or district attorney, shall be presented or indicted, to appoint for that occasion a prosecuting attorney or clerk, as the case may require, who shall thereby be invested, in relation to such presentment or indictment, with all the powers of clerk, or attorney-general, or district attorney. It shall be the duty of the court, when the judgment shall extend to removal from office, to cause immediate notice of such removal to be given to the proper department, in order that the vacancy thus occasioned may be filled.

When certain officers indicted, offices, how filled.

When judgment extends to removal from office.

If person be guilty of threatening letters, &c. Penalty.

SECT. 110. If any person shall knowingly send or deliver any letter or writing, threatening to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities or failings, with intent to extort money, goods, chattels, or other valuable things, or threatening to maim, wound, kill, or murder, or to burn or destroy his or her house or other property, or to accuse another of a crime or misdemeanor, or to expose or publish any of his or her infirmities or failings, though no money, goods, chattels, or valuable thing be demanded, such person, so offending, shall, on conviction, be fined in a sum not exceeding five hundred dollars, and imprisoned not exceeding six months.

OFFENCES AGAINST THE PUBLIC PEACE AND TRANQUILLITY.

SECT. 111. If any person, at late and unusual hours of the night time, maliciously or wilfully disturb the peace or quiet of any neighborhood or family, by loud or unusual noises, or by tumultuous and offensive carriage, threatening, traducing, quarrelling, challenging to fight, or fighting, every person convicted thereof, shall be fined in a sum not exceeding fifty dollars, or imprisonment not exceeding two months.

If person, at late hours, creates disturbance. Penalty.

SECT. 112. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do, by a judge, justice of the peace, sheriff, coroner, constable, or other public officer, persons so offending shall, on conviction, be severally fined in any sum not exceeding fifty dollars, and imprisoned not exceeding one month.

If person do not disperse, after being commanded by proper officer. Penalty.

SECT. 113. If two or more persons shall, by agreement, fight in a public place to the terror of the citizens of this territory, the persons so offending shall be deemed guilty of an affray.

If persons fight in public place. Penalty.

SECT. 114. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing toward it, such persons shall be deemed guilty of an unlawful assemblage, and upon conviction thereof, be severally fined in a sum not exceeding fifty dollars, or imprisoned not exceeding three months.

Unlawful assemblage. Penalty for.

SECT. 115. If two or more persons shall meet to do an unlawful act, upon a common cause of quarrel, and make advances toward it, they shall be deemed guilty of a rout, and, on conviction, shall be severally fined in a sum not exceeding seventy dollars, or imprisoned not exceeding four months.

Making advances to quarrel. Penalty.

SECT. 116. If two or more persons actually do an unlawful act, with force or violence, against the person or property of another, with or without a common cause of quarrel, or even do a lawful act in a violent and tumultuous manner, the person so offending shall be deemed guilty of a riot, and on conviction, shall severally be fined not exceeding two hundred dollars, or imprisoned not exceeding six months.

Rioting. Penalty for.

Officer failing to attempt arrest of parties intending to fight duel. Penalty.

SECT. 117. If any judge, justice of the peace, sheriff, or other officer bound to preserve the public peace, shall have knowledge of an intention on the part of any two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the duel, every such officer shall be fined, not exceeding one hundred dollars.

Persons being published as cowards who refuse to accept challenge to duel. Penalty.

SECT. 118. If any person or persons shall, in any newspaper or handbill, written or printed, publish or proclaim any other person or persons as a coward or cowards, or use any other opprobrious or abusive language, for not accepting a challenge to fight a duel, or for not fighting a duel, such person or persons so offending, on conviction, shall be fined in a sum not exceeding five hundred dollars, or imprisoned for a term not exceeding three months. The publisher or printer of any such newspaper, handbill, or other publication, may be summoned as a witness, and shall be required to testify against the writer or writers of such handbill or publication; and if any such printer or printers shall refuse to testify in relation to the premises, either before the grand or petit jury, he or they shall be deemed guilty of a flagrant contempt of the court, and may be punished by fine and imprisonment, or either: *Provided, however,* That the testimony given by any such witness shall, in no case, be used in any prosecution against such witness.

Proviso.

Libel. Penalty for.

SECT. 119. A libel is a malicious defamation, expressed either by printing or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural defects of one who is alive, and thereby expose him or her to public hatred, contempt, or ridicule; every person, whether writer or publisher, convicted of this offence, shall be fined in a sum not exceeding five hundred dollars, or imprisoned not exceeding one year. In all prosecutions for a libel, the truth thereof may be given in evidence in justification, except libels tending to blacken the memory of the dead, or expose the natural defects of the living.

Truth thereof may be given in evidence, when.

OFFENCES AGAINST THE PUBLIC MORALITY, HEALTH, AND POLICE.

SECT. 120. Bigamy consists in the having of two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this territory, being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending shall, on conviction thereof, be punished by a fine, not exceeding one thousand dollars, and imprisoned in the penitentiary, not exceeding two years. It shall not be necessary to prove either of the said marriages by the register or certificate thereof, or other record of evidence; but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when such second marriage shall have taken place without this territory, cohabitation in this territory, after such second marriage, shall be deemed the commission of the crime of bigamy, and the trial in such case may take place in the county where such cohabitation shall have occurred. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together, prior to the second marriage, and he or she not knowing such husband or wife to be living within that time. Also, that nothing herein contained shall extend to any person that is or shall be at the time of such second marriage, divorced by lawful authority from the bands of such former marriage, or to any person where the former marriage hath been by lawful authority declared void.

Bigamy. Penalty for.

Proof necessary.

If persons separated five years.

If persons lawfully divorced.

SECT. 121. If any man or woman, being unmarried, shall knowingly marry the husband or wife of another, such man or woman shall, on conviction, be fined not more than five hundred dollars, or imprisoned not more than one year.

If unmarried person marry husband or wife of another.

SECT. 122. Any man and woman who shall live together in an open state of adultery or fornication, or adultery and fornication, every such man and woman shall be indicted, and, on conviction, shall be fined in any sum not exceeding two hundred dollars each, or imprisoned not exceeding six months. This offence shall be sufficiently proved by cir-

Adultery or fornication. Penalty for.

Proof necessary.

cumstances which raise the presumption of cohabitation and unlawful intimacy; and for a second offence such man or woman shall be severally punished twice as much as the former punishment, and for the third offence treble, and thus increasing the punishment for each succeeding offence: *Provided, however,* That it shall be in the power of the party or parties offending, to prevent or suspend the prosecution, by their intermarriage, if such marriage can be legally solemnized, and upon the payment of the costs of such prosecution.

Proviso.

Family inter-marriage incestuous and void.

SECT. 123. Marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the half as well as of the whole blood, and between uncles and neices, aunts and nephews, are declared to be incestuous and absolutely void. This section shall extend to illegitimate as well as legitimate children and relations.

Persons so intermarrying or cohabiting. Penalty.

SECT. 124. Persons within the degrees of consanguinity within which marriages are declared by the preceding section to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, or who shall lewdly and lasciviously cohabit with each other, shall be liable to indictment, and, upon conviction, be punished by imprisonment in the penitentiary not exceeding ten years.

If father cohabits with daughter. Penalty.

SECT. 125. If a father shall rudely and licentiously cohabit with his own daughter, the father shall, on conviction, be punished by confinement in the penitentiary for a term not exceeding twenty years.

If person guilty of lewdness, keep open tippling on the Sabbath, or keep disorderly house for encouragement of wrong practices.

SECT. 126. If any person shall be guilty of open lewdness, or other notorious act of public indecency, tending to debauch the public morals, or shall keep open any tippling-house on the Sabbath day or night, or shall maintain or keep a lewd house or place for the practice of fornication, or shall keep a common ill-governed and disorderly house, to the encouragement of idleness, gaming, drinking, fornication, or misbehavior, every such person shall, on conviction, be fined not exceeding one hundred dollars, or imprisoned not exceeding six months.

If any person brings or offers for sale obscene books and prints. Penalty.

SECT. 127. If any person shall hereafter bring, or cause to be brought or imported into this territory for sale, or shall sell or offer to sell, any obscene book, pamphlet, print, picture, or

engraving; every such person shall, upon conviction, be fined in a sum not less than twenty-five dollars, nor more than fifty dollars.

SECT. 128. If any person shall, by himself, herself, servant, or other agent, for his or her gain or profit, keep, have, exercise, or maintain a common gaming-house, table, or room, or in any house or place occupied by him or her, procure or permit any persons to frequent or come together to play for money, or other valuable thing, at any game, every offender, on conviction, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding six months.

If person maintains gaming-house. Penalty.

SECT. 129. If any person or persons shall play for money, or other valuable thing, at any game with cards, dice, checks, or at billiards, or with any other article or instrument, thing or things whatsoever, which may be used for the purpose of playing or betting upon or winning or losing money, or any other thing or things, article or articles of value, or shall bet on any game others may be playing, every person so offending, shall be fined not exceeding one hundred dollars, and not less than ten dollars.

If persons game for money or other valuable thing. Penalty.

SECT. 130. Every tavern-keeper who shall suffer or permit any game or games, prohibited or intended to be prohibited by this chapter, to be played in his tavern or in any outhouse appendant thereto, shall, on conviction, be fined not exceeding one hundred dollars, and shall forfeit his license, and shall not be again licensed as a tavern-keeper, for one year from such conviction. It shall be the duty of all justices of the peace, sheriffs, coroners, and grand jurors, now in office or hereafter to be appointed, to take notice and give information to the proper authorities, of such offences as may be committed in their respective counties, contrary to the provisions of this chapter, whenever the same may in anywise come under their immediate observation. And if any officer whose duties it is made to execute the provisions of this chapter, shall neglect to enforce its provisions upon view or complaint, such officer, upon conviction thereof, shall be fined in the sum of one hundred dollars, and shall moreover be suspended from office for one year.

Tavern-keeper permitting same. Penalty.

Public officers to take notice of such practices. If they fail so to do. Penalty.

SECT. 131. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common street or alley of any town or village,

If person obstruct road, street, bridge, navigable river, or establish or

continue offensive trade, &c. Penalty.

or any public bridge or causeway, or public river or stream declared navigable by law, or shall continue such obstruction, so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, or manufacture, or business, or continue the same after it has been erected or established, or shall in anywise pollute or obstruct any water-course, lake, pond, marsh, or common sewer, or continue such obstruction or pollution, so as to render the same offensive or unwholesome to the county, town, village, or neighborhood thereabouts; every person so offending shall, upon conviction thereof, be fined not exceeding one hundred dollars. And every such nuisance may, by order of the court before whom the conviction may take place, be removed and abated by the sheriff of the proper county; and any inquest and judgment thereon, had under the provisions of any law authorizing a writ of ad quod damnum, shall be no bar to a prosecution under this chapter.

Such nuisances, how abated.

If person sells unwholesome provisions or drink. Penalty.

SECT. 132. If any person or persons shall knowingly sell any flesh of any diseased animal, or other unwholesome provisions, or any pernicious or adulterated drink or liquors, every person so offending shall be fined not exceeding one hundred dollars, or imprisoned not exceeding three months.

Persons or corporations issuing improper, unlawful circulating medium. Penalty.

SECT. 133. If any person, number of persons, or corporation, in this territory, without special leave from the general assembly, shall emit or utter any bill of credit, make, sign, draw, or indorse any bond, promissory note, or writing, bill of exchange, or order, to be used as a general circulating medium, as, and in lieu of, money or other currency, every such person or persons, or members of such corporation assenting to such proceedings, being thereof duly convicted, shall pay a fine not exceeding three hundred dollars, or be imprisoned not exceeding one year.

Persons damaging or destroying laws, proclamations, &c. Penalty.

SECT. 134. If any person shall intentionally deface, obliterate, tear down, or destroy, in whole or in part, any copy or transcript, or extract from, or of any law of the United States or of this territory, or any proclamation, advertisement, or notification set up at any place in this territory, by authority of any law of the United States or of this territory, or by order of any court, such person, on conviction, shall be fined in a sum not exceeding fifty dollars nor less than five dollars, or imprisoned for a term not exceeding one month: *Pro-*

Proviso.

vided, That this section shall not extend to defacing, tearing down, obliterating, or destroying any law, proclamation, publication, advertisement, or notification, after the time for which the same was by law to remain set up shall have expired.

SECT. 135. If any person shall be found having upon him or her, any picklock, crow, key, bit, or other instrument or tool, with intent feloniously to break and enter into any dwelling-house, store, warehouse, shop, or other building containing valuable property, or shall be found in any of the aforesaid buildings, with intent to steal any goods and chattels, every such person so offending shall, on conviction, be deemed a vagrant, and punished by confinement in the penitentiary for a term not exceeding two years. And if any person shall have upon him any pistol, gun, knife, dirk, bludgeon, or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined in a sum not exceeding one hundred dollars, or imprisoned not exceeding three months.

Persons having
housebreaking
tools, or being
found in build-
ing with intent
to steal. Pen-
alty.

Person having
offensive weapon,
with intent to as-
sault. Penalty.

SECT. 136. Every male person above eighteen years of age, who shall neglect or refuse to join the posse comitatus, or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons against whom there may have issued any civil or criminal process, or by neglecting or refusing to aid and assist in retaking any person or persons, who after having been arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offence, being thereto lawfully required by any sheriff, deputy-sheriff, coroner, constable, judge, or justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in a sum not less than ten dollars nor more than fifty dollars.

Male person
refusing to join
the posse comita-
tus. Penalty.

SECT. 137. If any person or persons shall open the grave or tomb where the body or bodies of any deceased person or persons shall have been deposited, and shall remove the body or bodies, or remains of any deceased person or persons from the grave or place of sepulture, for the purpose of dissection, or any surgical or anatomical experiment, or for any other purpose, without the knowledge and consent of the near rela-

Persons open-
ing graves and
tombs, and
removing dead
bodies, or assist-
ing, without con-
sent of relatives.
Penalty.

tions of the deceased, or shall in any way aid, assist, counsel, or procure the same to be done, every such person or persons so offending, shall, on conviction, be fined not less than one hundred dollars, nor more than five hundred dollars: *Provided*, That this section shall not extend to the dissection of any criminal, where the same shall be directed to be delivered up for that purpose by competent authority: *And provided, also*, That this section shall not be construed to prevent any person from removing the body or bodies of their deceased relations or intimate friends, to any other place of sepulture that he or she may think proper.

Persons voting more than once. Penalty. SECT. 138. If any person, being an elector, shall vote more than once at any election which may be held by virtue of any law of this territory, he shall, on conviction thereof, be fined in any sum not exceeding one hundred dollars.

Bribing or threatening an elector. SECT. 139. If any person shall, by bribery, menace, treating, or other corrupt means or device whatsoever, either directly or indirectly, attempt to influence any elector of this territory, in giving his vote at any election, every person so offending, and being thereof convicted, shall be fined not exceeding five hundred dollars, and shall thereafter be disqualified from voting at any election in this territory for five years.

Disturbing peace and order on the Sabbath. Penalty. SECT. 140. Any person who shall hereafter knowingly disturb the peace and good order of society by labor or amusement on the first day of the week, commonly called Sunday (works of necessity and charity excepted), shall be fined, upon conviction thereof, in any sum not exceeding five dollars.

Preceding section, how construed. SECT. 141. The preceding section shall not be construed to prevent watermen from landing their passengers, lading and unlading their cargoes, or ferrymen from carrying over the water travellers or persons moving with their families, on the first day of the week; nor to prevent the due exercise of the rights of conscience by any person who may think proper to keep any other day as a Sabbath, than the first day of the week.

Disturbing family on the Sabbath. Penalty. SECT. 142. Whoever shall be guilty of any noise, rout, or amusement on the first day of the week, called Sunday, whereby the peace of any private family may be disturbed, such person so offending, shall be deemed guilty of a misde-

meanor, and upon conviction thereof, shall be fined in any sum not exceeding twenty-five dollars.

SECT. 143. Any person who shall, by menace, profane swearing, vulgar language, or any disorderly or immoral conduct, interrupt or disturb any congregation or collection of citizens assembled together for the purpose of worshipping Almighty God, or who shall sell or attempt to sell, or otherwise dispose of ardent spirits or liquors, or any articles which will tend to disturb any worshipping congregation or collection of people, within one mile of such place, unless the person so selling or disposing of said spirituous liquors or articles, shall be regularly licensed to keep a tavern or grocery, and shall sell the same at his said tavern or grocery, any person so offending, shall be deemed guilty of a high misdemeanor, and upon conviction, shall be fined in any sum not exceeding fifty dollars: *Provided*, That this section shall not be so construed as to affect any person who may sell whiskey or any other ardent spirits at his own distillery, store, or dwelling-house.

Disturbing religious congregations. Penalty.

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SECT. 144. Justices of the peace, respectively, in their several counties, shall have jurisdiction of the aforesaid offences, and may on view or upon information on oath, cause every such person, having offended as aforesaid, to be apprehended and brought before him to answer such charge.

Justices of the peace have jurisdiction of such offences.

SECT. 145. Any person who shall be accused of either of the offences specified in the five preceding sections, if he choose it, shall have the cause tried by a jury of six lawful jurors, and if he shall insist on a full jury, by twelve, who shall be summoned to try the cause; and if the jury shall find the accused guilty, they shall assess and state the amount of the fine, not more than in said sections specified; upon which the justice, before whom the trial shall be had, or in case the person shall plead guilty, shall give judgment for fine and costs, and proceed to collect the same without delay; and when said fine shall be collected, the officer or person collecting the same shall be required to pay it over without delay to the treasurer of the proper county, taking his receipt therefor; and which receipt shall be filed with the clerk of the county; after which the said fine or fines which may be thus deposited shall be subject to the control of said court, and

Person accused of these offences may have jury.

Penalty, how stated, and used for benefit of orphans.

appropriated to the education of any poor orphan child or children of the proper county.

Judgments
subject to ap-
peals.

SECT. 146. The judgment rendered under the six preceding sections shall be subject to appeals as in cases of assault and battery and affrays, and shall be collected in the same manner.

OFFENCES COMMITTED BY CHEATS, SWINDLERS, AND OTHER
FRAUDULENT PERSONS.

Parties to
frauds, how pun-
ished.

SECT. 147. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance had, made, or contrived, with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands; or who, being parties as aforesaid, at any time shall wittingly and willingly put in use, avow, maintain, justify, or defend the same or any of them, as true, and done, had, or made in good faith, or upon good consideration, or shall sell, alien, or assign, any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him, her, or them conveyed as aforesaid, or any part thereof, he, she, or they so offending, shall, on conviction, be fined not exceeding one thousand dollars.

Person falsely
representing his
respectability,
wealth, &c., and
thereby defraud-
ing. Penalty.

SECT. 148. If any person, by false representations of his own respectability, wealth, or mercantile correspondence and connections, shall obtain a credit thereby, defraud any person or persons of money, goods, chattels, or any valuable thing, or if any person shall cause or procure others to report falsely of his honesty, wealth, or mercantile character, and by thus imposing upon any person or persons, obtain credit, and thereby fraudulently get into possession of goods, wares, or merchandise, or any valuable thing, every such offender shall be deemed a swindler; and on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars, and imprisoned not exceeding six months: *Provided*, That this section shall apply only to representations which shall

Proviso.

have been reduced to writing, and signed by the party to be charged thereby, prior to the obtaining such credit.

SECT. 149. If any person or persons shall, knowingly and designedly, by any false pretence or pretences, obtain from any other person or persons, any chose in action, money, goods, wares, chattels, effects, or other valuable thing whatever, with intent to cheat or defraud any such person or persons of the same, every person so offending shall be deemed a cheat, and upon conviction, shall be fined in any sum not exceeding one thousand dollars, and imprisoned not exceeding one year, and shall be sentenced to restore the property so fraudulently obtained, if it can be done: *Provided*, That this section shall not apply to cases of sales of property on credit.

Persons, by false pretences, obtaining money, goods, &c., deemed cheats. Penalty.

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SECT. 150. Any person or persons, after once selling, bartering, or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of any lands, or town lot or lots, who shall again knowingly and fraudulently sell, barter, or dispose of the same tract or tracts of land, or town lot or lots, or any parts thereof, or shall knowingly and fraudulently execute any bond or agreement to sell or barter, or dispose of the same land, or lot or lots, or any part thereof, to any other person or persons for a valuable consideration, every such offender, upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year, nor more than ten years.

Selling, bartering, or disposing of land, &c., twice. Penalty.

SECT. 151. If any person shall knowingly sell by false weights or measures, or shall knowingly use false measures at any mill, in taking toll for grinding corn, wheat, rye, or other grain, he or she shall be deemed a common cheat, and on conviction, shall be fined not less than two hundred dollars, and imprisoned not exceeding three months.

Using false weights and measures. Penalty.

FRAUDULENT AND MALICIOUS MISCHIEF.

SECT. 152. If any person shall wilfully or maliciously cut down, break down, level, demolish, or otherwise destroy or damage any bridge, embankment, or mill-dam, or break or destroy the windows or doors of any dwelling-house or other house, or shall set fire to or burn, or destroy, or procure, or cause to be burnt or destroyed, any barrack, cock, crib, rick,

Persons guilty of certain mischievous conduct. How punished.

or stack of hay, corn, wheat, oats, barley, or other grain of any kind, or shall cut down, girdle, or destroy any fruit-tree, or shade-tree, or shall cut, pull down, or destroy any gate, post, railing, or fence, or shall pull down, burn, or destroy any pile or piles of wood, boards, or planks, or other lumber, or shall overturn any cart, wagon, or other carriage, or shall run them into sloughs, holes, or other places, or shall cut loose or set adrift any canoe, ferry flat, skiff, boat, or other vessel, for mischief, or shall unlawfully, wantonly, wilfully, or maliciously kill, wound, disfigure, or destroy any horse, mare, filly, colt, or gelding, or any bull, ox, steer, bullock, cow, heifer, or calf, or any sheep or lamb, or any hog, pig, or dog, or any other useful animal, being the property of another, every person so offending, on conviction, shall be fined not exceeding one hundred dollars, or be imprisoned not exceeding three months, or both.

Destroying or
injuring public
place of confine-
ment. Penalty.

SECT. 153. If any person shall, wilfully and intentionally, break down, pull down, or otherwise destroy or injure, in whole or in part, any public jail or other place of confinement, every person so offending shall, upon conviction, be fined in any sum not exceeding five thousand dollars, nor less than the value of such jail or place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act.

Setting fire to
woods and
prairies. Pen-
alty.

SECT. 154. If any person or persons shall, at any time hereafter, wilfully and intentionally, or negligently and carelessly, set on fire, or cause to be set on fire, any woods, prairies, or other grounds whatsoever, in the inhabited parts of this territory, every person so offending shall, on conviction, be fined in any sum not less than five dollars nor more than one hundred dollars: *Provided*, That this section shall not extend to any person who shall set on fire, or cause to be set on fire, any woods or prairies adjoining his or her own farm, plantation, or inclosure, for the necessary preservation thereof from accident by fire, between the first day of March and the last day of November, by giving to his or her neighbors two days' notice of such intention: *Provided, also*, That this section shall not be construed to take away any civil remedy, which any person may be entitled to for any injury which may be done or received in consequence of such firing.

Proviso.

CONSTRUCTION OF THIS CHAPTER, AND DUTY OF COURTS AND
GRAND JURY.

SECT. 155. After the grand jury is impaneled, it shall be the duty of the court to appoint a foreman, who shall have power to swear or affirm witnesses to testify before them; and whose duty it shall be, when the grand jury, or any twelve of them, find a bill of indictment, to be supported by good and sufficient evidence, to indorse thereon "a true bill;" and when they do not find a bill to be supported by sufficient evidence, to indorse thereon "not a true bill;" and shall in either case sign his name as foreman, at the foot of said indorsement; and shall also, in each case in which a true bill shall be returned into court as aforesaid, note thereon the name or names of the witness or witnesses, upon whose evidence the same shall have been found.

Proceedings by
grand jury.

SECT. 156. Before the grand jury shall enter upon the discharge of their duties, the following oath shall be administered to the foreman, to wit:

Oath to be ad-
ministered to
foreman of grand
jury.

"You, as foreman of this inquest, do solemnly swear (or affirm, as the case may be,) that you will diligently inquire into and true presentment make of all such matters and things as shall be given you in charge, or shall otherwise come to your knowledge touching the present service; you shall present no person through malice, hatred, or ill-will; nor shall you leave any unpresented through fear, favor, or affection, or for any fee or reward, or for any hope or promise thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding: so help you God."

And the following oath or affirmation shall be administered to the other jurors, to wit:

Oath to the
jurors.

"The same oath that A—— B——, your foreman, has just taken before you on his part; you and each of you shall well and truly keep and observe on your respective parts: so help you God."

SECT. 157. No grand jury shall make presentments of their own knowledge, upon the information of a less number

Presentments
of their own
knowledge.

than two of their body, unless the juror giving the information is previously sworn as a witness, in which case, if the evidence shall be deemed sufficient, an indictment may be found thereon, in like manner as upon the evidence of any other witness, who may not be of the jury.

Indictment
deemed suffi-
cient, when.

SECT. 158. Every indictment or accusation of the grand jury, shall be deemed sufficiently technical and correct, which states the offence in the terms and language of this code, or so plainly that the nature of the offence may be easily understood by the jury. The commencement of the indictment shall be in substance as follows :

TERRITORY OF DAKOTA, }
— county, } ss.

Of the — term of the — district court, in the year of our Lord, 18—.

The grand jurors, chosen, selected, and sworn in and for the county of —, in the name and by the authority of the Territory of Dakota, upon their oaths present, &c. [Here insert the offence, the time and place of committing the same, with reasonable certainty.]

When there is
variance between
indictment and
evidence, indict-
ment may be
amended, how.

SECT. 159. Whenever on the trial of any indictment for any felony or misdemeanor, there shall appear to be any variance between the statement in such indictment and the evidence, offered in the proof thereof, in the name of any county, precinct, city, town, borough, township, town corporate, or place mentioned or described in any such indictment; or in the name or description of any person or persons, or body politic or corporate therein alleged or stated to be the owner or owners of any property, real or personal, which shall form the subject of any offence charged therein; or in the name or description of any person or persons, body politic or corporate, therein stated or alleged to be injured or damaged by the commission of such offence, or in the Christian name or surname or both Christian name and surname, or other description whatsoever of any person or persons whomsoever, therein named or described, or in the ownership of any property named or described, or in the ownership of any property named or described therein, it shall be and may be lawful for the court before which the trial shall be had, if it shall consider such variance not material to the merits of the case,

and that the defendant cannot be prejudiced thereby in his defence on such merits, to order such indictment to be amended, according to the proof, by some officer of the court, both in that part of the indictment where such variance occurs, and in every other part of the indictment which it may become necessary to amend on such terms as to postponing the trial to be had before the same jury or another jury, as such court shall think reasonable; and after any such amendment, the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects and with the same consequences, both with respect to the liability of witnesses to be indicted for perjury or otherwise, as if no such variance had occurred, and the order for amendment shall be indorsed on the indictment: *Provided*, That when any such trial shall be had before another jury, the territory and the defendant shall respectively be entitled to the same challenges as they were respectively entitled to before the first jury was sworn.

SECT. 160. Every verdict and judgment which shall be given after the making of any amendment under the provisions of this code, shall be of the same force and effect in all respects as if the same indictment had originally been in the same form in which it was after such amendment was made.

SECT. 161. If it shall be necessary at any time, for any purpose whatever, to draw up a formal record in any case when any amendment shall have been made under the provisions of this code, such record shall be drawn up in the form in which the indictment was after such amendment was made, without taking any notice of the fact of such amendment having been made.

SECT. 162. All exceptions which go merely to the form of an indictment, shall be made before trial, and no motion in arrest of judgment, or writ of error, shall be sustained for any matter not affecting the real merits of the offence charged in such indictment. No indictment shall be quashed for want of the words, "with force or arms," or of the occupation or place of residence of the accused, nor by reason of the disqualification of any grand juror or grand jurors.

SECT. 163. Nothing in this chapter contained shall be so

Proviso.

Verdict and judgment of same force as if no amendment had been made.

If formal record necessary, indictment to be inserted as amended.

Force of exceptions to form, &c.

Parties injured may maintain

action for damages as well as criminal offence.

construed as to prevent the party or parties injured from having and maintaining a civil action for all damages and losses that he, she, or they may have sustained, in consequence of the commission of any criminal offence herein punished ; and no court shall allow or entertain the plea that the private injury is merged in the crime, or in any manner affected thereby: *Provided, however,* The record of conviction shall not be used as evidence in any civil action brought on any forged writing, or to recover the damages and losses sustained by the commission of any such criminal offence.

Proviso.

Judges to make report of deficiencies or defects in code.

SECT. 164. It shall be and is hereby declared to be the duty of the judges of the supreme and district courts to make a special report biennially, to the legislature, of all such defects, omissions, or imperfections in this code, as experience may suggest.

Death penalty, how inflicted.

SECT. 165. The manner of inflicting the punishment of death, shall be by hanging the person convicted by the neck until death, at such time as the court shall direct, not less than fifteen nor more than sixty days from the time sentence is pronounced, unless, for good cause, the court or governor may prolong the time.

Court may order body delivered to surgeons.

SECT. 166. The court may order, on the application of any respectable surgeon or surgeons, that the body of the convict shall, after death, be delivered to such surgeon or surgeons for dissection.

This chapter extends to females.

Jury to name term of confinement. Judge to apportion it.

SECT. 167. This chapter shall extend to females committing any of the offences made punishable by this chapter, although they may not be expressly named. In all cases where the punishment shall be by confinement in the penitentiary, the jury shall say in their verdict for what term the offender shall be confined ; and the court, in pronouncing sentence, shall designate the portion of time such offender shall be confined to solitary imprisonment, and what portion to hard labor. Persons under the age of eighteen years shall not be punished by confinement in the penitentiary for any offence, except robbery, rape, manslaughter, burglary, or arson; in all other cases, where a penitentiary punishment is or shall be provided, such person, under the age of eighteen years, shall be punished by imprisonment in the county jail, for any term not exceeding eighteen months, at the discretion of the court.

Persons under 18 years, when confined in penitentiary and when in jail.

SECT. 168. All offences herein defined shall be prosecuted and punished as by this chapter is prescribed, and not otherwise; and all other offences may be punished by fine and imprisonment, in the discretion of the court: *Provided*, The fine in no case shall exceed one hundred dollars, and the imprisonment six months.

Offences punished.

Proviso.

SECT. 169. Whenever the punishment for any crime or misdemeanor is discretionary as to the extent or amount thereof, the court shall determine and affix the same, whether the punishment consist of corporeal punishment, imprisonment, or fine.

When punishment is discretionary, court to fix.

SECT. 170. All fines imposed by virtue of any of the laws of this territory for the punishment of crimes and misdemeanors, shall, when collected, be paid into the treasury of the county where the offence shall be tried, for the use of such county, unless otherwise specially directed: *Provided, however*, That nothing in this section contained shall be so construed, as to found or constitute a cause of challenge or objection to any grand or petit juror.

Fines paid into county treasury.

Proviso.

SECT. 171. The benefit of clergy, appeals of felony, and trials by battle, shall be and are hereby forever abolished.

Benefit of clergy, appeals of felony, and trials by battle abolished.

SECT. 172. The court shall have power, in all cases of conviction under this chapter, when any fine is inflicted to order, as part of the judgment of the court, that the offender shall be committed to jail, there to remain until the fine and costs are fully paid or otherwise legally discharged.

Court may order confinement until fine is paid.

SECT. 173. Each and every person who may hereafter be convicted of the crime of rape, kidnapping, wilful and corrupt perjury or subornation of perjury, arson, burglary, robbery, sodomy, or the crime against nature, incest, larceny, forgery, counterfeiting, or bigamy, shall be deemed infamous, and shall forever thereafter be rendered incapable of holding any office of honor, trust, or profit, of voting at any election, and of serving as a juror.

Persons guilty of certain crimes deemed infamous, and incapable of holding certain positions.

OF PROCESS, INDICTMENT, ARRAIGNMENT, TRIAL, JUDGMENT, EXECUTION, AND WRIT OF ERROR.

SECT. 173. It shall be the duty of the district court, when any indictment shall be found as a true bill, to make an order, fixing the amount of bail to each offence bailable by

How persons may be admitted to bail.

law, to be indorsed on the process by the clerk; and the sheriff, coroner, or other officer who shall arrest [may admit] the indicted person or persons to bail upon his, her, or their entering into a recognizance, with one or more securities, in the sum or sums specified on said process, which recognizance shall be made to the Territory of Dakota, conditioned for the appearance of the indicted person or persons, on the first day of the next district court to be holden in and for said county, to answer the said indictment, and not depart the court without leave, which recognizance shall be signed by the persons entering into the same, and certified by the officer taking it. Every recognizance so taken, is hereby declared to be valid and binding, and shall not be set aside or adjudged insufficient for want of form.

Clerks to issue process of arrest; arrest, how made, &c.

If offence not bailable.

Of arrests in other counties.

SECT. 175. It shall be the duty of the clerks of the district courts of each county of this territory, to issue process of *capias* for the apprehension of all persons indicted in said courts respectively, to be directed to the sheriff, coroner, and constable of the county where such indicted person or persons shall then be; and it shall be the duty of the sheriff, or, in case of his absence or inability, of the coroner or some one of the constables of the county to which said *capias* is directed, to arrest the person or persons therein named, and to let him or them to bail where the offence is bailable; or if the offence be not bailable, or not sufficient bail be offered, then the officer making the arrest shall bring his, her, or their bodies to the jail of the county where said *capias* is returnable, and deliver such accused person or persons, together with the *capias*, to the keeper of the jail, there to remain until discharged by due course of law. It shall also be the duty of any officer who shall take any recognizance in pursuance of this section, to return the same to the clerk by the first day of the court to which it may be returnable. It shall be lawful for any officer who has the custody of any prisoner or prisoners, by virtue of this section, to pass through any counties which lie in his route between the place of arrest and the county to which he is taking such prisoner or prisoners, and to lodge or deposit said prisoner or prisoners, in any jail on his route, for safe custody, for one night or more, as occasion may require; and it is hereby made the duty of the county commissioners' court of the county where such indictment

shall be found, to pay to the officer who shall bring any offender or offenders from another county, his reasonable charges for such service: *Provided*, That nothing contained in this or the preceding section, shall prevent a *capias* from being issued without such indorsement, returnable *instanter*, which *capias* shall authorize and require the accused to be arrested and immediately brought into court, when he or she shall be either committed, bailed, or tried at the term at which the indictment shall be found.

Proviso.

SECT. 176. It shall be the duty of the clerks of the district courts to issue *subpœnas*, either on the part of the territory or of the accused, in any indictment directed, as in the preceding section, to any county in this territory. And every witness who shall be duly *subpœnaed*, and shall neglect or refuse to attend any district court, pursuant to the requisitions of such *subpœna*, shall be proceeded against and punished for contempt of the court. And attachments against witnesses who live in a different county from that where such *subpœna* is returnable, may be served in the same manner as *capias* are directed to be served, out of the county from which they issue, in the preceding section.

Clerks issue *subpœnas* for witness. Contempt, &c.

SECT. 177. It shall not be necessary to issue a *venire* in any criminal case. And in all criminal cases where the panel of jurors shall be exhausted, by challenges or otherwise, and whether any juror has been elected and sworn or not, it shall be competent for the court to order on their minutes a *tales* for any number of jurors, not exceeding twenty-four, returnable *instanter*, out of which persons so ordered to be summoned, it shall be lawful to impanel a jury for the trial of any criminal case; but should the *tales* ordered be insufficient, by reason of challenges or otherwise, to form an impartial jury, the court may, from time to time, make such further orders on their minutes for additional *talesmen*, returnable *instanter*, until a full jury shall be obtained.

Venire not necessary in criminal case. If panel of jurors exhausted.

SECT. 178. No bill of indictment for false imprisonment, or wilful and malicious mischief, shall be found a "true bill," by any grand jury, unless a prosecutor is indorsed thereon by the foreman of the grand jury, with the consent of the prosecutor, except the same shall be found upon the information and knowledge of two or more of the grand jury, or upon the information of some public officer in the necessary discharge

Indictment for false imprisonment and malicious mischief.

of his duty, in which case it shall be stated, at the end of the indictment, how the same is found, and then no prosecutor shall be required; but in cases where a prosecutor is indorsed on the indictment, and the defendant shall be acquitted on trial, the petit jury acquitting each defendant, shall find, in addition to the verdict of "not guilty," whether the prosecutor had acted maliciously by instructing the prosecution or not; and whenever the petit jury shall return with a verdict of "not guilty," that the prosecutor had acted maliciously in the premises, the court shall enter judgment for costs against the prosecutor, including a fee of three dollars to the district attorney, and award execution for the same, as is done in civil cases: *Provided*, That nothing herein contained shall render the prosecutor incompetent to be a witness, either before a grand or petit jury.

Proviso.

Persons charged with certain crimes furnished with copy of indictment and list of witnesses.

SECT. 179. Every person charged with treason, murder, or other felonious crime or misdemeanor, shall be furnished previous to his trial, with a copy of the indictment, and a list of the witnesses, at his or her request, or the request of his or her counsel.

Arraignment and plea of prisoner, if not inserted in minutes.

SECT. 180. Upon the arraignment of a prisoner, it shall be sufficient, without complying with any other form, to declare, orally, by himself or herself, or his or her counsel, that he or she is not guilty; which declaration or plea shall be immediately entered upon the minutes of the court by the clerk, and the mention of the arraignment and such plea shall constitute the issue between the Territory of Dakota and the prisoner; and if the clerk should neglect to insert in the minutes the arraignment and plea, it may and shall be done at any time by order of the court, and then the error or defect shall be cured.

If party indicted stand mute, or refuse to plead.

SECT. 181. In all cases where the party indicted shall, on being arraigned, obstinately stand mute or refuse to plead, standing mute or refusing to plead, shall be adjudged and taken to be a denial of the facts charged in the indictment, and the court shall order the plea of "not guilty" to be entered on the minutes, and the trial, judgment, and execution shall proceed in the same manner as it would have done if the party had pleaded "not guilty."

If party pleads guilty.

SECT. 182. In all cases where the party indicted shall plead "guilty," such plea shall not be entered until the court

shall have fully explained to the accused the consequences of entering such plea; after which, if the party indicted persist in pleading "guilty," such plea shall be received and recorded, and the court shall proceed to render judgment and execution thereon, as if he or she had been found guilty by a jury. In all cases where the court possess any discretion as to the extent of the punishment, it shall be the duty of the court to examine witnesses as to the aggravation and mitigation of the offence.

If court possess discretion in punishment.

SECT. 183. Every person arraigned for any crime, punishable with death, shall be admitted, on his trial, to a peremptory challenge of sixteen jurors, and no more; and every person arraigned for any offence that may be punished by imprisonment for a term exceeding eighteen months, shall be admitted to a peremptory challenge of eight jurors; and in all other criminal trials the defendant shall be allowed a peremptory challenge of six jurors. The attorney, prosecuting on behalf of the territory, shall be admitted to a peremptory challenge of six jurors, in all cases where the offence charged is punishable with death, and of three jurors in all other cases.

Challenging of jurors, how limited.

SECT. 184. In no case shall the right to a trial by jury *de mediate lingua*, be allowed in criminal prosecutions.

Trial by jury, *de mediate lingua*, when not allowed.

SECT. 185. Where an offence shall be committed on a county line, the trial may be in either county divided by such line; and where any offence shall be committed against the person of another, and the person committing the offence shall be in one county, and the person receiving the injury shall be in another county, the trial may be had in either of said counties.

Where offence is committed on county line.

Injured party in one county and offender in another.

SECT. 186. In all complaints exhibited before the grand jury of any county, they shall hear the witnesses on behalf of the territory only, and may find an indictment on the oath of one witness only, or upon the information of two of their own body, except in cases of treason or perjury, where at least two witnesses to the same fact shall be necessary; and in finding a bill of indictment, at least twelve of the grand jury shall be present, and at least twelve of them shall agree to the finding. The foreman of the grand jury may swear or affirm all witnesses that may come before the jury.

Witness before grand jury for territory only.

Foreman administer oath or affirmation.

SECT. 187. All trials for criminal offences shall be con-

Trials by common law, unless

otherwise provided.

Juries, judges of law and fact.

When jury retire to consider their verdict.

Proviso.

If officer attending jury violates oath or affirmation.

When person convicted, to pay costs.

Property of person bound from time of

ducted according to the course of the common law, except when this chapter points out a different mode, and the rules of evidence of the common law shall also, unless changed by this chapter, be binding upon all courts and juries in criminal cases. Juries in all cases shall be judges of the law and the fact.

SECT. 188. When the jury shall retire to consider of their verdict in any criminal case, a constable or other officer shall be sworn or affirmed to attend the jury to some private and convenient place, and to the best of his ability, keep them together without meat or drink, water excepted, unless by leave of the court, until they shall have agreed upon their verdict, that he will not speak to them himself, except to ask them if they have agreed upon their verdict, nor suffer any other person to speak to them, and that when they shall have agreed on their verdict, he will return them into court: *Provided, however,* That in any cases of misdemeanor only, if the district attorney, and the person on trial, by himself or counsel, shall agree, which agreement shall be entered upon the minutes of the court, to dispense with the attendance of an officer upon the jury, or that the jury, when they have agreed upon their verdict, may write and seal the same, and after delivering the same to the clerk, may separate; it shall be lawful for the court to carry into effect any such agreement and receive any such verdict so delivered to the clerk, as the lawful verdict of any such jury.

SECT. 189. If any officer, sworn to attend upon a jury, shall knowingly violate his oath or affirmation, or shall so negligently perform his duties that the jury shall separate without leave of the court, or obtain food or drink (except water), or if any person, not belonging to the jury, shall hold conversation with any of the jury, every person and officer so offending shall be punished for a contempt of the court, by fine or imprisonment, or both, in the discretion of the court.

SECT. 190. In all cases where any person or persons shall be convicted of any crimes or misdemeanors specified in this chapter, or of any offences at common law, the court shall give judgment that the offender or offenders, so convicted, shall pay the costs of the prosecution.

SECT. 191. The property, real and personal, of every person who shall be convicted of any of the offences punished

by this chapter, shall be bound; and a lien is hereby created on the property, both real and personal, of every such offender, from the time of his or her arrest, if he or she be arrested before indictment, if not, then from the time of finding the indictment, at least so far as will be sufficient to pay the fine and costs of prosecution. And it shall be the duty of the clerk of the district court, at the end of each term, to issue an execution for every fine which shall have been imposed during the term, and which remains unpaid, and for all costs of conviction in criminal cases; in which execution shall be stated, the day on which the arrest was made, or indictment found, as the case may be, which execution shall be delivered to the sheriff or coroner, and shall be by him levied on all the estate, real and personal, which the defendant or defendants possessed, as his or her own real or personal estate, on the day mentioned in such execution, and any property, real and personal, subsequently acquired by him or her; which property, so to be levied upon, shall be advertised as in civil cases, and sold for what it will bring. It shall be no objection to the selling of any property, under such execution, that the body is in custody for said fine and costs.

indictment or conviction.

Execution issued by clerk, and to state what.

SECT. 192. It shall and may be lawful for any person or persons, convicted of any criminal offence, to replevy the judgment for the fine and costs, or the costs only when no fine shall be imposed, by such convicted person or persons, with one or more good and sufficient freeholders entering into a recognizance before the district court, to the people of this territory, for the payment of such fine and costs, or costs only, within five months from the date of the acknowledgment; which recognizance, so taken, is hereby declared valid in law, and to create a lien on the real estate of all such persons as shall acknowledge the same, and upon the breach thereof the clerk is hereby authorized to issue an execution against the goods and chattels, lands and tenements, of the persons who entered into recognizance, in the same manner as if it had been a judgment of the court, which execution shall be collected in the same manner as is prescribed in the preceding section. No scire facias shall be necessary previous to issuing such execution. In all cases where the person or persons, convicted as aforesaid, shall replevy the fine and costs, as is provided in this section, then no execution

Judgment may be replevied, undertaking with sureties.

shall issue for said fine and costs, as is prescribed in the next preceding section; and further, such person or persons, after replevying the fine and costs, as aforesaid, shall not be imprisoned for such fine and costs, but such person or persons shall be wholly discharged from any imprisonment, in consequence of any conviction, unless where imprisonment is by this chapter made a part of the punishment; in that case, such convicted person or persons shall be discharged from his or her, or their imprisonment, at the expiration thereof, if he, she, or they have replevied the fine and costs as aforesaid.

Such executions may be issued into any county in territory.

SECT. 193. Executions for fines and costs of prosecution, and on recognizances taken in pursuance of the preceding section, may be issued into any county in this territory.

Whenever it appears that confined person has not estate to pay fine and costs, to be released.

SECT. 194. Whenever it shall be made satisfactory to appear to the district court, after all legal means have been exhausted, that any person who is confined in jail for any fine or costs of prosecution, for any criminal offence, hath no estate wherewith to pay such fine and costs, or costs only, it shall be the duty of the said court to discharge such person from further imprisonment for such fine and costs; which discharge shall operate as a complete release of such fine and costs: *Provided*, That nothing herein shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned, as part of his or her punishment.

Proviso.

How securities may be discharged.

SECT. 195. In all cases of bail for the appearance of any person or persons charged with any criminal offence, the security or securities of such person or persons may, at any time before judgment is rendered, upon scire facias to show cause why execution should not issue against such security or securities, seize and surrender such person or persons charged as aforesaid, to the sheriff of the county wherein the recognizance shall be taken, and it shall be the duty of such sheriff on such surrender, and the delivery to him of a certified copy of the recognizance by which such security or securities are bound, to take such person or persons, so charged as aforesaid, into custody, and by writing, acknowledge such surrender, and thereupon the security or securities shall be discharged from such recognizance, upon payment of all costs occasioned thereby.

SECT. 196. In the trial of any person or persons for any crime or misdemeanor, it shall be the duty of the judge before whom such trial is pending, to sign and seal any bill of exception tendered to the court during the progress thereof: *Provided*, The truth of the case be fairly stated in such bill of exception; and thereupon the said exceptions shall, by the clerk of the said court, be entered in the record of such trial, and become, to all intents and purposes, a part thereof.

Judge to sign and seal bill of exceptions tendered.

Proviso.

SECT. 197. The party aggrieved by manifest and material error, appearing of record, in any capital prosecution by indictment, may be relieved by writ of error upon complying with the following terms, to wit: The party complaining that error has been committed, shall obtain a certified copy of the record from the clerk, and from the judge of the district court, or from the person who acted as prosecuting attorney on the trial, a certificate expressive of an opinion that said record contains a full and true history of the proceedings on said trial; which record, together with an assignment of the errors relied on for the reversal of the judgment, shall be presented to the supreme court, or to one of the justices thereof in vacation; and if after inspection of such transcript, the court or justice aforesaid shall be of opinion that there is reasonable cause for allowing a writ of error, the same shall be granted, by order indorsed on the back of said transcript. The allowance of such writ of error shall be sufficient authority to the clerk of the supreme court, to issue a supersedeas to stay the execution of the sentence of death, but not the discharge of the prisoner from jail. Where any judgment, the execution whereof has been stayed by writ of error, as aforesaid, shall be affirmed, the supreme court shall, by order, fix the time when the original sentence of death shall be executed, a copy of which order shall be sufficient authority to the sheriff for the execution of any prisoner therein mentioned, at the time specified.

Party in criminal prosecution relieved by writ of error, how.

SECT. 198. Writs of error in all criminal cases not capital, shall be considered as writs of right, and issue of course; but no writ of error shall be a supersedeas, unless the supreme court, or one of the justices thereof, in vacation, after inspecting a copy of the record, certified as in the preceding section, together with an assignment of the errors relied on for a reversal of the judgment, shall be of opinion that there is

Writs of error in criminal cases not capital.

reasonable cause for allowing a writ of error, then the writ shall be granted by order indorsed on the back of such record, in which case the clerk of the supreme court shall issue a supersedeas, which shall have the effect to stay the execution of the sentence, but not to discharge the prisoner from custody.

Party, how liberated, until writ determined.

If the party applying for such writ of error shall, at the same time be in custody, under the authority of the judgment prayed to be superseded, and the said court or justice shall be of opinion that the party obtaining such writ of error, ought to be bailed until the determination of such writ of error, the said supreme court or justice may make an order to discharge such prisoner from custody, upon the prisoner entering into a recognizance to the territory, before the sheriff of the county where he or she shall be imprisoned, in such sum and with such security, as said court or justice shall prescribe; which recognizance shall be conditioned that the prisoner will appear at the next district court, to be holden in the county where the trial of such prisoner took place, and at each subsequent term of the district court, on the first days, until the determination of such writs of error, and that he will be present and submit to such order as the supreme court shall make in the premises, and will not at any of the terms of said court in which he shall be bound to appear by said recognizance, depart the court without leave. The recognizance, so taken, shall be returned to the next district court and there entered of record, and such proceedings may be thereon had, in case of the breach of the condition of such recognizance of such, as shall be according to the course to the common law: *Provided, however,* That in cases where corporeal punishment is inflicted, the prisoner shall in no case be bailed upon the affirmance of any judgment brought into the supreme court, by virtue of this section; the said court shall order and direct the district court to carry into effect the judgment of the court below. In case of affirmance, judgment shall be given for costs against the party prosecuting such writ of error, and execution shall issue thereupon from the supreme court.

Proviso.

Of change of venue.

SECT. 199. When any defendant, in any indictment or information in any court in this territory, shall fear that he will not receive a fair and impartial trial in the court in which the trial is pending, on account that the judge is prejudiced, or

the minds of the inhabitants of the county wherein the trial is pending is prejudiced against him, such party may apply to the court in term time, or the judge thereof in vacation, for a change of venue, by petition, setting forth the cause of such application, verified by affidavit, reasonable previous notice having been given to the district attorney prosecuting for the district; and the court or judge may, in his discretion, award a change of venue to the next nearest county where the cause complained of does not exist; and in case the applicant be in custody or confined in jail, the court or judge shall make an order to the sheriff to remove the body of such applicant to the common jail of the county to which such venue is changed, and there deliver him to the keeper of said jail, together with the warrant by virtue of which he is confined or held in custody, not more than three days next before the first day of the term of said court; and the sheriff shall obey such order accordingly, and shall indorse on such warrant of commitment the reason of change of custody, and shall deliver such warrant, with the body of the prisoner, to the keeper at the jail of the proper county, who shall receive the same and give to the sheriff a receipt therefor, and shall take charge of and safely keep the prisoner in the same manner as if he originally had been committed to his custody: *Provided*,

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SECT. 200. Change of venue shall not be granted after the first term of the court at which the party applying might have been heard, unless the party so applying shall show that the causes for which the change is asked have arisen or come to his or her knowledge subsequent to the term at which the application might have been made, and shall also have given to the opposite party ten days' previous notice of his or their intention to make such application, except in cases where the causes have arisen or come to the knowledge of the party making the application, within less than ten days of making the same.

Change permitted only at first term, except when.

SECT. 201. When any judge shall award a change of venue in vacation, in any criminal cause, he shall immediately transmit to the clerk of the court wherein the cause is pending, the petition and affidavit, together with an order in writ-

When judge shall award change of venue in vacation.

ing, ordering and directing the change of venue, and such clerk shall file the same in his office, and shall make out a copy thereof and a full transcript of the record and proceedings in such case, and shall certify and transmit the same to the proper court, together with all papers filed in the cause, and pertaining and forming a part of the record, including the indictment and recognizance of the party and all witnesses; and the clerk of the court to which such cause is certified shall file the same, and the cause shall be docketed by such clerk, and shall be proceeded in and determined by the court, in all things as well before as after judgment, as if it had originated therein.

Parties, witness, &c., to appear as notified.

SECT. 202. When the venue shall be changed in any criminal case, the parties, witnesses, and all others who may have entered into recognizances to attend the trial of such cause, having notice of the change of venue, shall be and are hereby required to attend at the time and place the trial is to be had, according to such change, and a failure to do so shall work a forfeiture of the recognizance.

When changed in term time.

SECT. 203. When the venue is changed in term time, in a criminal case, the district attorney shall have all witnesses on the part of the prosecution recognized to appear at the court, on the first day thereof, where the trial is to be had.

In case of change of venue, and defendant is sentenced to imprisonment.

SECT. 204. In all cases when a change of venue shall be ordered, in a criminal case, if the defendant shall be convicted and imprisonment shall be a part of the judgment, the sheriff of the county where such conviction shall be had, shall immediately take such prisoner and convey him to the county where the crime shall have been committed, and deliver him to the sheriff thereof, and take his receipt therefor, who shall retain him in custody, according to the judgment of said court, and all the costs and charges incurred in removing any prisoner as aforesaid, shall be allowed and paid out of the county treasury where the crime shall have been committed, if the defendant be unable to pay the same.

LIMITATION OF INDICTMENTS AND PENAL ACTIONS.

No person prosecuted for certain offence after the lapse of certain periods.

SECT. 205. No person or persons shall be prosecuted, tried, or punished, for any offence denominated by the common law felony (treason, murder, arson, and forgery excepted),

unless the indictment for the same shall be found by a grand jury, within three years next after the offence shall have been done or committed. Nor shall any person be prosecuted, tried, or punished for any misdemeanor or indictable offence below the grade of felony, or for any fine or forfeiture under any penal statute, unless the indictment, information, or action for the same shall be found or instituted within one year and six months from the time of committing the offence or incurring the fine or forfeiture: *Provided*, That nothing herein contained shall extend to any person fleeing from justice: *And provided also*, That where any suit, information, or indictment for any crime or misdemeanor, is limited by any statute, to be brought or exhibited within any other time than is hereby limited, then the same shall be brought or exhibited within the time limited by such statute: *Provided, also*, That where any indictment, information, or suit shall be quashed, or the proceedings on the same set aside or reversed on writ of error, the time during the pendency of such indictment, information, or suit so quashed, set aside or reversed, shall not be reckoned within this statute, so as to bar any new indictment, information, or suit for the same offence.

Proviso.

GENERAL PROVISIONS.

SECT. 206. The judges of the district courts in their respective districts, and justices of the peace in their respective counties, shall jointly and severally be conservators of the peace within their respective jurisdictions, as herein designated, and shall have full power to enforce, or cause to be enforced, all laws that now exist, or that shall hereafter be made, for the prevention and punishment of offences, or for the preservation and observance of the peace. They shall have power to cause to be brought before them, or any of them, all persons who shall break the peace, and commit them to jail, or admit them to bail, as the case may require, and to cause to come before them, or any of them, all persons who shall threaten to break the peace, or shall use threats against any person within this territory, concerning his or her body, or threaten to injure his or her property, or the property of any person whatever; and also all such persons as are not of good fame; and the said judge or justices

Powers of district judges and justices of the peace, conservators of the peace.

of the peace being satisfied, by the oath of one or more witnesses, of his or her bad character, or that he or she had used threats as aforesaid, shall cause such person or persons to give good security for the peace, or for their good behavior toward all the people of this territory, and particularly toward the individual threatened. If any person against whom such proceedings are had, shall fail to give a recognizance with sufficient security, it shall be the duty of the judge or justice of the peace before whom he or she shall be brought, to commit such person or persons to the jail of the proper county, until such security be given, or until the next term of the district court. Such judge or justice of the peace shall also take recognizances for the appearance of all witnesses at such courts. All recognizances to be taken in pursuance of this section, shall be returnable to the next district court, to be holden in the proper county, where all such recognizances shall be renewed or dismissed, as the said district court shall, upon examination of the witnesses, deem to be just and right. And where the person or persons committed are in jail at the sitting of such district court, the court shall examine the witnesses and either continue the imprisonment, bail the prisoner, or discharge him or her as to the said court shall appear to be right, having due regard to the safety of the citizens of this territory.

Public notice and fresh pursuit in case of felonious officer.

SECT. 207. When any felonious offence shall be committed, public notice thereof shall be immediately given in all public places near where the same was committed, and fresh pursuit shall be forthwith made after every person guilty thereof, by sheriffs, coroners, constables, and all other persons who shall be by any of them commanded or summoned for that purpose; every such officer who shall not do his duty in the premises shall be punished by fine in a sum not exceeding one hundred dollars, or imprisonment not exceeding three months.

In case of information of criminal offence and supposed criminal, duty of judge or justice.

SECT. 208. It shall be lawful for any of the aforementioned judges or justices of the peace, upon oath or affirmation being made before him, that any person or persons having committed any criminal offence in this territory, or that a criminal offence has been committed, and that the witness or witnesses have just and reasonable grounds to suspect that such person or persons have committed the same, to issue his warrant,

under his hand, commanding the officer or person charged with the execution thereof, to arrest the person or persons so charged, and bring him, her, or them before the officer issuing said warrant, or in case of his absence, before any other judge or justice of the peace; the said judge or justice of the peace before whom any person shall be brought in pursuance of such warrant, or shall be brought without warrant, and charged with any criminal offence, before he shall commit such prisoner to jail, admit to bail, or discharge him or her from custody, shall inquire into the truth or probability of the charge exhibited against such prisoner or prisoners, by the oath of all the witnesses attending, and shall, upon consideration of the facts and circumstances then proved, either commit such person or persons, so charged, to jail, admit him, her, or them to bail, or discharge him, her, or them from custody. No justice of the peace shall admit to bail any person or persons charged with treason, murder, or any offence punishable with death. All recognizances taken in pursuance of this section shall require the accused to appear at and on the first day of the next district court, or if the court be then sitting, on some day of the term, to be therein designated.

SECT. 209. It shall be the duty of the judge or justice of the peace, who shall commit any offender to jail as aforesaid, or admit him to bail, to bind by recognizance the prosecutor, and all such as do declare any thing material to prove the offence charged, to appear before the next district court, on the first day thereof, or if the said court shall be then in sitting, on some day to be therein designated (and, in all cases, at the same time and place as the person or persons accused by said witnesses shall be bound to appear), to give evidence touching the offence so charged, and not depart the court without leave. If any person, upon being required to enter into recognizance as aforesaid, shall refuse, it shall be lawful for such judge or justice of the peace, to commit him or her to jail, there to remain until he or she shall enter into such recognizance or be otherwise discharged by due course of law.

In case accused is held for trial, prosecutor and witnesses to be also held for appearance.

SECT. 210. All recognizances that have any relation to criminal matters shall be taken to the Territory of Dakota, shall be signed by the person or persons entering into the

Of recognizances and their form.

same, be certified by the judge, justice of the peace, or other officer taking the same, and delivered to the clerk of the district court, on or before the day mentioned therein for the appearance of the witness or accused therein bound. Recognizances taken in courts of record need not be signed or certified as aforesaid. Recognizances for assaults, batteries, and affrays shall be for the appearance of the accused before the justice of the peace taking the same, or before some other justice of the county, on the day appointed by the justice for the trial of the offender.

When and how accused may be liberated in vacation.

SECT. 211. Where any person shall be committed to jail on a criminal charge, for want of good and sufficient bail, except for treason, murder, or other offence punishable with death, or for not entering into a recognizance to appear and testify, any judge, or any two justices of the peace may take such bail or recognizance in vacation, and may discharge such prisoner from his or her imprisonment. It shall be the duty of the judge or justice committing such person to jail, to indorse on the warrant of commitment, in bailable cases, in what sum bail ought to be taken.

If prosecution proves to be malicious.

SECT. 212. From and after the passage of this act, whenever any person has been bound, or shall be bound by any recognizances to keep the peace or for their good behavior, and for appearance of the party in the district court, if the prosecutor shall fail to appear and prosecute, or if upon the hearing it shall appear that a prosecution was commenced maliciously, without reasonable or probable cause, the court may, in its discretion, give judgment against the prosecutor for the costs of the prosecution and defence.

Warrant for arrest, issued when, and how executed.

SECT. 213. When a charge shall be exhibited upon oath, before any judge or justice of the peace, against any person for a criminal offence, it shall be the duty of the judge or justice of the peace before whom the charge shall be made, to issue his warrant for the apprehension of the offender, directed to all sheriffs, coroners, and constables within the territory; and it shall be the duty of any sheriff, coroner, or constable, into whose hands any such warrant shall come, to execute the same within any county in which such offender may be found, to arrest and convey such offender before the judge or justice of the peace who issued the warrant, or before some other justice of the peace of the same county. When any

such sheriff, coroner, or constable, or other person called to the assistance of such sheriff, coroner, or constable, shall be in pursuit of any offender, having a warrant for the apprehension of such offender, and the offender shall cross the line into the adjoining county, such sheriff, coroner, or constable, or other person, may pursue such offender into such adjoining county and make the arrest, as if such offender had been found in the county of the officer in pursuit.

SECT. 214. Any judge or justice of the peace, issuing any such warrant may make an order thereon, authorizing a person to be named in such warrant to execute the same, and the person named in such order may execute such warrant anywhere in the territory by apprehending and conveying such offender before the judge or justices issuing such warrant, or before some other justice of the same county; and all sheriffs, coroners, and constables, and others, when required, in their respective counties, to be aiding and assisting in the execution of such warrant.

Judge or justice may name person to execute warrant, &c., and his powers.

SECT. 215. Any person or persons, officer or officers, who may have the custody of any offender or offenders, by virtue of either of the two preceding sections, may take or carry such prisoner or prisoners into any other county which may be situated on his or their way back to the county from which the said prisoner or prisoners fled, and may deposit such prisoner or prisoners in any jail on his or their route, for safe custody, for one night or more, as occasion may require. Upon their arriving in the county to which the prisoner or prisoners is or are sent, under the last preceding section, such officer or officers, person or persons, shall deliver such prisoner or prisoners into the custody of the sheriff or jailer, together with the warrant of the said judge or justice, which shall be a sufficient justification to the said sheriff or jailer, to receive and detain such prisoner or prisoner, until he, she, or they obtain bail, if the offence be bailable, or be otherwise discharged by due course of law.

Officers or persons having charge of prisoners may transport them, how.

Upon their arriving in the county to which the prisoner is sent.

SECT. 216. It shall not be necessary to the validity of any warrant for the apprehension of any person charged with an offence, or warrant of commitment or search-warrant, that it be under the seal of the judge or justice of the peace granting or issuing the same; but every such warrant, under the hand of the judge or justice of the peace, shall be as valid in law

Not necessary for warrant to be sealed.

Of habeas
corpus.

as if a seal was affixed. And no person shall be discharged on habeas corpus from his imprisonment merely by reason of defect of legal precision, or want of technical form in the warrant of commitment, but the court or judge awarding such habeas corpus shall, in all such cases, proceed and determine as if the mittimus had all legal and technical form:

Proviso.

Provided, Sufficient appear on the face of the mittimus to ascertain for what crime or offence such prisoner or prisoners shall have been committed.

Of search-
warrant. Com-
plaint, issue of,
&c.

SECT. 217. It shall be lawful for any judge or justice of the peace, upon complaint made before him, upon oath or affirmation, that a larceny has been committed, and that the person affirming or swearing does verily believe that the stolen goods or other property, are or is concealed in any dwelling-house, out-house, garden, yard, or other place or places, to issue a warrant, under his hand, commanding every such dwelling-house or place to be searched in the day-time; and if any of the goods described in any such warrant be found therein, then that the said goods be seized or brought before the judge or justice issuing said warrant.

If goods appear
to be stolen.

If upon examination of witnesses before the judge or justice of the peace who issued said warrant, it shall be determined by said judge or justice that the goods so brought before him have been stolen, it shall be the duty of such judge or justice, either to keep possession of, or to deliver, or cause to be delivered, such goods to the sheriff of the proper county, there to remain until the conviction of the thief, or the claimant's right be otherwise legally ascertained. If the thief shall not be indicted at the next district court after the goods shall, or persons in whose possession such goods shall have been found, be seized, and an action shall not be commenced against the person for the recovery thereof, within one month after a district court shall have been held, after such seizure, the said district court shall, at their next session, order such goods to be redelivered to the person in whose possession they were found, which order shall be obeyed by the person in whose possession such goods may at the time be. In case the judge or justice of the peace shall, upon such examination as aforesaid, determine that such goods so seized had not been stolen, then the goods shall be immediately restored to the person from whose possession they were so taken.

If thief shall
not be indicted
at next term—
goods to be
restored.

SECT. 218. It shall be the duty of the judge or justice of the peace who shall commit any offender to jail, either because such offender is unable to procure bail for his appearance at court, or because the offence is not by law bailable, to write on the warrant of commitment the names and residences of the principal witnesses by whom the crime was proved before said judge or justice.

If defendant is committed, names of principal witnesses to be indorsed on commitment.

SECT. 219. Whenever any prisoner, in the custody of the sheriff or jailer of any county, on any warrant of commitment as aforesaid, shall demand of said sheriff or jailer a copy of said warrant of commitment, said sheriff or jailer shall indorse on the said copy the names of the witnesses written thereon as aforesaid, and any justice or judge who shall neglect to write the name or names of the witnesses aforesaid on the warrant of commitment, or any sheriff or jailer shall neglect to indorse the name of said witness or witnesses on a copy of said commitment, each justice, judge, sheriff, or jailer offending in the premises, shall be fined in the sum of twenty dollars, to be recovered by action of debt, in the name of, and for the use of, any person who shall sue for the same in any court of record.

If prisoner demands copy of commitment, and officer neglects to indorse names of witnesses. Penalty.

SECT. 220. Whenever a habeas corpus shall be issued to bring the body of any prisoner committed as aforesaid, unless the court or judge issuing the same shall deem it wholly unnecessary and useless, the said court or judge shall issue a subpœna to the sheriff of the county where said person shall be confined, commanding him to summon the witness or witnesses therein named, to appear before such judge or court, at the time and place when and where such habeas corpus shall be returnable; it shall be the duty of such sheriff to serve said subpœna, if it be possible, in time to enable such witness or witnesses to attend. It shall be the duty of the witness or witnesses thus served with said subpœna, to attend and give evidence before the judge or court issuing the same, on pain of being guilty of a contempt, and shall be proceeded against accordingly by said judge or court.

Of habeas corpus.

SECT. 221. On the hearing of any habeas corpus issued as aforesaid, it shall be the duty of the judge or court who shall hear the same, to examine the witness or witnesses aforesaid, and such other witnesses as the prisoner may request, touching any offence mentioned in the warrant of

Same.

commitment as aforesaid, whether said offence be technically set out in said commitment or not, and upon which hearing said judge or court may either recommit, bail, or discharge the prisoner, according to the facts of the case.

This code, and other law on crime, how construed.

SECT. 222. This code, and every other law upon the subject of crime which may be enacted, shall be construed according to the plain import of the language in which it is written, without regard to the distinction usually made between the construction of penal laws and laws upon other subjects, and no person shall be punished for an offence which is not made penal by the plain import of the words, upon pretence that he has offended against its spirit.

When definition of offence merely defective.

SECT. 223. When the definition of an offence made penal by the law of this territory is merely defective, the rules of the common law shall apply and be resorted to for the purpose of aiding in the interpretation of such penal enactment.

In construction, general controlled by special provision.

SECT. 224. In the construction of this code, each general provision shall be controlled by a special provision on the same subject, if there be a conflict.

When penalty altered by subsequent law.

SECT. 225. When the penalty of an offence is prescribed by one law and altered by a subsequent law, the penalty of such second law shall not be inflicted for a breach of the law committed before the second shall have taken effect. In every such case the offender shall be tried under the law in force when the offence was committed, and, if convicted, punished under that law, except that when by the provisions of the second law the punishment of the offence is ameliorated, the defendant shall be punished under such last enactment, unless he elect to receive the penalty prescribed by the law in force when the offence was committed.

When new penalty substituted by repealing statute.

SECT. 226. When by the provisions of a repealing statute a new penalty is substituted for an offence punishable under the act repealed, such repealing statute shall not exempt from punishment a person who has offended against the repealed law while it was in force, but in such case the rule prescribed in the next preceding statute shall apply.

Of offences, when penal law repealed, and no other penalty substituted.

SECT. 227. The repeal of a penal law, when the repealing statute substitutes no other penalty, will exempt from punishment all persons who may have offended against the provis-

ions of such repealing law, unless it be otherwise declared in the repealing statute.

SECT. 228. No penalty affixed to an offence by one law shall be considered as cumulative of penalties under a former law, and in any case where a new penalty is prescribed for an offence, the penalty of the first law shall be considered as repealed, unless the contrary be expressly provided in the law last enacted.

In case of new penalty, former penalty repealed, unless otherwise provided.

SECT. 229. If an offence be defined by one law and by a subsequent law the definition of this offence is changed, no such change or modification shall take effect as to the offenders already committed, but all the offences against the first law shall be tried, and their guilt or innocence determined in accordance with the provisions thereof.

If definition of offence changed, offender before committed to be tried by first definition.

SECT. 230. No offence committed, and no fine, forfeiture, or penalty incurred under existing laws previous to the time when this code shall take effect, shall be affected herein by the repeal of any such existing laws, but the punishment of such offences, and the recovery of such fines and the forfeitures take place as if the laws repealed had still remained in force, except that when any penalty, forfeiture, or punishment shall have been mitigated by the provisions of this code, such provisions shall apply to, and control any judgment to be pronounced after this code shall take effect, for any offence committed before that time, unless the defendant elect to be punished under the provisions of the repealed law.

Officers committed and fines, &c., incurred previous to passage of this code.

CUTTING TIMBER ON THE LAND OF ANOTHER.

SECT. 231. That every person who shall knowingly and wilfully, without color of title made in good faith, cut, box, fell, bore, or destroy any tree or sapling standing or growing upon the land of any person or corporation, without the license or consent of the owner of such land, shall be adjudged guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than ten nor more than one hundred dollars, or imprisoned in the county jail for any term not exceeding three months, in the discretion of the court in which such conviction is had.

Damaging timber. Penalty.

SECT. 232. That all offenders against this act shall be proceeded against by indictment, in the court of the proper

Proceeded against by indictment.

Owners competent witnesses.

county having cognizance of indictable offences ; on the trial of which indictment the owner or owners of the land upon which such trespass shall be committed, are hereby declared competent witnesses.

Of fines and costs under this statute.

SECT. 233. It shall be the duty of the court in all cases of conviction under this statute, when any fine is inflicted, to order, as a part of the judgment of the court, that the offender shall be committed to jail, there to remain until the fine and costs are fully paid or otherwise legally discharged, and any judgment for fine and costs hereafter rendered under this act, may be enforced by execution, as in other criminal cases.

Owner may have action to recover damages.

SECT. 234. Nothing in this act contained shall be so construed as to prevent the owner from having his election, and maintaining a civil action to recover damages for the trespasses declared criminal by this act, and that an indictment under this act shall be a bar to the recovery of the penalty given by the statute by action of debt.

Not to apply to traveller or marketer using timber necessarily.

SECT. 235. The action shall not apply to any traveller or marketer passing upon the highway, who, for the purpose of encampment and building camp-fires, shall violate the provisions of this act, by cutting such trees or saplings as may be necessary for above purposes.

Of whites and blacks uniting in adultery and fornication.

SECT. 236. That any black, colored, or mulatto man and white woman, and any white man and black, colored, or mulatto woman, who shall live together in an open state of adultery or fornication, or adultery and fornication, shall be indicted ; and on conviction shall be severally fined in any sum not exceeding five hundred dollars, and confined in the penitentiary for any term not exceeding one year : *Provided*, That nothing in this act shall be construed to extend to any case in which the man and woman living together, as aforesaid, shall both be white persons : *And provided further*, That the offence herein provided for, shall be sufficiently proved by circumstances which raise the presumption of cohabitation and unlawful intimacy ; and for a second offence such man or woman shall be severally punished twice as much as for the first offence, and for the third offence trebling, and thus increasing the punishment for each succeeding offence.

Proviso.

AN ACT TO PROVIDE FOR THE CUSTODY OF CONVICTS.

SECT. 237. Until the erection of a territorial penitentiary, it shall be the duty of the district judge or judge before whom any conviction under the provisions of this criminal code is had, to direct the sheriff of the county thereof to convey the convict or convicts, safely to any county jail in the territory that may be designated for his or her confinement, by said court or judge, and it shall likewise be the duty of said sheriff to safely keep in custody and deliver said convict or convicts to the jailer thereof, according to the order of the said court or judge or judges. The jailer of the county jail, thus designated by the court as aforesaid, shall receive of the sheriff and keep said convict or convicts, closely confined in said jail, or at hard labor, until discharged by due course of law.

Of keeping of prisoners before erection of territorial penitentiary.

SECT. 238. The sheriff or jailer, refusing or omitting to comply with the order of the court aforesaid of the provisions of this act, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not less than six months nor more than one year, at the discretion of the court before whom the conviction is had.

If sheriff or jailer refuse to receive prisoner. Penalty.

SECT. 239. If any person, confined in a place of confinement for any term less than for life, or in lawful custody going to the place of confinement, shall break such prison or custody, and escape therefrom, he shall, upon conviction, be punished by confinement for a term not exceeding five years, to commence from the expiration of the original term of imprisonment.

If prisoner escape from confinement. Penalty.

SECT. 240. All fines and forfeitures accruing by virtue of any of the provisions of this code shall be paid into the county treasury, one half thereof for the use of the school fund, to be distributed as other moneys, and the other half for the use of the respective counties where the prosecution or prosecutions are had: *Provided*, That wherever in this code moneys arising from certain fines and forfeitures are specially appropriated, such special and different appropriation shall prevail and be carried into effect.

Fines and forfeitures to go one half to school fund, remainder to use of county.

ACT TO PREVENT FRAUD IN WAREHOUSEMEN AND OTHERS.

Of issuing of receipt or voucher not in store.

SECT. 241. That no warehouseman, wharfinger, or other person, shall issue any receipt or other voucher for any goods, wares, merchandise, grain, or other produce or commodity, to any person or persons, purporting to be the owner or owners thereof, unless such goods, wares, merchandise, or other produce or commodity, shall have been bona fide received into store by such warehouseman or wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt.

Same.

SECT. 242. That no warehouseman, wharfinger, or other person shall issue any receipt or other voucher, upon any goods, wares, merchandise, grain, or other produce or commodity, to any person or persons, as security for any money loaned or other indebtedness, unless such goods, wares, merchandise, grain, or other produce or commodity shall be, at the time of issuing such receipt, the property of such warehouseman or wharfinger, or other person, and shall be in store and under his control, at the time of issuing such receipt or other voucher as aforesaid.

No second receipt to be issued until first is cancelled.

SECT. 243. That no warehouseman, wharfinger, or other person, shall issue any second receipt for any goods, wares, merchandise, grain, or other produce or commodity, while any former receipt for any such goods or chattels as aforesaid, or any part thereof, shall be outstanding and uncanceled.

Goods receipted for not to be delivered without assent of holder of receipt.

SECT. 244. That no warehouseman, wharfinger, or other person, shall sell or encumber, ship, transfer, or in any manner remove beyond his immediate control, any goods, wares, merchandise, grain, or other produce or commodity, for which a receipt shall have been given, as aforesaid, without the written assent of the person or persons holding such receipt.

Warehouseman, &c., violating these provisions, deemed a cheat. Penalty.

SECT. 245. Any warehouseman, wharfinger, or other person, who shall violate any of the foregoing provisions of this act, shall be deemed a cheat and subject to indictment, and, upon conviction, shall be fined in any sum not exceeding one thousand dollars, and imprisoned in the penitentiary of this territory not exceeding five years; and all and every person, aggrieved by the violation of any of the provisions of this act, may have and maintain a civil action against the person or

persons violating any of the foregoing provisions of this act, to recover all damages, immediate or consequential, which he or they may have sustained by reason of any such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted as a cheat under this act or not.

AN ACT TO PUNISH THE FRAUDULENT ISSUE AND TRANSFER OF STOCK IN CORPORATIONS.

SECT. 246. That every president, cashier, treasurer, secretary, or other officer, and every agent of any bank, railroad, manufacturing, or other corporation, who shall wilfully and designedly sign, with intent to issue, sell, pledge, or cause to be issued, sold, or pledged, any false, fraudulent, or semi-related certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation, or any instrument purporting to be a certificate or other evidence of such ownership or transfer, for the signing, issuing, selling, or pledging of which such president, cashier, treasurer, or other officer or agent, shall not be authorized by the charter and by-laws of such corporations, or by some amendment thereof, shall be adjudged guilty of felony, and every such person or persons shall be liable to indictment, and on conviction, shall be punished by fine, not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine.

Of fraudulent issue and transfer of stock by officers of corporations. Penalty.

SECT. 247. That every president, cashier, treasurer, secretary, or other officer, and every agent, attorney, servant, or employee of any bank, railroad, manufacturing or other corporation, and every other person who shall knowingly and designedly, and with intent to defraud any person or persons, bank, railroad, manufacturing or other corporation, issue, sell, transfer, assign, or pledge, or cause or procure to be issued, sold, transferred, assigned, or pledged any false, fraudulent, or semi-related certificate or other evidence of ownership, of any share or shares of the capital stock of any bank, railroad, manufacturing or other corporation, every such person so issuing, selling, transferring, assigning or pledging, or causing the same to be done, shall be adjudged to be guilty of felony, and shall be liable to indictment, and on conviction,

Same.

shall be punished by fine, not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine.

EXCEPTIONS AND WRITS OF ERROR IN CRIMINAL CASES.

Exceptions and writs of error in criminal cases.

SECT. 248. That exceptions taken to opinions or decisions of any court in this territory, overruling motions in arrest of judgment for new trials, or for continuance or change of venue, shall be allowed in criminal cases and in penal and qui tam actions; and the party excepting to such decisions may assign the same for error, in the same manner as in civil cases.

DEFINITIONS.

Females included by what terms.

SECT. 249. The general terms "whoever," "any person," "any one," and the relative pronouns, "he" and "they," as referring to these terms, include females as well as males, unless there is some express declaration to the contrary. The word "man" is used to signify a male person of any age, and the word "woman" a female person of any age.

Same.

SECT. 250. The use of any word expressive of the "relationship, state, condition, office, or trust of any person, as of parent, child, ascendant, descendant, minor, infant, ward, guardian," or the like, or of the relative pronouns "he" or "they" in reference thereto, includes both males and females.

Singular and plural number.

SECT. 251. The use of the singular number includes the plural, and the plural the singular, and the words used in the masculine gender include the feminine also, unless by reasonable construction it appears that such was not the intention of the language.

Words generally used to designate "party" to apply to corporations, &c.

SECT. 252. Whenever any property or interest is intended to be protected, by a provision of the penal law, and the general term "person," or any other general term, is used to designate the "party" whose property is intended to be protected, the provisions of such penal laws and the protection thereby given, shall extend to the property of the territory, or of any county, and of all public or private corporations.

The words "accused" and "defendant."

SECT. 253. The word "accused" is intended to refer to any person who, in any legal manner, is held to answer for

any offence at any stage of the proceedings, or against whom complaint in a lawful manner is made, charging the commission of an offence, including all proceedings, from the order for arrest to the final execution of the law, and the word "defendant" is used in the same sense.

SECT. 254. A "criminal action," as used in this code, means the whole and any part of the procedure which the law provides for bringing offenders to justice, and the terms "prosecution," "criminal prosecution," "accusation," and "criminal accusation," in the same sense. "Criminal action," &c.

SECT. 255. An "accused person" is termed a convict after final condemnation by the highest court of resort, which by law has jurisdiction of his case, and to which he may have thought proper to appeal. "Accused person."

SECT. 256. The term "criminal process" is intended to signify any *capias*, warrant, citation, summons, attachment, or other written precept or order issued in a criminal proceeding, whether the same be to arrest, commit to jail, collect money, or for whatever other purpose used. "Criminal process."

SECT. 257. The word "writing" includes printing; the word "oath" includes affirmation. "Writing"—"oath."

SECT. 258. The word "signature" includes the mark of a person unable to write his name; a mark shall have the same effect as a signature, when the name is written by some other person, and the mark is made near thereto by the person unable to write his name. "Signature."

SECT. 259. Except where a word, term, or phrase is specially defined, all words used in this code are to be taken and construed in the sense in which they are understood in common language, taking into consideration the context and subject-matter relative to which they are employed. What not specially defined.

SECT. 260. And be it further enacted, that all civil rights which have accrued under any former act or law of this territory are hereby reserved and continued, and the same may be prosecuted to judgment and enforced by execution and satisfaction, and that all violations of the criminal law heretofore in force may be proceeded with by indictment and trial, or other lawful or proper proceeding or proceedings, to conviction and punishment, the same as if this criminal code had not been enacted. Civil rights accrued under former act or law continued.

SECT. 261. That the words General Assembly, when used

The words
"General assem-
bly" mean what.

Take effect,
when.

in the criminal code, be construed to mean the Legislative Assembly of Dakota Territory.

SECT. 262. This criminal code shall take effect and be in force from and after its passage and approval by the governor.

F O R M S .

The following forms may be substantially followed, varying the terms to suit the case :

FORM OF INFORMATION.

THE TERRITORY OF DAKOTA, } ss.
— county,

Form of infor-
mation.

The complaint and information of A B, of said county, made before C D, esquire, one of the justices of the peace in and for said county, on the — day of —, 18—, who being duly sworn, on his own oath says, that the crime of (larceny) has been committed in the county of —, (and that one E F committed the same), or say (and that he has just and reasonable grounds to suspect that one E F had committed the same).

Subscribed and sworn to before me,
C— D—, Justice of the Peace.

FORM OF A WARRANT.

THE TERRITORY OF DAKOTA, } ss.
— county,

In the name and by the authority of the Territory of Dakota.

Form of a war-
rant.

To all sheriffs, constables, and coroners of said territory (and to esquire, if directed to a private person) :

It appearing that E F has committed the crime of (larceny) in the county of —, you are therefore commanded forthwith to arrest E F, and bring him before me or some other magistrate of said county, to be dealt with according to law.

A— B—, Justice the Peace.

FORM OF ORDER THEREON WHEN SUCH WARRANT IS TO BE EXECUTED
BY A PERSON THEREIN NAMED.

Ordered, That John Boe, named in the within warrant, be hereby authorized to execute the same.

(Date.) A—— B——, Justice of the Peace.

FORM OF COMMITMENT FOR FURTHER EXAMINATION.

THE TERRITORY OF DAKOTA, }
—— county, } ss.

In the name and by the authority of the Territory of Dakota.

To the keeper of the common jail of said county :

Receive into your custody, and safely keep, for further examination, E F, who is charged, before me, with having committed the offence of (larceny).

Form of commitment.

Given under my hand this —— day of ——, 18—.

A—— B——, Justice of the Peace of said county.

FORM OF AN ORDER TO BRING UP A PRISONER FOR EXAMINATION.

THE TERRITORY OF DAKOTA, }
—— county, } ss.

In the name and by the authority of the Territory of Dakota.

To the keeper of the common jail of said county :

You are hereby commanded to bring E F, a prisoner in your custody, to my office, in ——, in said county, for further examination.

Form of an order to bring up prisoner for examination.

Given under my hand this —— day of ——, 18—.

A—— B——, Justice of the Peace.

FORM OF SUBPCENA FOR WITNESSES TO ATTEND AN EXAMINING COURT.

THE TERRITORY OF DAKOTA, }
—— county, } ss.

In the name and by the authority of the Territory of Dakota.

To any sheriff or constable of said county :

You are commanded to summon A, E, I, O, and U, to be and appear before me at my office at ——, in said county, forthwith (or on the —— day of ——, instant, at — o'clock, in the — noon), to testify the truth in behalf of the plaintiff

Form of subpoena for witness to attend.

(or defendant), on the examination of the charge against E F, of having committed the offence of (larceny).

Given under my hand this — day of —, 18—,
A— B—, Justice of the Peace of said county.

FORM OF OATH OF WITNESSES ON THE EXAMINATION.

Form of oath
of witnesses on
examination.

You do solemnly swear that the evidence you shall give between the Territory of Dakota and E F, touching the charge exhibited against him, now in hearing, shall be the truth, the whole truth, and nothing but the truth; so help you God.

FORM OF AN AFFIRMATION.

Form of affir-
mation.

You do solemnly, sincerely, and truly declare and affirm that the evidence you shall give between the Territory of Dakota and E F, touching the charge exhibited against him, now on trial, shall be the truth, the whole truth, and nothing but the truth; and this you do under the pains and penalties that may ensue thereon.

FORM OF RECOGNIZANCE OF BAIL.

THE TERRITORY OF DAKOTA, }
against E— F—, } For the offence of larceny.

Form of recog-
nizance of bail.

Be it remembered that on the — day of —, 18—, A—, of — county, Dakota, and B—, of — county, Dakota, appeared personally before me, A B, a justice of the peace of — county, and severally acknowledged themselves jointly indebted to the Territory of Dakota, in the sum of — dollars, to be made and levied of their respective goods, chattels, lands, and tenements, to be void, however, if the said E F, shall personally appear at the next (October) term of the district court of — county, on the first day thereof, or if the recognizance be taken in term time, then it must require the party to appear on some day of the term to be herein designated to answer to an indictment preferred against him for the offence of (larceny) and to do and receive what shall be by said court, then and there enjoined upon him, and shall not depart the said court without leave.

Witness our hands, this — day of —, 18—.

A—,
B—.

Taken, subscribed, and acknowledged, }
the day and year first above written. }

A— B—, Justice of the Peace.

RECOGNIZANCE OF A WITNESS.

THE TERRITORY OF DAKOTA }
 against E— F—, } For the offence of larceny.

Be it remembered that on the — day of —, 18—, that G H, of the county aforesaid, appeared before me, a justice of the peace of said county, and acknowledged himself indebted to the Territory of Dakota, in the sum of — dollars, to be levied on his goods, chattels, lands, and tenements, to be void, however, upon his appearing in the district court of said county of —, on the first day of its next (October) term (or if the recognizance is taken in term time, then it must require the witness to appear on some day of the term, to be herein designated), to testify on behalf of the plaintiff (or defendant) in the above-named prosecution, and not depart without leave of said court.

Taken, subscribed, and acknowledged, }
 the day and year above written. } G. H.
 A— B—, Justice of the Peace.

FORM OF MITTIMUS IN OFFENCES NOT BAILABLE.

THE TERRITORY OF DAKOTA, }
 — county, } ss.

In the name and by the authority of the Territory of Dakota.

To the keeper of the common jail of said county.

You are commanded to receive into the jail of — county, E F, and him safely keep until discharged by due course of law, he having been held by me as an examining court for trial in the district court of — county, on the charge of —, after first having inquired into the truth and probability of said charge exhibited against him by the oath of all the witnesses attending such examination.

Given under my hand, as justice of the peace of — county, this — day of —, 18—.

A— B—, Justice of the Peace.

FORM OF MITTIMUS IN BAILABLE CASES.

THE TERRITORY OF DAKOTA, }
 — county, } ss.

In the name and by the authority of the Territory of Dakota.

To the keeper of the common jail of said county:

You are commanded to receive into the common jail of — county, E F, and him safely keep until discharged by

due course of law, he having been held by me as an examining court for trial, in the district court of — county, on the charge of (larceny), after having first inquired into the truth and probability of said charge exhibited against him by the oath of all the witnesses in attendance on such examination, and allowed to give bail in the sum of — dollars, for default of which he is committed to jail.

Given under my hand, as justice of the peace of — county, this — day of —, 18—.

A— B—, Justice of the Peace.

FORM OF AN INDORSEMENT ON THE FOREGOING.

Bail ought to be taken in the sum of — dollars.

A— B—, Justice of the Peace.

FORM OF BAIL AFTER COMMITMENT.

THE TERRITORY OF DAKOTA, }
 — county, } ss.

Form of bail
 after commit-
 ment.

Be it remembered, that on the — day of —, 18—, E F, of — county, Dakota, and G H and I J, of — county, Dakota, appeared personally before the undersigned, two justices of the peace of — county, and severally and jointly acknowledged themselves indebted to the Territory of Dakota, in the sum of — dollars, to be made and levied on their respective goods, chattels, lands, and tenements, to be void, however, if the said E F, who has been committed to the common jail of — county, shall personally be and appear at the next — term of the district court of — county, on the first day thereof, to answer an indictment to be preferred against him, for the offence of (larceny), and to do and receive what shall be by said court enjoined upon him, and shall not depart the said court without leave.

Witness our hands, this — day of —, 18—.

E— F—,
 G— H—,
 I— J—.

Taken, subscribed, and acknowledged the day and year first above written.

A— B—, Justice of the Peace.
 K— L—, Justice of the Peace.

FORM OF COMMITMENT OF WITNESS FOR REFUSING TO ENTER INTO A RECOGNIZANCE.

THE TERRITORY OF DAKOTA, }
 — County, } ss.

In the name and by the authority of the Territory of Dakota.

To any constable of said county, and to the keeper of the common jail thereof :

Form of commitment of witness for refusing to enter into recognizance.

We command you, the said constable, forthwith to convey and deliver into the custody of the said keeper, the body of C D, it appearing, by the examination of the said C D, on oath, before me, one of the justices of the peace of said county, that he is a material witness against the said E F, on a charge of (larceny), and it having been adjudged by me that the said offence has been committed, and that there is probable cause to believe the said E F to be guilty thereof, and the said C D, having been required to enter into recognizance in the sum of — dollars for his personal appearance at the next — term of the district court of — county, on the first day thereof, to give evidence on behalf of the territory against the said E F for the offence aforesaid, with which requisition the said C D has refused to comply, and you, the said keeper of the said jail are hereby required to receive the said C D into your custody, in the said jail, and him safely keep, until he shall enter into such recognizance, or be otherwise discharged according to law.

Given under my hand, this — day of —, 18—.

A— B—, Justice of the Peace.

FORM OF A WARRANT TO DISCHARGE A PRISONER UPON HIS FINDING SURETIES AFTER COMMITMENT.

THE TERRITORY OF DAKOTA, }
 — County, } ss.

In the name and by the authority of the Territory of Dakota.

To the keeper of the common jail of said county :

Discharge from imprisonment E F, if detained in your custody for no other cause than what is mentioned in the warrant for his commitment, under the hand of A B, justice of the peace for said county, dated the — day of —, 18—.

Form of warrant to discharge prisoner upon finding sureties after commitment.

Given under — hand as justice of the peace of said county, this — day of —, 18—.

A— B—, Justice of the Peace.

K— L—, Justice of the Peace.

Approved April 28, 1862.

W. JAYNE, Governor.

COMMISSIONERS.

CHAPTER 10.

AN ACT PROVIDING FOR THE APPOINTMENT OF COMMISSIONERS TO TAKE THE ACKNOWLEDGMENT OF DEEDS, AND OTHER INSTRUMENTS, AND DEFINING THE DUTIES THEREOF.

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

Governor may appoint in other states and territories, with what powers.

SECTION 1. The governor shall have power to appoint or more commissioners in any state of the United States of the territories belonging to the United States, who shall continue in office during the pleasure of the governor, and shall have authority to take the acknowledgment and proof of the execution of any deed, or other conveyance, or lease of any lands lying in this territory, and of any contract, letter, or any other writing under seal or not, to be used by an attorney, or any other writing under seal or not, to be used or recorded in this territory.

Their acknowledgment of same force as if executed here.

SECT. 2. Such acknowledgment or proof, so taken, according to the laws of this territory, and certified to by any commissioner under his seal of office, and annexed to or endorsed on such instrument, shall have the same power and effect as if the same had been made before any officer authorized to perform such acts in this territory.

May administer oaths and take depositions.

SECT. 3. Every commissioner, appointed as before mentioned, shall have power to administer an oath which may lawfully required in this territory to any person willing to take the same, and to take and duly certify all depositions to be used in any of the courts of this territory in conformity with the laws thereof, either on interrogatories proposed under the commission from any court of this territory, or by consent of the parties, or on legal notice given to the opposite party; and all such acts shall be as valid as if done and certified according to law by a proper officer in this territory.

Commissioners to make oath or affirmation.

SECT. 4. Every such commissioner, before performing his duty, or exercising any power by virtue of his appointment,

shall take and subscribe an oath or affirmation before a judge or a clerk of one of the courts of record of the state or territory in which such commissioner shall reside, well and faithfully to execute and perform all the duties of such commissioner, under and by virtue of the laws of the Territory of Dakota, which oath, with a description or impression of his seal of office, shall be filed in the office of the secretary of this territory.

SECT. 5. This act shall take effect and be in force from and after its passage. Take effect, when.

Approved April 12, 1862.

W. JAYNE, *Governor.*

CORPORATIONS.

CHAPTER 11.

AN ACT TO PROVIDE FOR CORPORATIONS FOR MANUFACTURING, MINING, LUMBERING, AGRICULTURAL, MECHANICAL, AND CHEMICAL PURPOSES.

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

SECTION 1. Any three or more persons desirous of forming a corporation for the purpose of carrying on any kind of manufacturing, mining, lumbering, agricultural, mechanical, or chemical business, may make, sign, and acknowledge, before some officer authorized to take the acknowledgment of deeds, a certificate in writing, in which shall be stated the name of such corporation, and the object for which the corporation shall be formed, the amount of the capital stock of such corporation, the term of its existence (which shall not exceed ten years), the number of shares of which said stock shall consist, the number of trustees, and their names, who shall manage the concerns of said corporation for the first

Persons desirous of forming corporation, make and sign certificate — to contain what.

year, and the names of the town and county in which the operations of said corporation are to be carried on.

Certificate to be filed, where.

SECT. 2. Such certificate shall be filed in the office of register of deeds of the county in which the business of the corporation shall be carried on, and a duplicate thereof shall be filed in the office of the secretary of the territory.

When filed, persons signing shall be known as corporate body, with what powers.

SECT. 3. When such certificate shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, by the name stated in such certificate, and by that name may have succession, and shall be capable of suing and being sued, and they may have a common seal, and may alter the same at pleasure; and they shall, by their corporate name, be capable of purchasing, holding, and conveying any real and personal estate whatever, which may be necessary to enable the said corporation to carry on the business named in such certificate, but shall not mortgage the same, or give any lien thereon: *Provided*, That the amount of real estate so owned and held shall not at any time exceed forty acres to each stockholder in such corporation, unless it shall be an agricultural corporation.

Proviso.

Business managed by trustees.

SECT. 4. The stock, property, and concerns of such corporation shall be managed by not less than three nor more than nine trustees, who shall respectively be stockholders in such corporation, and who shall, except the first year, be annually elected by the stockholders, at such time and place as shall be directed by the by-laws of the corporation.

Notice of election of trustees to be given, how.

SECT. 5. Public notice of the time and place of holding such election shall be given, not less than ten days previous thereto, by publication in the newspaper printed nearest the place where the business of the corporation shall be carried on, or in such other manner as shall be prescribed by the by-laws of the corporation; and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy.

Election to be by ballot.

SECT. 6. All elections shall be by ballot, and each stockholder shall be entitled to one vote in said corporation; and the persons receiving a majority of the votes shall be trustees; and when any vacancy shall happen among the trustees, by death, resignation, or otherwise, it shall be filled for the

Vacancies, how filled.

remainder of the year in such manner as shall be provided for by the by-laws of the corporation.

SECT. 7. In case it shall happen at any time that an election of trustees shall not be made on the day fixed for such election by the by-laws of said corporation, the corporation for that reason shall not be dissolved; but it shall be lawful on any other day to hold an election for trustees, as shall be provided for by the said by-laws; and all acts of the trustees shall be valid and binding as against such corporation, until their successors shall be elected.

In case no election be made on day appointed.

SECT. 8. The trustees shall have power to make and prescribe such by-laws, rules, and regulations respecting the management, control, and disposition of the stock, property, and business of such corporation, as they may deem expedient and proper, not inconsistent with the constitution of the United States, or the organic act of this territory, and shall have power to appoint and employ officers, clerks, and servants, for conducting and carrying on the business of such corporation, and determine their duties, and the salaries and wages to be paid them.

Powers of trustees.

SECT. 9. It shall be lawful for the trustees to call in and demand from the stockholders respectively, all such sums of money by them subscribed, at such times and in such payments or instalments as the trustees shall deem proper; and, if any stockholder shall fail to pay the amounts so required to be paid, at the times required for such payments, the stock of such delinquent stockholder, or such portions thereof as may be required to meet such payments, may be sold by the trustees, at public auction, after giving public notice of the time and place of such sale, at least twenty days previous thereto, by publication of such notice in the newspaper printed nearest the place of business of such corporation, or by giving such notice in such other manner as shall be prescribed by the by-laws of such corporation; and the surplus, if any arising from the sale of such stock, over and above the amount due thereon, shall be paid by the trustees to such delinquent stockholder: and a transfer of stock so sold, made by the trustees, in the name of the holder of the stock, shall vest a good and valid title thereto in the purchaser; or the said corporation may commence and prosecute, in any court of competent jurisdiction, an action against any sub-

Same.

scriber for stock in said corporation, and recover judgment for amount due on his subscription, with interest thereon, from the time the same was required to be paid, and have execution therefor.

Stock deemed personal estate, and transferable, when.

SECT. 10. The stock of said corporation shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the corporation; but no shares shall be transferable until all previous calls thereon shall have been fully paid in, or they shall have been sold, as provided in the preceding section, for the non-payment thereon; and it shall not be lawful for such corporation to use any of their funds for the purchase of any stock in any other corporation.

Stockholders individually liable for debts due or owing to servants.

SECT. 11. The stockholders of any corporation organized under the provisions of this act, shall be jointly and individually liable for all debts that may be due and owing to all their clerks, laborers, and servants, for services performed for such corporation.

Same, for all other debts. Suit to be commenced within three years.

SECT. 12. All such stockholders shall be jointly and individually liable for the payment of all other debts of such corporation, to be recovered of the stockholder who is such when the debt is contracted; but he shall not be so liable except as is mentioned in the preceding section, unless suit shall be commenced against such stockholder for such debt, within three years from the time he shall have ceased to be a stockholder in such corporation, or unless an execution, issued against the corporation for the collection of such debt, shall have been returned unsatisfied in whole or in part.

Certain persons holding stocks not liable.

SECT. 13. No person holding stock in such corporation, as executor, administrator, guardian, or trustee; and no person holding such stock as collateral security shall be personally subject to any liability as stockholder of such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estates and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner as the testator or intestate would have been, if he had been living, or the ward competent to act and hold the same stock in his own name.

Stocks, how represented.

SECT. 14. Every such executor, administrator, guardian, or trustee shall represent the share of stock in his hands at

all meetings of the corporation, and may vote accordingly as a stockholder; and every person who shall pledge his stock as aforesaid, may nevertheless represent the same at all such meetings, and may vote accordingly as a stockholder.

SECT. 15. Nothing but money shall be considered as payment of the capital stock of any corporation formed under the provisions of this act; and no loan of money shall be made by any such corporation to any stockholder therein.

Nothing but money considered as payment of capital stock, &c.

SECT. 16. The legislature may, at any time, alter, amend, or repeal this chapter; but such amendment shall not, nor shall the dissolution of any such corporation take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

Legislature may alter and repeal. Dissolved corporation still liable.

SECT. 17. Any corporations formed under this act may increase or diminish its capital stock, and may also extend its business to any other manufacturing, mining, lumbering, agricultural, mechanical, or chemical business, in the manner hereinafter provided; and any existing company, heretofore formed, may come under and avail itself of the privileges and provisions of this act, by complying with the following provisions; and thereupon such company, its officers and stockholders, shall be subject to all the restrictions, duties, and liabilities of this act.

Corporation may increase and diminish stock.

SECT. 18. Whenever any company shall desire to avail itself of the privileges and provisions of this act, or shall desire to increase or diminish the amount of capital stock, or extend or change its business, a meeting of the stockholders shall be called by the trustees, whose duty it shall be to publish a notice of such meeting, signed by a majority of them, in a newspaper printed in the county, if any shall be published therein; and if none, then in a newspaper printed nearest their place of business, at least three successive weeks, and to serve personally on each stockholder a written or printed copy thereof, or deposit such copy in the post-office, addressed to each stockholder, at his usual place of residence, at least three weeks before the day fixed upon for holding the meeting. Such notice shall specify the object of such meeting, the time and place when and where such meeting shall be held, and the amount to which it is proposed to increase or

Whenever company desires to avail itself of these provisions, meeting of stockholders to be called, how.

diminish the capital stock, and the business to which the company would be extended or changed.

Meeting, how organized, and business, how conducted.

SECT. 19. At the time and place specified in the notice provided for in the preceding section, the stockholders present in person or by proxy shall organize, by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to vote; and if, on canvassing the votes, it shall be found that votes representing at least two thirds of all the shares of stock of such company have been given in favor of increasing or diminishing the amount of capital, or [of] increasing or extending its business, or in favor of availing itself of the provisions and privileges of this act, as aforesaid, a certificate of the proceedings, showing a compliance with the provisions of this act, the business to which the company is extended or changed, and the amount to which the capital stock shall be increased or diminished shall be made out, signed, and verified by the chairman and secretary of the meeting; and such certificate shall be acknowledged by the chairman and secretary, and filed as required by the first section of this act; and when so filed, the capital of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed as aforesaid, and the company shall be entitled to the provisions and privileges, and be subject to the liabilities of this act, as the case may be.

Treasurer or clerk to keep book containing names of stockholders for six years, &c.

SECT. 20. It shall be the duty of the trustees of every such corporation or company to cause a book to be kept by the treasurer or clerk thereof, containing the names of all persons alphabetically arranged, who are or shall have been, within six years, stockholders of such company, and showing their place of residence, and number of shares of stock held by them respectively, and the time when they respectively became the owners of such shares, every transfer of stock, and the amount of stock actually paid in; which book shall, during the usual business hours of the day, on every day except Sunday, be open for the inspection of stockholders and creditors of the company, and their personal representatives, at the office or principal place of business of such company, in the county where its business operations shall be located; and any and every such stockholder, creditor, or representa-

Book to open, to whose inspection.

tive shall have a right to make extracts from such book, and no transfer of such stock shall be valid for any purpose whatever, except to render the person to whom it shall be transferred liable for the debts of the company, according to the provisions of this chapter, until it shall have been entered therein, as provided in this section, by an entry showing to and from whom transferred. Such book shall be presumptive evidence of the facts therein stated, in favor of the plaintiff, in any such suit or proceeding against such company, or against one or more stockholders. Every officer or agent of any such company, who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected, and extracts to be taken therefrom, as provided by this section, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine not exceeding four hundred dollars, or by imprisonment not exceeding six months: and the company shall forfeit and pay for every such neglect or refusal, to the party injured thereby, all the damages resulting therefrom, and every company that shall neglect to keep such books open for inspection as aforesaid, shall forfeit and pay the sum of fifty dollars for every day it shall so neglect; to be sued for and recovered in the name of the United States, by the district attorney of the county in which the business of such corporation shall be located, or of the county to which it may be attached for judicial purposes.

No transfer valid, unless entered in book.

Neglect in relation to book. Penalty.

SECT. 21. Any company or corporation formed and organized under the provisions of this act, is hereby prohibited from exercising any banking powers, under any pretence whatever, under a penalty of forfeiting their right of incorporation under or by virtue of this act.

Company so formed, prohibited from banking.

SECT. 22. This act shall take effect from and after its passage.

Take effect, when.

Approved May 7, 1862.

W. JAYNE, Governor.

COUNTIES AND COUNTY SEATS.

CHAPTER 12.

AN ACT TO ESTABLISH THE COUNTY OF BON HOMME, AND LOCATE THE COUNTY SEAT THEREOF.

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

Boundaries of county of Bon Homme.

SECTION 1. The district of country embraced within the following described boundaries, shall be, and is hereby declared to be, a county, to be known as Bon Homme county, to wit: commencing at a point on the Missouri river, on line between ranges 57 and 58; thence along the main channel of the Missouri river to the mouth of Choseau creek; thence along the eastern and northern boundary of the Yankton Indian Reservation to the north line of township No. 96; thence east along said line to the range line between ranges 57 and 58; thence south on said range line to the place of beginning.

Town of Bon Homme declared county seat.

SECT. 2. And the town of Bon Homme is hereby declared to be the county seat of the said county.

Take effect, when.

SECT. 3. This bill shall take effect from and after its passage, and approval by the governor.

Approved April 5, 1862.

W. JAYNE, *Governor.*

CHAPTER 13.

AN ACT FOR THE ESTABLISHMENT OF CLAY COUNTY IN THE TERRITORY OF DAKOTA.

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

Boundaries of county of Clay.

SECTION 1. That the district of country embraced within the following described boundaries shall be, and is hereby

declared to be Clay county, to wit: commencing at the point where range line between 50 and 51 intersects the Missouri river, and following up the main channel of the Missouri river to the range line between 53 and 54 west; thence north of said line to the northern boundary of township 95; thence east of the said line to the range line between 50 and 51 west; thence west of said range line to the place of beginning.

SECT. 2. This act shall be in force from and after its pas- ^{Take effect,}
sage, and approval by the governor. _{when.}

Approved April 10, 1862.

W. JAYNE, *Governor.*

CHAPTER 14.

A BILL FOR AN ACT FOR THE ESTABLISHMENT OF COLE COUNTY, IN THE TERRITORY OF DAKOTA.

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

SECTION 1. That the district of country embraced within the following described boundaries shall be, and is hereby declared to be, Cole county, to wit: commencing at the confluence of the Big Sioux with the Missouri river, and following up the main channel of the Missouri river to the range line between ranges 50 and 51 west; thence north of said range lines, to the northern boundary of township 93; thence east to the Big Sioux river; thence down the main channel of the Big Sioux river to the place of beginning. ^{Boundaries}
_{of county of Cole.}

SECT. 2. This act shall take effect and be in force from ^{Take effect,}
and after its passage, and approval by the governor. _{when.}

Approved April 10, 1862.

W. JAYNE, *Governor.*

CHAPTER 15.

A BILL FOR AN ACT CREATING AND ESTABLISHING JAYNE
AND HUTCHINSON COUNTIES, DEFINING THE COUNTY LINES
OF THE SAME, AND FOR OTHER PURPOSES.

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

Boundaries of
county of Jayne.

SECTION 1. That so much of the Territory of Dakota as is embraced in the following described limits be, and the same is hereby created into, and declared to be a county to be known as Jayne county, to wit: commencing at the north-east corner of Yankton county; thence north thirty miles; thence west twenty-four miles; thence south to the north-west corner of Yankton county; thence east on the north boundary line of Yankton county, to the point of commencement.

Attached to
county of Yank-
ton for stated
purpose.

SECT. 2. The said county of Jayne is hereby attached to the county of Yankton for election, judicial, and revenue purposes.

Boundaries of
county of Hutch-
inson.

SECT. 3. That so much of the Territory of Dakota as is embraced in the following described limits be, and the same is hereby created into, and declared to be a county, to be known as Hutchinson county, to wit: commencing at the north-west corner of Bon Homme county; thence north on the east boundary line of Gregory county thirty miles; thence east to the north-west corner of Jayne county; thence south on the west boundary line of Jayne county to the north-west corner of Yankton county; thence west on the north boundary line of Bon Homme county to the point of commencement.

Attached to
Bon Homme
county for stated
purpose.

SECT. 4. The said county of Hutchinson is hereby attached to Bon Homme county for election, judicial, and revenue purposes.

Take effect,
when.

SECT. 5. This act to take effect, and be in full force, from and after its passage, and its approval by the governor.

Approved May 8, 1862.

W. JAYNE, *Governor.*

CHAPTER 16.

AN ACT TO ESTABLISH THE COUNTIES OF LINCOLN, MINNEHAHA, BROOKINGS, AND DEUEL.

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

SECTION 1. That so much of the Territory of Dakota as is embraced in the following boundaries, be and the same is hereby established as the county of Lincoln. Beginning at the south-east corner of township 94, north of range 48 west; thence west to the south-west corner of township 94, north of range 50 west; thence north to the south-west corner of township 96, north of range 50 west; thence west to the south-west corner of township 96, north of range 53 west; thence north to the north-west corner of township 100, north of range 53, west; thence due east to the Big Sioux river; thence south along the course of said river to place of beginning.

Boundaries of
the county of
Lincoln.

SECT. 2. That so much of the Territory of Dakota as is embraced in the following boundaries, be and the same is hereby established as the county of Minnehaha: beginning at the south-west corner of the state of Minnesota; thence west to the south-west corner of township 101, north of range 53 west; thence due north to the north-west corner of township 106, north of range 53 west; thence due east to the boundary line between the state of Minnesota and the Territory of Dakota; thence south on said boundary line to place of beginning.

Boundaries of
the county of
Minnehaha.

SECT. 3. That so much of the Territory of Dakota as lies within the following boundaries, be and the same is hereby established as the county of Brookings, beginning at the north-east corner of the county of Minnehaha; thence due west to the south-west corner of township 107, north of range 53 west; thence due north to the north-west corner of township 112, north of range 53 west; thence due east to the boundary line between the state of Minnesota and Territory of Dakota; thence south along said boundary line to place of beginning.

Boundaries of
the county of
Brookings.

Boundaries of
the county of
Deuel.

SECT. 4. That so much of the Territory of Dakota as is embraced in the following boundaries, be and the same is hereby established as the county of Deuel; beginning at the north-east corner of the county of Brookings; thence west to the south-west corner of township 113, north of range 53 west; thence north to the north-west corner of township 124, north of range 53 west; thence due east to the boundary line between the state of Minnesota and the Territory of Dakota; thence south along said boundary line to place of beginning: *Provided*, That all territory from which the Indian title is not yet extinguished shall form no part of said county, until the Indian title shall be extinguished from the same.

Proviso.

For stated pur-
poses all form
one county, with
seat at Sioux
Falls city.

SECT. 5. And be it further enacted, that for judicial and election purposes, the counties of Lincoln, Minnehaha, Brookings, and Deuel, form one and the same county, with the county seat at Sioux Falls city, in the county of Minnehaha.

Sioux Falls
city, seat of Min-
nehaha county.

SECT. 6. And be it further enacted, that the county seat of Minnehaha county, be established temporarily at Sioux Falls city.

Take effect,
when.

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

Approved April 5, 1862.

W. JAYNE, *Governor*.

CHAPTER 17.

AN ACT TO ESTABLISH CERTAIN COUNTIES, AND FOR OTHER PURPOSES.

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

Boundaries of
county of Shey-
enne.

SECTION 1. That so much of the Territory of Dakota as lies within the following boundaries, be and the same is hereby established as the county of Sheyenne: beginning at the north-east corner of the county of Stevens, from thence along the centre of Red river to the north-east corner of Deuel county; from thence west to the western line of range 62; from thence north to the south-west corner

of the county of Stevens; from thence east to the place of beginning.

SECT. 2. That so much of the Territory of Dakota as lies within the following boundaries, be and the same is hereby established as the county of Stevens: beginning at a point in the centre of the Red river of the North, at the point where the north line of township No. 134 north crosses said river; from thence west to the west line of range No. 62 west; from thence north to the north line of township No. 144 north; from thence east to the centre of the said river; from thence along the centre of said river to the place of beginning, as per the fifth principal meridian, according to the Minnesota government survey.

Boundaries of county of Stevens.

SECT. 3. That so much of the Territory of Dakota as lies within the following boundaries, be and the same is hereby established as the county of Chippewa: beginning at the north-west corner of Stevens county; from thence north ten townships; from thence east to the centre of Red river; from thence along the centre of Red river to the south-east corner of the county of Stevens; from thence west to the place of beginning.

Boundaries of county of Chippewa.

SECT. 4. That so much of the Territory of Dakota as lies within the following boundaries be, and the same is hereby established as the county of Kittson: beginning at the north-west corner of Chippewa county; from thence north to the boundary line of the British possessions; from thence east, along said line, to the centre of Red river; from thence, along the centre of said river to the south-east corner of the county of Chippewa, to the place of beginning.

Boundaries of county of Kittson.

SECT. 5. The governor shall appoint three persons for each of the respective organized counties, being residents and legal voters thereof, commissioners for each of said counties, with full power and authority to do and perform all acts and duties devolving upon the board of county commissioners of any organized county in this territory. The said board of commissioners shall have power to appoint all other officers that may be required to complete the organization of their respective counties.

Governor to appoint commissioners, with what powers.

Commissioners to appoint other officers.

SECT. 6. And be it further enacted, That the county seat of the county of Kittson shall be established temporarily at the town of St. Joseph.

St. Joseph, seat of Kittson county.

Take effect,
when.

SECT. 7. This act shall take effect and be in force on and after its passage, and approval by the governor.

Approved April 24, 1862.

W. JAYNE, *Governor.*

CHAPTER 18.

A BILL FOR AN ACT CREATING AND ESTABLISHING TODD, GREGORY, CHARLES MIX, AND BRUGUIER COUNTIES; TO DEFINE THE BOUNDARY LINES OF THE SAME, AND TO LOCATE COUNTY SEATS.

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

Boundaries of
county of Todd.

SECTION 1. That so much territory as is embraced in the following described limits be, and the same is hereby created into and declared to be one county,— to be known as Todd county, to wit: commencing in the middle of the channel of the Missouri river at the mouth of the Niobrarah river; thence up the main channel of the Niobrarah river to the south-east corner of the Ponka Indian Reserve; thence north, on the east line of said reserve, to Ponka creek; thence up the main channel of said creek to the north-west corner of the afore-said reserve; thence on the west boundary line of said reserve to the Niobrarah river; thence up the main channel of said river to the west boundary line of the lands ceded by the Ponka Indians to the United States government; thence on a direct line to the south-west corner of the Fort Randall Military Reserve; thence on the south line of said reserve, to the south-east corner of the same; thence on the east line of said reserve, to the Missouri river; thence down the centre of the main channel of said Missouri river to the point of commencement.

Mixville de-
clared county
seat.

SECT. 2. The county seat of Todd county, is hereby located and established at Mixville, on the Niobrarah river.

Boundaries of
the county of
Gregory.

SECT. 3. That so much territory as is embraced in the following described limits be, and the same is hereby created

into and declared to be a county, to be known as Gregory county, to wit: commencing in the centre of the main channel of the Missouri river opposite the north-west corner of the Fort Randall Military Reserve; thence on the west line of said reserve to the south-west corner of the same; thence west on a direct line to a point on the Niobrarah river, where the west boundary line of the tract of lands ceded to the United States by the Ponka Indians strikes the same; thence on the last-named boundary line to the Missouri river; thence down the centre of the main channel of the last-named river, to the point of commencement.

SECT. 4. That the said county of Gregory be, and the same is hereby attached to the county of Todd, for revenue, election, and judicial purposes.

Attached to
Todd county for
stated purposes.

SECT. 5. That so much territory as is embraced in the following described limits be, and the same is hereby created into and declared to be a county, to be known as Charles Mix county, to wit: commencing at the north-east corner of the Yankton Indian Reserve; thence north to Fire Steel creek; thence east up the main channel of said creek to its source; thence on a direct line to the head of the main branch of Fish or Pratt creek; thence down the main channel of said creek to the Missouri river; thence down the main channel of said river to the south-west corner of the Yankton Indian Reserve; thence on the west line of said reserve to the north-west corner of the same; thence on the north line of said reserve to the point of commencement.

Boundaries of
the county of
Charles Mix.

SECT. 6. The county seat of said county of Charles Mix is hereby located and established at Papineau on the Missouri river, on the claim of Mr. Papineau.

Papineau de-
clared county
seat.

SECT. 7. That so much territory as is embraced in the following described limits be, and the same is hereby created into and declared to be a county, to be known as Bruguier county, to wit: commencing at the mouth of Fish or Pratt creek; thence up the main channel of said creek to the source of its main branch; thence on a direct line to the source of Fire Steel creek; thence due west to the Missouri river; thence down the main channel of said river to the point of beginning.

Boundaries of
the county of
Bruguier.

SECT. 8. The said county of Bruguier is hereby attached to the county of Charles Mix for election, judicial, and revenue purposes.

Attached to
Charles Mix
county for stated
purposes.

Take effect,
when.

SECT. 9. This act to take effect and be in force from and after its passage, and its approval by the governor.

Approved May 8, 1862.

W. JAYNE, *Governor.*

CHAPTER 19.

A BILL FOR AN ACT TO CREATE AND ESTABLISH THE COUNTY OF YANKTON, TO DEFINE THE BOUNDARY LINES, AND TO LOCATE THE COUNTY SEAT THEREOF.

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

Boundaries of
the county of
Yankton.

SECTION 1. That so much territory as is embraced in the following described limits, be and the same is hereby created into and declared to be a county to be known as Yankton county, to wit: commencing at a point on the Missouri river where the range line dividing ranges 53 and 54 west of the fifth principal meridian strikes said river; thence north on said range line to the north-east corner of township 96, north range 54 west; thence west on the north boundary line of township 96, to the range line dividing ranges 57 and 58; thence south on said range line to the Missouri river; thence down the main channel of the Missouri river to the point of beginning.

Town of Yank-
ton declared
county seat.

SECT. 2. The town of Yankton is hereby declared to be the county seat of Yankton county, and the seat of justice is hereby located and established at the same.

Take effect,
when.

SECT. 3. This act shall take effect and be in force from and after its passage, and approval by the governor.

Approved April 10, 1862.

W. JAYNE, *Governor.*

CHAPTER 20.

AN ACT TO PROVIDE FOR THE LOCATION OF THE COUNTY SEATS IN THE COUNTIES OF THIS TERRITORY.

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

SECTION 1. That when any number of the legal voters of any county in this territory equal to one half the highest number of votes cast at the next preceding general election in such county, shall, at least thirty days previous to the next ensuing election, petition the county commissioners of such county to be allowed to vote on the removal or location of the county seat of such county, to any point within such county, the said commissioners shall cause to be inserted in the notices for the next general election, an article requiring the voters of such county to vote on the removal of the county seat to, or the location thereof, at the point named in the petition. That only one point of removal or location shall be voted for in each year, and that point shall be the one presenting the largest number of petitions: *Provided*, That the same point was not voted for at the last preceding election, and that it shall be lawful for said petitioners to deposit any sum of money or bonds with the county treasurer, which they may propose to donate for the erection of public buildings at the point petitioned for: *Provided*, That in any of the counties of the territory in which the county seat has been or shall hereafter be located by a vote of the electors of said county, the place at which the county seat is so located shall be and remain the county seat at least three years after the time of taking such vote; and no new vote shall be had on the re-location of the county seat until the expiration of said three years.

Election, how ordered and when.

Proviso.

Proviso.

SECT. 2. The voters of any county, so notified, shall vote at the next general election on the removal or location of their county seat by ballot, written or printed as follows: "For county seat at ——" (filling the blank with the place named in the petition), or "Against county seat at ——" (filling the blank as above); and if a majority of the votes

Form of ballot.

Majority to decide. cast are for the point named in the petition, then that place shall be the county seat; otherwise the county seat shall remain as before.

Returns and canvass same as in voting for county officers. **SECT. 3.** The votes for and against the removal or location of the county seat shall be returned and canvassed in the same manner as the votes for county officers.

No county seat removed in any other manner. **SECT. 4.** No county seat, in any county in this territory, shall be removed in any other manner than that prescribed in this act, except by the amendment or repeal of this act.

If county seat removed, officers to remove within twenty days. **SECT. 5.** If, on canvassing the votes, a majority of them are found to be in favor of removal, then all the county officers — who are required to hold their offices at the county seat — shall, within twenty days after such canvass, move their offices to the point so elected as the county seat.

Take effect, when. **SECT. 6.** This act shall take effect from and after the first day of January, one thousand eight hundred and sixty-four.

Approved April 24, 1862.

W. JAYNE, *Governor.*

CHAPTER 21.

AN ACT NAMING AND LOCATING THE COUNTY SEAT OF COLE COUNTY.

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

Named Victoria. **SECTION 1.** That the county seat of Cole county be, and the same is hereby named Victoria.

Located, where. **SECT. 2.** That the county seat of Cole county be, and the same is hereby located on the claim of Joseph Chapillion, on section 10, in township 89 north, range 48 west of the fifth principal meridian.

Take effect, when. **SECT. 3.** This act shall take effect from and after its passage, and approval of the governor.

Approved May 7, 1862.

W. JAYNE, *Governor.*

CHAPTER 22.

AN ACT TO PROVIDE FOR THE LOCATION OF THE COUNTY SEAT OF COLE COUNTY.

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

SECTION 1. That at the first general election held in the county of Cole, in the Territory of Dakota, the legal voters shall vote by ballot for the location of the county seat of said county; and the place in said county having the highest number of votes, shall be declared to be the permanent county seat of said county. To vote at first general election on location.

SECT. 2. That the votes cast for county seat in said county shall be returned by the several judges of elections in said county, to the registrar of deeds of said county, as is provided by law for the return of votes in other cases, to the registrar of deeds, and canvassed by him as is provided for the canvass of votes by law; and after said canvass, he shall declare the place having the highest number of votes, to be the county seat of said county. Return and canvass same as in other elections.

SECT. 3. If any two places should have the highest and an equal number of votes, then the registrar of deeds shall, within twenty days after the result of such election is known, give notice, that within ten days from the time of giving such notice, that an election will be held in said county, at which election the two places only having the highest and an equal number of votes shall be candidates for the county seat; after the result of which election the votes shall be canvassed as hereinbefore provided; and the place having the highest number of votes shall be declared to be the county seat of said county. In case of tie vote.

SECT. 4. This act to take effect from and after its passage, and approval by the governor. Take effect, when.

Approved May 8, 1862.

W. JAYNE, *Governor.*

COUNTY OFFICERS.

CHAPTER 23.

AN ACT TO PROVIDE FOR COUNTY OFFICERS.

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

All counties
organized to
contain twenty
legal voters.
Shall have
what officers.

SECTION 1. That all counties, to entitle them to an organization, shall contain at least twenty legal voters.

SECT. 2. That all organized counties shall have the following described officers, to wit: three county commissioners, a register of deeds, sheriff, judge of probate, and coroner, justices of the peace, constables, county surveyor, and district attorney.

Duties of
county commis-
sioners.

SECT. 3. It shall be the duty of the county commissioners to superintend the location of county roads; to appoint the commissioners to locate the same; to establish election precincts, and appoint the judges of elections; to equalize the assessment roll, and to divide their counties into school districts as will best subserve the interest of the inhabitants of their respective counties.

Hold meetings
at county seat.

SECT. 4. The county commissioners shall hold their meetings at the county seat, and shall elect one of their own number chairman, to preside at their meetings. They shall permit no tax to be levied in any one year that will exceed fifteen mills on the dollar — territorial, school, and county tax inclusive — without the consent of the majority of the voters.

Limit to taxa-
tion.

Their compen-
sation.

SECT. 5. The county commissioners shall receive, as a compensation for their services, one dollar and fifty cents per day, and five cents a mile for travelling to and from place of meeting.

Annual meet-
ing, when held.

SECT. 6. The annual meeting of the board of county commissioners shall be held on the first Monday in June, and as often thereafter as they may deem expedient, not to exceed

four times in any one year. And no one session shall continue for a longer period than six days.

SECT. 7. All orders of the board of county commissioners shall be signed by the chairman and attested by the register of deeds.

All orders signed and attested.

SECT. 8. The register of deeds shall attend all meetings of the county commissioners, and shall act as clerk of the same, for which he shall receive the same compensation allowed to county commissioners.

Register act as clerk. Compensation.

SECT. 9. The register of deeds shall keep a record of the proceedings of the board of county commissioners in a book kept for that purpose, and the record of each meeting shall be signed by the chairman and attested by the register of deeds.

To keep record of proceedings, signed and attested.

SECT. 10. The register of deeds shall keep a true record (in proper books kept for the purpose) of all deeds, mortgages, bonds, and bills of sale handed him for record, provided the person or persons handing him the same for record, shall first pay to him twelve and a half cents per folio for recording the same. He shall record at large and in full, word for word. Every register of deeds, before he enters upon the duties of his office, shall take and subscribe an oath before the clerk of the court of his county, or some other person duly empowered to administer oaths, to support the constitution of the United States and the organic act organizing the Territory of Dakota, and faithfully and impartially to perform his duties as prescribed by law to the best of his ability, which said oath shall be indorsed on the back of his election certificate or appointment, recorded in a book kept in his office for the purpose, and filed in the office of the clerk of the court of the county, or if there is no such officer, with the clerk of the court of the county to which his county is attached for judicial purposes. He shall also give bonds with good and sufficient sureties, in the penal sum of one thousand dollars, to be approved by the board of commissioners of his proper county, conditioned that he will faithfully and impartially discharge the duties of his office.

Duties of register of deeds.

SECT. 11. The registers of deeds in the several counties of this territory, are hereby authorized to appoint deputy registers, who shall be appointed in writing, and shall, before entering upon the duties of their office, take and subscribe an

May appoint deputies; their responsibilities.

oath faithfully to perform the duties of their office, which oath shall be indorsed on the appointment and recorded in the office of register of deeds. The registers of deeds shall be responsible for the acts of their deputies, and may revoke their appointment at pleasure.

Duties of register when acting as canvasser.

SECT. 12. It shall be the duty of the register of deeds of each county to call to his assistance two justices of the peace, and, together with them, canvass all votes cast in his county; he shall make out and deliver certificates of election to the persons having the highest number of votes; to notify persons having an equal and the highest number of votes; to attend at his office and decide by lot which person shall be elected.

To make out poll books.

SECT. 13. It shall be the duty of the register of deeds to make out and deliver to the several judges of elections in his county, poll books.

To write notices of election, when.

SECT. 14. It shall be the duty of the register of deeds to write notices of elections to be held in the several precincts in his county, and deliver the same to the sheriff at least twenty days prior to any general election.

Commissioners to take oath and give bond.

SECT. 15. Each county commissioner, before entering upon the duties of his office, shall take an oath to support the constitution of the United States, and the organic act organizing the Territory of Dakota, which oath shall be subscribed to and recorded in the office of register of deeds. Each county commissioner, before entering upon the duties of his office, shall give bond with approved security in the penal sum of one thousand dollars for the honest and faithful discharge of the duties and trusts of his office, which bond shall be approved by the judge of probate, and filed and recorded in the office of the register of deeds.

Sheriff to take oath and give bond.

SECT. 16. It shall be the duty of the sheriff, before he enters upon the duties of his office, to take and subscribe an oath to support the constitution of the United States and the organic act organizing the Territory of Dakota, and to faithfully and impartially discharge the duties of his office, which oath may be taken by any person authorized by law to administer oaths in his county, which oath shall be recorded in the office of register of deeds. He shall, also, give bond, previous to entering upon the duties of his office, to the board of county commissioners of his county, in the penal sum of

four thousand dollars, with two or more securities, to be approved by the board of county commissioners, and the approval indorsed thereon, conditioned that the said sheriff shall well and faithfully, in all things perform and execute the duties of sheriff, assessor, and collector of taxes, according to law, during his continuance in office, without fraud, deceit, or oppression, which bond shall be filed in the office of register of deeds of his proper county.

SECT. 17. The sheriff may appoint a deputy, who shall be empowered to perform all the duties devolving on the sheriff, the sheriff being responsible for the acts of his deputy, but no deputy shall be authorized to perform the duties of sheriff until he shall have taken an oath to support the constitution of the United States and the provisions of the act organizing the Territory of Dakota, and to perform the duties of his office faithfully and impartially, to the best of his ability, which oath shall be subscribed on the back of his appointment, and filed and recorded in the office of register of deeds of the proper county.

Sheriff may appoint deputy, with what responsibilities.

SECT. 18. It shall be the duty of the sheriffs to keep and preserve peace in their respective counties, for which purpose they are empowered to call to their aid such persons or power of their respective counties as they may deem necessary. They shall also pursue and apprehend all felons; they shall execute all writs, warrants, and other process from a justice of the peace or the district court, which shall be directed to them by legal authority. They shall attend at the district court, and the session of the board of county commissioners, when required by the latter to attend.

Duties of sheriff.

SECT. 19. The sheriff shall serve or post up all notices he may receive from the register of deeds or the board of county commissioners; he shall give notice of a special election when notified by the register of deeds, and notify the board of commissioners when any vacancy happens in the office of register of deeds; shall collect the county revenue, and pay over to the county treasurer all sums so collected, and take his receipt therefor, which receipt shall be a sufficient voucher for the board of commissioners to cancel the amount of such assessment roll charged in their books against said collector; and shall keep his office at the county seat, and shall generally do and perform all and singular the duties which are or

Same.

may be hereafter authorized by law to be performed by sheriff, assessor, or tax-collector.

In case of vacancy.

SECT. 20. In case of the office of sheriff becoming vacant by death, resignation, or otherwise, the board of county commissioners shall forthwith appoint some suitable person to be sheriff of the county during the unexpired term, or until the next general election.

Fees.

SECT. 21. The sheriff shall receive for serving every summons, execution, writ of attachment, or other precept of a court, twenty-five cents, and five cents a mile for every mile travelled in serving any of the aforementioned writs. He shall also receive ten cents for every election notice he may post, and the same fees for travelling as when serving writs.

Judge of probate to give bond and take oath.

SECT. 22. The judge of probate shall, before he enters upon the duties of his office, execute a bond to the board of county commissioners of his county, with sufficient security to be approved by them in the penal sum of four thousand dollars, and shall take an oath to support the constitution of the United States, and the act organizing the Territory of Dakota, which oath shall be recorded in the office of register of deeds in the proper county.

Shall keep record of transactions. Compensation.

SECT. 23. The judge of probate shall keep a record of all orders, decrees, and other official acts, made or done by him, which record shall be open to the inspection of all persons without charge; and he shall receive such compensation for his services as shall be allowed him by law.

May take oaths and acknowledgments.

SECT. 24. The several judges of probate in this territory shall have full power and authority to administer oaths in all cases where oaths are required to be made. They shall also be authorized to take acknowledgment of deeds.

Act as county treasurers, &c.

SECT. 25. The several judges of probate shall be county treasurers, ex-officio, and shall perform all the duties of that office, and shall receive five per cent. of all money received and paid out by them, by virtue of said office. They shall report the amount of county funds in their hands to the board of county commissioners of their respective counties at their annual meeting on the first Monday in June of each year, and as often thereafter as demanded by them, and disburse the same, subject to their order.

County surveyor to take oath and give bond.

SECT. 26. The county surveyor, previous to entering upon the duties of his office, shall take and subscribe an oath or

affirmation, faithfully to discharge the duties of the same, and shall give bond to the register of deeds of the proper county, in the sum of three hundred dollars, conditional for the faithful discharge of the same.

SECT. 27. It shall be the duty of said surveyor, by himself or deputy, to execute any survey which may be required by any court, or upon application of any person or corporation.

His duties.

SECT. 28. The said surveyor shall keep a fair and correct record of all surveys made by him or his deputy, in a book to be provided by the county commissioners for that purpose, which he shall transmit to his successor in office; he shall also number such surveys progressively, and shall preserve a copy of the field notes and calculations of each survey, indorsing thereon its proper number, a copy of which, and also a fair and accurate plat, together with a certificate of survey, shall be furnished by said surveyor to any person requiring the same.

Keep record of surveys, and give copies of same.

SECT. 29. The said surveyor and his deputies may demand and receive for their services the following fees, to wit: for each mile actually run with compass and chain, two dollars; for each succeeding mile thereafter, one dollar; for every in and out lot, in any town laid out and platted, twenty-five cents; for a plat and certificate, except town plats, fifty cents; for recording a survey, fifty cents. When employed surveying for the county, he shall receive two dollars and fifty cents per day.

Fees of surveyor and deputies.

SECT. 30. The coroner shall, before he enters upon the duties of his office, take and subscribe an oath to support the constitution of the United States, and the act organizing the Territory of Dakota, and to faithfully discharge the duties of his office to the best of his ability; and he shall be required to give bond to the county commissioners in the penal sum of two thousand dollars, with good and sufficient securities, conditioned for the faithful performance of his duty, which bond shall be filed with the register of deeds, and recorded in his office.

Coroner to take oath and give bond.

SECT. 31. When there shall be no sheriff or under sheriff in any organized county, it shall be the duty of the coroner in each county to exercise all the powers and duties of sheriff of his county until a sheriff shall be elected and qualified; and when the sheriff, for any cause, shall be committed to the jail

When he shall act as sheriff.

of his county, the coroner shall be keeper thereof during the time the sheriff shall remain a prisoner therein. The coroner shall receive the same fees as a sheriff, for like business.

Duties and compensation.

SECT. 32. The coroner shall perform all duties usually belonging to that office, and receive the usual compensation therefor. When the sheriff is sued, the coroner shall serve the papers on him.

District attorney take oath and give bond.

SECT. 33. The district attorney shall, before he enters on the duties of his office, take and subscribe an oath to support the constitution of the United States and the organic act organizing the Territory of Dakota, and faithfully and impartially discharge his duty to the best of his ability. He shall, also, execute a bond, with one or more sufficient sureties, to the board of county commissioners, to be approved by the register of deeds, in the sum of five hundred dollars, the condition of which bond shall be, that he will faithfully discharge the duties of the office of district attorney, and that he will pay over to the treasurer of his county all money which shall come into his hands by virtue of his office, which bond, together with the oath of office, shall be deposited in the office of register of deeds of such county.

Duties.

SECT. 34. It shall be the duty of the district attorneys of the several counties to appear in the district courts of their respective counties, and prosecute or defend on behalf of the county or territory all suits, indictments, applications, or motions, civil or criminal, in which the territory or county is interested as a party.

Receive no improper fees.

SECT. 35. No district attorney shall receive any fee or reward, from or on behalf of any prosecution or other individual, for services in any prosecution or business to which it shall be his duty to attend.

May receive what fees.

SECT. 36. The district attorney shall receive five dollars for every prosecution before a justice of the peace, and ten dollars for every prosecution before the district court, in which he shall be engaged for the county or territory.

Number of justices and constables.

SECT. 37. There shall not be less than two nor more than four justices of the peace in any one county, and the same number of constables.

Officers, when elected, and term of office.

SECT. 38. All the officers mentioned in this bill, shall be elected at the first general election in Dakota Territory, for the term of two years.

SECT. 39. The governor is hereby authorized to nominate, and with the advice and consent of the council, appoint the officers mentioned in this act, to hold their respective positions until the first general election, and their successors are elected and qualified.

Governor appoint until that time.

Approved April 24, 1862.

W. JAYNE, *Governor*.

CHAPTER 24.

AN ACT LEGALIZING THE ACTS OF CERTAIN OFFICERS OF THE COUNTY OF BIG SIOUX.

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

SECTION 1. That the official acts of James M. Allen as register of deeds, and of James McCall as justice of the peace for the county of Big Sioux, as organized under the authority of the Territory of Minnesota, be and are hereby declared legal.

Official acts legalized.

SECT. 2. That this act shall take effect from and after its passage.

Take effect, when.

Approved May 8, 1862.

W. JAYNE, *Governor*.

COUNTY WARRANTS.

CHAPTER 25.

AN ACT LIMITING THE ISSUE OF COUNTY WARRANTS.

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

SECTION 1. That all issue of county warrants amounting in the aggregate to a sum larger than the county tax levied

Issue larger than tax levied unlawful.

for the year in which they are issued, are hereby declared unlawful, unless the county commissioners shall be first authorized by a majority of the legal voters of said county at any election when the proposition shall be submitted to them.

Warrants bear upon their face amount levied and drawn. Commissioners liable for over-issue.

SECT. 2. All warrants shall bear upon their face the amount of said tax levied, and the amount that warrants have been drawn for, and all warrants drawn for a larger amount than is authorized by law, the county commissioners shall be personally liable for the same.

Take effect, when.

SECT. 3. This act shall take effect and be in force from and after its passage.

Approved May 14, 1862.

W. JAYNE, *Governor.*

COURTS AND JUDGES.

CHAPTER 26.

AN ACT TO AUTHORIZE HOLDING SPECIAL TERMS OF THE DISTRICT COURT IN CERTAIN COUNTIES [CASES].

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

If judge falls in regular term, may hold special, when.

SECTION 1. That if the judge of any district court in this territory shall, for any reason whatever, fail to hold court in any county in his district, at the time prescribed by law, such judge may order and hold a special term of the district court in such county, whenever the business of the county or the court shall, in the opinion of the judge, require it.

When special term is held, notice to be given.

SECT. 2. When a special term of the said court shall be held in any county, the presiding judge of the district shall direct notice of the time of the court to be given at least twenty days prior to the sitting of the same, in a newspaper of the county, if there be one; if not, then in some paper in the nearest or adjoining county.

SECT. 3. All causes undisposed of in said court may be ^{Causes tried same as in regular term.} tried and determined at the special term, the same as at a regular term of the court.

SECT. 4. The chief justice of the supreme court shall have ^{Chief justice may call special terms of supreme court.} power to call special terms of the supreme court of the territory in the same manner as is prescribed for holding special terms of the district court.

SECT. 5. This act to be in force from and after its pas- ^{Take effect, when.} sage, and approval by the governor.

Approved May 14, 1862.

W. JAYNE, *Governor.*

CHAPTER 27.

AN ACT FIXING THE TIME OF HOLDING A SPECIAL TERM OF COURT IN THE THIRD JUDICIAL DISTRICT.

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

SECTION 1. That there shall be a special term of the ^{Special term to be held.} United States district court held in the third judicial district of this territory.

SECT. 2. That said term of court shall begin on the first ^{When and where held.} Monday in June, A. D. 1862, and shall be held in the town of Bon Homme.

SECT. 3. This act shall take effect and be in force from ^{Take effect, when.} and after its passage, and approval by the governor.

Approved May 13, 1862.

W. JAYNE, *Governor.*

CHAPTER 28.

AN ACT CONCERNING THE POWERS OF DISTRICT JUDGES.

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

In case of
vacancy or dis-
ability, judge of
another district
may act.

SECTION 1. That whenever a vacancy shall occur in the office of district judge of any district in this territory, or whenever it shall appear by an affidavit, to the satisfaction of any district judge in the territory, that the judge of any other district is unable to act, on account of sickness, interest, or absence from the district, or from any other cause, the judge to whom application may be made, shall have power to make any order, or do any act relative to any suit, judicial matter, or proceeding, or to any special matter arising within the district where such vacancy or disability exists, which the judge of such district court could make or do, and the order or act shall have the same effect as if made or done by the judge of such district.

Take effect,
when.

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

Approved May 13, 1862.

W. JAYNE, *Governor.*

CHAPTER 29.

AN ACT RELATING TO CLERKS OF THE DISTRICT COURTS.

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

Clerks, how ap-
pointed.

SECTION 1. There shall be appointed a clerk of the district court, in each of the organized counties in this territory, which appointment shall be made by the judge of the district in which such county is situated, in writing, under his hand, and may be revoked at any time by said judge.

Office at
county seat.

SECT. 2. The clerk appointed in pursuance of the preceding section, shall keep his office at the county seat of his county.

SECT. 3. Before entering upon the duties of his office, each clerk of the district courts of this territory shall execute a bond to the treasurer of his county, with two or more sufficient sureties, to be approved by the said treasurer, in the penal sum of one thousand dollars, conditioned for the faithful discharge of his duties as clerk of the district court of his county. The said clerk shall also take and subscribe an oath or affirmation, that he will support the constitution of the United States, and faithfully and honestly discharge the duties of his office, which oath or affirmation shall be certified on the back of said bond, and filed with the treasurer of the county.

To give bond
and take oath.

SECT. 4. Any person who may, at any time, be injured or aggrieved by reason of the violation of the duties of his office, on the part of any such clerk of the district court, or by any wilful neglect or refusal to perform any of the duties pertaining to the office of clerk of the district courts, as the same are or may be prescribed by law, may institute legal proceedings upon the bond of such clerk, and collect thereon double the amount of damages actually sustained by such aggrieved person, which suit may be brought before any court having competent jurisdiction, and the county treasurer is also authorized and required for every such violation or neglect of duty, to collect a fine of not less than fifty dollars, for any such violation of duty, or refusal or neglect on the part of said clerk of the district court.

If he neglects
or refuses to do
duty. Penalty.

SECT. 5. It shall be the duty of the clerk of the district court to perform all duties which are or may be assigned him by law, and by the rules of the court of which he is clerk, made in pursuance of the statute in such case provided.

Duties.

SECT. 6. Each and every clerk of the district court may, at his discretion, with the sanction of the judge of his court, appoint a deputy clerk of the district, for whose acts the said clerk shall be responsible. The said deputy shall be appointed under the hand and official seal of the clerk, with the sanction of the judge indorsed on the back of such appointment.

May appoint
deputy, how.

SECT. 7. Before any deputy clerk of the district court shall enter upon the duties of his office, he shall take and subscribe the same oath or affirmation prescribed and required

Deputy to take
oath and give
bonds.

to be taken by the clerk of the district court, which oath or affirmation, together with the appointment of such deputy clerk, shall be filed with the treasurer of the proper county; and any clerk of the district court may, at any time, remove any deputy appointed by him, under the provisions of this act.

May remove deputy.

In absence of clerk, deputy may perform duties.

SECT. 8. In the absence of the clerk of the district court from his office or from the court, the deputy, appointed under and in pursuance of the provisions of this act, may perform all the duties pertaining to the office of clerk of the district court.

Take effect, when.

SECT. 9. This act shall take effect on and after its passage.

Approved April 24, 1862.

W. JAYNE, *Governor.*

DEEDS, MORTGAGES, & C.

CHAPTER 30.

AN ACT TO PROVIDE FOR THE RECORDING OF DEEDS, MORTGAGES, BONDS, CONTRACTS, AGREEMENTS, &C.

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

To be recorded within three months, where.

SECTION 1. All deeds, mortgages, bonds, contracts, agreements, or other instrument concerning any interest in lands in this territory, made in writing under seal, attested by one or more witnesses, and acknowledged before some person authorized by law to take acknowledgments of deeds, shall be recorded in the office of the register of deeds of the county where the land lies, within three months of the date of such instrument.

Duty of register to record all such.

SECT. 2. It shall be the duty of the register of deeds of each county within this territory, to receive and record at

length all such deeds, bonds, mortgages, contracts, and agreements, as shall be left with him for the purpose.

SECT. 3. Each and every instrument touching interest in lands made and recorded according to the provisions of the first section of this act, shall be notice to, and take precedence of, any subsequent purchaser or purchasers, from the time of delivering said instrument at the office of the register of deeds for record, and shall operate as a lien upon the lands therein described, according to its import and meaning.

To take precedence after time of delivery to register.

SECT. 4. The said register of deeds shall receive as compensation for recording all papers contemplated by this act, the sum of twelve and one half cents per hundred words.

Compensation of register.

SECT. 5. This act shall take effect and be in force from and after its passage, and approval by the governor.

Take effect, when.

Approved May 2, 1862.

W. JAYNE, *Governor.*

CHAPTER 31.

AN ACT CONCERNING ALIENATION BY DEED, OF THE PROOF AND RECORDING OF CONVEYANCES, AND THE CANCELING OF MORTGAGES.

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

SECTION 1. Conveyances of lands, or of any estate or interest therein, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded as directed in this chapter, without any other act or ceremony whatever.

Conveyances of lands, &c., may be made by deed, how.

SECT. 2. A husband and wife may, by their joint deed, convey the real estate of the wife in like manner as she might do by her separate deed if she were unmarried; but the wife shall not be bound by any covenant contained in such joint deed.

Wife convey by joint deed with husband.

SECT. 3. A deed of quitclaim and release of the form in common use, shall be sufficient to pass all the estate

Deed of quitclaim, force of.

which the grantor could lawfully convey by deed of bargain and sale.

Conveyance granting more than grantor could lawfully convey.

SECT. 4. A conveyance made by a tenant for life or years, purporting to grant a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey.

No covenant shall be implied.

SECT. 5. No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not.

No mortgage construed as implying covenant, &c.

SECT. 6. No mortgage shall be construed as implying a covenant for the payment of the sum thereby intended to be secured, and where there shall be no express covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment shall be given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.

No conveyance deemed void, when.

SECT. 7. No grant or conveyance of lands or interest therein shall be void, for the reason that at the time of the execution thereof, such land shall be in the actual possession of another claiming adversely.

Deeds, how executed and acknowledged.

SECT. 8. Deeds executed within this territory of lands, or any interest in lands therein, shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such; and the person executing such deeds may acknowledge the execution thereof before any judge or commissioner of a court of record, or before any notary public or justice of the peace within the territory; and the officer taking such acknowledgment shall indorse thereon a certificate of the acknowledgment thereof, and the true date of making the same, under his hand.

If executed in another state or territory.

SECT. 9. If any such deed shall be executed in any other state, territory, or district of the United States, such deed may be executed according to the laws of such state, territory, or district, and the execution thereof may be acknowledged before any judge of a court of record, notary public, justice of the peace, master in chancery, or other officer authorized by the laws of such state, territory, or district, to take the acknowledgment of deeds therein, or before any commissioner appointed by the governor of this territory, for such purpose.

SECT. 10. In the cases provided for in the last preceding section, unless the acknowledgment be taken before a commissioner appointed by the governor of this territory for that purpose, such deed shall have attached thereto a certificate of the clerk, or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is therein represented to be; that he believes the signature of such person subscribed thereto, to be genuine; and that the deed is executed and acknowledged according to the laws of such state, territory, or district.

If not taken before officer authorized by governor of this territory.

SECT. 11. When any married woman, residing in this territory, shall join with her husband in deed of conveyance of real estate, situate within this territory, the acknowledgment of the wife shall be taken separately apart from her husband, and she shall acknowledge that she executed such deed freely and without any fear or compulsion from any one.

When married woman joins, separate acknowledgment to be taken.

SECT. 12. When any married woman, not residing in this territory, shall join with her husband in any conveyance of real estate, situated within this territory, the conveyance shall have the same effect as if she were sole, and the acknowledgment or proof of the execution of such conveyance by her, may be the same as if she were sole.

When married woman not residing in territory.

SECT. 13. When any grantor shall die, or depart from or reside out of this territory, not having acknowledged his deed, the due execution thereof may be proved by any competent subscribing witness thereto, before any court of record in this territory.

When grantor shall die without acknowledging.

SECT. 14. If all the subscribing witnesses to such deed shall also be dead or out of this territory, the same may be proved before any court of record in this territory by proving the handwriting of the grantor, and of any subscribing witness thereto.

If subscribing witnesses die or live out of territory.

SECT. 15. If any grantor, residing in this territory, shall refuse to acknowledge his deed, the [grantor] or any person claiming under him, may apply to any justice of the peace in the county where the land lies, or where the grantor or any subscribing witness to the deed resides, who shall there-

If grantor refuses to acknowledge deed.

upon issue a summons to the grantor to appear at a certain time and place before the said justice, to hear the testimony of the subscribing witnesses to the deed; and the said summons, with a copy of the deed annexed, shall be served at least seven days before the time therein assigned for proving the deed.

Execution of deed, how proved.

SECT. 16. At the time mentioned in such summons, or at any time to which the hearing may be adjourned, the due execution of the deed may be proved by the testimony of one or more of the subscribing witnesses, and if proved to the satisfaction of the justice, he shall certify the same thereon; and in such certificate he shall note the presence or absence of the grantor, as the fact may be.

Deed may be proved before court of record, how.

SECT. 17. If any grantor, residing in this territory, shall refuse to acknowledge his deed, and the subscribing witnesses thereto shall all be dead or out of the territory, it may be proved before any court of record in this territory, by proving the handwriting of the grantor or of any subscribing witness, the said court first summoning the grantor for the purpose in the manner before provided in this chapter.

Court or justice may issue subpoenas for witnesses and others.

SECT. 18. The court or justice before whom any deed may be presented to be proved, as provided in the preceding sections, may issue subpoenas to the subscribing witnesses or others, as the case may require, to appear and testify touching the execution of such deed, which subpoenas may be served in any part of this territory.

Persons not appearing without excuse. Penalty.

SECT. 19. Every person who, being served with such subpoena shall, without reasonable cause, refuse or neglect to appear, or, appearing, shall refuse to answer on oath touching the matters aforesaid, shall be liable to the injured party in the sum of one hundred dollars damage, and for such further damages as such party may sustain thereby; and may also be committed to prison, as for a contempt, by the court or justice who issued such subpoena, there to remain until he shall submit to answer upon oath as aforesaid.

If deed not acknowledged, how to make it effective.

SECT. 20. Any person interested in a deed that is not acknowledged may, at any time before or during such application to a court of record, or such proceedings before a justice, file in the office of the register of deeds of the county where the lands are situated, a copy of the deed compared with the original by the register, which shall, for the space of

thirty days thereafter, in case of proceedings before a justice, and in case of proceedings before a court of record, for the space of ten days after the first day of the next term of such court, have the same effect as the recording of the deed, if such deed shall, within that time, be duly proved and recorded.

SECT. 21. If at the expiration of the time mentioned in the preceding section for that purpose, such proceedings for proving the execution of the deed shall be pending before a justice of the peace, the effect of filing such copy shall continue until the expiration of seven days after the termination of the proceedings, if such deed shall within that time be duly proved and recorded. Same.

SECT. 22. A certificate of the acknowledgment of any deed, or of the proof of the execution thereof, before a court of record, or justice of the peace, signed by the clerk of such court, or by the justice before whom the same was taken, as provided in this chapter, and in the cases where the same is necessary, the certificate required by the tenth section of this chapter shall entitle such deed, certificate or certificates aforesaid, to be recorded in the office of the register of deeds of the county where the land lies. Certificate of acknowledgment by court of justice entitles deed to be recorded.

SECT. 23. Every conveyance of real estate within this territory hereafter made, which shall not be recorded as provided by law, shall be void, as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate, or any portion thereof, whose conveyance shall be first duly recorded. Conveyance not recorded considered void.

SECT. 24. Deeds of pews and slips in any church may be recorded by the register of deeds of the county in which such church is situated, or by the clerk of the society or proprietors, if incorporated or legally organized; and such clerks shall receive the same fees as the register of deeds is entitled to for similar services. Deeds of pews and slips in church, how recorded.

SECT. 25. All conveyances and other instruments authorized by law to be recorded, and which shall be acknowledged or proved, as provided in this chapter, and if the same shall have been recorded, the record, or a transcript of the record, certified by the register in whose office the same may have been recorded, may be read in evidence in any court within this territory without further proof thereof; but the effect of Conveyances, &c., recorded, evidence in court.

such evidence may be rebutted by other competent testimony.

When deed is made defeasible.

SECT. 26. When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of a deed of defeasance, or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected, as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the office registry of deeds of the county where the lands lie.

Of recording of assignment.

SECT. 27. The recording of assignment of a mortgage shall not, in itself, be deemed notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to the mortgagee.

The term "purchaser."

SECT. 28. The term "purchaser," as used in this chapter, shall be construed to embrace every person to whom any estate or interest in real estate, shall be conveyed for a valuable consideration, and also every assignee of a mortgage, or lease, or other conditional estate.

The term "conveyance."

SECT. 29. The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing by which any estate or interest in real estate is created, aliened, mortgaged, or assigned, or by which the title to any real estate may be affected in law or equity, except wills, leases for a term not exceeding three years, and executing contracts for the sale or purchase of lands.

Same.

SECT. 30. The preceding section shall not be construed to extend to a letter of attorney, or other instrument containing a power to convey lands as agent or attorney for the owner of such lands; but every such letter or instrument, and every executory contract for the sale or purchase of lands, when acknowledged or proved in the manner prescribed in this chapter, may be recorded by the registry of deeds of any county in which the lands to which such powers or contract relates may be situated; and where so acknowledged or proved, and the record thereof, when recorded, or a transcript of such record duly certified, may be read in evidence, in the same manner, and with like effect, as a conveyance recorded in such county.

SECT. 31. No letter of attorney or other instrument so recorded, shall be deemed to be revoked by any act of the party by whom it was executed, unless the instrument containing such revocation be also recorded in the same office in which the instrument containing the power was recorded.

No letter of attorney deemed revoked, unless.

SECT. 32. A scroll or device used as a seal upon any deed of conveyance, or other instrument whatever, whether intended to be recorded or not, shall have the same force and effect as a seal attached thereto, or impressed thereon; but this section shall not be construed to apply to such official seals, as are or may be provided for by law.

Scroll or device used as seal of same force as seal.

SECT. 33. All conveyances of real estate, heretofore made and acknowledged, or proved in accordance with the laws of this territory, in force at the time of such making and acknowledgment or proof, shall have the same force as evidence, and be recorded in the same manner, and with the like effect, as conveyances executed and acknowledged in pursuance of the provisions of this chapter.

Conveyances heretofore made.

SECT. 34. Any mortgage that has been, or hereafter may be recorded, may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative, or assignee, acknowledging the satisfaction of the mortgage in the presence of the register of deeds or his deputy, who shall subscribe the same as a witness; and such entry shall have the same effect as a deed of release, duly acknowledged and recorded.

Mortgage, how discharged.

SECT. 35. Any mortgage shall be discharged upon the record thereof, by the register of deeds in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representatives or assigns, acknowledged or proved, and certified as hereinbefore prescribed to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied or discharged.

Same.

SECT. 36. Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book and page containing such record, in the minute of the discharge of such mortgage made by the register upon the record thereof.

Certificate of discharge to be recorded.

SECT. 37. If any mortgagee, or his personal representative or assignee, as the case may be, after a full performance

If mortgagee refuses to discharge mortgage. Penalty.

of the condition of the mortgage, whether before or after a breach thereof, shall, for the space of seven days after being thereto requested, and after tender of his reasonable charges, refuse or neglect to discharge the same, as provided in this chapter, or to execute and acknowledge a certificate of discharge or release thereof, he shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars damages, and also for all actual damages occasioned by such neglect or refusal, to be recovered in a civil action.

SECT. 38. Where the word "chapter" occurs in this act, it shall be construed to mean act.

Take effect,
when.

SECT. 39. This act shall take effect from and after its passage, and approval by the governor.

Approved May 7, 1862.

W. JAYNE, *Governor.*

ELECTIONS.

CHAPTER 32.

AN ACT PRESCRIBING THE MANNER OF CONDUCTING ELECTIONS; OF THE CANVASS AND RETURN OF THE SAME.

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

GENERAL ELECTIONS.

General election, when held, and for what purposes.

SECTION 1. That a general election shall be held in the several election precincts in this territory, on the first Monday of September in each year, at which there shall be chosen so many of the following officers as are by law to be elected in each year; that is to say, a delegate to congress and other territorial officers, members of the territorial council and house of representatives, judges of probate, district attorney, and the following county and precinct officers, to wit: county commissioners, sheriffs, registers of deeds, coroners, justices of the

peace, constables, and all other county, precinct, and district officers not herein enumerated, or otherwise provided for.

SECT. 2. The county commissioners shall respectively, at their regular sessions in June preceding the general election, [appoint] three capable and discreet persons, possessing the qualifications of electors, to act as judges of the election at each precinct and for each of the polls of election as [provided] for in this act, and to set off and establish election precincts or districts; and the clerk of the said board of commissioners shall make out and deliver to the sheriff of the county, immediately after the appointment of said judges, a notice thereof in writing, directed to the judges so appointed; and it shall be the duty of the said sheriff, within twenty days after the receipt of the said notice, to serve the same upon each of the said judges of the election.

County commissioners to appoint judges, &c.

SECT. 3. The said judges shall choose two persons having similar qualifications with themselves, to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers to be held at their respective precincts, until other judges shall be appointed, as hereinbefore directed; and the said clerks of election may continue to act as such during the pleasure of the judges of election, and the county commissioners shall from time to time fill all vacancies which may occur in the office of judges of election at any election precinct within their respective counties.

Judges to appoint clerks.

Judges to act, how long.

Clerk to act, how long.

Vacancies.

SECT. 4. The clerks of the several boards of county commissioners shall, at least forty days before any general election, and at least eight days previous to any special election, make out and deliver to the sheriff of his county, or to a justice of the peace of any county attached for judicial purposes, three written notices thereof for each election precinct, said notices to be, as nearly as circumstances will admit, as follows, to wit: "Notice is hereby given that on the — Monday, the — day of — next, at the house of —, in the town, district, or precinct of —, in the county of —, an election will be held for territorial, town, or district officers (naming the offices to be filled, as the case may be), which election will be opened at nine o'clock in the morning, and will continue open until four o'clock in the afternoon of the same day. Dated this — day of —, A. D. — (as the

Clerks of counties, to make out election notices — to contain what.

case may be). Signed, A B, clerk of the board of county commissioners.”

Sheriff to put them up, when and where.

SECT. 5. The sheriff aforesaid, to whom such notices shall be delivered as aforesaid, shall put up in three most public places in each town or district, the notices referring to such precinct, town, or district, at least twenty days previous to the time of holding any general election, and at least eight days previous to the time of holding any special election; and in cases where towns or districts may not be set off by law as election precincts, said notices shall be posted as follows: one at the house where the election is authorized to be held, and the two others at two of the most public and suitable places in that vicinity or settlement.

If judges are not sworn, others how chosen.

SECT. 6. If any person appointed to act as judge of an election as aforesaid, shall neglect or refuse to be sworn to act in such capacity, or shall not be present, the place of such person shall be filled by the votes of such qualified electors residing within the county, town, district, or precinct as may then be present at the place of election, and the person or persons so elected to fill the vacancy or vacancies shall be and are hereby vested with the same power as if appointed by the board of county commissioners.

Judges and clerks to take what oath.

SECT. 7. Previous to votes being taken, the judges and clerks of the election shall severally take an oath in the following form, to wit: “I, A B, do solemnly swear (or affirm, as the case may be), that I will perform the duties of judge (or clerk, as the case may be) according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit, and abuse, in conducting the same.”

Judges may administer oath, when.

SECT. 8. In case there shall be no judge or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered to administer the oath to each other, and to the clerks of the election: and the person administering oaths shall cause an entry thereof to be made and subscribed by him, and prefixed to the poll books.

Polls open, how long, &c.

SECT. 9. At all elections to be held under this act, the polls shall be opened at the hour of nine o'clock in the forenoon, and continue open until six o'clock in the afternoon of the same day, at which time the poll shall be closed. Thirty

minutes before the closing of the poll, proclamation shall be made in like manner, that the poll will be closed in half an hour; but the board may, in their discretion, adjourn the polls at twelve o'clock, noon, for one hour (proclamation of the same being made).

SECT. 10. The clerks of the election shall furnish the necessary poll books and stationery for conducting the same.

Clerks of election to furnish poll books and stationery.
Of the form of ballot.

SECT. 11. Every elector shall vote by ballot, and each person offering to vote shall deliver his ballot to one of the judges of election, in presence of the board. The ballot shall be a paper ticket, which shall contain, written or printed, or partly written and partly printed, the names of the persons for whom the elector intends to vote, and shall designate the office to which each person so named is intended by him to be chosen; but no ballot shall contain a greater number of names of persons designated to any office, than there are persons to be chosen at the election to fill such office.

SECT. 12. The names of all persons voted for by any elector at any general election or special election, shall be on one ballot.

Names all on one ballot.

SECT. 13. It shall be lawful for any elector to vote for delegate to congress at any place of holding election within this territory; for members of the council and house of representatives at any place of holding an election in the district in which he may reside; for sheriff, coroner, county commissioner, and any other county officers, at any place of holding an election in the county in which he resides; but for constable and other town or precinct officers, he shall [not] vote out of the town or precinct in which he resides: *Provided*,
That an elector qualified to vote for a part of, and not all, of the officers to be chosen at any election, shall present an open ticket, that the judges may determine the legality of such vote.

Certain officers may be voted for, where.

Proviso.

SECT. 14. If any person offering to vote shall be challenged as unqualified, by any judge or clerk of election, or by any other person entitled to vote at the same poll, the board of judges shall declare to the person so challenged, the qualification of an elector; if such person shall then state himself duly qualified, and the challenge shall not be withdrawn, one of the judges shall then tender to him the following oath:
"You do solemnly swear (or affirm, as the case may be), that

If person offering to vote is challenged.

Form of oath.

you are twenty-one years of age; that you are a citizen of the United States (or that you have declared your intention to become a citizen, conformable to the laws of the United States and this territory, on the subject of naturalization); that you have resided in the United States two years, and in this territory ninety days, and in this county twenty days next preceding this election; that you have not voted at this election;" and if any person so challenged shall refuse to take such oath so tendered, his vote shall be rejected.

If oath falsely taken. Penalty.

SECT. 15. If any person so offering such vote shall take such oath, his vote shall be received; and if any person shall take the said oath, knowing it to be false, he shall be deemed guilty of wilful and corrupt perjury; and shall, on conviction, suffer such punishment as now is, or shall hereafter be, prescribed by law for persons guilty of perjury. And if any person shall vote at any election, who is not a qualified voter, he shall forfeit and pay for the use of the county in which such election shall take place, a sum not exceeding fifty, nor less than twenty-five dollars, to be sued for and recovered in the name of the county commissioners, by a civil action before any justice of the peace in such county, for the use of common schools.

If person vote illegally. Penalty.

Ballot-box to be kept by judges.

SECT. 16. There shall be provided and kept by the judges of each election precinct (at the expense of the county in which such precincts are situated), a suitable ballot-box, with a lock and key.

Of the ballot-box.

SECT. 17. There shall be an opening through the lid of such box, of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls, the ballot-box shall be carefully examined by the judges of the election, that nothing may remain therein; it shall then be locked, and the key thereof delivered to one of the judges to be designated by the board, and shall not be opened during the election, except in the manner and for the purposes hereinafter mentioned.

Ballot, how received.

SECT. 18. When a ballot shall be received, one of the judges, without opening the same, or permitting it to be opened or examined (except to ascertain whether it be a single ballot), shall deposit it in the box.

Clerks to keep poll list.

SECT. 19. Each clerk shall keep a poll list, which shall

contain the names of all the persons voting at such election in their numerical order.

SECT. 20. At each adjournment of the polls, the clerk shall, Poll lists made to correspond. in presence of the judges, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered, according to the decision of the board, until such poll lists shall be made in all respects to correspond.

SECT. 21. The ballot-box shall then be opened and the poll list placed therein; and such box shall then be locked, Of the keeping of ballot-box and key. and a covering with a seal placed on the opening in the lid of such box, so as entirely to cover the same, and the key delivered to one of the judges, and the box to another, to be designated by the board.

SECT. 22. The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the poll; and the person having the box shall carefully keep it without opening it, or suffering it to be opened, or the seal thereof to be broken or removed; and shall publicly, in that condition, deliver it to the board of judges at the next opening of the poll, when the seal shall be broken, the box opened, the poll lists taken out, and the box again locked. Same

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

SECT. 24. For the preservation of order, as well as to secure the judges and clerks from insult and abuse, it shall be the duty of the constable or constables residing in the town, district, or precinct, who shall be designated for the purpose by the judges of the election, to attend all elections within such town, district, or precinct, and should no constable attend at such elections, the judges of election are hereby authorized and empowered to appoint one or more special constables to assist in preserving order during the election; and the judges are hereby authorized to enforce a fine not exceeding fifty dollars, on any person or persons who shall conduct in a disorderly or riotous manner, and shall persist in such conduct after having been warned of the consequences, and on refusal to pay the same, to commit him or them to the common jail of the county, for any time not For the preservation of order at elections.

exceeding six days, or until the fine shall be paid; and the constable to whom the order shall be directed, and the jailer of the county, are hereby required to execute said order, and receive such person or persons so committed as though it had been issued by a magistrate in due form of law.

Canvass to be made immediately and in public.

SECT. 25. As soon as the poll of the election shall be finally closed, the judges shall immediately proceed to canvass the vote given at such election, and the canvass shall be public and continued without adjournment until completed.

Canvass, how commenced and conducted.

SECT. 26. The canvass shall commence by a comparison of the poll lists from the commencement, and a correction of any mistakes that may be found therein until they shall be found or made to agree. The box shall then be opened, and the ballots contained therein taken out and counted by the judges, unopened, except so far as to ascertain whether each ballot is single; and if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot is completed; and if upon a comparison of the count with the poll lists, and the appearance of such ballots, a majority of such judges shall be of opinion that the ballots thus folded together were voted by one elector, they shall be destroyed.

If ballots exceed number on poll lists.

SECT. 27. If the ballots in the box shall be found to exceed in number the whole number of votes on the poll lists, they shall be replaced in the box after being purged as above, and one of the judges shall publicly draw out and destroy therefrom so many ballots unopened as shall be equal to such excess.

Form of poll books and when made out.

SECT. 28. The ballot and poll lists agreeing or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and the clerks shall set down in their poll books the name of every person voted for, written at full length, the office for which such person received such votes, and the number he did receive, the number being expressed at full length, such entry to be made, as nearly as circumstances will admit, in the following form, to wit: "At an election held at the house of A B, in the town, district, or precinct, in the county of —, and Territory of Dakota, on the — day of —, A. D. —, the following named persons received the number of votes annexed to their respective names, for the following described offices, to wit:

A B had — votes for delegate to congress; C D had — votes [for] member of the legislative council; E F had — votes for member of the house of representatives; G H had — votes for coroner; I J had — votes for sheriff; K L had — votes for county commissioner (and in like manner for any other person voted for). Certified by us, A B, C D, E F, judges of election. Attest: G H, I K, clerks of election.

SECT. 29. The judges of election shall then inclose and seal one of the poll books, and under cover direct the same to the clerk of the board of county commissioners of the county in which such election was held, and the packet thus sealed shall be conveyed by one of the judges or clerks of the election, to be determined by lot, if they cannot otherwise agree, or by some other person to be agreed upon by the judges, and delivered to said clerk of the board of county commissioners, at his office three days after the [closing] of the polls, and the other poll book, together with the ballot-box, deposited with one of the judges of election, to be determined by lot if not otherwise agreed; and the said poll book shall be subject to the inspection of any elector at any time thereafter, who may wish to examine the same.

Disposition of
poll books.

SECT. 30. If any judge or clerk of election, after being deputed by the judges of election at which he shall have served as judge or clerk, to carry the poll books of such election to the clerk of the board of county commissioners, shall fail or neglect to deliver such poll book to the said clerk within the time prescribed by law, safe with the seals unbroken, he shall, for every such offence, forfeit and pay the sum of five hundred dollars for the use of the common school in said county, to be recovered by a civil action, in the name of the county commissioners, in the district court.

If judge or
clerk fails in safe
transmission of
poll book. Pen-
alty.

SECT. 31. On the twentieth day after the close of any election, or sooner if all the returns be received, the clerk of the board of county commissioners, taking to his assistance two justices of the peace of the county, shall proceed to open said returns and make abstracts of the votes in the following manner: the abstract of the votes for delegate to congress shall be on one sheet; the abstract of votes for members of the legislative assembly shall be on one sheet; the abstract of votes for the county and precinct officers, shall be on another sheet; and it shall be the duty of the said clerk of county

General county
canvass, how
made.

Certificates made out and delivered, when.

Proviso.

Clerk of county to make out certificate of compensation due judges and clerks.

How to be paid.

In case of tie, decided by lot.

Clerk of county board to transmit copy of abstracts to secretary of the territory.

commissioners immediately to make out a certificate of election to each of the persons having the highest number of votes for members of the legislative assembly, county, and precinct officers, respectively, and to deliver said certificate to the person entitled to it, on his making application to the clerk at his office: *Provided*, That when a tie shall exist between two or more persons, for the council or house of representatives, the clerk of the board of commissioners shall give notice to the sheriff of the county, who shall immediately advertise another election, giving at least ten days' notice. And it shall be the duty of the clerk of the board of commissioners of each county, on the receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of election may be entitled for their services, and lay the same before the board of commissioners at their next session, and the said board shall order the compensation aforesaid to be paid out of the county treasury.

SECT. 32. If the requisite number of county officers shall not be elected by reason of two or more persons having an equal and the highest number of votes for one and the same office, the clerk, whose duty it is to compare the polls, shall give notice to the several persons so having the highest and an equal number of votes, to attend at the office of the proper clerk, at a time to be appointed by the said clerk, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared duly elected; and the said clerk shall make and deliver to the person thus declared duly elected a certificate of his election, as hereinbefore provided.

SECT. 33. The clerk of the board of commissioners, immediately after making the abstracts of the votes given in his county, shall make a copy of each of said abstracts, and transmit it by mail to the secretary of the territory, at the seat of government, and it shall be the duty of the secretary of the territory, with the chief justice and the governor, or a majority of them, to proceed within fifty days after the election — and sooner, if all the returns be received — to canvass the votes given for delegate to congress, and other territorial officers, and the governor shall grant a certificate of election to the person having the highest number of votes, and shall

also issue a proclamation, declaring the election of such person. In case there shall be no choice by reason of any two or more persons having an equal and the highest number of votes, the governor shall by proclamation order a new election: *Provided*, That if either of the persons mentioned in this section as canvasser be a candidate for delegate to congress, such person shall take no part in the canvass of said votes.

SECT. 34. If the returns of election of any county in this territory shall not be received at the office of the secretary of the territory within forty days after the day of election, the said secretary shall forthwith send a messenger to the clerk of the board of commissioners of such county, whose duty it shall be to furnish said messenger with a certified copy of such returns; and the said messenger shall be paid out of the treasury the sum of ten cents per mile for each mile he shall necessarily travel in going to and returning from the office of said clerk.

SECT. 35. Any person who shall receive a certificate of his election as a member of the council or house of representatives of the legislative assembly, coroner, or county commissioner, shall be at liberty to resign such office, though he may not have entered upon the execution of its duties, or taken the requisite oath of office; and when any vacancy shall happen in the office of [the] members of the council or house of representatives of the legislative assembly by death, resignation, or otherwise, the governor shall issue a writ of election, directed to the sheriff of the county or district in which such vacancy shall happen, commanding him to notify the several judges in his county or district, to hold a special election to fill such vacancy or vacancies, at a time to be appointed by the governor: *Provided*, That if there be no session of the legislative assembly, between the happening of such vacancy or vacancies and the time of the general election, it shall not be necessary to order a special election to fill such vacancy; and whenever any such vacancy shall happen in the office of sheriff, either by death, resignation, or otherwise, the clerk of the board of commissioners of the county in which such vacancy shall happen, shall immediately notify the board of county commissioners of the proper county, who shall forthwith appoint some suitable person to be sheriff of

Proviso.

If returns not received by secretary.

Persons elected may resign, and the governor may order new election.

Proviso.

Other vacancies, how filled.

the county during or until the next general election, and when any vacancy shall happen in the office of delegate to congress from this territory, it shall be the duty of the governor to issue his proclamation appointing a day to hold a special election to fill such vacancy.

When two or more counties are united in one district.

SECT. 36. When two or more counties are united in one council or representative district, the clerk of the board of county commissioners of the county last established shall, within twenty days after the day of election, attend at the office of the clerk of board of county commissioners of the senior county, and in conjunction with the clerk or clerks of the senior county or counties, shall compare the votes given in the several counties comprising such council or representative district, and said clerks shall immediately make out a certificate of the person or persons having the highest number of votes in such counties, for a member or members of the council or house of representatives of the legislative assembly, which certificate shall be delivered to the person entitled to it, on his application to the clerk of the board of county commissioners of the senior county at his office.

When vacancy in council or house.

SECT. 37. When any vacancy shall happen in the office of member of the council or house of representatives of the legislative assembly, by death, resignation, or otherwise, it shall be the duty of the clerk of the board of county commissioners, if the county only compose such council or representative district, as soon as he shall be informed thereof, to notify the governor of such vacancy, and if there be more than one county comprised within such council or representative district, it shall be the duty of the clerk of the board of commissioners of the senior county in such district, so to notify the governor; the governor, immediately upon receiving such notification, shall proceed in the same manner as is prescribed for other cases in the thirty-fifth section of this act.

Compensation of officers of election.

SECT. 38. There shall be allowed out of the county treasury of each county, to the several judges and clerks of election, two dollars per day, and to the person carrying the poll books from the place of election to the clerk's office, the sum of five cents per mile for going and returning; this provision to extend to the unorganized counties, and to

be paid out of the treasury of the county to which they are attached.

SECT. 39. If a vacancy shall occur in the council or house of representatives of this territory, for any cause, and if the county or counties comprising the district in which such vacancy has happened, shall have been divided after the election of the member whose seat is vacant, and before the election to supply the vacancy, such election shall be ordered in every county in which any part of the original county or district may be situated; but no person shall be permitted to vote at any such election who does not at the time reside within the limits of the original county or district in which such vacancy may have occurred: *Provided*, That nothing herein contained shall be so construed as to permit any person to vote so residing within the same limits, who has not the other qualifications of an elector.

If counties divided after election of member whose seat is vacant.

Proviso.

SECT. 40. In cases of elections to fill vacancies as provided for in this act, the returns shall be made by the clerks of the boards of county commissioners of the different counties, within twenty days after the election, to the office of the clerk of the board of county commissioners of the original county composing the district, and certificates of election shall be made out and signed by the clerks of the boards of county commissioners of the different counties in which such election may have been held.

Returns, how made in such elections.

SECT. 41. No election returns shall be refused by any clerk of the board of county commissioners for the reason that the same may be returned or delivered to him in any other than the manner directed in this act; nor shall he refuse to include any returns in his estimate of votes for any informality in holding an election or making returns thereof; but all returns shall be received, and the votes canvassed by such clerks, and a certificate given to the person or persons who may, by such returns, have the greatest number of votes.

Clerk shall not refuse election returns on account of informality.

SECT. 42. If any judge or clerk of election as [or] clerk of the board of county commissioners, or any other person in any manner concerned in conducting the election, shall corruptly violate any of the provisions of this act, he shall forfeit and pay to the county a sum not less than fifty nor more than five hundred dollars, to be recovered by a civil action in the name of the county commissioners of the proper county,

If officers of election violate provisions of this act. Penalty.

which money, when collected, shall be for the support of common schools in said county.

Commencement of regular term of office.

SECT. 43. The regular term of office for all county, town, or precinct officers, when elected for a full term, shall commence on the first day of January next succeeding their election.

Commencement of term in case of vacancies filled.

SECT. 44. Any of the territorial, county, district, or precinct officers that may be elected or appointed to fill vacancies, may qualify and enter upon the duties of their office immediately thereafter; and when elected, they may hold the same during the unexpired term for which they were elected, and until their successors are elected and qualified; but if appointed, they shall hold the same until their successors are elected and qualified.

No civil process served on day of election.

SECT. 45. During the day on which any general, special, town, precinct, or charter election shall be held, no civil process shall be served on any elector entitled to vote at such election.

Person having highest number of votes deemed elected.

SECT. 46. In all elections for the choice of any officer, unless it is otherwise expressly provided, the person having the highest number of votes for any office shall be deemed to have been elected to that office.

Concerning construction of statutes.

SECT. 47. The clerk of the board of county commissioners shall not construe the statutes, concerning the opening of election returns, so as to decide all matters of law and fact himself, but the clerk aforesaid, and the two justices he shall call to his assistance, shall constitute a board, a majority of whom shall decide all matters of disagreement, and the said board shall disregard technicalities and misspelling, the use of initial letters or abbreviations of the names of candidates for office, if it can be ascertained from such votes for whom they are intended, but they shall not count votes polled in any place but established precincts, and a breach of the provisions of this section shall be deemed a misdemeanor in office, and punished accordingly.

County clerk to provide uniform poll books, containing what. How distributed.

SECT. 48. It shall be the duty of the clerk of the board of county commissioners of each organized county in this territory, to provide uniform poll books for the use of his county, each poll book containing a copy of the law prescribing the qualifications of electors, and so much of this act as relates to the duties of judges and clerks of elections, the manner of

conducting elections, and the penalties imposed for offences; also containing blanks for all entries required to be made in said poll books; and at the time the said clerk delivers notices for an election to the sheriff of his county, as provided for in this act, he shall also deliver to the sheriff two copies of said poll books for an election precinct; and the sheriff shall deliver the same into the hands of one of the judges of election; and the judges of election, receiving the said poll books, shall deliver, and [or] cause the same to be delivered, to the clerks on the day of election.

SECT. 49. Any citizen of Dakota Territory, who is a qualified voter, shall not be deprived of his vote because he is in the military service of the United States: *Provided*, He resided in said territory at the time when he enlisted. The officers and privates of any company or part of company of Dakota volunteers, who are in the military service of the United States, shall be permitted to vote at the polls in any authorized precinct at any authorized election, for any of the following named officers, to wit: delegate to congress and all territorial officers: *Provided*, Such officer or officers are required by law to be elected at such election; but no officer or private of such military company or companies shall be allowed to vote at such election for any precinct or county office, nor for members of the legislative assembly, unless such volunteer, officer, or private be in the county in which he resided at the time of his enlistment. In case any company or detachment of Dakota volunteers in the service of the United States be without the limit of an organized county, or more than five miles distant from an authorized precinct on the day of an election authorized by law, the officers and privates of said company or part of company may elect three judges of election, which judges shall appoint two clerks; and the judges shall take and administer such oaths as are required in this act; and the polls shall be opened and conducted in like manner as prescribed in this act for elections in authorized precincts; and when the board shall have been organized as aforesaid, and the polls proclaimed open, all such volunteer officers and privates then present, shall be allowed to vote in like manner and for such officers as prescribed in this section, and return shall be made of such election to the secretary of this territory.

Citizen of Dakota in military service, not deprived of vote.
Proviso.

May vote for what officers.

Proviso.

May establish polls, in what cases.

Returns, how made.

Legal voters may vote for delegate to congress at any authorized precinct in territory.

SECT. 50. And all legal voters in this territory, residing on ceded lands or unceded lands, shall have the right to vote for delegate to congress, at any election precinct established by law, in any organized county in this territory, and all legal voters living in unorganized counties shall vote in the organized counties to which their unorganized counties are respectively attached for election and representative purposes; and no soldier, officer, or private, other than those who resided in this territory previous to and at the time of their enlistment, shall be entitled to vote at any election in said territory.

Soldiers not formerly residing in Dakota cannot vote.

Qualifications of voters.

SECT. 51. Every free white male person above the age of twenty-one years, who shall have been a resident of the territory ninety days prior to any election, and who is a citizen of the United States, or has declared on oath his intention to become such, and shall have taken an oath to support the constitution of the United States, shall be entitled to vote; and all persons possessing the qualifications mentioned in this section, and who have resided in this territory nine months, shall be eligible to any office within said territory.

Eligibility to office.

Take effect, when.

SECT. 52. This act shall take effect from and after its passage.

Approved May 15, 1862.

W. JAYNE, *Governor*

CHAPTER 33.

AN ACT TO DESIGNATE THE TIME OF HOLDING THE GENERAL ELECTION, AND TO PROVIDE FOR THE ELECTION OF A DELEGATE TO CONGRESS.

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

Date of general election.

SECTION 1. That the time for holding the general election, in the Territory of Dakota, shall be on the first Monday of September in each year.

Election of delegate to congress in 1862.

SECT. 2. That at the general election in the year one thousand eight hundred and sixty-two, there shall be elected a delegate to serve in the Congress of the United States, after the term of the present delegate shall have expired, and every

two years thereafter a like election for delegate to congress shall take place.

SECT. 3. That when any vacancy shall happen in the office of delegate to congress from this territory, it shall be the duty of the governor to issue his proclamation, appointing a day to hold a special election to fill such vacancy.

In case of vacancy in that office.

SECT. 4. This act to take effect from and after its passage.

Take effect, when.

Approved April 21, 1862.

W. JAYNE, *Governor.*

ENTRIES AND DETAINERS.

CHAPTER 34.

AN ACT TO PROVIDE A REMEDY FOR FORCIBLE ENTRIES AND UNLAWFUL DETAINERS.

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

SECTION 1. No person or persons shall hereafter make an entry into lands, tenements, or other possessions, but in cases where entry is given by law; and in such cases not with strong hands nor with a multitude of people, but only in a peaceable manner; and if any person from henceforth do to the contrary, and thereof be duly convicted, he shall be punished by fine.

To make no other than lawful entry.

SECT. 2. Any justice of the peace shall have authority to inquire as hereinafter directed, as well against those who may make unlawful or forcible entry into lands, tenements, or other possessions, and detain the same, as against those who, having lawful and peaceable entry into lands, tenements, or other possessions, unlawfully and forcibly detain the same; and if it be found, upon such inquiry, that an unlawful or forcible entry hath been made, and that said lands, tenements, or other possessions are unlawfully detained by force and strong hands, or that the same, after a lawful entry, are so held or detained unlawfully, then such justice shall cause the party complaining to have restitution thereof.

Justice may inquire into manner of entry.

Justice to issue
summons on
complaint.

SECT. 3. When any complaint shall be made in writing to any justice of the peace, of any such unlawful or forcible entry or unlawful detainer, said justice shall issue a summons, directed to the sheriff or any constable of the same county, commanding him to summons the person or persons against whom such complaint shall have been made, to appear before the said justice on a day in such summons named, which shall not be less than six nor more than ten days from the day of issuing said summons, and at the place therein named.

Summons, how
made.

SECT. 4. Such summons shall be served upon the person or persons, against whom the same is issued, by delivering a certified copy thereof to such person or persons, at least three days before the return day thereof; and the officer serving the same shall make a special return of the time and manner of serving said summons.

Justice to hear
and determine.

SECT. 5. After the return of the said summons served as hereinbefore provided, and at the time and place appointed in said summons, the said justice shall proceed to hear and determine said complaint: *Provided*, That if either party shall call for a trial by jury, the said justice shall issue a venire, in the same manner, upon the same terms, as in other cases provided for trial by jury in justices' courts; and such jury shall be sworn as in other cases.

Proviso.

If person
against whom
complaint is
issued be absent
from county.

SECT. 6. If at the time of making said complaint it shall be made to appear that the person or persons against whom said complaint is made, or either of them, are absent from the county, it shall be the duty of the justice before whom the same is made, to issue his summons as hereinbefore provided, and make the same returnable not less than six, nor more than ten days from the time of issuing the same, and such summons may be served by leaving a true and attested copy thereof at the last and usual place of such person or persons' abode, not less than six days before the return day thereof; such copy shall be left with some member of the family, or some person residing at such place, of suitable age and discretion, to whom the contents shall be explained by the officer leaving the same; and the said officer shall make a special return of the time and manner of issuing said summons; and the suit shall thereafter proceed the same as though a personal service were had of such summons.

SECT. 7. The justice may, at his discretion, adjourn any

trial under this act, not exceeding six days; but in all cases mentioned in section twelve in this act, if the defendant, his agent or attorney, shall make oath that he cannot safely proceed to trial, for the want of some material witness, naming him, that he has made due exertion to obtain said witness, and believes if an adjournment be allowed, he will be able to procure the attendance of said witness, or his deposition, in time to produce the same upon such trial; in which case, if such person or persons will give bond, with one or more sufficient sureties, conditioned to pay the said complainant for all rent that may accrue during the pendency of such suit, and all costs and damages consequent upon such adjournment, the said justice shall adjourn such cause for such reasonable time as may appear necessary, not exceeding three months.

Justice may
adjourn trial,
when.

SECT. 8. The deposition of any witness, whose testimony may be considered necessary by either party, may be taken for the same reason, in the same manner, and with the same effect as is provided by law for taking of depositions to be used in justices' courts.

Of deposition.

SECT. 9. If, upon the trial of any complaint under this act, the justice or jury shall find that the defendant or defendants, or either of them, are guilty of the allegation in the complaint, the said justice shall thereupon enter judgment for the complainant, to have restitution of the premises, and shall impose such fines, not exceeding one hundred dollars, considering all the circumstances, as he may deem just, and shall tax the costs for the complainant, and may upon execution in favor of said complainant, for such costs as in other actions ex delicto, and the said justice shall also award and issue a writ of restitution; but if the said justice or the jury find that the person complained of is not guilty, the complaint, in their opinion, not having been supported, the said justice shall tax the costs against the complainant, and issue execution therefor.

If defendant
found guilty.
If not guilty.

SECT. 10. If the jury impaneled as aforesaid, cannot agree upon a verdict, the justice before whom the trial is pending, may discharge said jury, if in his opinion they are not likely to agree upon a verdict, and issue a venire returnable forthwith, or at some other time agreed upon by the parties for the purpose of impaneling a new jury.

If jury cannot
agree, new jury
to be impan-
neled.

SECT. 11. The complainant of any forcible entry, or any

If complainant
recover, it may

be for treble
damages and
costs.

unlawful detainer, as aforesaid, who shall recover against the person complained of as aforesaid, shall be entitled to recover treble damages, with costs of suit, by a civil action against the offender or offenders, to be brought before any justice of the peace or court of record, for that purpose: *Provided, always*, That nothing contained in the foregoing part of this act, shall be construed to extend to any person or persons, who have had quiet, peaceable, and uninterrupted occupation of any lands, tenements, or other possessions, otherwise than by devise or lease, for the period of three whole years, next before the entering of such complaint, any thing in this act to the contrary notwithstanding.

Proviso.

If tenant or
person holding
over refuse to
quit possession or
pay rent.

SECT. 12. When any person shall hold over any lands, tenements, or other possessions, after the sale thereof on execution against such person and expiration of the time for redemption, or after a sale thereof under a mortgage upon foreclosure by advertisement, or after the termination of the time for which they are demised or let to him or her, or to the person under whom he or she holds possession, or contrary to the conditions or covenants of the lease or agreement, under which he or she holds, or after any rent shall have become due, according to the term of such lease or agreement, and shall remain unpaid for the space of three years, in all such cases, if the lessor, his heirs, executors, administrators, assign, agent, or attorney, shall make demand in writing of such person or tenant holding over, that he or she shall deliver possession of the premises as aforesaid, and if such tenant or person holding over shall refuse, or neglect for the space of three days, after such demand, to quit the possession of such lands or tenements, or to pay the rent thereof, so due and unpaid as aforesaid, upon complaint thereof to any justice of the peace of the county, the justice shall proceed to hear, try, and determine the same, in the same manner as in other cases hereinbefore provided for: *Provided*, That in all cases mentioned in this section, the justice shall impose no fine upon such tenants or persons holding over.

Proviso.

Preceding sec-
tion does not
extend to whom.

SECT. 13. The preceding section shall not extend to any person who has or shall have continued in possession three years after the termination of the time for which the premises were demised or let to him or her, or those under whom he or she claims, or after the sale thereof as aforesaid, or to any

person who continues in possession three years quietly and peaceably by disseizin, any thing in this act to the contrary notwithstanding.

SECT. 14. The complainant shall be entitled to bring a civil action against the person complained of, and who shall be found guilty on the trial, and may recover treble damages from the time of notice to quit the premises, and until that time damages only.

Complainant may recover what damages.

SECT. 15. Every person summoned as a juror, or subpoenaed as a witness, who shall not appear, or appearing, shall refuse to serve or give evidence, in any prosecution instituted by virtue of this act, shall forfeit and pay for every such default or refusal, unless some reasonable cause be assigned, such fine, not exceeding ten dollars, as the said justice shall think proper to impose.

Jurors or witnesses refusing to serve or give evidence. Penalty.

SECT. 16. All fines imposed by virtue of this act, shall be paid to the county treasurer of the county where the action is commenced, for the use of common schools, and the said justice may commit the person against whom the fine is imposed, to the common jail of the county until such fine be paid, or the said justice may issue an execution therefor, as in other cases ex delicto.

Of fines, and disposition of same.

SECT. 17. If either party shall feel aggrieved by the verdict of the jury or decision of the justice, he may appeal within ten days, as in other cases tried before justices of the peace, except his bond shall be with two or more sufficient sureties, to be approved by said justice, conditioned to pay all costs of such appeal, and abide the order the court may make therein, and pay all rent and other damages justly accruing to said complainant during the pendency of such appeal.

Of appeals.

SECT. 18. Upon the taking of such appeal all further proceedings in the case shall be thereby stayed, and the appellate court shall thereafter issue all needful writs and processes, to carry out the provisions of this act, according to the true intent and meaning thereof.

Upon appeal further proceedings stayed.

SECT. 19. If a writ of restitution shall have been issued previous to the taking of any appeal, as provided in this act, the justice shall forthwith give the appellate a certificate of the allowance of such appeal, and upon the service of the [same upon the] officer having such writ of restitution, the

If writ of restitution has been issued previous to appeal.

said officer shall forthwith cease all further proceedings by virtue of such writ, and if such writ shall not have been completely executed, the defendant shall remain in possession of the premises, until the appeal shall have been determined.

Appellate court not to dismiss or quash for want of form only.

SECT. 20. In all cases of appeal under the provisions of this act, the appellate court shall not dismiss or quash the proceedings for want of form only, provided they have been conducted substantially, according to the provisions of this act.

Of amendments.

SECT. 21. Amendments may be allowed by the court at any time before final judgment, upon such terms as to the court shall appear just, in the same cases and manner, and to the same extent as in civil actions.

What may be set up in answer.

SECT. 22. All matters in excuse, jurisdiction, or avoidance of the allegations in the complaint, shall be set up in answer.

Appellate court has power to compel justice to make or amend return.

SECT. 23. The appellate court shall have power to compel the justice by attachment, to make or amend any return which shall be withheld, or insufficiently or improperly made.

SECT. 24. The following, or equivalent forms, shall be used in proceedings under this chapter.

FORM OF SUMMONS.

TERRITORY OF DAKOTA, }
county of —, } ss.

Form of summons.

To the sheriff or any constable of the county aforesaid.

Whereas —, of —, hath exhibited unto a justice of the peace, in and for said county aforesaid, a complaint against —, of —, for that the said —, on the — day of —, at (here insert the substance of the complaint with legal certainty); therefore, in the name of the United States, you are hereby commanded to summons the said —, if to be found in the said county, to appear before me at —, on the — day of —, at — of the clock in the — noon, there and then to make answer to, and defend against the complaint aforesaid, and further to be dealt with according to law, and make due return to me of this summons, with your doings thereon.

Dated at —, this — day of —, in the year one thousand eight hundred and —.

A— B—, Justice of the Peace.

FORM OF WRIT OF RESTITUTION.

TERRITORY OF DAKOTA, }
 — county, } SS.

To the sheriff or any constable of the county aforesaid.

Form of writ
of restitution.

Whereas —, of —, at the court of inquiry of an unlawful detainer, or an unlawful forcible entry and unlawful detainer, held at —, in the county aforesaid, on the — day of —, one thousand eight hundred and —, before —, justice of the peace in and for the county aforesaid, by the consideration of the court recorded, recovered judgment against —, of —, to have restitution of (here describe the premises as in the complaint); therefore, in the name of the United States, you are hereby commanded, that taking with you the force of the county, if necessary, you cause the said — to be immediately removed from the aforesaid premises, and the said — to have peaceable restitution of the same; you are also hereby commanded, that of the goods and chattels of the said —, within said county, you cause to be levied, and the same being disposed of according to law, to be paid to the said — the sum of —, being the costs taxed against said — for the said —, at the court aforesaid, together with twenty-five cents for this writ, and thereof, together with this writ, make due return within thirty days from the date hereof, according to law.

Dated at —, the — day of —, one thousand eight hundred and —.

FORM OF VERDICT.

At a court of inquiry held at —, on the — day of —, one thousand eight hundred and —, before —, a justice of the peace in and for the county of —, complainant against —, respondent, the jury finds the facts alleged in the said complaint are true; that the said — is guilty thereof, and the said — ought to have restitution of the premises therein designated without delay (or in case the jury do not find the allegation of complaint proved), the jury find that the facts alleged in the same complaint are not proved, and that the said — is not guilty thereof.

Form of ver-
dict.

Take effect,
when.

SECT. 25. This act shall take effect from and after its passage and approval.

Approved May 15, 1862.

W. JAYNE, *Governor.*

ESTRAYS.

CHAPTER 35.

AN ACT TO PROVIDE FOR AN ESTRAY LAW.

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

Freeholder may
take what ani-
mals, and when.

SECTION 1. That any freeholder may take up any stray horse, mule, neat-cattle, sheep, or swine, found within his inclosed premises, at any season of the year. Any estray found around the premises of any freeholder, between the first of November and the first day of April, may be taken up by such freeholder; and any horse or mule, with any portion of harness attached to them, and any oxen with yoke on, that are believed to have strayed away from their owner, may be taken up by any person at any time.

Duty of taker
up to give no-
tice.

SECT. 2. It shall be the duty of any person taking up an estray, to send a description of the same to the county clerk, within two weeks after taking it up; and the county clerk shall immediately record the same in a book kept for that purpose. The taker up of any estray shall, within two weeks thereafter, procure the publication of the description of such animal in any one newspaper published within the county.

Three weeks'
notice.

SECT. 3. The proprietor of such newspaper shall publish said description at least three consecutive weeks, and shall receive a reasonable compensation therefor.

Owner may
reclaim estray,
how.

SECT. 4. The owner of an estray may, at any time previous to its sale, reclaim the same, on proving property, by oath

or otherwise, and paying for the advertisement and a reasonable compensation for the necessary expense incurred by the person taking it up.

SECT. 5. When an estray has not been reclaimed within nine months from the time it was advertised, if it be a sheep, swine, or calf, under the age of one year, it shall be the property of the person taking it up. When the animal is a horse, mule, bull, steer, or cow, the person taking it up shall notify a justice of the peace residing within the county, who shall appoint two persons to appraise the animal at what they consider its cash value; a day of sale shall be fixed, and notice of such sale shall be advertised for ten successive weeks, in any newspaper published in the county. If there be no newspaper in the county, then the notice of sale shall be posted in at least three conspicuous places within the county, for at least three weeks before the sale. And on the day appointed, the animals shall be sold to the highest and best bidder.

If not reclaimed within nine months.

SECT. 6. The place of sale shall be at the county seat.

Sale at county seat.

SECT. 7. When any estray is sold, it must bring at least two thirds of the appraised value. In case it does not, the animal shall be re-appraised, and again offered for sale one week from the day appointed for the first sale, without advertisement.

Must bring two thirds appraised value. If it does not.

SECT. 8. If, upon examination of said sale, the said animal will not bring enough to defray the entire expense, the taker up of said animal may, on payment of the same, be the owner thereof.

If sale will not pay expenses.

SECT. 9. After all expenses have been paid, the balance, if any, shall be paid into the school fund.

Balance remaining to go to school fund.

SECT. 10. The appraisers of estrays shall estimate the value of the labor, trouble, and expense of the person in taking up and keeping an estray, taking into consideration the services rendered by the animals.

What appraisers shall consider.

SECT. 11. The appraisers of estrays shall receive fifty cents each for each appraisement; but when more than one animal is taken up at the same time, by one man, they shall all be appraised at once, and the appraisers shall be entitled to compensation for but one appraisement. The justice of the peace shall receive for his services fifty cents.

Compensation of appraisers.

Of justice.

SECT. 12. Should any animal, taken up as an estray, die

If animal dies.

while in possession of the taker up, he shall not be liable for the loss, unless its death was the result of mistreatment or wilful neglect.

Take effect,
when.

SECT. 13. This act shall take effect from the date of its passage.

Approved, April 26, 1862.

W. JAYNE, *Governor.*

CHAPTER 36.

AN ACT CONCERNING HORSES AND OTHER ANIMALS.

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

Stallion or ass
over two years,
not allowed to
run at large.
Owners liable
to fine.

SECTION 1. That no stallion or ass, over the age of two years, shall be allowed to run at large; and the owners of such animal found running at large shall be liable to a fine of five dollars for the first offence, and ten dollars for any subsequent offence, to be recovered by an action of debt before any justice of the peace in the county. Such fine or fines, when collected by any justice of the peace, shall be paid into the county treasury of the county where the same shall have been collected, and the same shall be appropriated for the benefit of common schools.

Fines appropri-
ated to common
schools.

When animal
may be castrated.

SECT. 2. Any person finding such animal running at large, may take up and secure the same, and shall give public notice of such taking up; and if the animal, so taken up, be not claimed within five days, and the fines and costs of taking up and keeping paid, may castrate the same: *Provided*, The usual precaution be used, that the life of the animal be not endangered thereby more than is usual, and shall be entitled to recover from the owner of any such animal for castrating the same, the sum of five dollars in addition to a reasonable compensation for taking up and keeping, and shall have a lien upon said animal for the payment of the same.

Proviso.

Owners respon-
sible for further
damage done.

SECT. 3. The owner or owners of any such stallion or ass, who shall suffer or permit the same to run at large, contrary to the provisions of this act, shall be further liable for and pay

all damages which any person may sustain in consequence of such horse or ass running at large.

SECT. 4. This act shall take effect and be in force from ^{Take effect, when.} and after its passage.

Approved May 15, 1862.

W. JAYNE, *Governor.*

EXEMPTION.

CHAPTER 37.

AN ACT EXEMPTING PROPERTY FROM EXECUTION, WRIT OF ATTACHMENT, OR ANY OTHER FINAL PROCESS OF A COURT.

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

SECTION 1. That a homestead, belonging to any man or woman resident in this territory, consisting of not more than eighty acres of land, and the dwelling-house and other improvements and appurtenances situated thereon convenient for a homestead, to be selected by the owner thereof, and not included within any incorporated city or village, or instead thereof, at the option of the owner, a quantity of land not exceeding in amount one acre, being within an incorporated city, town, or village, and the dwelling-house thereon and its appurtenances, shall not be subject to attachment or mesne process, or [levy], or sale upon execution, or any other process issuing from any court within this territory. This section shall be construed to exempt such homestead in the manner aforesaid, during the time it shall be owned or occupied by the widow or minor child or children of any deceased person, who was, when living, entitled to the benefit of this act.

SECT. 2. Such exemption shall not extend to any mort- ^{Such exemp- tion does not ex-}

tend to valid mortgage.

gage thereon, but such mortgage of said homestead or any part thereof by the owner if he be a married man, shall not be valid unless the wife join in said conveyance.

SECT. 3. Whenever any levy shall be made upon the lands or tenements of a householder whose homestead has not been selected out or set apart by metes and bounds, such householder may notify the officer at the time of making such levy of what he regards as his homestead, with a description thereof, within the limits above described, and the remainder alone shall be subject to sale under such levy.

If plaintiff dissatisfied with land set apart.

SECT. 4. If the plaintiff in execution be dissatisfied with the quantity of land selected and set apart as aforesaid, the officer making the levy shall cause the land to be surveyed, beginning at a point to be designated by the owner, and set apart in compact form, including house and other buildings and improvements, to the amount specified in the first section of this act. The expense of said survey shall be paid by said plaintiff.

Officer make sale when, and of the deed.

SECT. 5. After the survey shall have been made, the officer making the levy, may sell the property levied upon, and not included within the set-off, in the same manner as is provided by law in other cases for the sale of real estate in execution; and in giving a deed he shall describe the same fully by metes and bounds.

Owner of several houses may select either.

SECT. 6. Any person owning several houses situated upon the same or different lots of land within this territory, may select either one of said houses and lots as a homestead, that he may see fit, and the same shall be exempt as aforesaid, and every person occupying a home not his own, and owning a homestead as hereinbefore described, shall be entitled to the exemption aforesaid.

Not exempt from sale for taxes.

SECT. 7. Nothing in this act shall exempt any real estate from sale in payment for taxes.

Other property exempt.

SECT. 8. All property hereinafter mentioned shall be exempt from attachment or mesne process, or levy of execution, or any other final process issued from any court.

1. All family pictures.
2. All miscellaneous books and musical instruments for use of family not exceeding five hundred dollars in value.
3. A seat or pew in any house of worship.
4. A lot or lots in any burial-ground.

5. All wearing apparel suitable to the condition of the debtor and his family.

6. All household furniture used by the debtor and his family, not exceeding five hundred dollars in value, and in case the debtor shall own more than five hundred dollars' worth of furniture, he shall select such as may be deemed most useful to himself and family, leaving the balance subject to legal process.

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

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

9. The tools and instruments of any mechanic, whether a minor or of age, used and kept for the purpose of carrying on his trade or business, and in addition thereto, stock in trade not exceeding two hundred dollars in value. The library and implements of any professional man, not exceeding six hundred dollars in value, all of which articles hereinbefore exempt shall be chosen by the debtor, his agent or legal representative, and whenever the articles are limited in value, they shall be [appraised] at the usual price of such articles at sheriff sale as near as can be. To be selected by whom.

SECT. 9. Nothing in this act shall be so construed as to exempt any property in this territory from execution for clerks', laborers', or mechanics' wages. Not exempt for clerks', laborers', and mechanics' wages.

SECT 10. This act shall take effect from and after its passage. Take effect when.

Approved May 12, 1862.

W. JAYNE, *Governor.*

CHAPTER 38.

AN ACT TO EXEMPT THE PROPERTY OF MARRIED WOMEN
FROM EXECUTION IN CERTAIN CASES.

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

Married
woman's prop-
erty exempt for
debts of husband.

Proviso.

Take effect,
when.

SECTION 1. That the property owned by any married woman, before her marriage, and that which she may acquire after marriage, by descent, gift, grant, devise, or otherwise, and the increase, use, and profits thereof, shall be exempt from all debts and liabilities of the husband, unless for necessary articles for the use and benefit of the family. *Provided, however,* That the provisions of this act shall extend only to such property as shall be mentioned in a list of the property of such married woman as is on record in the office of the register of deeds of the county in which such married woman resides.

SECT. 2. This act to take effect and be in force from and after its passage.

Approved April 5, 1862.

W. JAYNE, *Governor.*

CHAPTER 39.

AN ACT EXEMPTING PROPERTY FROM EXECUTION.

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

Property ex-
empt from execu-
tion for any debt,
&c., incurred
without limits of
the territory.

SECTION 1. That all property, real and personal, goods and chattels, rights, credits, interests, and estates in this territory, owned by any citizen of this territory, and acquired during his or her residence in said territory: also, all the property, real and personal, goods and chattels, rights and credits, interests and estates within this territory, owned by the widow or minor children of any deceased person who, at the time of his death, was a citizen of this territory, and

who acquired said property, real and personal, goods and chattels, rights and credits, interests and estates during his residence in said territory; also, all the property, real and personal, goods and chattels, rights and credits, interests and estates belonging to the estate and in the hands of the executor or executors, administrator or administrators of such deceased person, or in the hands of the guardian or guardians of the minor children of such deceased person; and also all the property, real and personal, goods and chattels, rights and credits, interests and estates in this territory, owned by any woman married or single, residing in this territory, and acquired by her during residence in said territory, be and the same is hereby declared to be exempt from levy, seizure, or sale, by virtue of any execution, writ of attachment, or any other final process of a court, founded upon any debt, demand, or liability contracted or incurred without the limits of this territory.

SECT. 2. No judgment obtained in any court in or out of this territory, upon any indebtedness as mentioned in section first of this act, shall in anywise operate as a lien upon any property, real or personal, goods or chattels, rights or credits, interests or estates, exempted from levy, seizure, and sale by the provisions of this act.

No judgment on such liability operate as lien in this territory.

SECT. 3. Nothing in this act shall prevent any person, residing in or out of this territory, from bringing suit against any person owning property in this territory, and prosecuting his or her lawful demand against such person to final judgment.

Any person may bring suit notwithstanding.

SECT. 4. This act shall take effect from and after its passage, and approval by the governor.

Take effect, when.

Approved May 5, 1862.

W. JAYNE, *Governor.*

CHAPTER 40.

AN ACT EXEMPTING CERTAIN PROPERTY FROM TAXATION.

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

Wool and cot-
ton manufac-
tories exempt for
how many years.

SECTION 1. That the following property shall be exempt from taxation, for the time specified in this act, to wit: 1. All sheep and the wool shorn from the same, while in possession of the producer, for the term of five years. 2. All woollen manufactories, including the machinery of the same, for a term of fifteen years. 3. All cotton manufactories, including the machinery of the same, for a term of twenty years. 4. One half of the value of all other manufacturing establishments, for the term of five years.

Periods to date
from passage of
act.

SECT. 2. The period of time mentioned in the previous section shall date from the passage of this act.

Take effect,
when.

SECT. 3. This act to take effect from and after its pas-
sage.

Approved May 14, 1862.

W. JAYNE, *Governor.*

FEES OF OFFICERS, &c.**CHAPTER 41.**

AN ACT RELATIVE TO THE COMPENSATION OF OFFICERS.

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

No other than
lawful fees al-
lowed.

SECTION 1. That no officer is allowed fees or other com-
pensation for any services further than is expressly permitted
by law.

Fees for cer-
tain services.

SECT. 2. Any officer legally called upon to perform any the
following services, is entitled to the following compensation:

for drawing and certifying an affidavit, or for giving a certificate not attached to any other paper or document, twenty-five cents; for fixing his official certificate to any paper, whether the certificate be under seal or not, thirty-five cents; for making out a copy or transcript of any public papers or records under his control for the use of a private individual or company, or recording articles of incorporation, ten cents for every one hundred words.

[FEES OF CLERKS OF SUPREME COURT.]

SECT. 3. The clerk of the supreme court may take the following fees, as the whole compensation, and where they are payable by a party to a suit, they may (except in criminal cases) be required in advance. If not so paid in advance the clerk may at any time after judgment, issue a fee-bill, which shall have the force of a special execution against the party adjudged to pay costs: upon the filing each appeal, three dollars; upon entering each judgment where the cause has been decided upon its merits, two dollars; upon each continuance of a cause, one dollar; upon issuing each execution, one dollar and twenty-five cents; entering satisfaction of judgment, fifty cents; upon issuing each writ, rule, or order to be served upon any person not in court, twenty-five cents; for copying an opinion to be transmitted to the district court in case of a reversal of judgment, ten cents for every one hundred words, to be paid by the party against whom costs are adjudged.

Fees of clerk of
supreme court.

SECT. 4. In criminal cases the clerk shall charge no fees against the county or territory, except that where judgment is reversed he is entitled to the legal fees for a copy of the decision, to be paid from the county treasury. As against the accused he is entitled to the same compensation as is allowed in civil cases.

Same.

[FEES OF CLERKS OF DISTRICT COURT.]

SECT. 5. The clerk of the district court must, in addition to the fees elsewhere authorized, charge and collect the following: on the filing of an appeal or the commencement of an original suit, two dollars and fifty cents; additional amount

Fees of clerk of
district court.

on issuing an attachment, two dollars; on entering a judgment by confession in a case not pending in court, in all, three dollars; if the case is already pending, in addition to the first charge, at the commencement of the suit, one dollar; on the submission of a cause without action, two dollars and fifty cents; on entering judgment when not by confession, two dollars and fifty cents; on entering a general continuance, one dollar; on entering a special continuance at a party's costs and judgment thereon, two dollars and fifty cents; on issuing execution and entering return, one dollar and twenty-five cents; on entering satisfaction of judgment, fifty cents.

To be paid in advance, or security given.

SECT. 6. The above fees of the clerk of the district court, as well as the jury fee required by law, must be paid in advance, unless ample security is given to the approval of the clerk for the payment thereof when the suit is determined.

Where security is given, its effect.

SECT. 7. Where security is given as contemplated in the preceding section, if the money is not paid at the time stipulated, the security shall be treated as an authority to confess judgment for the proper amount, and the clerk must enter up judgment either in term time or vacation, and issue execution thereon accordingly. And in all cases heretofore decided in the district court, the clerk is authorized to issue a fee-bill in the same manner as is above provided for the clerk of the supreme court.

Fees paid by whom.

SECT. 8. The above fees of the clerk of the supreme or district court must, unless otherwise provided by law, be paid in the first instance by the plaintiff or appellant, as the case may be, except in cases where the services are rendered at the instance and for the benefit of some other person, in which case the fees must be paid by such person. But unless otherwise ordered by the court, the party paying such fees, if successful in the suit, is entitled to recover them back from the opposite party.

In criminal cases.

SECT. 9. In criminal cases, where the defendant is adjudged to pay the costs, the clerk of the district court must charge fees as follows: in cases of appeals, the same fees in all respects as are allowed on appeals in civil actions; on an indictment for a misdemeanor, where there is no trial, five dollars; where there is a trial by the court, seven dollars; where

by jury, ten dollars. In cases of indictment for felonies the above fees shall be doubled. The same fees for issuing execution and entering satisfaction of judgment, must be charged in criminal as in civil cases.

SECT. 10. In criminal cases, whether commenced by indictment or brought upon appeal, the fees shall not be required in advance, but must be collected by execution against the defendant, being added to and treated as a part of the judgment or fine in case a judgment for money has been rendered against the defendant. Not required in advance.

[FEES OF PROBATE JUDGE.]

SECT. 11. The probate judge shall, in addition to the fees elsewhere permitted, charge ten cents for every one hundred words for all wills and certificates recorded in his office as required by law, and shall retain pay therefor out of the first money coming into the hands of the executor after payment of the charges of the last sickness and funeral expenses of the deceased. The judge of probate shall also be entitled to the following fees for the following services, to wit: for issuing letters of administration, with or without the will annexed, one dollar; for issuing letters of guardianship, one dollar; for issuing letters of execution, one dollar; for recording said letter, ten cents for one hundred words; for taking proof of will, fifty cents; for each oath administered, in all cases, in allowing claims, five cents; for filing each claim or receipt, five cents; for recording account current of executor, administrator, or guardian, on the final settlement of the same, ten cents per hundred words; for each notice or subpoena issued from his office, twenty-five cents; for docketing each suit or demand, ten cents; he shall, also, have civil and criminal jurisdiction of a justice of the peace, and have the same fees allowed by law to justices of the peace. Fees of probate judge.

[FEES OF SHERIFF.]

SECT. 12. The sheriff is entitled to the following fees: for serving any writ or notice (not including subpoenas) and return thereof, for the first person served, fifty cents, for each additional person, twenty-five cents; for each copy of such writ Fees of sheriff.

or notice, when required, ten cents for each hundred words; serving writ with posse comitatus, one dollar and fifty cents; each commitment to prison, twenty-five cents; discharge from prison, twenty-five cents; attending with a person before a judge or court when required, not at a regular term of the court in his county, for each day besides mileage, one dollar; copy of paper required by law, for each one hundred words, ten cents; serving and returning subpœnas, for each person, twenty cents; calling a jury in each case, ten cents; summoning a jury, grand or petit, for each panel including mileage (to be paid out of the county treasury), five dollars; travelling fees in other cases, required by law, going and returning, per mile, five cents; selling land or other property on execution per day, one dollar; for time actually employed by him as assessor per day, two dollars; making and executing a deed for land sold on execution, one dollar; serving one person with order of court, beside mileage, fifty cents; for each additional person embraced in the same order, twenty-five cents; summoning a jury in cases of forcible entry and detainer, including mileage, one dollar and fifty cents; serving an execution or order for the partition of real estate or assigning dower (besides mileage), two dollars; for each bond required by law, twenty-five cents; for summoning a jury to assess the damages to the owner of lands taken for any work of internal improvement, and attending upon them, in all three dollars; if such case occupies more than one day, he may charge for each additional day or fraction thereof, one dollar and fifty cents; for serving each attachment, one dollar; for the time necessarily employed in making an inventory of property attached or levied upon, per day, one dollar; for collecting and paying over money, on the first two hundred dollars or part thereof, three per cent.; on the next three hundred dollars, or any part thereof, two per cent.; and on all excess over five hundred dollars, one per cent. But when property is purchased by a plaintiff in execution, so that the money does not pass through the sheriff's hands, he is entitled to only one half the above-named rates. Returning a writ not served, five cents; receiving prisoner on surrender by bail, twenty-five cents; taking new bail, twenty-five cents; dieting a prisoner, per day, twenty-five cents.

When to be
paid by county.

SECT. 13. The above items, when chargeable in criminal

cases where the prosecution fails, or where the money cannot be made from the person liable to pay the same, the facts being certified to by the clerk, as far as his knowledge extends, and sworn to by the sheriff, shall be allowed and paid out of the county treasury.

CORONER'S FEES.

SECT. 14. For a view of each body, and for taking and returning inquest, five dollars; each subpoena, warrant, or venire, twenty-five cents. The above fees are to be paid from the county treasury where they cannot be obtained from the estate of the deceased. For all other services, the same fees as are allowed to sheriffs in similar cases.

Coroner's fees.

CONSTABLE'S FEES.

SECT. 15. For serving any notice or process, on each person named therein, twenty-five cents; copy thereof when required, ten cents; for serving an attachment or writ of replevin, fifty cents; travelling fees, going and returning, per mile, five cents; summoning a jury (including mileage), fifty cents; attending same on trial, twenty-five cents; serving execution (besides mileage), fifty cents; advertising and selling property (besides mileage), fifty cents; advertising without selling, twenty-five cents; notifying plaintiff of the time of such sale, besides mileage, unless he waive such notice, twenty cents; return of execution when no levy is made, five cents; on taking bond in any case, twenty-five cents; on all sums collected on execution and paid over, four per cent.; serving subpoena (besides mileage), fifteen cents; posting up each notice required by law (besides mileage), fifteen cents; commitment to prison (besides mileage), twenty-five cents.

Constable's fees.

SECT. 16. The fees of constables for services in criminal cases where the prosecution fails or when the money cannot be made from the person liable to pay the same, the facts being certified by the justice and sworn to by the constable, shall be allowed and paid out of the county treasury.

When paid by county.

NOTARY'S FEES.

Fees of notary
public.

SECT. 17. For every protest of a bill or note, seventy-five cents; noting a bill of exchange for non-acceptance or non-payment, twenty-five cents; notarial affidavit to an account, under seal, twenty-five cents; registering protest in a bill of exchange or promissory note for non-acceptance or non-payment, fifty cents; certifying power of attorney, twenty-five cents; administering an oath, five cents; being present at demand, tender, or deposit, and noting the same, thirty-five cents. Other services the same fees as are allowed to other officers for like services.

JUSTICES' FEES.

Fees of justices
of the peace.

SECT. 18. At the commencement of each suit, fifty cents; in case of an attachment or forcible entry and detainer, one dollar; on taking judgment by confession after suit is commenced, fifty cents; if not on suit previously brought, one dollar; on submitting controversies without action, the same fees as on suit brought. The following additional fees are allowed: in the cases in which they apply on entering judgment when not contested, fifty cents; if contested, one dollar; if jury is called, additional one dollar. On issuing execution (for issuing as well as for returning and entering satisfaction). When any cause consumes more than an entire day, the justice is entitled to one dollar for each day or fraction of a day thereafter, in addition; and on all amounts of money coming into the justices' hands, without suit and by him actually paid over, two per cent. shall be allowed him therefor; for every continuation or adjournment, at the request of either party, fifty cents; making and certifying transcript, fifty cents; on setting aside a judgment of nonsuit or by default, fifty cents; justices shall also be allowed the following fees in criminal cases: for process of any kind, except subpœnas, fifty cents; entering judgment, fifty cents; taking recognizance or any undertaking, fifty cents; order of discharge to jailer, twenty-five cents. The first of the above charges shall be payable by the county in cases where the prosecution fails.

WITNESSES.

SECT. 19. Each witness, for attending before the district court each day, is entitled to one dollar; before a justice of the peace, fifty cents; mileage for actual travel, per mile, each way, five cents. An attorney, or juror, or officer, who is in habitual attendance on the court during the term at which he is subpœnaed as a witness, shall charge for only one day's attendance or travel. The court may disallow to the successful, any witness who, without sufficient cause, was absent at the trial, or whose testimony was unimportant or unnecessary. For attending before a grand or petit jury, in a criminal case, witnesses are entitled to a like fee, which, when they are called in behalf of the prosecution, shall be paid out of the county treasury. But they cannot claim their fees in such cases in advance. Fees of witnesses.

JURORS.

SECT. 20. A juror, for each day's attendance, whether as a grand or petit juror, one dollar; before justices of the peace, fifty cents; travelling, per mile, going and returning, five cents. Fees of jurors.

COUNTY SURVEYORS.

SECT. 21. For each day's service actually performed in travelling to and from the place where the survey is to be made, making survey and return, five dollars; for a certified copy of the plat or field notes, fifty cents. Fees of county surveyors.

SECT. 22. This act shall take effect and be in force from and after its passage. Take effect, when.

Approved April 15, 1862.

W. JAYNE, *Governor.*

CHAPTER 42.

AN ACT TO PROVIDE FOR THE FEES OF ROAD COMMISSIONERS.

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

One dollar and a half per day.

SECTION 1. That all road commissioners who perform their duties as such, upon the construction of any road within this territory, shall be entitled to the sum of one and one half dollars per day, for every day occupied in such capacity.

In case of vacancy.

SECT. 2. In case of the absence of any one of these (three) commissioners appointed to construct any road in this territory, the others may supply said vacancy by appointing another; or, in case of a majority of them meet, may proceed to discharge their duties.

Commissioners to meet within six months.

SECT. 3. That said commissioners shall meet at any time within six months from the time of their appointment, to take into consideration the duties imposed upon them by the provisions of the "act" authorizing them to act as commissioners.

This act applicable to what cases.

SECT. 4. This act shall only be applicable to cases where there is no specified provisions similar to the requirements of this act.

Take effect, when.

SECT. 5. This act shall take effect from and after its passage.

Approved May 7, 1862.

W. JAYNE, *Governor.*

FENCES, HEDGES, GRAIN, AND TREES.

CHAPTER 43.

TO PROVIDE FOR THE PROTECTION OF HEDGES, FENCES,
GRAIN, FRUIT, AND ORNAMENTAL TREES.

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

SECTION 1. That whenever any owner or owners, occu-
pant or occupants of any land or lands bordering upon any
public road or highway, except a street or alley, in a town or
village, through which any public road or highway may pass,
may wish to plant and cultivate any hedge or live fence
along the margin of his, her, or their lands, it shall be lawful
for any such person or persons to set or plant any such
hedge or live fence, precisely on the line of the road or high-
way; and also place on the margin of such road a protection
fence, not to occupy more than six feet of the margin or edge
of such road; and such protection fence, when placed oppo-
site any line fence or hedge actually set or planted, shall be
permitted by the supervisor of roads, and all other persons,
to remain for the term of six years: *Provided*, That the
authorities of any county may grant permission, in writing,
to the owner or owners of any hedge or live fence, to con-
tinue such protection fence any term of time they may deem
necessary.

Provisions re-
lating to growth
of hedges.

Proviso.

SECT. 2. If any person or persons shall wantonly or ma-
liciously cut through, dig up, or injure any hedge or live fence,
or throw, cut, or lodge down, or prostrate any fence inclosing
any orchard, pasture, meadow, garden, or other field or inclo-
sure, in which any grain or vegetables are cultivated, the
property of, or lawfully occupied by any other person or
persons, or shall wantonly or maliciously open, let down,
throw down, or prostrate any gate or bars belonging to any
such inclosure or field, and leave any such fence, bars, or
gate down, prostrate or open, every such person or persons

Relating to
injury to
hedges and
fences. Penalty.

shall, upon conviction thereof, be fined in any sum, not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days, or both, at the discretion of the court.

Relating to injury to fruit and ornamental trees and shrubbery. Penalty.

SECT. 3. And if any person or persons shall wilfully or maliciously, and without lawful authority, cut down, root up, sever, injure, or destroy any fruit or ornamental trees, cultivated root or plant, or other vegetable production, standing or growing in, or being attached to the lands of others, and shall wilfully and without lawful authority, cut down, root up, destroy, or injure any fruit or ornamental trees or shrubbery, planted or growing in any street, lane, or alley, or public ground, in any city or incorporated town, every such person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine of not more than one hundred dollars, or by imprisonment in the county jail not exceeding three months, or both, at the discretion of the court, and shall moreover be liable in damages to the party injured.

In case of prosecution, and land owned by one or more tenants.

SECT. 4. In case of prosecution for any of the above offences, if the land referred to be owned or occupied in common by two or more tenants, the complaint shall be deemed sufficient, if any one or more of such tenants in common shall be named therein.

Prosecutions commenced within one year.

SECT. 5. All prosecutions under this chapter shall be commenced within one year from the time any such offence shall have been committed, before some justice of the peace of the county wherein the same shall have been committed; and all fines collected under the provisions of this chapter, shall be paid into the treasury of the county where the offence shall have been committed, for the use of the common schools of said county.

Fines for use of common schools.

Take effect, when.

SECT. 6. This act shall take effect and be in force from and after the first day of May, 1862.

Approved April 10, 1862.

W. JAYNE, *Governor.*

FUGITIVES FROM JUSTICE.

CHAPTER 44.

AN ACT RELATIVE TO FUGITIVES FROM JUSTICE AND THE
SURRENDER OF THE SAME.

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

SECTION 1. The governor of this territory may, in any case authorized by the constitution and laws of the United States, appoint agents to demand of the executive authority of any state or territory, any fugitive from justice, or any person charged with felony or any other crime, in this territory, and whenever an application shall be made to the governor for that purpose, the district attorney, or any other prosecuting officer of the territory, when required by the governor, shall forthwith investigate the grounds of such application, and report to the governor all material circumstances which may come to his knowledge, with an abstract of the evidence, and his opinion as to the expediency of the demand; but the governor may, in any case, appoint such agents, without requiring the opinion of, or any report from, the district attorney; and the accounts of the agents, appointed for that purpose, shall, in all cases, be audited by the governor, and paid from the territorial treasury.

Governor may appoint agents to demand fugitives from justice.

When application made to him for that purpose.

Expenses, how paid.

SECT. 2. When a demand shall be made upon the governor of this territory, by the executive of any state or territory, in any case authorized by the constitution and laws of the United States, for the delivery over of any person charged in such state or territory, with treason, felony, or any other crime, the district attorney or any other prosecuting officer of the territory, when required by the governor, shall forthwith investigate the ground of such demand, and report to the governor all material facts which may come to his knowledge, as to the situation and circumstances of the person so demanded, especially whether he is held in custody, or

When demands made on the executive from other states and territories.

is under recognizance to answer for any offence against the laws of this territory or of the United States, or by force of any civil process, and also whether such demand is made according to law, so that such person ought to be delivered up; and, if the governor is satisfied that such demand is conformable to law and ought to be complied with, he shall issue his warrant under the seal of the territory, authorizing the agents who make such demand, either forthwith, or at such time as shall be designated by the warrant, to take and transport such person to the line of the territory, at the expense of such agents, and shall, also, by such warrant, require the civil officer within this territory to render such assistance as may be necessary in the execution thereof.

When person found in this territory charged with any offence in another state or territory.

SECT. 3. Whenever any person shall be found within this territory, charged with any offence committed in any state or territory, and liable by the constitution and laws of the United States, to be delivered over upon the demand of the executive of such state or territory, any court or magistrate authorized to issue warrants in criminal cases, may, upon complaint under oath, setting forth the offence and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same, or some other court or magistrate within the territory, to answer such complaint as in other cases.

If it appear that complaint is true, accused to be held.

SECT. 4. If upon examination of the person charged, it shall appear to the court or magistrate that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the governor, he shall, if not charged with a capital crime, be required to recognize, with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court or magistrate; and, if such person shall not so recognize, he shall be committed to prison, and shall be there detained until such day, in like manner as if the offence charged had been committed within this territory; and if the person so recognizing shall fail to appear according to the condition of his recognizance, he shall be defaulted, and the like proceedings shall be had as in the case of other recognizances entered into before such court or magistrate; but, if such person be charged with a capital crime, he shall

If accused fail to appear according to recognizance.

be committed to prison, and there detained until the day so appointed for his appearance before the court or magistrate.

SECT. 5. If the person so recognized or committed shall appear before the court or magistrate upon the day ordered, he shall be discharged, unless he be demanded by some person authorized by the warrant of the executive to relieve him, or unless the court or magistrate shall see cause to commit him, or to require him to recognize anew, for his appearance at some other day, and if, when ordered, he shall not so recognize, he shall be committed and detained as before provided; whether the person so discharged shall be recognized, committed, or discharged. Any person authorized by the warrant of the executive may, at all times, take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

If he appear as ordered, and is not demanded or is not recognized anew.

SECT. 6. The complainant in such case shall be answerable for the actual costs and charges, and for the support in prison of any person so committed, and shall advance to the jailer one week's board, at the time of commitment, and so from week to week, so long as such person shall remain in jail; and if he shall fail to do so, the jailer may forthwith discharge such person from his custody.

Complainant answerable for costs and charges.

If he fail to pay same, accused may be discharged.

SECT. 7. This act shall take effect and be in force from and after its approval by the governor.

Take effect, when.

Approved May 15, 1862.

W. JAYNE, *Governor.*

H E A L T H .

CHAPTER 45.

AN ACT TO PROVIDE FOR OFFENCES AGAINST THE PUBLIC HEALTH.

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

If person adulterate food or drink. Penalty. SECTION 1. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirits, malt, or other liquor, intended for drinking, with any substance injurious to health, he shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding two hundred dollars, and the article so adulterated shall be forfeited and destroyed.

If person adulterate drug or medicine. Penalty. SECT. 2. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, in such a manner as to render the same injurious to health, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars, and such adulterated drugs and medicines shall be forfeited and destroyed.

If person inoculate himself or other person with smallpox, to spread same. Penalty. SECT. 3. If any person shall inoculate himself or any other person, or shall suffer himself to be inoculated with the smallpox, within this territory, with intent to cause the prevalence or spread of this infectious disease, he shall be punished by imprisonment in the territorial prison, not more than three years, nor less than one year.

If intoxicated physician prescribe poison, &c. Penalty. SECT. 4. If any physician or other person, while in a state of intoxication, shall prescribe any poison, drugs, or medicine, to any other person, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars.

Apothecary delivering active poison without SECT. 5. Every apothecary, druggist, or other person who shall sell and deliver any arsenic, corrosive sublimate, prussic

acid, or any other active poison, without having the word "poison," and the true name thereof, in English, written or printed upon a label attached to the vial, box, or parcel containing the same, shall be punished by a fine not exceeding one hundred dollars.

SECT. 6. This act to take effect from and after its passage, and approval by the governor.

Approved April 30, 1862.

W. JAYNE, *Governor*.

INDIANS.

CHAPTER 46.

AN ACT TO PREVENT INDIANS FROM TRESPASSING UPON CEDED LANDS.

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

SECTION 1. No Indian shall be permitted to trespass or enter upon any ceded lands within this territory, for the purpose of hunting or fishing, or travelling to and from the lands or hunting grounds of different tribes of Indians, without first having obtained a written pass or permit for such purpose from the local United States agent of the tribe to which such Indian or Indians belong, or from the superintendent of Indian affairs in this territory.

SECT. 2. Such pass or permit shall state the name of the Indian, the band and tribe to which he belongs, the business he is on, what portion of the territory he is to visit, and the duration of time for which his pass is issued.

SECT. 3. Any Indian or Indians found upon any of the ceded lands of this territory, without a pass or permit obtained as provided for in section one, or with a pass or permit the duration of which shall have expired, shall be deemed

amenable to the laws of the territory, and may be arrested by any citizens of this territory, and placed in charge of the sheriff of the county where such arrest was made.

Duty of sheriff
committing
Indian.

SECT. 4. It shall be the duty of said sheriff to receive such Indian or Indians, and to place the same in close confinement in the county jail, and forthwith to officially notify the superintendent of Indian affairs of such arrest and confinement, and notify the United States Indian agent of the tribe or nation to which such Indian or Indians belong, to remove the same immediately to their reserve.

Expenses of
carrying out this
act, how paid.

SECT. 5. All expenses incurred by any county in carrying the provisions of this act into effect, shall be paid by the said Indian agent to the treasurer of the county where the arrest is made, before said Indian shall be delivered to said agent.

Take effect,
when.

SECT. 6. This act shall take effect and be in force from and after its passage.

Approved April 13, 1862.

W. JAYNE, *Governor.*

CHAPTER 47.

AN ACT TO PREVENT THE TRAFFIC IN ARDENT SPIRITS
WITH THE INDIANS.

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

Persons dispos-
ing of spirituous
liquors to In-
dians. Penalty.

SECTION 1. That if any hotel keeper, saloon keeper, merchant, trader, salesman, or any other person or persons, shall sell, give, barter, or in any manner dispose of any spirituous liquors to any Indian or Indians within this territory, every such person or persons offending shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction to try the same, shall be imprisoned in the county jail for a period not less than thirty, nor more than ninety days, and shall forfeit and pay to the use of the county, in which the offence may have been committed, a fine not less than twenty nor more than one hundred dollars.

If there be no
jail.

SECT. 2. In all cases of conviction under this chapter, if there be no jail in the county where the offence was com-

mitted, or to which it may be attached for judicial purposes, it shall be competent for the court before which such conviction was had, to commit the offender to the nearest jail in any other county, or to either of the forts of this territory, with the permission of the commanding officer thereof; and it is hereby made the duty of the keeper of such jail to receive the prisoner and in all respects so to proceed with him, as if he had been committed by the proper authorities of the county in which such jail is situated: *Provided*, That in all cases of conviction under the provisions of this chapter, when the person convicted is confined in the jail of any other county, or in any of the forts of the territory, the county in which such offence shall have been committed shall pay all the expenses arising from such confinement. The property real and personal of all persons convicted and confined under the provisions of this act, shall be liable for the costs of trial and expenses of confinement.

Proviso.

SECT. 3. All sheriffs, constables, and justices of the peace within this territory, are required, under the penalty of forfeiting their respective offices, to make complaint of such violation of the provisions of this chapter, as may come within their knowledge; and the judges of the several district courts in this territory are hereby required to give this chapter in special charge of the grand juries of the several counties in their districts.

What officers to make complaint of violations.

SECT. 4. Any individual or individuals who shall violate any of the provisions of this chapter, may be prosecuted before a justice of the peace, by any citizen of the county; and all fines collected under the provisions of this act shall be paid into the county treasury for the support of common schools in the county, and the declaration or statements of Indians may be received before any of the courts under this act, which declaration or statements may be considered as circumstantial evidence, and received for what they may be considered worth by courts and juries, as the case may be.

Persons, how prosecuted.

Declarations of Indians received for what they are worth.

SECT. 5. This act shall take effect and be in force from and after its passage, and approval by the governor.

Take effect, when.

Approved April 30, 1862.

W. JAYNE, *Governor*.

JAILS.

CHAPTER 48.

AN ACT FOR THE REGULATION OF COUNTY JAILS.

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

Judges pre-
scribe rules in
writing, for jails,
upon what sub-
jects.

SECTION 1. That the judges of the district courts of the several judicial districts of this territory, shall from time to time, as they may deem necessary, prescribe, in writing, rules for the regulation and government of the jails in the several counties within their respective districts, upon the following subjects: 1. The cleanliness of the prisoners. 2. The classification of prisoners in regard to sex, age, and crime, and also persons insane, idiots, and lunatics. 3. Beds and clothing. 4. Warming, lighting, and ventilation of the prison. 5. The employment of medical and surgical aid when necessary. 6. Employment, temperance, and instruction of the prisoners. 7. The supplying of each prisoner with a Bible. 8. The intercourse between prisoners and their counsel and other persons. 9. The punishment of prisoners for violation of the rules of the prison. 10. Such other regulations as said judges may deem necessary to promote the welfare of said prisoners: *Provided*, That such rules shall not be contrary to the laws of this territory.

Proviso.

Rules, how
promulgated
and preserved.

SECT. 2. That the said judges shall, as soon as necessary, cause a copy of said rules to be delivered to the county commissioners in the several counties in their respective judicial districts; and it shall be the duty of said commissioners forthwith to cause the same to be printed, and to furnish the sheriff of their county with a copy of said rules, for each and every room or cell of said jail, and also to forward a copy of said rules to the secretary of the territory, who may file away and preserve the same.

Duty of sheriff.

SECT. 3. The sheriff shall, on the receipt of said rules

cause a copy thereof to be posted up and continued in some conspicuous place in each and every room or cell of said jail.

SECT. 4. The judges aforesaid may from time to time, as they may deem necessary, revise, alter, or amend said rules, and such revised rules shall be printed and disposed of by said commissioners and sheriff, in the same manner as is directed by the second and third sections of this act.

Judges may alter and amend rules when necessary.

SECT. 5. The sheriff, or, in case of his death, removal, or disability, the person by law appointed to supply his place, shall have charge of the county jail of his proper county, and of all persons by law confined therein, and such sheriff or other officer is hereby required to conform, in all respects, to the rules and directions of said district judge above specified, or which may from time to time, by said judge, be made and communicated to him by said commissioners.

Sheriff or his successor to have charge of jail, &c.

SECT. 6. The sheriff or other officers performing the duties of sheriff of each county in this territory, shall, as soon as necessary after the passage of this act, procure, at the expense of the proper county, a suitable book, to be called the jail register, in which the said sheriff, by himself or his jailer: 1. The name of each prisoner, with the date and cause of his or her commitment. 2. The date or manner of his or her discharge. 3. What sickness, if any, has prevailed in the jail during the year, and, if known, what were the causes of such disease. 4. Whether any, or what labor has been performed by the prisoners, and the value thereof. 5. The practice observed during the year, of whitewashing and cleaning the occupied cells or apartments, and the times and seasons of so doing. 6. The habits of the prisoners as to personal cleanliness, diet, and order. 7. The means furnished prisoners of literary, moral, and religious instruction and of labor. 8. All other matters required by said rules, or in the discretion of such sheriff deemed proper; that the said sheriff or other officers performing the duties of sheriff, shall carefully keep and preserve the said jail register, in the office of the jailer of his proper county, and at the expiration of said office, shall deliver the same to his successor in office.

Sheriff to supply "jail register," to contain what.

Preserve same, and deliver it to successor.

SECT. 7. The sheriff, or other officer performing the duties of sheriff, shall, on or before the first Monday of No-

Sheriff to make out jail report and transmit same to whom.

member in each year, make out in writing, from said jail register, a jail report, one copy of which said report he shall forthwith file in the office of the clerk of the district court of the proper district, one copy with the county clerk of his county, for the use of the commissioners thereof, and one copy of said report he shall transmit to the secretary of the territory, and it shall be the duty of the secretary of the territory to communicate the reports of the several sheriffs of this territory to the legislative assembly, on or before the tenth day of its session annually.

Secretary of territory to communicate same to legislature.

Duty of district court to charge grand jury in relation to jails.

SECT. 8. It shall be the duty of the district court to give this act in charge of the grand jury once each term of said court, and lay before them any and all rules, plans, or regulations, established by the district judge, relating to county jails and prison discipline, which shall then be in force.

Grand jury to visit jail, and make report.

SECT. 9. That the grand jury of each county in this territory shall, once at each term of the district court, while in attendance, visit the jail, examine its state and condition; examine and inquire into the discipline and treatment of prisoners, their habits, diet, and accommodations, and it shall be their duty to report to said court in writing, whether the rules of the said district judge have been faithfully kept and observed, or whether any of the provisions of this act have been violated. It shall also be the duty of the county commissioners of each county of this territory to visit the jail of their county once during each of their regular meetings of each year.

Duty of county commissioners in relation to jails.

SECT. 10. It shall be the duty of the county commissioners, at the expense of their respective counties, to provide suitable means for warming the jail and its cells or apartments, beds and bedding, night buckets, and such other permanent fixtures and repairs as may be prescribed by the said district judge; said commissioners shall also have power to appoint a physician to the jail, when they may deem it necessary, and pay him such annual or other salary as they may think reasonable and proper, which salary shall be drawn out of the county treasury; and said medical officer, or any physician or surgeon who may be employed in the jail, shall make a report in writing whenever required by said commissioner, district judge, or grand jury.

SECT. 11. It shall be the duty of the sheriff of each coun-

ty to provide: first, bed-clothing, washing, nursing, when required, and board generally, and all necessaries for the comfort and welfare of said prisoners, as the said judge by his said rules shall designate, for all persons confined by law, and he shall be allowed such compensation for services required by the provisions of this act, as may be prescribed by the county commissioners of their respective counties.

Duty of sheriff.
His compensa-
tion.

SECT. 12. The sheriff shall visit the jail in person, and examine into the condition of each prisoner at least once each month, and once during each term of the district court; and it is hereby made his duty to cause all the cells and rooms, used for the confinement of prisoners, to be thoroughly white-washed at least three times in each year.

Sheriff to visit
jail, when, &c.

SECT. 13. The jailer or keeper of the jail shall, unless the sheriff elect to act as jailer in person, be a deputy appointed by the sheriff, and such jailer shall take the necessary oaths before entering upon the duties of his office: *Provided*, The sheriff shall in all cases be liable for the negligence and misconduct of the jailer as of other deputies.

Jailer to be
deputy-sheriff,
and take oath.

Proviso.

SECT. 14. If the sheriff or jailer, having in charge of any county jail, shall neglect or refuse to conform to all or either of the rules and regulations established by said judge, or to any other duty or duties required of him by this act, he shall, on conviction thereof by indictment for each case of such failure or neglect of duty as aforesaid, pay into the county treasury of the proper county, for the use of such county, a fine not less than ten dollars nor more than one hundred dollars, to be assessed by the district court of the proper district.

If sheriff or
jailer refuse to
do duty. Pen-
alty.

SECT. 15. This act shall take effect and be in force from and after its passage.

Take effect,
when.

Approved May 8, 1862.

W. JAYNE, *Governor*.

JUSTICES OF THE PEACE.

CHAPTER 49.

AN ACT DEFINING THE JURISDICTION AND PROCEDURE BEFORE JUSTICES OF THE PEACE, AND OF THE DUTIES OF CONSTABLES IN CIVIL COURTS.

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

ARTICLE I.—OF THE JURISDICTION OF JUSTICES OF THE PEACE.

Jurisdiction limited to county.

SECTION 1. The jurisdiction of justices of the peace in civil cases shall, unless otherwise directed by law, be limited to the county wherein they may have been elected, and where they shall reside.

Powers of justices.

SECT. 2. Justices of the peace within and coextensive with their respective counties, shall have jurisdiction and authority: 1. To administer an oath or affirmation authorized or required by law to be administered. 2. To take the acknowledgment of deeds, mortgages, and other instruments of writing. 3. To solemnize marriages. 4. To issue subpoena for witnesses and coerce their attendance in causes or matters pending before them, or other cause or matter wherein they may be required to take depositions. 5. To try the action for forcible entry and detention, or detention only, of real property. 6. To proceed against security for costs and bail for the stay of execution on their dockets. 7. To issue attachments, and proceed against the goods and effects of debtors in certain cases. 8. To issue executions on judgments rendered by them. 9. To proceed against constables, failing to make return, making false return, or failing to pay over money collected on execution issued by such justice. 10. To try the right of the claimant to property taken in execution or on attachment.

Have jurisdiction in actions for trespass.

SECT. 3. Justices shall have jurisdiction in actions for trespass on real estate, where the damages demanded for such

trespass shall not exceed one hundred dollars, but a claim of title to such real estate set up by the defendant, shall take away or affect the jurisdiction hereby given.

SECT. 4. Justices shall not have cognizance of any action: Have cognizance of what actions.
 1. To recover damages for an assault, or assault and battery; or, 2. In any action for malicious prosecution; or, 3. In actions against justices of the peace or other officers for misconduct in office, except in cases provided for in this act; or, 4. In actions for slander, verbal or written; or, 5. In actions on contracts for real estate; or, 6. In actions in which the title to real estate is sought to be recovered, or may be drawn in question, except actions for trespass on real estate which are provided for in this act.

ARTICLE II.—OF THE COMMENCEMENT OF SUITS, SERVICE, AND RETURN OF PROCESS, AND PROCEEDINGS IN ARREST AND ATTACHMENT.

SECT. 5. Actions before justices of the peace are commenced by summons, or by the appearance and agreement of the parties without summons. Actions commenced by summons, when. In the former the action is deemed commenced upon delivery of the writ to the constable to be served; and he shall note thereon the time of receiving the same. In the latter case, the action is deemed commenced at the time of docketing the case.

SECT. 6. When a guardian to the suit is necessary, he must be appointed by the justice as follows: When guardian necessary in suit, how appointed. 1. If the infant be plaintiff, the appointment must be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years or upwards; if under that age, upon the application of some friend. The consent in writing of the guardian to be appointed, and to be responsible for costs if he fail in the action, must be filed with the justice. 2. If the infant be defendant, the guardian must be appointed before the trial. It is the right of the infant to nominate his own guardian, if the infant be over fourteen years of age, and the proposed guardian be present and consent in writing to be appointed. Otherwise the justice may appoint any suitable person who gives such consent.

SECT. 7. The style of the summons shall be: "The Territory of Dakota, — county;" Style and contents of summons. it shall be dated the day it

is issued, signed by the justice issuing the same, directed to the constable or sheriff of the proper county (except in case a person be deputed to serve it, in which case it shall be directed to such person), must contain the names of the defendant or defendants, if known; if unknown, give a description of him or them, and command the officer or person serving the same, to summon the defendant or defendants to appear before such justice, at his office, in — county, at a time specified therein, and must describe the plaintiff's cause of action in such general terms as to apprise the defendant of the nature of the claim against him, and there shall be indorsed on the writ the amount for which the plaintiff will take judgment if the defendant fail to appear. If the defendant fail to appear, judgment shall not be rendered for a larger amount and the costs.

If defendant fail to appear.

Summons returnable when, and how delivered.

SECT. 8. The summons must be returnable not more than twelve days from its date, and must be served at least three days before the time of appearance, as follows: 1. By delivering a copy of the summons with the indorsement thereon (certified by the constable or person serving the same to be a true copy), to the defendant, or leaving the same at his usual place of residence. 2. An acknowledgment on the back of the summons, or the voluntary appearance of a defendant, is equivalent to service.

Summons, how served on corporation.

SECT. 9. A summons against a corporation may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or, if its chief officer be not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office or usual place of business of such corporation, with the person having charge thereof.

Summons on agency of insurance company.

SECT. 10. When the defendant is an incorporated insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency.

On agency of foreign corporation.

SECT. 11. When the defendant is a foreign corporation, having a managing agent in this territory, the service may be upon such agent.

When defendant is a minor.

SECT. 12. When the defendant is a minor under the age of fourteen years, the service must be upon him and upon his

guardian or father; or if neither of these can be found, then upon his mother or the person having the care or control of the infant, or with whom he lives. If neither of these can be found, or if the minor be more than fourteen years of age, service on him alone shall be sufficient. The manner of service may be the same as in the case of adults.

APPEARANCE.

SECT. 13. The parties are entitled to one hour in which to appear, after the time mentioned in the summons for appearances, but are not bound to remain longer than that time, unless both parties have appeared, and the justice being present, is engaged in the trial of another cause. In such case the justice may postpone the time of appearance until the close of such trial. Of appearance.

ATTACHMENT.

SECT. 14. The plaintiff shall have an order of attachment against the property of the defendant, in a civil action before a justice of the peace, for the recovery of money before or after the commencement thereof, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing the nature of the plaintiff's claim; that [it] is just; the amount which the affiant believes the plaintiff ought to recover; and the existence of some one or more of the following particulars: 1. That the defendant, or one of the several defendants, is a foreign corporation, or is a non-resident of the territory; or, 2. Has absconded with intent to defraud his creditors; or, 3. Has left the county of his residence to avoid the service of a summons; or, 4. So conceals himself, that a summons cannot be served upon him; or, 5. Is about to remove his property, or a part thereof, out of the county, with the intent to defraud his creditors; or, 6. Is about to convert his property, or part thereof, into money, for the purpose of placing it beyond the reach of creditors; or, 7. Has property or rights in action which he conceals; or, 8. Has assigned, removed, or disposed of, or about to dispose of his property, or a part thereof, with intent to defraud his creditors; or, 9. Fraudulently contracted the debt, or incurred

Plaintiff to
have order of
attachment,
when.

the obligation, for which suit is about to be, or has been brought. When the defendant is a foreign corporation, or a non-resident of the territory, the attachment shall not be granted, unless the claim is for debt or demand arising upon contract, judgment, or decree.

Plaintiff to give undertaking, when.

SECT. 15. When the ground of attachment is, that the defendant is a foreign corporation, or a non-resident of the territory, the order of attachment may be issued without an undertaking, but in all other cases the order of attachment shall not be issued by the justice until there has been executed in his office, by one or more sufficient sureties of the plaintiff, to be approved by the justice, an undertaking not exceeding double the amount of the plaintiff's claim, to the effect, that the plaintiff shall pay the defendant all damages which he may sustain by reason of the attachment, if the order be wrongfully obtained.

Order of attachment take effect, how.

SECT. 16. The order of the attachment may be made to accompany the summons, or at any time afterwards, before judgment, it shall be addressed and delivered to any constable of the proper county, and shall require him to attach the goods, chattels, stocks, or interests in stocks, rights, credits, moneys, and effects of the defendant in his county not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable costs of the action not exceeding fifty dollars.

Return day of order of attachment.

SECT. 17. The return day of the order of attachment, when issued at the commencement of the action, shall be the same as that of the summons; when issued afterwards, it shall be executed and returned forthwith.

When there are several orders of attachment.

SECT. 18. When there are several orders of attachment against the same person, in the hands of the same officer, they shall be executed in the same order in which they are received by said officer: he shall go to the place where the defendant's property may be found, and there, in the presence of two credible persons, declare that by virtue of said order, he attaches said property at the suit of said plaintiff; and the officer, with two residents of the county, who shall be first sworn or affirmed by the officer, shall make a true inventory and appraisalment of all property attached which shall be signed by the officer and said residents and returned

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

SECT. 19. The constable shall deliver the property attached to the person in whose possession it is found, upon the execution by such person, in the presence of the constable, an undertaking of the plaintiff, with one or more sufficient sureties resident in the county, to the effect that the parties to the same are bound, in double the appraised value thereof, that the property or its appraised value in money shall be forthcoming to answer the judgment of the court in the action; but if it shall appear to the court that any part of said property has been lost or destroyed by unavoidable accident, the value thereof shall be remitted to the person or persons so bound.

Constable may surrender property, when.

SECT. 20. Different attachments of the same property may be made, and one inventory and appraisal shall be sufficient. The lien of the attachments shall be in the order in which they are served, and the subsequent attachments shall be served on the property, as in the hands of the officer, and subject to the prior attachments. The justice who issued the attachment having the priority of lien, shall determine all questions as to the priority of liens on the property attached.

One appraisal sufficient for different attachments. Lien, in what order.

SECT. 21. If the order of the attachment is made to accompany the summons, a copy thereof, and the summons, shall be served upon the defendant in the usual manner for the service of a summons, if the same can be done within the county; and when any property of the defendant has been taken under the order of attachment, and it shall appear that the summons issued on the actions has not been, and cannot be served on the defendant in the county, in the manner prescribed by law, the justice of the peace shall continue the cause for a period not less than forty, nor more than sixty days. Whereupon the plaintiff shall proceed for three consecutive weeks, to publish, in some newspaper printed in the county, or if none be printed therein, then in some newspaper of general circulation in said county, a notice stating the names of the parties, the time when, by what justice of the peace, and for what sum said order was issued, and shall make proof of such publication to the justice; and thereupon

If order accompany summons, how served.

If cannot be served in county, then by publication, how.

said action shall be proceeded with, the same as if summons had been duly served.

When property taken is live-stock or perishable.

SECT. 22. When the cause is continued as provided for in the preceding section, and it shall appear that any of the property taken under the attachment is live-stock, or is of a perishable nature, the justice may issue his order directing the officer having the custody thereof, to dispose of the same as upon execution; and the money realized therefrom shall be paid over to the justice and applied as other money realized from the sale of property attached is applied.

When makes oath in regard to property of defendant not to be come at, what notice to be served.

SECT. 23. When the plaintiff, his agent or attorney, shall make oath, in writing, that he has good reason to and does believe that any person or corporation, to be named, and within the county where the action is brought, has property of the defendant (describing the same) in his possession, if the officer cannot come at such property, he shall leave with such garnishee a copy of the order of attachment, with a written notice that he appear before the justice at the return of the order of the attachment, and answer as provided in section twenty-five.

How served.

SECT. 24. The copy of the order and the notice shall be served upon the garnishee as follows: if he be a person, they shall be served upon him personally, or left at his usual place of residence; if a corporation, they shall be left with the president or other head of the same, or the secretary, cashier, or managing agent thereof.

Garnishee shall appear and answer.

SECT. 25. The garnishee shall appear before the justice, in accordance with the command of the notice, and shall answer, under oath, all questions put to him touching the property of every description, and credits of the defendant, in his possession or under his control, and he shall disclose truly, the amount owing by him to the defendant, whether due or not; and in case of a corporation, any stock therein held by or for the benefit of the defendant, at or after the service of the notice.

Garnishee discharged from liability, how.

SECT. 26. A garnishee may pay the money owing to the defendant by him, to the constable having the order of attachment, or into the court. He shall be discharged from liability to the defendant for any money so paid, not exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of the claim against

him; and if he disclose the property in his hands, or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs.

SECT. 27. If the garnishee do not appear and answer, as required by section twenty-five, the justice may proceed against him by attachment, as for a contempt.

If garnishee does not appear.

SECT. 28. If the garnishee appear and answer, and it is discovered on his examination, that at or after the service of the order of attachment and notice upon him, he was possessed of any property of the defendant, or was indebted to him, the justice may order the delivery of such property and the payment of the amount owing by the garnishee into the court, or may permit the garnishee to retain the property or the amount owing, upon the execution of an undertaking to the plaintiff, by one or more sufficient sureties, to the effect that the amount shall be paid or the property forthcoming, as the court may direct.

If garnishee appear, and it is proved he has property of defendant.

SECT. 29. If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure is not satisfactory to the plaintiff; or if he fail to comply with the order of the justice to deliver the property and pay the money owing into court, or give the undertaking required in the preceding section, the plaintiff may proceed against him in an action, in his own name, as in other cases; and thereupon such proceedings may be had as in other actions, and judgment may be rendered in favor of the plaintiff, for the amount of the property and credits of every kind of the defendant in the possession of the garnishee, and for what shall appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, the plaintiff shall pay the costs of such action. The judgment in this action may be enforced as judgments in other cases. When the claims of the plaintiff in attachment are satisfied, the defendant in the attachment may, on motion, be substituted as the plaintiff in the judgment.

If disclosure is unsatisfactory, garnishee how proceeded against.

Plaintiff pay costs, when.

SECT. 30. Final judgment shall not be rendered against the garnishee until the action against the defendant in attachment has been determined; and if, in such action, judgment be rendered for the defendant in attachment, the garnishee

Final judgment against garnishee rendered, when. If judgment for defendant.

If judgment for plaintiff.

shall be discharged and recover costs. If the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all property, moneys, and credits of the defendant in possession, and pay all the moneys from him due as the court may order, the garnishee shall be discharged, and the costs of the proceedings against him shall be paid out of the property and moneys so surrendered, or as the court may think right and proper.

If judgment for defendant, attachment discharged.

SECT. 31. If judgment be rendered in the action for the defendant, the attachment shall be discharged, and the property attached or its proceeds shall be returned to him.

If judgment for plaintiff, how satisfied.

SECT. 32. If judgment be rendered for the plaintiff, it shall be satisfied as follows: so much of the property remaining in the hands of the officer, after applying the moneys arising from the sale of perishable property, if any, whether held by legal or equitable right, as may be necessary to satisfy the judgment, shall be sold by order of the justice, under the same restrictions and regulations as if the same had been levied on by execution; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs. If there be not enough to satisfy the same, the judgment shall stand, and execution may issue thereon for the residue, in all respects as in other cases. Any surplus of the attached property or its proceeds, shall be returned to the defendant.

Justice may order constable to repossess himself of property not sold.

SECT. 33. The justice may order the constable to repossess himself, for the purpose of selling it, of any of the attached property which may have passed out of his hands without being sold or converted into money; and the constable shall under such order have the same power to take the property, as he would have under an order of attachment.

If any property attached claimed by other person.

SECT. 34. If any of the property which has been attached, be claimed by any person other than the defendant, the claimant may have the validity of such claim tried, and such proceedings must be had thereon, with like effect, as in case the property had been seized upon execution issued by the justice and claimed by a third person.

Where several attachments, proceeds how applied.

SECT. 35. Where several attachments are executed on the same property, or the same persons are made garnishees, the justice issuing the first order, served on the motion of any of the plaintiffs, may determine the amounts and priorities of

the several attachments, and the proceeds shall be applied accordingly.

SECT. 36. The officer shall return upon every order of attachment what he had done under it. The return must show the property attached, and the time it was attached. When garnishees are served, their names, and the time each was served, must be stated. The officer shall also return, with the order, all undertakings given under it.

Officer's return.

SECT. 37. An order of attachment binds the property attached from the time of service, and the garnishee shall stand liable to the plaintiff in attachment for all property, moneys, and credits in his hands, or due from him to the defendant, from the time he is served with a written notice, mentioned in section twenty-three; but when property is attached in the hands of a consignee or other person having a prior lien, his lien thereon shall not be affected by the attachment.

Order binding from time of service.

SECT. 38. If the defendant, or other person in his behalf, at any time before judgment, cause an undertaking to be executed to the plaintiff by one or more sureties resident in the county, to be approved by the justice, in double the amount of the plaintiff's claim, to be stated in his affidavit, to the effect, that the defendant shall perform the judgment of the justice, the attachment in such action shall be discharged, and restitution made of any property taken under it, or the proceeds thereof; such undertaking shall also discharge the liability of a garnishee in such action, for any property of the defendant in his hands.

Attachment discharged before judgment, how.

SECT. 39. If in any case where an order of attachment has been issued by a justice of the peace, it shall appear from the return of the officer, and from the examination of the garnishee, that no property, moneys, rights, credits, or effects of the defendant have been taken under the attachment, but that the defendant is the owner of an interest in real estate in the county, the justice before whom said action is pending, shall, at the request of the plaintiff, forthwith certify his proceedings to the district court, of the proper county, and thereupon the clerk of said court shall docket said cause, and the action shall be proceeded with in said court in all respects as if the same had originated therein.

If it appear that no property can be attached by officer, and that defendant has interest in real estate in county.

ARTICLE III.—BILL OF PARTICULARS.

Bill of particulars to be filed by both parties.

SECT. 40. In all cases before a justice, the plaintiff, his agent or attorney, shall file with such justice a bill of the particulars of his demand; and the defendant, if required by the plaintiff, his agent or attorney, shall file a like bill of the particulars he may claim, as a set-off; and the evidence on the trial shall be confined to the items set forth in said bills.

State what.

SECT. 41. The bill of particulars must state, in a plain and direct manner, the facts constituting the cause of action, or the claim to be set off.

Of amendments to bills.

SECT. 42. The bill of particulars may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency, or omission in the items when, by such amendments, substantial justice will be promoted. If the amendment be made at the time of, or during the trial, and it be made to appear, to the satisfaction of the justice, by oath, that an adjournment is necessary to the adverse party, in consequence of such amendment, an adjournment must be granted. The justice may also, in his discretion, require, as a condition of an amendment, the payment of costs to the adverse party, to be fixed by the justice; but such payment cannot be required, unless an adjournment is made necessary by the amendment.

ARTICLE IV.—CHANGE OF THE PLACE OF TRIAL.

Of change of place of trial.

SECT. 43. If, on the return of process, or at any time before trial shall have commenced, it shall be made satisfactorily to appear to the justice of the peace before whom any cause is instituted, or is pending for trial, by the affidavit of either of the parties in the case: 1. That such justice is a material witness for either party; or, 2. If a jury be demanded by the adverse party, then that he cannot, as he verily believes, have a fair and impartial trial in the precinct, or place for which said justice may have been elected, on account of the bias or prejudice of the citizens thereof; the place of trial may be changed.

Where case shall be tried.

SECT. 44. If the place of trial be changed on account of the justice being a material witness in the cause, such cause

may be transferred for trial before some other justice of the peace in the same precinct. If the place of trial be changed on account of the bias or prejudice of the citizens of such precinct or place, the case shall be taken to some justice in an adjoining precinct, in the same county.

SECT. 45. The justice granting such change, shall deliver or transmit the papers in the cause, together with a certified transcript of the proceedings before him, to the justice to whom such change may be granted, who shall proceed therein, and have the same jurisdiction, powers, and duties, in all respects whatever, as if such suit had been originally instituted before him.

Justice transmit papers, &c., to the justice trying case.

SECT. 46. Before any such change shall be allowed, the costs, as specified in the next following section, shall be paid by the party applying for such change.

Costs to be paid before change made.

SECT. 47. When such change is at the instance of the plaintiff, he shall be taxed with all the costs which have accrued, and which shall accrue in the cause, until such transcript and papers shall be delivered to the justice to whom such cause is removed for trial; and when on the application of the defendant, he shall be taxed for the costs which have accrued for issuing subpœnas for witnesses, and service thereof, witnesses' fees, and costs of the justice for transferring the cause to the docket of the other justice.

Which party pay, what costs.

ARTICLE V.—ADJOURNMENTS.

SECT. 48. Upon the return day, if a jury be required, or if the justice be actually engaged in other official business, he may adjourn the trial, without the consent of either party, as follows: 1. Where a party is in attendance who is not a resident of the county, the adjournment not to exceed forty-eight hours. 2. In other cases not to exceed eight days, unless by consent of the parties. If the trial be not adjourned, it must take place immediately upon the return of the summons.

Justice may adjourn trial when, and for how long.

SECT. 49. The trial may be adjourned upon the application of either party, without the consent of the other, for a period not exceeding thirty days, as follows: the party asking the adjournment must, if required by his adversary, prove, by his own oath, or otherwise, that he cannot, for want

Trial adjourned on application of parties, when.

of material testimony which he expects to procure, safely proceed to trial.

Other adjournment, when made.

SECT. 50. An adjournment may be had either at the return day, or at any subsequent time to which the cause may stand adjourned, on the application of either party, for a period longer than thirty days, but not to exceed ninety days from the time of the return of the summons, upon compliance with the provisions of the preceding section, and upon proof, by the oath of the party or otherwise, to the satisfaction of the justice, that such party cannot be ready for trial before the time to which he desires an adjournment, for the want of material evidence, describing it; that the delay has not been made necessary by any act or negligence on his part since the action was commenced, and that he expects to procure the evidence at the time stated by him.

ARTICLE VI.—WITNESS.

Justices issue subpoenas for what.

SECT. 51. Any justice may issue subpoenas to compel the attendance of witnesses to give evidence on any trial pending before himself, or for the purpose of taking depositions, or to perpetuate testimony.

Subpoena, how served.

SECT. 52. A subpoena may be served by a constable or any other person, and shall be served by reading the same or stating the contents thereof to the witness, or by leaving a copy thereof at his usual place of residence.

When not served by officer no fees charged.

SECT. 53. When not served by a constable, or some person deputed for that purpose by a justice, no fees shall be charged in the suit for serving it.

If witness attend, and is not examined, costs how paid.

SECT. 54. If any witness, having been subpoenaed, attend and be not examined by either party, the costs of such witness shall be paid by the party ordering the subpoena, unless the adverse party, by confessing the matter or otherwise, render unnecessary the examination of such witness.

When witness may be compelled to appear.

SECT. 55. Whenever it shall appear to the satisfaction of a justice, by proof made before him, that any person has been duly served with a subpoena to appear and give testimony before him, in any matter in which he has authority to require such witness to appear and testify, that his testimony is material, and that he refuses or neglects to attend as such witness in conformity to such subpoena, the justice shall

issue a warrant for the arrest of the delinquent for the purpose of compelling his attendance, and punishing his disobedience.

SECT. 56. When a person arrested is brought before the justice, or when a person in attendance refuses to testify as a witness, and no valid excuse be shown, the justice may impose a fine on him not exceeding five dollars. An entry of such fine, stating the reason therefor, must be made by the justice in his docket, and thereupon shall have the effect of a judgment in favor of the Territory of Dakota against the delinquent, and may be enforced against his person or property. Said money so collected shall be paid into the county treasury, for the support of common schools in said county.

When witness is arrested or refuses to testify. Penalty.

Fines for support of common schools.

SECT. 57. Every person subpoenaed as aforesaid, and neglecting to appear or refusing to testify, shall also be liable to the party in whose behalf he shall have been subpoenaed, for all damages which such party shall sustain by reason of such delinquency.

Person neglecting or refusing, responsible for damages.

DEPOSITION.

SECT. 58. Depositions may be taken to be read in a cause pending before a justice of the peace, in like manner and subject to the same restrictions and rules of law as in cases pending in the district court.

Depositions taken as before district court.

ARTICLE VII.—THE TRIAL AND ITS INCIDENTS.

SECT. 59. At the time appointed for trial, if no jury shall have been demanded by either party, the justice shall proceed to try the action, shall hear the proofs, and determine the cause according to law and the right.

If no jury demanded, justice to try action.

SECT. 60. Where parties agree to enter, without process, before a justice, any action of which such justice has cognizance, such justice shall enter the same on his docket, and proceed to trial, judgment, and execution, in all respects in the same manner as if the summons had been issued, served, and returned.

Where parties agree to enter without process.

JURY.

Either party
may demand
jury of six men.

SECT. 61. In all civil actions, after the appearance of the defendant, and before the court shall proceed to inquire into the merits of the cause, either party may demand a jury to try the action, which jury shall be composed of six good and lawful men, having the qualifications of electors, unless the parties shall agree on a less number. When a jury is demanded, the trial of a cause must be adjourned until a time fixed for the return of the jury. If neither party desire an adjournment, the time must be determined by the justice, and must be on the same day, or within the next two days; the jury must be immediately selected as herein provided.

How jury shall
be selected.

SECT. 62. The justice shall write in a panel the names of twelve persons, citizens of the county, from which the defendant, his agent or attorney, shall strike one, and so alternately, until each shall have stricken three names, and the remaining six shall constitute the jury to try such case; and if either party neglect or refuse to aid in striking the jury as aforesaid, the justice shall strike the same in behalf of such party.

Form of sum-
mons for jury.

SECT. 63. The justice thereupon shall issue a summons for the jury, in which the following form shall be observed in substance as near as practicable:

THE TERRITORY OF DAKOTA, }
 — county. }

To —, constable of — county:

You are hereby commanded to summon — to appear before me at —, in said county, on the — day of —, A. D. —, at — o'clock in the — noon, to serve as jurors in a case pending before me, then and there to be tried. And this they shall in nowise omit. And have you then and there this writ with your doings thereon.

Given under my hand this — day of —, A. D. —.

—, Justice of the Peace.

Constable
serve summons,
how.

SECT. 64. The constable shall serve such summons by a personal service thereof, and return the same indorsed with the names of the persons summoned, at the time appointed for the trial of the case. Jurors, for neglecting to attend when

Jurors neglect-
ing to attend.

properly summoned, or refusing to serve when in attendance, shall be liable to the like penalty, and be proceeded against in the same manner, as witnesses who fail to attend or refuse to testify.

SECT. 65. The constable shall be in attendance on the court at and during the progress of the trial; and if from challenge or other cause the panel shall not be full, he may fill the same in the same manner as is done by the sheriff in the district court.

If panel be not full, constable to fill same.

SECT. 66. When a jury shall be in attendance and the cause shall be continued, the jurors must attend at the time and place appointed for the trial without further notice.

Jury to attend at time of trial.

SECT. 67. If either party object to the competency of a juror, the question thereon must be tried in a summary manner by the justice, who may examine the juror or other witness under oath.

If competency of juror questioned.

SECT. 68. The justice shall administer an oath or affirmation to the jury, well and truly to try the matter in difference between the parties, and a true verdict to give according to the evidence.

Jury to take oath or affirmation.

SECT. 69. After the jury shall have been sworn they shall sit together and hear proofs and allegations of the parties; and after hearing the same, shall be kept together in some convenient place, under the charge of a constable, until they have agreed upon their verdict, or shall be discharged by the justice.

After jury is sworn, to be kept together until discharged.

SECT. 70. When the jury shall have agreed upon their verdict, they shall deliver it to the justice publicly, who shall enter it upon his docket.

Deliver verdict publicly. To be entered on docket.

SECT. 71. Whenever the justice shall be satisfied that a jury, sworn in any cause before him, cannot agree in the verdict after having consulted upon it a reasonable time, he may discharge them and continue the cause, and may, if required by either party, proceed to strike another jury, as hereinbefore provided. The cause shall be continued to such time as the justice thinks reasonable, unless the parties or their attorneys agree on a longer or shorter time, or unless they may agree that the justice may render judgment on the evidence already before him.

When jury cannot agree.

SECT. 72. It shall be lawful for the justice before whom a cause has been tried, on motion, and being satisfied that the

If verdict improper, new trial may be granted.

verdict was obtained by fraud, partiality, or undue means, at any time within four days after the entering of judgment, to grant a new trial, and he shall set a time for the new trial, of which the opposite party shall have at least three days' notice.

Opposite party to have reasonable notice of motion.

SECT. 73. The opposite party shall also have a reasonable notice of such motion for a new trial, if the same is not made on the day of the former trial, and in the presence of such party; such notice to be given by the applying party. If the new trial shall be granted, or the jury be unable to agree, the proceedings shall be in all respects as upon the return of the summons.

Proceeding same as in first trial.

When appeal may be made.

SECT. 74. If either the plaintiff or defendant, in their bill of particulars, claim more than ten dollars, the case may be appealed to the district court; but if neither party demand a greater sum than ten, and the case is tried by jury, there shall be no appeal.

Which party pays costs on appeal.

SECT. 75. If, on appeal by the plaintiff, he shall not recover a larger sum than twenty dollars, exclusive of interest since the rendition of the judgment before the justice, he shall be adjudged to pay all costs in the district court (including a fee of five dollars to defendant's attorney); and in case the defendant shall demand a set-off greater than twenty dollars, and he appeal and do not recover twenty dollars, he shall in like manner pay all costs in the appellate court, including a like fee to the plaintiff's attorney.

Fees of jury, when and how paid.

SECT. 76. Upon the verdict being delivered to the justice, and before judgment being rendered thereon, each juror shall be entitled to receive fifty cents at the hands of the successful party, which shall be taxed in the cost bill against the losing party. When the jury shall be unable to agree upon a verdict, the same compensation shall be paid them by the party calling the jury, and the same shall be taxed in the cost bill against the losing party.

Of exceptions before justice.

SECT. 77. In all cases which shall be tried by a jury before a justice of the peace, either party shall have the right to except to the opinion of the justice upon any question of law arising during the trial of the cause; and when either party shall allege such exception, it shall be the duty of the justice to sign and seal a bill containing such exception, if truly

alleged, with the point decided, so that the same may be made part of the record in the cause.

ARBITRATIONS.

SECT. 78. At any time before trial and judgment rendered, the plaintiff and defendant consenting thereto, may have the cause submitted to the arbitrament of [three] disinterested men, who shall be chosen by the parties; and if the arbitrators be present, they shall hear and determine the cause on oath or affirmation, to be administered by the justice. But if the persons chosen as arbitrators be not present, the justice shall issue summons for them to attend at the time and place appointed for the trial, which shall be served by any constable or the parties, as they may agree. The fees of arbitrators shall be the same as that paid to jurors.

Cases, how submitted to arbitration.

SECT. 79. When the arbitrators shall convene and be qualified, they shall proceed to hear and determine the cause, and make out their award in writing, which shall be valid when signed by any two of them, and return the same to the justice, who shall thereupon enter such award upon his docket, and thereupon render judgment, and issue execution as in other cases.

Arbitrators hear and determine, and their award.

SECT. 80. Every judgment rendered on such award, shall conclude the rights of the parties thereto, unless it shall be made to appear to the justice of the peace who rendered such judgment, and within ten days after the rendition of the same, or to the district court, on appeal, that such award was obtained by fraud, corruption, or other undue means.

Their judgment final, unless it appear fraudulent.

SECT. 81. Whenever satisfactory proof shall be adduced before such justice, within the period aforesaid, that such award was obtained by fraud, corruption, or other undue means, it shall be competent for such justice to set aside such award and his judgment thereon rendered, and thereupon proceed to such final trial and judgment, as if such award had never been made.

How judgment set aside.

SECT. 82. But no appeal shall be allowed to the district court from a judgment of a justice of the peace rendered on an award, unless the party praying such appeal shall file with such justice an affidavit, therein stating that he or she does

No appeal allowed, except when.

verily believe that such award was obtained by fraud, corruption, or other undue means.

When district court sets aside.

SECT. 83. And if, on appeal from the judgment of a justice rendered on any such award, the district court shall be satisfied that the award was obtained by fraud, corruption, or other undue means, such court shall set aside the award, and proceed to hear and determine the cause on the merits, as in other cases of appeal.

When it sustains award.

SECT. 84. But if the court shall be of opinion that the award was not obtained by fraud, corruption, or other undue means, they shall render judgment thereon, for the costs of suit, and award execution as in other cases.

TRIAL OF THE RIGHT OF PROPERTY LEVIED ON OR ATTACHED.

When property attached is claimed by another party.

SECT. 85. When a constable shall levy on or attach property, claimed by any person or persons, other than the party against whom the execution or attachment issued, the claimant or claimants shall give three days' notice, in writing, to the plaintiff or his agent, or if not found within the county, then such notice shall be served by leaving a copy thereof at his usual place of abode in such county, of the time and place of the trial of the right to such property, which trial shall be had before some justice of the county, at least one day prior to the time appointed for the sale of such property.

If justice satisfied of claimant's right, he shall restore property.

SECT. 86. If on the trial, the justice shall be satisfied from the proof, that the property or any part thereof, belongs to the claimant or claimants, such justice shall render judgment against the party in whose favor such execution or attachment issued for the costs, and issue execution therefor, and shall, moreover, give a written order to the constable who levied on, or who may be charged with the duty of selling such property, directing him to restore the same, or so much thereof, as may have been found to belong to such claimant or claimants.

If not satisfied, claimants to pay costs of trial of right.

SECT. 87. But if the claimant or claimants fail to establish his or their right to such property or any part thereof, the justice shall render judgment against such claimant or claimants for the costs that have accrued on account of such trial,

and issue execution therefor; and the constable shall not be liable to the claimant or claimants for the property so taken.

ARTICLE VIII.—JUDGMENTS.

SECT. 88. Judgment, that the action be dismissed without prejudice to a new action, may be entered with costs, in the following cases: 1. When the plaintiff voluntarily dismisses the action before it is finally submitted. 2. When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter.

Judgment of dismissal without prejudice in what cases.

SECT. 89. If the plaintiff fail to appear at the return day of the summons, and his bill of particulars be not filed and evidence before the justice, the action must be dismissed. If the defendant fail to appear at the return day of the summons, and if either party fail to attend at the time to which a trial has been adjourned, or fail to make the necessary bill of particulars, or fail in the proof on his part, the cause may proceed at the request of the adverse party, and judgment must be given in conformity with the bills of particulars and proofs.

If plaintiff or defendant fail to appear.

SECT. 90. When judgment shall have been rendered against a defendant in his absence, the same may be set aside upon the following conditions: 1. That his motion be made within ten days after such judgment was entered. 2. That he pay or confess judgment for the costs awarded against him. 3. That he notify in writing the opposite party, his agent, or attorney, or cause it to be done, of the opening of such judgment and of the time and place of trial at least five days before time, if the party reside in the county, and if he be not a resident of the county, by leaving a written notice thereof at the office of the justice ten days before the trial.

When judgment against absent defendant set aside.

SECT. 91. Upon a verdict, the justice must immediately render judgment accordingly. When the trial is by the justice, judgment must be entered immediately after the close of the trial, if the property of the defendant has been attached; in other cases it must be entered either at the close of the trial, or if the justice then desire further time to consider, on or by the fourth day thereafter, both days inclusive.

When judgment entered.

SECT. 92. When the amount due to either party exceeds

When amount due exceeds au-

thorized judgment.

the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be entered for the residue. A defendant need not remit such excess, and may withhold setting the same off, and a recovery for the amount set off and allowed, or any part thereof, shall not be a bar to his subsequent action for the amount withheld.

If defendant offer judgment for specified sum.

SECT. 93. If the defendant, any time before trial, offer, in writing, to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor with the costs then accrued. But if he do not accept such offer before the trial, and fail to recover in the action a sum equal to the offer, he cannot recover costs accrued after the offer; but costs must be adjudged against him. But the offer and failure to accept it, cannot be given in evidence, to effect the recovery, otherwise than to costs as above provided.

SECT. 94. * . * * * .

ARTICLE IX. — APPEALS.

Appeals, in what cases.

SECT. 95. In all cases not otherwise especially provided for by law, either party may appeal from the final judgment of any justice of the peace, to the district court of the county where the judgment was rendered.

Party appealing to give undertaking.

SECT. 96. The party appealing shall, within ten days from the rendition of judgment, enter into an undertaking to the adverse party with at least one good and sufficient surety to be approved by such justice, in a sum not less than fifty dollars in any case, nor less than double the amount of judgment and costs, conditioned: 1. That the appellant will prosecute his appeal to effect and without unnecessary delay. 2. That if judgment be adjudged against him on the appeal, he will satisfy such judgment and costs. Such undertaking need not be signed by the appellant.

Justice to deliver record and papers in the case, to whom.

SECT. 97. And the said justice shall make out a certified transcript of his proceedings, include the undertaking taken for such appeal, and shall, on demand, deliver the same to the appellant, or his agent, who shall deliver the same to the clerk of the court to which appeal may be taken, on or before the second day of the term thereof, next following such appeal; and such justice shall also deliver or transmit the bill or bill

of particulars, the depositions and all other original papers, if any used on the trial before him, to such clerk, on or before the second day of such term; and all other proceedings before the justice of the peace, in that case, shall cease and be stayed from the time of entering into such undertaking.

SECT. 98. The clerk on receiving such transcript and other papers as aforesaid, shall file the same and docket the appeal. Clerk to file same.

SECT. 99. The plaintiff in the court below, shall be the plaintiff in the district court; and the parties shall proceed in all respects in the same manner, as though the action had been originally instituted in the said court. Parties same as in court below.

SECT. 100. If the appellant shall fail to deliver the transcript, and other papers, if any, to the clerk, and have his appeal docketed as aforesaid, on or before the second day of the term of the said court next after such appeal, the appellee may, at the same term of said court, file a transcript of the proceedings of such justice, and the said cause shall, on motion of the said appellee, be docketed; and the court is authorized and required, on his application, either to enter up a judgment in his favor, similar to that entered by the justice of the peace, and for all the costs that have accrued in the court, and award execution thereon; or such court may, with the consent of such appellee, dismiss the appeal, at the cost of the appellant, and remand the cause to the justice of the peace, to be thereafter proceeded in as if no appeal had been taken; and if the plaintiff in the action before the justice shall appeal from any judgment rendered against such plaintiff, and after having filed his transcript and caused such appeal to be docketed according to the provisions of this act, shall fail to file petition, or otherwise neglect to prosecute the same, to final judgment, so that said plaintiff shall become non-suited, it shall be the duty of said court to render judgment against such appellant for the amount of the judgment rendered against him by the justice, together with interest accrued thereon and for costs of suit, and to award execution therefor, as in other cases. If appellant fail to deliver papers to clerk, when. Court may enter judgment similar to justice.

SECT. 101. If both parties fail to enter such appeal within the time limited as aforesaid, the justice, on receiving a certificate from the clerk of the court, stating that the appeal was not entered, or being entered, was dismissed as aforesaid, If both parties fail to enter appeal.

shall thereupon issue execution upon the judgment, in the same manner as if such appeal had never been taken.

If appellant fail to recover larger amount, to pay costs of appeal.

SECT. 102. If any person, appealing from a judgment rendered in his favor, shall not recover a greater sum than the amount for which judgment was rendered, besides costs and the interest accruing thereon, every such appellant shall pay the costs of such appeal.

When appeal dismissed, &c., surety liable.

SECT. 103. When any appeal shall be dismissed, or when judgment shall be entered in the district court against the appellant, the surety in the undertaking shall be liable to the appellee for the whole amount of the debt, costs, and damages, recovered against the appellant.

When district court quash appeal, order to be lodged with justice.

SECT. 104. When an appeal, taken to the district court, shall there be quashed, by reason of irregularity in taking or consummating the same, the cause for quashing shall be stated in the order of the court, and a transcript of such order shall be lodged with such justice, who shall thereupon proceed to issue execution, in the same manner as if no appeal had been taken.

When undertaking may be changed or renewed.

SECT. 105. In proceeding on appeal when the surety in the undertaking shall be insufficient, or such undertaking may be insufficient, in form or amount, it shall be lawful for the court, on motion to order a change or renewal of such undertaking, and direct the same to be certified to the justice, from whose judgment the appeal was taken, or that it be recorded in said court.

Appeals not allowed, in what cases.

SECT. 106. Appeals in the following cases shall not be allowed: 1. On judgments rendered on confession. 2. In jury trials where neither party claim in their bill of particulars a sum exceeding twenty dollars. 3. In the action for the forcible entry and detention, or forcible detention of real property. 4. In trials of the right of property, under the statutes, either levied upon by execution or attached.

When term of justice expires between date of judgment and appeal.

SECT. 107. When the term of office of a justice shall expire between the dates of judgment and the time limited for appeal, such justice may take the undertaking for appeal at any time before he has delivered his docket to his successor, and give the appealing party a transcript. After the delivery of the docket, the undertaking shall be given to his successor, and it shall be his duty to give the transcript and do and perform all things required of his predecessor.

ARTICLE X.—OF THE ACTION FOR THE FORCIBLE ENTRY AND
DETENTION, OR FORCIBLE DETENTION ONLY OF PROPERTY.

SECT. 108. Any justice, within his proper county, shall have power to inquire, in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and detain the same, as against those who having a lawful and peaceable entry into lands or tenements, unlawfully and by force hold the same; and if it be found upon such inquiry that an unlawful and forcible entry has been made, and that the same lands or tenements are held by force, or that the same, after a lawful entry are held unlawfully, then said justice shall cause the party complaining to have restitution thereof.

Justice may inquire into entry and detention.

SECT. 109. Proceedings under this article may be had in all cases against tenants holding over their terms; in sales of real estate, on executions, orders, or other judicial process, when the judgment debtor was in possession at the time of the rendition of judgment or decree, by virtue of which such sale was made; in sale by executors, administrators, guardians, and on partition, where any of the parties to the petition were in possession at the commencement of the suit, after such sales, so made on execution or otherwise, shall have been examined by the proper court, and the same by such court adjudged legal; and in cases where the defendant is a settler or occupier of the lands or tenements, without color of title, and to which the complainant has the right of possession; this section not to be construed as limiting the provisions of the first section of this article.

Proceedings had in what cases.

SECT. 110. Judgments either before the justice or in the district court, under this article, shall not be a bar to any after action brought by either party.

Judgment not bar to, after action.

SECT. 111. It shall be the duty of the party desiring to commence an action under this article, to notify the adverse party to leave the premises, for the possession of which the action is about to be brought, which notice shall be served at least three days before commencing the action, by leaving a written copy with the defendant, or at his usual place of abode, if he cannot be found.

Action, how commenced.

Summons not to issue until plaintiff files complaint, containing what.

SECT. 112. The summons shall not issue herein, until the plaintiff shall have filed his complaint in writing with the justice, which shall particularly describe the premises so entered upon or detained, and shall set forth either an unlawful and forcible entry and detention, or an unlawful and forcible detention after a peaceable or lawful entry of the described premises. The complaint shall be copied into and made a part of the record.

Summons to state what, and when served.

SECT. 113. The summons shall be issued and directed; shall state the cause of the complaint, and the time and place of trial, [and] shall be served and returned as in other cases. Such service shall be three days before the day of trial appointed by the justice.

If defendant does not appear.

SECT. 114. If the defendant does not appear in accordance with the requisitions of the summons, and it shall have been properly served, the justice shall try the cause as though he was present.

No continuance longer than eight days, unless.

SECT. 115. No continuance shall be granted for a longer period than eight days, unless the defendant applying therefor shall give an undertaking to the adverse party, with good and sufficient surety to be approved by the justice, conditioned for the payment of the rent that may accrue, if judgment be rendered against the defendant.

Of trial and judgment.

SECT. 116. If the suit be not continued, place of trial changed, or neither party demand a jury, upon the return day of the summons, the justice shall try the cause; and if, after hearing the evidence, he shall conclude that the complaint is not true, he shall enter judgment against the plaintiff for costs; if he find the complaint true, he shall render a general judgment against the defendant and in favor of the plaintiff for restitution of the premises and costs of suit; if he find the complaint true in part, he shall render a judgment for the restitution of such part only, and the costs shall be taxed as the justice shall deem just and equitable.

If jury demanded.

SECT. 117. If a jury be demanded by either party, the proceedings, until the impanelling thereof, shall be in all respects as in other cases. The jury shall be sworn or affirmed to well and truly try and determine whether the complaint of (naming the plaintiff) about to be laid before them, is true according to the evidence. If the jury shall find the complaint

Their verdict.

true, they shall render a general verdict of guilty against the

defendant; if not true, then a general verdict of not guilty; if true in part, then a verdict setting forth the facts they find true.

SECT. 118. The justice shall enter the verdict upon his docket, and shall render such judgment in the action as if the facts, authorizing the finding of such verdict, had been found to be true by himself. Justice enter verdict and render judgment.

SECT. 119. Exceptions to the opinion of the justice, in cases under this article, upon questions of law and evidence, may be taken by either party, whether tried by a jury or otherwise. Exceptions may be taken.

SECT. 120. When a judgment of restitution shall be entered by a justice, he shall, at the request of the plaintiff, his agent or attorney, issue a writ of execution thereon, which shall be in the following form, as near as practicable: In case of judgment of restitution — form of writ.

THE TERRITORY OF DAKOTA, }
 — county, } ss.

To any constable of — county:

Whereas, in a certain action for the forcible entry and detention (or the forcible detention, as the case may be), of the following described premises, to wit: —, lately tried before me, wherein — was plaintiff and — was defendant —, judgment was rendered on the — day of —, A. D. —, that the plaintiff have restitution of said premises, and also that he recover costs in the sum of —. You, therefore, are hereby commanded to cause the defendant to be forthwith removed from said premises, and the said plaintiff to have restitution of the same; also that you levy of the goods and chattels of the said defendant, and make the costs aforesaid, and all accruing costs, and of this writ make legal service and due return.

Witness my hand this — day of —, A. D. —.
 — —, Justice of the Peace.

SECT. 121. The officer shall, within ten days after receiving the writ, execute the same by restoring the plaintiff to the possession of the premises, and shall levy and collect the costs, and make return as upon other executions. If the officer shall receive a notice from the justice that the proceedings have been stayed by an allowance of a writ of error, he shall Of execution of writ, &c.

immediately delay all further proceedings upon the execution; and if the premises have been restored to the plaintiff, he shall immediately place the defendant in the possession thereof, and return the writ with his proceedings and costs taxed thereon.

ARTICLE XI.—OF THE REPLEVIN OF PROPERTY.

Petition in replevin sworn to, and state what.

SECT. 122. The petition in replevin must be sworn to, and it must state: 1. A particular description of the property claimed. 2. Its actual value, and where there are several articles, the actual value of each. 3. The facts constituting the plaintiff's right to the present possession thereof, and must define the extent of his interest in the property, whether it be full or qualified ownership. 4. That it was neither taken on the order or judgment of a court against him, nor under an execution or attachment against him or against the property. But if it was taken by either of these modes, then it must state the facts constituting an exemption from seizure by such process. 5. The facts constituting the alleged cause of detention thereof according to his best belief. 6. The amount of damages which the affiant believes the plaintiff ought to recover for the detention thereof.

Affiant shall execute bond.

SECT. 123. He shall also execute a bond to the defendant, with sureties to be approved by the justice of the peace, in a penalty at least equal to twice the value of the property sought, conditioned that he will appear at the time of the trial of said cause, and prosecute his suit to judgment and return the property, if a return be awarded, and also pay all costs and damages that may be adjudged against him. This bond shall be filed with the justice of the peace, and is for use of any person injured by the proceeding, and a judgment for money rendered against the plaintiff shall also go against the sureties on the bond.

To be filed.

Justice issue writ, &c.

SECT. 124. The justice of the peace shall thereupon issue a writ of replevin directed to the sheriff or constable to take the property therein described and deliver the same to the plaintiff. The ordinary original notice must also be served [on] the defendant in the usual manner.

When property is removed to another county.

SECT. 125. When any of the property is removed to another county after the commencement of the action, counterparts

of the writ of replevin may issue on the demand of the plaintiff to such other county, and may be executed upon such goods found in such county, and further writs of replevin and the necessary counterparts thereof may issue as often as may be necessary.

SECT. 126. The sheriff or constable must forthwith execute the writ by taking possession of the property therein mentioned, if it is found in the possession of the defendant, or of his agent, or of any other person who obtained possession thereof from the defendant, directly or indirectly after the writ was placed in the sheriff's or constable's hands, for which purpose he may break open any dwelling-house or other inclosure, having first demanded entrance and exhibited his authority, if required.

Writ, how executed.

May break open dwelling.

SECT. 127. When it appears by the affidavit that the property claimed has been disposed of or concealed, so that the writ cannot be executed, the justice of the peace may compel the attendance of the defendant and examine him on oath as to the situation of the property, and punish a wilful obstruction or hinderance of the writ, and a disobedience of the order of the court in this respect, as in case of contempt.

When property is disposed of or concealed.

SECT. 128. The sheriff or constable must return the writ on or before the return day of the notice, and shall state fully what he has done thereunder. If he has taken any property, he shall describe particularly the same.

Of the return.

SECT. 129. The officer having taken the property, or any part thereof, shall forthwith deliver the same to the plaintiff, on the payment of his costs.

Deliver property to plaintiff.

SECT. 130. If a third person claim the property, or any part thereof, the plaintiff may amend and bring him in as a co-defendant, or the defendant may obtain his substitution by the proper mode, or the claimant may himself intervene by the process of intervenor.

If third person claim property.

SECT. 131. The judgment shall determine which party is entitled to the possession of the property, and shall designate his right therein, and if such party have not the possession thereof, shall also determine the value of the right of such party, which right shall be absolute as to an adverse party having no right in such property, and shall also award such

Judgment determine right to property, &c.

damages to either party as he may be entitled to, for illegal detention of such property.

Party entitled thereto, may have execution for what.

SECT. 132. The party entitled thereto, may have execution for the money found due him, or may, in his discretion, have execution for the delivery of the property, and if the property or any article thereof cannot be obtained on execution, he may have execution for the value of such article.

When it appears that property has been concealed or removed by other party.

SECT. 133. When it appears by the return of the officer, or by the affidavit of the plaintiff, that any specific property which has been adjudged to belong to one party, has been concealed or removed by the other, the justice of the peace may require him to attend and be examined on oath, respecting such matter, and may enforce his order in this respect as in cases of contempt.

ARTICLE XII.—EXECUTION.—RETURN.—STAY OF EXECUTION.—NOTICE OF SALE.—DELIVERY.—UNDERTAKING.

When and by whom execution may issue.

SECT. 134. Execution for the enforcement of a judgment before a justice of the peace (except where it has been taken to the district court on error or appeal, or docketed therein, or during the time it may be stayed, as provided by this act), may issue by the justice before whom the judgment was rendered, or by his successor in office, on the application of the party entitled thereto, at any time within five years of entry of the judgment, or the date of the last execution issued thereon.

Justice issue execution without demand, except when.

SECT. 135. It shall be the duty of the justice if the case be not appealed, taken up on error, docketed in the district court, or bail has not been given for the stay of execution at the expiration of ten days from the entry of the judgment, to issue execution without a demand, and proceed to collect the judgment, unless otherwise directed by the judgment creditor.

Person may have stay of execution, how.

SECT. 136. Any person against whom judgment may be rendered under the provisions of this act, except as hereinafter excepted, may have stay of execution for the several periods hereinafter mentioned, by entering into an undertaking with the adverse party, within ten days after the rendition of such judgment, with good and sufficient surety, resident of the county, as the justice shall approve, conditioned for the

payment of the amount of such judgment, interest, and costs, and costs that may accrue; which undertaking shall be entered on the docket of the justice, and be signed by the surety.

SECT. 137. The stay of execution hereby authorized shall be graduated as follows, namely: 1. On any judgment for five dollars and under, the stay shall be for sixty days, and on all sums over fifty and under one hundred dollars, the stay shall be for six months. 2. On any judgment exceeding five and under fifty dollars, the stay shall be for ninety days. 3. Where judgment is obtained against a surety, and he takes a stay thereon, and he obtains judgment against the principal, stay of execution must be allowed on the judgment against the principal only so long, that the stay will expire one month before that allowed to the surety on the judgment against him. For how long.

SECT. 138. No stay of execution on judgments rendered in the following cases shall be allowed. 1. On judgments rendered against justices of the peace for refusing to pay over money by them collected or received in their official capacity. 2. On any judgment rendered against a constable for failing to make return, making a false return, or refusing to pay over money collected in his official capacity. 3. On judgments against bail for the stay of execution. 4. Where judgment is rendered in favor of bail, who have been compelled by judgment to pay over money on account of their principal. 5. On judgments obtained by constables or undertakings executed to them for the delivery of property. No stay of execution, in what cases.

SECT. 139. If the execution issued before the undertaking for stay, or that required in case of appeal be given, and such undertaking be given afterward, and within the time allowed, the justice shall recall the execution. When execution recalled.

SECT. 140. Where any person who has become bail for stay of execution, shall remove before the expiration of such stay, into any other county or state, the justice shall, on demand, issue execution against the goods and chattels of the defendant, or other party against whom the original judgment was rendered, to be proceeded with as in other cases. When any surety for the stay of execution shall become apprehensive that, by delaying the execution until the expiration of the full time of such stay, he or she may be compelled to When bail shall remove to other parts. When surety may be obliged to pay judgment.

pay the judgment, it shall be lawful for such surety to make and file affidavit of that fact before the justice on whose docket the judgment is entered; whereupon such justice shall issue execution against the judgment debtor, which shall be proceeded in as in other cases: *Provided*, Such bail shall not thereby be discharged from liability, but may be proceeded against after the expiration of the term of stay, in the same manner as if execution had not issued as aforesaid.

Proviso.

If judgment debtor enter into further undertaking.

SECT. 141. If the judgment debtor shall, within ten days after levying such execution, enter into a further undertaking for the stay of execution, during so much of the first stay as remains then unexpired, and shall pay costs of the execution issued against him as aforesaid, it shall be the duty of the justice to take such further undertaking, and recall the execution; and the person who last became surety shall first be proceeded against, until it shall appear by the return of the constable, that he or she has no goods whereon to levy, before proceedings shall be instituted on the undertaking first given.

When judgment obtained against bail.

SECT. 142. When any judgment shall be obtained against any person who shall have entered himself bail on the docket of any justice of the peace, agreeably to the provisions of this act, the original judgment shall remain good and valid in law, for the use of such bail; who, at any time thereafter, may sue out execution on such judgment, against the goods and chattels of the defendant, for the use of such bail, which shall be so indorsed by the justice; and such bail shall also be entitled to a transcript of such judgment, for his own use; which shall have the same force and effect as transcripts in other cases.

When surety deemed insufficient.

SECT. 143. At any time before the stay shall expire, if the justice taking the surety, or his successor in office, shall become satisfied that the surety is insufficient, it shall be his duty to cause written notice thereof to be given to the defendant, or if he be absent, that the same be left at his residence, requiring him to give additional surety, on or by the third day after the giving of such notice, such facts shall be entered on the docket, and he shall immediately issue execution against the defendant for the collection of the judgment. If within ten days after the issuing of such execution, surety to the satisfaction of the justice be given, the

execution shall be recalled, and stayed until the expiration of the original stay.

SECT. 144. The execution must be directed to a constable ^{Of the execution.} of the county, and subscribed by the justice by whom the judgment was rendered, or by his successor in office, and must bear date the day of its delivery to the officer to be executed. It must intelligibly refer to the judgment, by stating the names of the parties, and the name of the justice before whom, and of the county where, and the time when it was rendered, the amount of the judgment, and, if less than the whole is due, the true amount due thereon. It must require the constable substantially as follows: 1. It must direct the officer to collect the amount of the judgment out of the personal property of the debtor, and pay the same to the party entitled thereto. 2. If it be a case where any of the judgment debtors are certified on the docket as surety, it shall command that the money be made of the personal property of the principal debtor, and for want thereof, of the personal property of the surety. In such cases the personal property of the principal subject to execution within the jurisdiction, shall be exhausted, before any property of the bail shall be taken in execution. 3. It must in all cases direct the officer to make return of the execution and the certificate thereon, showing the manner in which he has executed the same, in thirty days from the time of his receipt thereof.

SECT. 145. Upon an execution on a judgment against ^{Upon an execution against joint debtors.} joint debtors, upon one or more of whom the summons was not served, the execution shall contain a direction to collect the amount of the joint property of all the defendants, or the separate property of the persons upon whom the summons was served, to be specified by name.

SECT. 146. *** SECT. 147. *** SECT. 148. *** SECT. 149. ***

SECT. 150. A constable is liable to the party in whose favor an execution issued to him for the amount thereof, in the following case: when he suffers thirty days to elapse without making a true return thereof to the justice, and paying to him, or to the party entitled, the money collected thereon by him. ^{When constable is liable.}

SECT. 151. When an execution shall be returned unsatisfied for the want of goods and chattels, the justice shall, un- ^{When execution is returned unsatisfied.}

less otherwise directed by the party for whom the execution issued, commence an action on the undertaking for the stay of execution, and, so soon as judgment is obtained thereon, shall issue execution, and if such execution be returned unsatisfied in whole or in part, for want of goods and chattels, of the bail whereon to levy, then the plaintiff may demand and have execution on the original judgment, for the amount remaining due.

When defendant die before judgment is satisfied.

SECT. 152. Where bail is given for the stay of execution, and the defendant against whom the judgment was rendered shall die before the same is satisfied, the creditor may proceed against the surety in the undertaking in like manner as if execution had been issued against the defendant, and return not satisfied for want of goods and chattels whereon to levy.

SALE ON EXECUTION.

Notice and sale on execution.

SECT. 153. All property taken in execution under the provisions of this act, shall be advertised for sale, at four of the most public places within the precinct where such property was seized, at least ten days previous to the time appointed for such sale, which sale shall be held between the hours of ten o'clock, A. M., and four o'clock, P. M., at the house or on the premises where such property was taken, or at one of the most public places within the precinct.

If justice or constable purchase. Penalty.

SECT. 154. It shall not be lawful for any justice of the peace who issued the execution, nor for the constable holding the execution, to purchase, either directly or indirectly, any property sold on such execution. And any justice or constable who shall offend against the provisions of this section, shall forfeit and pay, for every such offence, any sum not exceeding one hundred dollars nor less than five dollars, to be recovered by civil action in the name of the Territory of Dakota, before any court having jurisdiction thereof, for the use of common schools of the county where such offence was committed; and shall moreover be liable to the action of the party injured thereby.

If live-stock taken, constable to be paid for keeping same.

SECT. 155. When any cattle or other live-stock shall be taken in execution, it shall be the duty of the justice who issued the execution, or other justice charged with the duty of collecting the judgment, whereon such execution issued,

to allow the constable for keeping the same, a reasonable compensation, to be taxed and collected as other costs in the suit.

SECT. 156. When a constable shall levy on and sell any goods and chattels, he shall make out and annex to his return to the execution, in virtue of which such sale was made, a true inventory of all such property, and of each article thereof, and the price at which the same was sold.

Constable to make out inventory, &c.

SECT. 157. Where a constable shall have levied on any goods and chattels, which remain unsold for want of bidders, or other just cause, it shall be his duty to return with the execution, a schedule of all such goods and chattels. And the justice shall, unless otherwise directed by the party for whom such execution issued, or his agent immediately thereafter, issue an order, thereby commanding any constable to whom the same may be directed or delivered, to expose such property for sale; which sale, and the proceedings thereon, shall be the same as if such property had been sold on the original execution.

When goods remain unsold.

SECT. 158. Any constable having levied on goods and chattels, of which he permits the party against whom the execution issued to retain the possession, is hereby authorized to take such security for his own indemnity as he may require, that such property shall be delivered at the time and place appointed for the sale thereof.

If constable permits party to retain possession.

SECT. 159. In all cases where any lands may have been let, reserving rent in kind, and when the crops or emblements growing or grown thereon, shall be levied on or attached, by virtue of any execution, attachment, or other process, against the landlord or tenant, the interest of such landlord or tenant, against whom said process did issue, shall not be affected thereby.

When crops, &c., are attached.

SECT. 160. In cases where the constable shall make it appear to the satisfaction of the justice that he has been deprived of an opportunity of levying an execution within the time prescribed by this act, or otherwise prevented from making the whole of the money therein required to be made, and shall make return to the justice who issued the same to that effect, such justice is hereby authorized and required to issue further process of execution, for the amount of balance

When constable returns his inability to levy in time prescribed.

remaining unsatisfied; which shall be served and returned in all respects as other executions are under this act.

ARTICLE XIII.—OF CONSTABLES AND THEIR DUTIES.

Constables—
may execute
process in
county.

SECT. 161. All constables shall be ministerial officers in justices' courts, in their respective counties, in civil and criminal cases, and civil and criminal process may be executed by them throughout the county.

Duties
of constables.

SECT. 162. It shall be the duty of every constable to serve and execute all warrants, writs, precepts, executions, and other process to him directed and delivered, and in all respects whatever, to do and perform all things pertaining to the office of constable.

Call what aid.

SECT. 163. In discharging their duties, constables may call to their aid the power of the county, or such assistance as may be necessary. It shall be the duty of every constable to make due return of all process to him directed and delivered, at the proper office and on the proper return day thereof; or if the judgment be docketed in the district court, appealed, or stayed, upon which he has an execution, on notice, to return the execution, stating thereon such fact.

Make return,
when.

SECT. 164. It shall be the duty of every constable, on the receipt of any writ or other process (subpœnas excepted), to note thereon the time of receiving the same; he shall also state in his return on the same, the time and manner of executing it.

Return "not
found" only
after.

SECT. 165. No constable shall make a return on any process of "not found," as to any defendant, unless he shall have been once at least to his usual place of residence of the defendant, if such defendant have any in the county.

Conservator of
the peace.

SECT. 166. It shall be the duty of every constable to apprehend, on view or warrant, and bring to justice all felons and disturbers and violators of the criminal laws of this territory, to suppress all riots, affrays, and unlawful assemblies, which may come to his knowledge, and generally to keep the peace in his proper county.

Authority ex-
tends, where.

SECT. 167. In serving all process, either civil or criminal, and in doing his duties generally, when not otherwise restricted by law, the authority of a constable shall extend

throughout the whole county in which he may be appointed ; and in executing and serving process issued by a justice of the peace, he shall have and exercise the same authority and powers over goods and chattels, and the persons of parties, as is granted by law to a sheriff, under like process issued from courts of record.

SECT. 168. When it shall become the duty of the constable to take the body of any person to the jail of the county, he shall deliver to the sheriff or jailer a certified copy of the commitment, or other process, whereby he holds such person in custody, and return the original to the justice who issued the same ; which copy shall be sufficient authority to the sheriff or jailer to keep the prisoner in jail, until discharged by due course of law.

When person is committed to jail.

SECT. 169. Constables shall pay over to the party entitled thereto, all money received by them in their official capacity, if demand be made by such party, his agent, or attorney, at any time before he returns the writ upon which he has received it ; if not paid over by that time, he shall pay the same to the justice when he returns the writ.

Shall pay over money, to whom.

SECT. 170. Constables shall be liable to twenty per cent. penalty upon the amount of damages for which judgment may be entered against them, for failing to make return, making false return, or failing to pay over money by them collected or received in their official capacity, and such judgment must include, in addition to the damages and costs, the penalty herein provided.

Penalty for making improper return.

ARTICLE XIV.—GENERAL PROVISIONS.

SECT. 171. The provisions of the act entitled “ An act to establish a code of civil procedure,” approved May —, 1862, which are in their nature applicable to the jurisdiction and proceedings before justices, and in respect to which no special provision is made by statute, are applicable to the proceedings before justices of the peace.

Provisions of civil code applicable.

SECT. 172. Every justice must keep a book, denominated a docket, in which must be entered by him : 1. The title of every action, in which the writ is served, or where the parties voluntarily appear. 2. The date of the writ, the time of its return, and if an order to arrest the defendant

Justices to keep docket, and enter what in same.

or attach property was made, such fact must be stated, together with the affidavit upon which such order was made. 3. The filing of the bill of particulars of either party, and nature thereof, and when not of too great length, the same shall be entered at length on the docket. 4. Which of the parties, if either of them appear at the trial. 5. Every adjournment, stating on whose application, whether on oath or consent, and to what time. 6. When trial by jury is demanded, the demand must be stated, and by whom made, the names of the jurors selected, and the time appointed for the trial. 7. The name of the jurors who appear and of those sworn, the names of all witnesses sworn, and at whose request. 8. The exceptions to the ruling of the justice, on questions of law, taken by either party. 9. The verdict of the jury, and when received; if the jury disagree and are discharged, that fact must be stated. 10. The judgment of the justice, specifying the items of costs included, and the time when rendered. 11. The issuing of execution and orders to sell, when issued and to whom, the renewals thereof, if any, when made, the return and when made, and a statement of any money paid to the justice and by whom. 12. The giving of a transcript, to be filed in the clerk's office, and when given. 13. If appeal be taken, the undertaking and the time of entering into the same, and by which party taken. 14. The undertaking for stay of execution, and the time of giving the same. 15. The satisfaction of the judgment, and the time of satisfying the same.

Particulars,
when and where
entered.

SECT. 173. The several particulars in the last section specified, must be entered under the title of the action to which they relate, and at the time when they occurred (except that bills of exceptions, in regard to the rulings on questions of law or evidence, need not be entered until after the judgment, unless required by the justice or one of the parties); such entries in a justice's docket, or a transcript thereof, certified by the justice or his successor in office, shall be evidence to prove the facts stated therein.

Entries evi-
dence.

Alphabetical
index to be kept.

SECT. 174. A justice must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment, with reference to the page of the entry; the names of the plaintiffs must be entered in the index in the alphabetical order of the first letter of the family names;

he shall number the cases progressively upon his docket, and shall correspondingly number the papers in each case; he shall keep the entire papers in each action together, and in packages of a proper and convenient size, and in the order in which the cases are numbered on his docket.

SECT. 175. It is the duty of every justice upon the expiration of his term of office, to deposit with his successor his official docket, as well his own, as those [of] his predecessor which may be in his custody, together with all files and papers, laws and statutes, pertaining to his office, there to be kept as public records and property. Deliver books and papers to successor. If there be no successor elected and qualified, or if the office become vacant by death, removal from the county, or otherwise, before his successor is elected and qualified, the docket and papers in the possession of such justice must be deposited with the nearest justice in the county, there to be kept until a successor be chosen and qualified, then to be delivered over to such successor on request. ¶ If there be no successor, &c.

SECT. 176. A justice receiving by succession or on deposit, any such docket, papers, and laws, shall, if requested, give a receipt thereof to the person from whom he receives the same. Justice receiving to give receipt.

SECT. 177. The justice with whom the docket of another may be deposited, either during a vacancy, or as a successor, is hereby authorized, while having such docket legally in his possession, to issue execution on any judgment there entered, and unsatisfied and not docketed in the district court, in the same manner [and] with the same effect as the justice by whom the judgment was rendered might have done; to take bail in appeals, or for stay of execution, to issue certified transcripts of judgments on such docket, and proceed in all cases in like manner as if the same had been originally had, or instituted before him. Powers of justices with whom docket may be left in certain cases.

SECT. 178. In case of sickness or other disability or other necessary absence of a justice, at the time appointed for trial, another justice of the same county may, at his request, attend in his behalf, and shall thereupon become vested with the powers for the time being of the justice before whom the summons was returnable. In that case the proper entry of the proceeding before the attending justice, subscribed by him, must be made in the docket of the justice, before whom the writ was returnable. In case of disability of justice, another justice may act. If the case be adjourned, the justice

before whom the summons was returnable, must resume jurisdiction.

Summons void,
when.

SECT. 179. The summons, execution, and every other paper made or issued by a justice must be filled without a blank to be filled by another; otherwise it is void.

Justice may
deputize person
to serve process.

SECT. 180. A justice, at the request of a party, and on being satisfied that it is expedient, may specially depute any discreet person of suitable age, and not interested in the action, to serve any process of said justice authorized by law. Such deputation must be in writing on the process.

Authority of
person deputed.

SECT. 181. The person so deputed has the authority of a constable, in relation to the service, execution, and return of such process, and is subject to the same obligation, but there can be no fee of his services taxed in the bill of costs.

Punishment
for contempt, in
what cases.

SECT. 182. A justice may punish, as for contempt, persons guilty of the following acts, and no others: 1. Disorderly, contemptuous, or insolent behavior towards the justice, tending to interrupt the due course of the trial, or other judicial proceedings before him. 2. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial, or other judicial proceeding. 3. Wilful resistance in the presence of the justice, to the execution of a lawful order, or process made or issued by him.

Warrant of
arrest, &c.

SECT. 183. A warrant of arrest may be issued by such justice, on which the person so guilty may be arrested, and brought before the justice, when an opportunity to be heard in his defence or excuse must be given. The justice may thereupon discharge him, or may convict him for the offence and adjudge a punishment by fine or imprisonment, or both; such fine not to exceed twenty dollars, and such imprisonment ten days, the money collected on such fine shall be for the support of common schools in said county.

Conviction
entered in
docket.

SECT. 184. The conviction, specifying particularly the offence and judgment thereon, must be entered in his docket.

Warrant of
commitment
then issued.

A warrant of commitment to the jail of the county, until the fine be paid, or for the term of imprisonment, may then be issued; such warrant must contain a transcript of the entry in the docket, and the same must be executed by any constable to whom it may be given, and by the jailer of the county.

SECT. 185. When a person intending to bring an action before a justice of the peace, is a non-resident of the county in which he intends to commence such action, the justice may, previous to his issuing process, require such person to give security for the costs of such suit; which may be done by depositing a sum of money, deemed by the justice to be sufficient to discharge the costs that may accrue in the action, or by giving an undertaking, with security approved by the justice, payable to the adverse party, for the payment of all costs that may accrue in the action. If any plaintiff or plaintiffs, after commencing an action before a justice in the county in which he or they reside, afterwards remove out of the county, the justice may require such plaintiff or plaintiffs to deposit a sum of money, equal to the costs that have accrued and that probably will accrue, or require in place thereof, that such party give sufficient security for all costs that have accrued, or which may accrue in the action, and in default to do either, shall enter a non-suit against the plaintiff or plaintiffs.

When person bringing action is non-resident.

If they remove after commencement.

SECT. 186. That in all actions instituted before a justice of the peace, founded upon any bond, sealed bill, promissory note, or other instrument of writing, for the payment of a sum of money certain, of which the whole amount of money promised therein is due, it shall be the duty of the plaintiff, his agent or attorney, to file a copy of said bond, sealed bill, promissory note, or other written evidence of indebtedness upon which said suit is brought, with such justice of the peace, and upon the trial of the case the original of said bond, sealed bill, promissory note, or other written evidence of indebtedness shall be filed with such justice of the peace; and if, upon the trial judgment shall be entered thereon, in favor of the plaintiff, such bond, sealed bill, promissory note, or instrument of writing, shall be retained by the justice so rendering judgment, who shall indorse the sum for which he shall have entered judgment (provided the same shall in nowise exceed one hundred dollars) and shall subscribe his name thereto. And upon payment, or tender of the amount of such payment, together with the cost accruing thereon, or securing the payment of the same by putting in bail for the stay of execution, it shall not be lawful for the plaintiff to institute any other suit or suits upon such bond, sealed bill,

In actions bond, sealed bill, promissory note, &c.

Proviso.

promissory note, or other instrument of writing for the recovery of any other sum or sums, the payment of which is secured by the same bond, sealed bill, promissory note, or other written evidence of indebtedness: *Provided*, That when an appeal shall be taken from the judgment of such justice, it shall be his duty to transmit any bond, sealed bill, promissory note, or other written evidence produced before him on trial to the clerk of the district court, to which such cause shall have been appealed, on or before the second day of the term of the court next after taking such appeal: *Provided, also*, That nothing herein contained shall be construed to lessen or in anywise affect the right which any creditors now have to demand from any justice of the peace, any joint and several obligations for the purpose of prosecuting any party to said obligations, other than the party against whom judgment may have been rendered.

If justice purchase judgment on his docket. Penalty.

SECT. 187. It shall not be lawful for any justice of the peace to purchase any judgment, upon any docket in his possession; and for so doing, and for every such offence, such justice shall forfeit and pay a sum not more than fifty dollars, nor less than ten dollars, to be recovered by an action before any court having jurisdiction thereof, and when collected, shall be paid into the treasury of the county where such offence was committed. Said money so collected and paid in shall be for the support of common schools in said county.

No imprisonment for debt.

SECT. 188. Nothing in this act contained shall be so construed as to authorize the arrest or imprisonment of any citizen of this territory for debt; and nothing in this act shall apply to property, real or personal, goods or chattels, rights or credits, interests or estates, exempt by law from levy, seizure, or sale under execution.

Nothing in act applies to exempted property.

Take effect, when.

SECT. 190. This act to take effect and be in force from and after its passage.

Approved May 13, 1862.

W. JAYNE, *Governor*.

CHAPTER 50.

AN ACT DEFINING THE JURISDICTION OF JUSTICES OF THE PEACE IN CRIMINAL CASES, AND OF THE PROCEEDINGS THEREIN.

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

SECTION 1. That justices of the peace in their respective counties have jurisdiction of, and must hear, try, and determine all public offences less than felony, in which the punishment prescribed by law does not exceed a fine of one hundred dollars or imprisonment thirty days, on information under oath, without indictment or the intervention of a grand jury, saving to the defendant the right of appeal to the district court. Have jurisdiction of what criminal cases.

SECT. 2. Criminal actions for the commission of a public offence must be commenced before a justice of the peace by an information, subscribed and sworn to, and filed with the justice. How commenced.

SECT. 3. Such information must contain: 1. The name of the county and of the justice where the information is filed. 2. The names of the parties, if the defendants be known, and if not, then such name as may be given by the complainant. 3. A statement of the acts constituting the offence, in ordinary and concise language, and the time and place of the commission of the offence as near as may be. Information contain, what.

SECT. 4. The information may be substantially in the following form: Form of information.

<p style="text-align: center;">— county,</p> <p>THE TERRITORY OF DAKOTA,</p> <p style="text-align: center;">v.</p> <p>A B, defendant.</p>	}	<p>Before Justice (here insert the name of the justice).</p>
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The defendant is accused of the crime (here name the offence). For that the defendant on the — day of —, A. D. 18—, at the (here name the city, village, or township) in the county aforesaid (here state the act or omission constituting the offence, as in an indictment).

File same. **SECT. 5.** The justice must file such information, and mark thereon the time of filing the same.

May then issue warrant for arrest. **SECT. 6.** Immediately upon the filing of such information, the justice may, in his discretion, issue a warrant for the arrest of the defendant, directed in the same manner as a warrant of arrest upon a preliminary information, and may be served in like manner.

How served. **SECT. 7.** The officer who receives the warrant must serve the same by arresting the defendant, if in his power, and bringing him, without unnecessary delay, before the justice who issued the same.

Proceedings when defendant is brought before justice. **SECT. 8.** When the defendant is brought before the justice, the charge against him must be distinctly read to him, and he shall be asked whether he is presented by his right name, and be required to plead. If he object that he is wrongfully named in the information, he must give his right name; and if he refuse to do so, or does not object to the name used in the information, the justice shall make an entry thereof in his docket, and he is thereafter precluded from making any such objection.

Pleas of defendant. **SECT. 9.** The defendant may plead the same pleas as upon an indictment; his pleas may be either oral or written, and must be entered on the docket of the justice.

Justice must try, except when. **SECT. 10.** Upon a plea other than a plea of guilty, if the defendant do not demand a trial by jury, the justice must proceed to try the issue unless a change of venue be applied for by the defendant.

If change of venue applied for. **SECT. 11.** If a change of venue be applied for, an affidavit must be filed stating that the justice is prejudiced against the defendant, or is of near relation to the prosecutor upon the charge, or the party injured or interested, or is a material witness for either party, or that the defendant cannot obtain justice before him, as the affidavit verily believes.

When allowed, justice must transmit papers, &c. **SECT. 12.** If such affidavit be filed, the change of venue must be allowed, and the justice must immediately transmit all the original papers, and a transcript of all his docket entries in the case, to the next nearest justice in the county, against whom no such objection has been made, who shall proceed to try the case, unless a jury trial be demanded. No more than one change of venue in the same case shall be allowed.

SECT. 13. Before the justice has heard any testimony upon the trial, the defendant may demand a jury, which in all cases shall be allowed.

Defendant may demand jury.

SECT. 14. If a trial by jury be demanded, the justice shall direct any peace officer of the county, to make a list in writing of the names of twelve inhabitants of the county, having the qualifications of jurors in the district court, from which list the prosecutor and defendant may each strike out three names.

If jury is demanded, how made up.

SECT. 15. In case the prosecutor or the defendant neglect or refuse to strike out such names, the justice shall direct some disinterested person to strike out the names for either or both of the parties so neglecting or refusing; and upon such names being struck out, the justice must issue a venire directed to any peace officer of the county, requiring him to summon the six persons whose names remain upon the list, to appear before such justice at the time and place named therein, to make a jury for the trial of the cause.

Same.

SECT. 16. The officer to whom such venire is delivered must forthwith summons such jurors, and return the venire to the justice, within the time therein specified, naming the persons summoned and the manner of service.

Officer summon jurors and make return.

SECT. 17. The names of the persons returned as jurors shall be called by the justice, and if upon any such call any of the persons so named do not appear, or are challenged, or set aside for any cause, such further number must be summoned as will make a jury of six, after all legal challenges have been allowed.

When incomplete.

SECT. 18. This same challenge may be taken by either party to any individual juror as on the trial of an indictment for a misdemeanor, but no challenge to the panel is allowed.

Challenge, when allowed.

SECT. 19. If the officer by whom the venire is received, do not return it as required, he may be punished by the justice as for a contempt, and the justice shall issue a new venire for the summoning of the same jurors, upon which the same proceeding shall be had as upon the one first issued.

If officer do not return venire. Penalty.

SECT. 20. When six jurors appear and are accepted, they shall constitute the jury.

Six jurors constitute jury.

SECT. 21. The justice must thereupon administer to them the following oath or affirmation: "You and each of you

Take what oath.

do swear) or you do solemnly affirm, as the case may be), that you will well and truly try the issue, between the territory of Dakota and the defendant, and a true verdict give according to the evidence."

Must sit together.

SECT. 22. After the jury are sworn they must sit together and hear the proofs and allegations of the parties, which must be delivered in public, after which they may either decide in open court or retire for consideration.

If deliberation necessary in forming verdict, to retire with sworn officer.

SECT. 23. If they do not immediately agree upon a verdict, they must retire with the sheriff of the county, or some constable, if either such are in attendance upon the court, or in their absence, with some person appointed by the justice who shall be sworn to the following effect: "You do swear that you will keep the jury together, in some private place, without food or drink, unless otherwise ordered by the court; that you will not permit any person to speak to them, nor speak to them yourself, unless it be to ask them whether they have agreed upon a verdict, and that you will return them into court when they have so agreed."

Must deliver verdict publicly, &c.

SECT. 24. When the jury have agreed on their verdict, they must deliver it publicly, to the justice, who shall enter it on his docket.

When discharged.

SECT. 25. The jury must be kept together after the case is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the justice sooner discharge them.

New trial, when.

SECT. 26. If the jury be discharged as provided in the last section, the justice may proceed again to the trial in the same manner as upon the first trial, and so on till a verdict is rendered.

In case of plea of guilty or conviction.

SECT. 27. When the defendant pleads guilty, or is convicted, either by the justice or by a jury, the justice shall render judgment thereon of fine or imprisonment, as the case may require, being governed by the rules prescribed for the district court, as far as the same are applicable, in rendering such judgment.

Judgment of fine may direct imprisonment.

SECT. 28. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied.

When defendant is acquitted.

SECT. 29. When the defendant is acquitted, either by the justice or by a jury, he must be immediately discharged.

If prosecution malicious.

SECT. 30. When the defendant is acquitted the justice

shall, if he is satisfied that the prosecution was malicious or without probable cause, tax the cost against the prosecuting witness, and render judgment therefor.

SECT. 31. Whenever a conviction is had upon a plea of guilty or upon trial, the justice must make and sign with his name of office a certificate of such conviction, in which it shall be sufficient briefly to state the offence charged and the conviction and judgment thereon, and if any fine has been collected, the amount thereof.

When plea of guilty, duty of justice.

SECT. 32. Within twenty days after such conviction, the justice must cause such certificate to be filed in the office of the judge of probate of the county where the conviction was had.

Same.

SECT. 33. The judgment shall be executed by a peace officer of the county where the conviction is had, by virtue of the warrant under the hand of the justice, specifying the particulars of such judgment.

Judgment executed.

SECT. 34. If a fine be imposed and paid before commitment, it shall be received by the justice, and by him paid over to the county treasurer, within thirty days after the receipt thereof, for the use of the schools in the county, as provided by law.

Disposal of fines to use of schools.

SECT. 35. If the defendant be committed for not paying a fine, he may pay it to the sheriff of the county, but to no other person, who must, in like manner, within thirty days after the receipt thereof, pay it into the county treasury for the use of the schools in the county, as provided by law.

If defendant committed before paying fine.

SECT. 36. If the fine or any part thereof is paid to the justice or sheriff, he must execute duplicate receipts therefor, one of which he must file without delay with the register of deeds or recorder of deeds in and for the county.

If fine paid to justice or sheriff, duplicate receipts executed.

SECT. 37. Either party may appeal from the judgment to the district court of the county in which the trial was had — the territory in the same manner as the defendant.

Either party may appeal.

SECT. 38. The justice, rendering a judgment against the defendant, must inform him of his right to an appeal therefrom, and make an entry on his docket of the giving such information, and the defendant may thereupon take an appeal by giving notice orally to the justice that he appeals, and the justice must make an entry on his docket of the giving of such notice.

Defendant notified of right to appeal.

Appeal, how taken.

Execution not stayed unless bail be given.

SECT. 39. The justice must, thereupon, enter an order on his docket, fixing the amount in which bail may be given by the defendant, and the execution of the judgment against the defendant shall not be stayed, unless bail in that amount be put in by an undertaking substantially in the following form :

THE TERRITORY OF DAKOTA, }
 — county, } ss.

Form of undertaking.

A B having been convicted before C D, a justice of the peace of said county, of the crime of (here designate it generally, as in the information), by a judgment rendered on the — day of —, A. D. 18—, and having appealed from said judgment to the district court of said county :

We, A B and E F (or I, E, F), or (we, E F and H G), hereby undertake that the said A B will appear in the district court of said county at the next term thereof, and abide the judgment of said court, and not depart without leave of the same, or that we will pay to the Territory of Dakota the sum of — dollars (the amount of bail fixed).

A— B—,
 E— F—.

Acknowledged before and accepted by me, at —, in the county of —, this — day of —, A. D. 18—.

C— D—, Justice of the Peace.

Qualifications of bail.

SECT. 40. The bail must possess the qualifications required in cases of appeal from the district to the supreme court of the territory.

Bail taken by whom.

SECT. 41. The bail may be taken by the justice who rendered the judgment, or by any magistrate in the county who has authority to admit to bail, or by the district court, or the clerk thereof.

Material witnesses give undertaking for appearance.

SECT. 42. When an appeal is taken, the justice must cause all material witnesses to enter into an undertaking, as in a case where a defendant is held to answer on a preliminary examination, to appear and testify on the trial of the appeal in the district court, at a term at which it is returnable, and shall as soon as practicable, and at least ten days before the first day of such term of the district court of the county, file in the office of the clerk thereof, a certified copy of the entries

on his docket, together with all the undertakings and papers in the case.

SECT. 43. The cause, when thus appealed, shall stand for trial anew in the district court, in the same manner that it should have been tried before the justice, and as nearly as practicable, as an issue of fact upon an indictment, without regard to technical errors, or defects, which have not prejudiced the substantial rights of either party, and the court has full power over the case, the justice of the peace, his docket entries, and his return, to administer the justice of the case, according to the law, and shall give judgment accordingly. When appealed, stands how.

SECT. 44. No appeal from the judgment of a justice of the peace in a criminal case shall be dismissed. No appeal dismissed.

SECT. 45. If any proceedings be necessary to carry the judgment upon the appeal into effect, they shall be had in the district court. Proceedings on judgment in appeal.

SECT. 46. Either party may appeal from the judgment of the district court, to the supreme court, in the same manner as from a judgment in a prosecution by indictment, and the defendant may be admitted to bail in like manner, and similar proceedings shall be had on the appeal in all respects, as nearly as applicable. May appeal to supreme court.

SECT. 47. The same proceedings shall be had to carry into effect the judgment of the supreme court upon the appeal, as if it had been taken from a judgment prosecuted by indictment. Proceedings in judgment of supreme court.

SECT. 48. This act to take effect from and after its passage. Take effect, when.

Approved May 13, 1862.

W. JAYNE, *Governor*.

CHAPTER 51.

AN ACT TO PROVIDE FOR TRIALS IN CERTAIN CASES BEFORE JUSTICES OF THE PEACE.

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

When title to lands is disputed, case goes to district court.

SECTION 1. If it appear, on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other party, the justice shall immediately make an entry thereof in his docket, and cease all further proceedings in the cause, and shall certify and return to the district court of the county a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit, in the same manner and within the same time as upon an appeal; and thereupon the district court shall proceed in the cause to final judgment and execution, the same as if the said suit had been originally commenced therein, and the costs shall abide the event of the suit.

Take effect, when.

SECT. 2. This act to take effect from and after its passage.

Approved May 12, 1862.

W. JAYNE, *Governor.*

JURIES.**CHAPTER 52.**

AN ACT RESPECTING JURORS.

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

Qualifications of jurors.

SECTION 1. All free white males 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 being judges of the supreme court or district courts, clerks of the supreme or district courts, sheriffs, coroners, or jailers, or subject to any bodily infirmity amounting to a disability, and who have not been convicted of a criminal offence punishable by imprisonment in the penitentiary, and are not subject to disability for the commission of any offence 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, licensed attorneys, practising physicians, postmasters or assistant postmasters, and carriers of the United States mail, shall not be compelled to serve as jurors.

Proviso.

SECT. 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 any two of them may meet—and select sixty persons, possessing the qualifications prescribed in section one, and as nearly as may be, a proportionate number from each precinct in the county, and shall, within five days thereafter, furnish to the clerk of the district court of the county, or his deputy, a list of the names of the persons selected.

Where district court is held, commissioners of county to select jury, how.

SECT. 3. The clerk or deputy clerk receiving the names, 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.

Duty of clerk receiving list of names.

SECT. 4. 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 deputy-sheriff, or if there is no sheriff or deputy-sheriff, the coroner of the county shall, at least ten days before the first day of the session of the district court, meet together and draw by lot out of the box or receptacle wherein shall be kept the tickets aforesaid, sixteen names, and the persons whose names are drawn shall be grand jurors, and the clerk and sheriff shall then draw twelve additional names,

How grand and petit jurors selected, and when.

and the persons whose names are drawn shall be the petit jurors.

Order to sheriff to summon jurors.

SECT. 5. The clerk shall, on the day of the drawing aforementioned, 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 or before the hour of eleven o'clock, on the morning of the first day of the term (stating in the order the day of the week and month, and the place of the sitting of the court), to serve as grand jurors, and a like order commanding the sheriff, deputy-sheriff, or coroner to summon the petit jurors.

Duty of sheriff receiving order.

SECT. 6. The sheriff, deputy-sheriff, or coroner, having received the order, shall, at least five days before the first day of the session of the court, serve upon each person whose name was selected and drawn as grand juror, 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; and the sheriff, deputy-sheriff, or coroner shall, at least five days before the first day of the session of the court, in like manner summon each person whose name was selected and drawn as 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.

Jurors to appear when, and not depart without leave.

SECT. 7. Each grand juror 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.

If all do not appear, places how filled.

SECT. 8. If all the persons summoned as grand and petit jurors do not appear before the court, or if by any cause the panel of grand jurors or petit jurors is not complete, 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 summoned shall forthwith appear before the court, and, if competent, shall serve on the grand jury or petit, as the case may be, unless such person may be excused from serving or lawfully challenged.

Qualified persons to serve in rotation.

SECT. 9. It shall be the duty of the county commissioners in selecting and furnishing to the clerk the names of persons qualified to serve as grand or petit jurors, so to select and arrange that no one person shall serve 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.

SECT. 10. The sheriff, deputy-sheriff, or coroner, having received the order or service issued by the clerk, shall make return thereof, with his proceedings, to the clerk before the session of the court.

Sheriff make return, when.

SECT. 11. 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 hereinbefore provided, such persons so offending may be fined by the court not less than five nor more than fifty dollars, and if any clerk of the district court, or deputy clerk, or sheriff, deputy-sheriff, or coroner, neglect or fails to perform the duties imposed by this act, the person 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, may be imprisoned by the court not longer than thirty days in the county jail.

If person summoned fails or refuses. Penalty.

If commissioners fail in their duty.

If clerk fails in his duty.

SECT. 12. This act shall take effect and be in force from and after its passage.

Take effect, when.

Approved May 13, 1862.

W. JAYNE, *Governor.*

LAWS AND JOURNALS.

CHAPTER 53.

AN ACT TO REGULATE THE DISTRIBUTION OF THE LAWS
AND JOURNALS OF DAKOTA TERRITORY, AND FOR OTHER
PURPOSES.

*Be it enacted by the Council and House of Representatives of
the Territory of Dakota :*

Secretary au-
thorized to dis-
tribute.

SECTION 1. That the secretary of the Territory of Dakota be and is hereby authorized to distribute the laws and journals of the territory as hereinafter prescribed.

County clerk
to make requisitions,
&c.

SECT. 2. The county clerk of each organized county shall make a requisition upon the secretary of the territory for as many copies of the laws and journals of each branch of the legislative assembly as said county may be entitled to, for the use of the county of which he is clerk; and he shall name the conveyance or means of transportation, and also to specify to whom they shall be directed, and to whose care; and upon the receipt of such requisition, the secretary shall at once forward the required number of laws and journals as specified in the requisition of such county clerk, and the county clerk shall receipt for the same to the secretary, which receipt shall be filed in the office of the secretary of the territory.

Clerk receipt
for same.

Clerk dis-
tribute, how.

SECT. 3. The county clerk shall distribute one copy of the laws to each officer of the county and precinct, one copy to each notary public, and two copies each of the laws and journals to every representative and councilman who was a member of the legislative assembly by which the laws were enacted.

County officers
deliver to suc-
cessors.

SECT. 4. Each county officer shall deliver up to his successor in office all statutes which shall have come into his possession under the provisions of this act, as soon after his successor shall have qualified, as his successor or the county clerk may require.

SECT. 5. After the above distribution, the copies remaining in the hands of the county clerk shall be sold at public auction (ten days' notice having been given in three public places in each county), to the highest bidder; no person, however, to purchase more than two copies, and the proceeds of such sale shall go, first, to defray the cost of transportation from the secretary of the territory to the county clerk, and the remainder, if any shall exist, shall be paid over to the secretary of the territory, and to be by him held subject to the order of the legislative assembly.

Copies remaining with clerk to be sold at public auction.

Proceeds, how disposed of.

SECT. 6. The secretary shall, upon the order of either of the judges of the supreme court, issue one copy each to the district attorney, United States marshal, each register and receiver of all United States land-offices in the territory, each United States commissioner residing in this territory, any such other officers as the judges in their discretion may direct: *Provided, always,* That the secretary shall permit no person or persons to take away a copy or copies of the laws and journals without taking a receipt therefor.

Secretary to distribute to other officers.

Proviso.

SECT. 7. The members of each succeeding legislative assembly shall be furnished by the secretary, at the commencement of each session for which they are elected, with one copy each of the laws and journals of the preceding session.

Members to receive with those of preceding session.

SECT. 8. This act shall take effect and be in force from and after its passage.

Take effect, when.

Approved May 15, 1862.

W. JAYNE, Governor.

LIENS.

CHAPTER 54.

AN ACT TO CREATE A LIEN FOR MECHANICS AND OTHERS IN
CERTAIN CASES.

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

Person having
cause of action
amounting to ten
dollars,
may file com-
plaint, to con-
tain what.

SECTION 1. Any person who has a subsisting cause of action to the amount of ten dollars for any labor performed upon any lands, tenements, or hereditaments, or for any materials furnished for any improvements upon any lands, tenements, or hereditaments may, at any time within ninety days next after such cause of action shall have accrued, file his complaint as in other cases, and serve a notice upon the defendant; and such complaint shall, in addition to the facts necessary to constitute a cause of action, contain an accurate description and statement of the location of the lands, tenements, or hereditaments, upon which the labor was performed, or for the improvement of which the materials were furnished; and shall also allege that the defendant therein named is the owner of, or has some interest in, such lands, tenements, or hereditaments, and that such labor was performed, or such materials furnished, pursuant to an agreement, expressed or implied, between the plaintiff and defendant or his agent; the said complaint shall, as soon as filed in the office of the clerk of the district court of the proper courts, constitute and be a lien upon the property therein described, in favor of the plaintiff, to the extent of the defendant's title or interest therein.

Complaint act
as lien, when.

When labor,
&c., was for con-
tractor employed
by owner.

SECT. 2. When the complaint does not allege that the labor was performed or the materials furnished, pursuant to an agreement with the defendant, but shall allege that the labor was performed or the materials furnished pursuant to an agreement with some contractor therein named, which contractor was employed by the defendant or his agent, and

that the plaintiff was employed by said contractor, and had served a notice in writing upon the defendant or his agent, to the effect that he, the plaintiff, was, or had been employed by the said contractor, to perform labor thereon, or to furnish materials for the improvement of such lands, tenements, and hereditaments, and relied upon him, the defendant, or upon such lands, tenements, or hereditaments for his pay, then the filing of such complaint shall constitute and be a lien in favor of the plaintiff, the same as provided in the preceding section, to the amount that the defendant was indebted to the said contractor, when the said notice was served upon him or his agent, and to the amount in which the defendant became indebted to said contractor after the service of said notice, and before the expiration of the plaintiff's lien: *Provided*, The amount thus due, or thus becoming due, does not exceed the amount claimed in the complaint; and upon the trial, the plaintiff shall have judgment for no more than the sum due from the defendant to the contractor at the time of serving such notice, and the amount which becomes due after the service of such notice; and when the lien shall be acquired under this section, it shall be a bar to any action by the said contractor, for the recovery of his claim for moneys due from said defendant, to the amount of the lien, until such claim of lien shall be finally decided, and if decided in favor of the plaintiff, then it shall be to that extent a bar forever.

Proviso.

SECT. 3. The plaintiff may, at any time after filing his complaint as above provided, serve a notice on the defendant, and proceed to judgment as in other actions, but the lien hereby created shall cease to exist after ninety days from the time the labor was performed, or the materials furnished, unless a notice be served within that time: *Provided*, That if the defendant be absent or concealed, he may be proceeded against in the same manner as is provided for in other cases of absent or concealed defendants.

Lien ceases in ninety days, unless case proceeds to judgment.

Proviso.

SECT. 4. The lien hereby created, shall be as effectual as liens created by judgment of courts of record; and if the plaintiff shall recover judgment upon his complaint, the lands, tenements, and hereditaments therein described, or any interest whatever therein, either in law or equity, which the defendant had therein at the time of securing such lien; and

Force of lien.

any interest whatever, either in law or equity, which the defendant shall have acquired therein, after such lien was secured, shall be liable to sale by virtue of any execution issued thereon; and if the property described in such complaint, be not sufficient to satisfy such execution, or if the defendant was not the owner, or had not sufficient interest therein, any other property of the defendant not exempt from sale or execution, may be sold to satisfy such execution.

District court has jurisdiction in actions under this chapter.

SECT. 5. The district court of this territory shall have jurisdiction in all actions and proceedings under this chapter, whatever may be the amount in controversy; and they are hereby authorized to make all orders and decrees which may be necessary for the effectual enforcement of the remedies herein provided.

How complaint may be discharged.

SECT. 6. When any person who shall have filed his complaint pursuant to the provisions of this chapter, shall have received satisfaction for his claim, and the legal costs of his proceedings therein, he shall upon the request of any person interested, and upon the payment or tender of the costs of entering satisfaction therein, within six days after such payment or tender, enter satisfaction of his demand in the office where his complaint is filed, which shall forever thereafter discharge, defeat, and release the same.

If person satisfied does not enter satisfaction.

SECT. 7. If such person, having received satisfaction as specified, in the preceding section, shall not, within six days after request and payment of costs as aforesaid, enter satisfaction as aforesaid, he shall forfeit and pay to the party aggrieved, double the amount of damages which he shall have sustained in consequence of his refusal or neglect.

Lien on articles altered or repaired.

SECT. 8. Any person who shall make, alter, repair, or bestow labor on any article of personal property, at the request of the owner or legal possessor thereof, shall have a lien on such property so made, altered, or repaired, or upon which labor has been bestowed, for his just and reasonable charges for the labor he has performed and the materials he has furnished; and such person may hold and retain possession of the same, until such just and reasonable charges shall be paid; and if they be not paid within three months after the labor shall have been performed or the materials furnished, such person having such lien, may proceed to sell the property by him so made, altered, or repaired, or upon

If charges not paid in three months, may be sold, how.

which labor has been bestowed, at public auction, by giving public notice of such sale by advertisement for three weeks, in some newspaper that has general circulation in the county, or if no newspaper be published in said county, by posting up notice of such sale in three of the most public places in the county, three weeks before the time of sale; and the proceeds of such sale be applied, first, to the discharge of such lien, and the costs and expenses of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof.

SECT. 9. Any person who is common carrier, and any person who shall, at the request of the owner or lawful possessor of any personal property, carry, convey, or transport the same from one place to another, and any person who shall safely keep or store any personal property, at the request of the owner or lawful possessor thereof, shall have the same lien and the same power of sale for the satisfaction of his reasonable charges, upon the same condition and restrictions as provided in the preceding section. The provisions of this act shall not interfere with any special agreement between the parties.

Lien of common carrier same as in preceding section.

Special agreement not interfered with.

SECT. 10. This act shall take effect and be in force from and after its passage, and approval by the governor.

Take effect, when.

Approved April 24, 1862.

W. JAYNE, *Governor.*

LEGISLATIVE ASSEMBLY.

CHAPTER 55.

AN ACT TO FIX THE TIME FOR CONVENING THE LEGISLATIVE ASSEMBLY.

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

SECTION 1. That the next session of the legislative assembly of the Territory of Dakota, shall commence on the first

Next session commence when, and of future meetings.

Monday of December, in the year one thousand eight hundred and sixty-two; and said legislative assembly shall meet annually thereafter on the first Monday in December.

Take effect,
when.

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

Approved April 21, 1862.

W. JAYNE, *Governor.*

CHAPTER 56.

AN ACT TO DESIGNATE THE TIME OF THE MEETING OF THE LEGISLATURE, AND DEFINING THE DUTIES OF THE SAME.

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

Meet. when.

SECTION 1. The regular annual session of the legislative assembly shall commence on the first Monday of December in each year.

No officer liable
to arrest on civil
process, when.

SECT. 2. No officer of the council or house of representatives, while in actual attendance upon the duties of his office, shall be liable to arrest upon civil process.

May punish for
contempt in what
cases.

SECT. 3. Each house may punish, as a contempt, by imprisonment, a breach of its privileges by its members; but only for one or more of the following offences, to wit: 1. The offence of arresting a member or officer of the house, or procuring such member or officer to be arrested, in violation of his privileges from arrest. 2. That of disorderly conduct in the immediate view of the house, and directly tending to interrupt its proceedings. 3. That of refusing to attend to be examined as a witness, either before the house, or a committee, or before any person authorized by the house, or a committee, to take testimony in legislative proceedings. 4. That of giving or offering a bribe to a member, or of attempting, by menace, or other corrupt means, or device, directly or indirectly, to control or influence a member in giving his vote, or to prevent his giving the same; but the term of imprisonment, which such house may impose for any contempt speci-

fied in this section, shall not extend beyond the same session of the legislature.

SECT. 4. Every person who shall be guilty of any contempt specified in the preceding section, shall, also, be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars, or both such fine and imprisonment, at the discretion of the court.

Person guilty of contempt. Penalty.

SECT. 5. The speaker of the house of representatives and the president of the council, the governor, attorney-general, or any of the judges of the supreme court, are hereby authorized to administer the oath of office to the members and officers of the respective houses.

Who may administer oath of office.

SECT. 6. Any member of the council or house of representatives, while acting as a committee of the house of which he is a member, shall have authority to administer oaths to such persons as shall be examined before the committee of which he is a member.

Any member of committee may do same.

SECT. 7. In case the right of any person to a seat in either house of the legislative assembly, shall be contested, the right of such person to a seat as aforesaid, shall be determined by the house in which he claims such seat as a member; and such house shall, in all cases, be the judge of the qualification of its members.

Houses may judge of rights of members to seats, &c.

SECT. 8. The officers of the council shall consist of a president (who shall be a member of said body), a secretary and assistant secretary, an engrossing clerk and an enrolling clerk, a sergeant-at-arms (who shall also perform the office of doorkeeper), a messenger and a fireman.

Officers of the council.

SECT. 9. The officers of the house of representatives shall consist of a speaker (who shall be a member of said body), a chief clerk, an assistant clerk, an engrossing clerk, an enrolling clerk, a sergeant-at-arms (who shall also perform the duties of doorkeeper), a messenger, and a fireman.

Officers of the house.

SECT. 10. The said officers shall be elected, viva voce, by the members of each house respectively, at such time, after the meeting of said house, as the members thereof shall see proper; but neither house shall transact any business other than the election or appointment of officers, until said officers are elected or appointed pro tem. on motion.

Officers elected, how and when.

SECT. 11. It shall be the duty of the secretary of the

Duties of secretary and clerk.

council and chief clerk of the house of representatives, to keep correct journals of the proceedings of their respective houses, to have the custody of all records, accounts, and other papers committed to them, and at the close of each session of the legislative assembly, shall deposit for safe keeping in the office of the secretary of the territory, all books, bills, documents, resolutions, and papers in the possession of the legislature, correctly labelled, folded, and classified, and generally to perform such duties as shall be assigned them by their respective houses: *Provided*, The journals of the two houses need not be deposited as above provided until the expiration of forty days after the adjournment of the legislative assembly.

Proviso.

Same.

SECT. 12. It shall be the duty of the secretary of the council and the chief clerk of the house, at the close of each session, to prepare for the press and superintend the publication of the journals of the proceedings of their respective houses, and to affix an index thereto; and to transcribe into a book kept for that purpose, the documents accompanying the message of the governor, or by him sent to either house, other than those entered on the journal, or the documents reported to either branch of the legislative assembly by any public officer of the territory, in pursuance of law, for which service they shall be allowed such compensation as the legislature shall from time to time determine; but in no event to be less than their regular pay per diem, for the time actually employed in performing said labor.

Same.

SECT. 13. It shall be the duty of the said secretary and chief clerk, at the opening of every session of the legislative assembly, to make a correct roll of the members of their houses, respectively, to whom certificates of election have been issued by the proper officers, which certificates shall be filed by said secretary and chief clerk.

Secretary and clerk to remain in office until next session, and call houses to order.

SECT. 14. In all cases, the said secretary and chief clerk, serving at the close of a session, shall remain in office until the organization of the next regular annual session of the legislature, and at twelve o'clock, meridian, on the day appointed by law for the meeting of the legislative assembly, the said secretary and chief clerk, or in the absence of either, then some member or other person appointed by the members present, shall call the members of their respective houses so

enrolled to order, when the members may proceed to the election of the necessary officers. The term of office of all officers of the council and house of representatives, shall expire with the close of the session at which they were elected.

Term of office
of officers.

SECT. 15. The compensation prescribed by law for the officers of the council shall be certified by the president thereof, and attested by the secretary: and the compensation that may be due to the officers of the house of representatives, shall be certified by the speaker thereof, and attested by the chief clerk, which said certificate, when made out as aforesaid, shall be sufficient evidence to the secretary of the territory of each person's claim.

Compensation,
how certified.

SECT. 16. It shall be competent at any time during a session of the legislative assembly, for either house, by a vote of a majority, to remove from office any of the officers provided for in this act; but in case of the removal of any officer by either house, his place shall be supplied by an election, viva voce; and in all elections under the provisions of this act for officers of either house of the legislative assembly, it shall require a majority of all the votes cast to determine a choice.

Officers may be
removed, how.

Majority elect.

SECT. 17. There shall be allowed to the presiding officers of each house three dollars per diem extra, and to each of the officers provided for by this act, for the council and house of representatives, three dollars per diem during the session of the legislative assembly.

Pay of officers.

SECT. 18. Either house may, by resolution, request the opinion of the supreme court, or any one or more of the judges thereof, upon a given subject, and it shall be the duty of such court or judges, when so requested, respectively, to give such opinion in writing.

Houses may
request opinions
of supreme court.

SECT. 19. This act to take effect from and after its passage.

Take effect,
when.

Approved May 7, 1862.

W. JAYNE, *Governor.*

MARKS AND BRANDS.

CHAPTER 57.

AN ACT TO PROVIDE FOR THE RECORDING OF THE MARKS AND BRANDS OF ANIMALS.

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

Registered rec-
ord, what marks
and brands.

SECTION 1. It shall be the duty of the register of deeds of each county, upon application of any person residing in such county, to record a description of the marks or brands, with which such person may be desirous of marking his horses, cattle, sheep, or hogs; but the same mark or brand shall not be recorded for more than one resident of the same county.

If person shall
use mark of an-
other. Penalty.

SECT. 2. If any person shall wilfully mark any of his horses, cattle, sheep, or hogs, with the same mark or brand previously recorded by any resident of the same county, and while the same mark shall be used by such resident, the person so offending shall forfeit for every such offence the sum of five dollars, to be recovered before any justice of the peace of such county.

If person shall
use his own mark
on another's ani-
mals. Penalty.

If any person shall wilfully mark or brand the cattle, horses, sheep, or hogs of any other person with his own mark or brand, the person so offending shall forfeit, for every such offence, not less than ten nor more than fifty dollars, to be recovered before any justice of the peace of the proper county; and if any person shall wilfully destroy or alter any mark or brand upon any horse, cattle, sheep, or hogs belonging to another, the person so offending shall, upon conviction thereof, before any justice of the peace of the county in which the offence is committed, forfeit and pay for every such offence a sum not less than ten nor more than fifty dollars, and shall, moreover, pay to the party injured double damages.

SECT. 3. Each register of deeds shall be entitled to receive the following fees for his services, under the provisions of this act, to wit: for recording any mark or brand, twenty cents; for giving certificate of the same, twenty cents.

Fees of register.

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

Take effect, when.

Approved April 24, 1862.

W. JAYNE, *Governor.*

MARRIAGES.

CHAPTER 58.

AN ACT LEGALIZING MARRIAGES IN THE TERRITORY OF DAKOTA.

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

SECTION 1. That all marriages heretofore solemnized in the territory prior or subsequent to the organization of said territory, by any regularly ordained minister of the gospel, justice of the peace, or judges of the several courts of said territory, shall be, and are hereby declared to be legal and binding, to all intents and purposes.

Marriage heretofore solemnized legalized.

SECT. 2. This act to take effect, and be in force from and after its passage.

Take effect, when.

Approved May 5, 1862.

W. JAYNE, *Governor.*

CHAPTER 59.

A BILL FOR AN ACT REGULATING MARRIAGES.

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

Marriage.

SECTION 1. That marriage is a civil contract, requiring the consent of parties capable of entering into other contracts, except as herein otherwise declared.

Marriage, at what ages valid. Proviso.

SECT. 2. A marriage between a male person of sixteen, and a female of fourteen years of age is valid: *Provided*, That nothing in this act contained shall be so construed as to permit of the intermarriage of white persons with persons of color; nor of the intermarriage of persons who are related to each other by blood nearer than second cousins.

License necessary.

SECT. 3. Previous to any marriage within this territory, a license for that purpose must be obtained from the county clerk of the county wherein the marriage is to be solemnized (or of a county to which the same is attached for election and judicial purposes), agreeable to the provisions of this chapter.

License not granted in certain cases.

SECT. 4. Such license must not in any case be granted where either party is under the age necessary to render the marriage absolutely valid, nor shall it be granted where either party is a minor, without the previous consent of the parent or guardian of such minor, or where the condition of either party is such as to disqualify him for making any other civil contract.

In cases of doubt as to age and condition.

SECT. 5. Unless the clerk of the board of county commissioners is acquainted with the age and condition of the parties, for the marriage of whom the license is applied for, he must take the testimony of competent and disinterested witnesses on the subject.

Make entry of application for license.

SECT. 6. He must cause due entry of the application for the issuing of the license to be made on the marriage records, stating that he was acquainted with the parties and knew them to be of competent age and condition, or that the requisite proof of such facts was made to him by one or more witnesses, stating their names.

SECT. 7. If either party is a minor, the consent of the parent or guardian must be filed in the office of the clerk of the board of county commissioners, after being admitted by the said parent or guardian or proved to be genuine, and a memorandum of such facts must be also entered upon the marriage record by the clerk.

If either party minor, consent of parents necessary.

SECT. 8. If the clerk of the board of county commissioners grants a license contrary to the provisions of the preceding sections, he is guilty of a misdemeanor, and if a marriage is solemnized without such license being procured, the parties, so married, and all persons aiding in such marriage, are likewise guilty of a misdemeanor.

Marriage without proper license, a misdemeanor.

SECT. 9. The license shall not be issued until the amount of one dollar has been paid to the clerk of the board of county commissioners as his fee.

License fee.

SECT. 10. Marriages must be solemnized either: 1. By some officiating minister of the gospel, ordained or licensed according to the usages of his denomination. 2. By any person or officer authorized to administer oaths.

Marriages solemnized by whom.

SECT. 11. After the marriage has been solemnized, the officiating minister, or magistrate, or other person shall, on request, give each of the parties a certificate thereof.

Party officiating to give certificate, when.

SECT. 12. Marriages solemnized with the consent of parties in any other manner than is herein prescribed are valid, but the parties themselves, and all other persons aiding or abetting, shall forfeit to the school fund the sum of fifty dollars each.

Other marriages valid — but penalty imposed.

SECT. 13. The person solemnizing marriage shall forfeit a like amount, unless within ninety days after the ceremony he make return thereof to the clerk of the board of county commissioners.

Person solemnizing same, forfeit same, unless.

SECT. 14. The clerk of the board of county commissioners shall keep a register containing the names of the parties, the date of the marriage, and the name of the person by whom the marriage was solemnized, which (or a certified transcript therefrom) is receivable in all courts and places as evidence of the marriage, and the date thereof.

Clerk to keep record.

SECT. 15. The preceding provisions, so far as they relate to the manner of solemnizing marriages, are not applicable to marriages among the members of any particular religious

Not applicable to peculiar forms in religious societies.

denomination, having as such, any peculiar mode of performing that ceremony.

Husband must
make return to
clerk in such
cases.

SECT. 16. But where any mode is thus pursued, which dispenses with the services of a clergyman or magistrate, the husband is responsible for the return directed to be made to the clerk of the board of county commissioners, and is liable to the above-named penalty if the return is not made.

Illegitimate
children made
legitimate by
marriage.

SECT. 17. Illegitimate children become legitimate by the subsequent marriage of their parents, and all marriages heretofore contracted are hereby declared legalized and in full force and effect.

Take effect,
when.

SECT. 18. This act shall take effect and be in force from and after its passage, and approval by the governor.

Approved May 7, 1862.

W. JAYNE, *Governor.*

MILITIA.

CHAPTER 60.

AN ACT TO ORGANIZE AND DISCIPLINE THE MILITIA OF THE TERRITORY OF DAKOTA.

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

Who compose
militia.

SECTION 1. That all able-bodied white male citizens, residents of this territory, being eighteen years of age and under the age of forty-five years, excepting persons exempt by law, shall be enrolled in the militia, and perform military duty, in such manner, not incompatible with the constitution and laws of the United States, as hereinafter prescribed.

Territory forms
one division,
under whose
command.

SECT. 2. That the territory shall constitute but one division, and shall be under the command of one brigadier-general

and colonels, as the commander-in-chief may see proper, according to the census returns taken from time to time under the authority of law.

SECT. 3. The governor of the territory shall be commander-in-chief, and shall have power to appoint the brigadier-general, colonels, majors, and all the commissioned officers necessary for the several regiments and companies, and the captains of the several companies shall have power to appoint all non-commissioned officers of their respective companies.

Governor commander-in-chief. Officers, how appointed.

SECT. 4. It shall be the duty of the sheriff of each of the counties of this territory, when taking the census of their respective counties, to make out a list containing the names of all the persons in their respective counties, liable to perform military duty, and file a copy of such list with the register of deeds of the county, to be by him kept as a matter of reference, and also to transmit to the secretary of the territory a copy, to be by him kept as a matter of reference in his office; which copies shall be filed in the offices of the persons aforementioned, on or before the first day of January in each year.

Sheriff to make out list of persons liable to military duty, &c.

SECT. 5. The sheriff shall take a list of the persons liable to perform military duty at the time of making the assessment.

List, when taken.

SECT. 6. The militia thus enrolled shall be subject to perform no active military duty, save and except in case of war, invasion, or to prevent invasion, riot, or insurrection. In such case, the commander-in-chief is hereby authorized to order out, from time to time, for actual service, as many of the militia thus enrolled as necessity may require, and to provide for their organization in the manner hereinafter prescribed for the organization of volunteer militia: *Provided*, That, in all such cases, the enrolled volunteer militia shall first be ordered into service. The militia, while in active service, shall be governed by the military law of the territory, and the rules and articles of war of the United States; and when any troops are in the field for the purposes aforesaid in this section, the senior ranking officer of the troops present shall take command: *Provided*, That no person shall be eligible to a command in the militia of this territory except citi-

When and how militia liable to do duty.

Proviso.

Governed by what rules.

Proviso.

zens of the United States, or persons having declared their intention to become such.

Of volunteer militia.

SECT. 7. The active militia of this territory shall be composed of volunteer companies, raised by order of the commander-in-chief within the limits of this territory. The volunteer militia shall, in all cases of war, invasion, riot, or insurrection, be the first military force ordered into the field.

First in the field.

How composed. Proviso.

SECT. 8. Volunteer companies shall consist of men between the ages of eighteen and forty-five: *Provided*, No minor shall be enrolled as a member of such volunteer company, without the consent of his parent or guardian.

Companies, battalions, and regiments, how formed.

SECT. 9. Whenever, according to the provisions of this act, forty men shall be enrolled as members of a volunteer company of artillery, infantry, light-infantry, or rifle, or whenever thirty men shall be enrolled as members of a volunteer company of cavalry, such companies shall be officered by the commander-in-chief, as provided for in the third section of this act. No company shall be increased to more than one hundred members; and whenever a company becomes reduced to less than twenty members, it may be attached to another company or disbanded, by order of the commander-in-chief: *Provided*, That whenever twenty men shall be enrolled as members of a light artillery company, they may proceed as provided in this act (section 3). When two such light artillery companies are organized in any brigade, they may be formed into a battalion, under the command of a major and such subordinate officers as the commander-in-chief shall direct; and whenever three such companies of light artillery are organized in any brigade, they may be formed into a battalion, under the command of a lieutenant-colonel and major, with such subordinate officers as the commander-in-chief may direct; and, whenever five such light artillery companies exist in any one brigade, they may, by order of the commander-in-chief, be formed and organized into a regiment, with a full complement of regimental officers. All such companies, battalions, and regiments of light artillery, when organized, shall be armed and drilled as near as practicable in accordance with the system of the United States army, for like organization.

Proviso.

Armed and drilled as in U. S. A.

SECT. 10. The several volunteer companies of cavalry, artillery, infantry, light infantry, and riflemen in this territory shall be numbered by the proper commandant of [the] brigade, and a record made of such numbers in his office, and in the adjutant-general's office, and when they exist in sufficient numbers, and are conveniently located for the purpose, shall be organized into battalions and regiments, and officered as provided in section three of this act. And in all cases of the same description of arms and the oldest organized uniform company, [those] first commissioned shall be first and senior in rank, the next uniform company commissioned second in rank, and so on to the junior organized and commissioned company, dating from the first commissions issued to the officers of the company.

Companies numbered, how, &c.

Of rank.

SECT. 11. That every commandant of any volunteer independent company shall make a return of all non-commissioned officers, musicians, and privates under his command, belonging to his company, and all the arms and accoutrements belonging thereto, to the commandant of his regiment, squadron, or battalion; but, if his company does not form a part of any regiment, squadron, or battalion, then he shall make return to the commandant of his brigade; but in either case, shall make his return on or before the first day of October in each year; and the commandants of each and every regiment, squadron, or battalion shall make return to the commandant of brigade, on or before the first day of November, annually; and the commandant of brigade shall return to commander-in-chief, on or before the first day of December, in each year. All commandants named in this act shall make return of all commissioned and staff-officers, non-commissioned staff-officers, all members of volunteer or independent companies, all arms and accoutrements belonging to or in possession of their commandants, and all such returns shall be preserved by the adjutant-general, in a book of records in his office; and an abstract thereof, showing the number of uniform volunteer militia, or active military of the territory, shall be by him forwarded to the war department, at Washington city.

Return required of commandants of companies.

Commandant of regiment same.

Returns contain what, and how preserved.

SECT. 12. Every non-commissioned officer and soldier of any volunteer company, shall be held to duty therein for two years, unless some absolute disability shall occur after form-

Of term of service.

ing such company, or shall be discharged by the proper officer; and every such person, after the expiration of said term, and every commissioned officer, after serving a similar term in conformity with the provisions of this act, shall be entitled to a certificate of such service; and such certificate shall be given to all such persons under the rank of brigadier-general, by general of brigade, and, if there be no brigadier, by officers of any brigade in command; and the holders of such certificates shall be exempt from military duty in time of peace: *Provided*, That if any officer or person shall knowingly grant, issue, or use any illegal certificate under the provisions of this act, such officer or person shall be deemed guilty of misdemeanor, and subject to pay a penalty in amount not less than five nor more than fifty dollars for each offence, to be collected before any court having competent jurisdiction, and when collected, to be paid into the military fund in the county where the offence was committed.

Proviso.

Companies may
adopt constitu-
tion and by-laws.

SECT. 13. Each volunteer company, organized under the provisions of this act, may adopt such constitution and by-laws as a majority of such company may approve, which shall be binding on all who sign the same; and when any fines are assessed, by reason of any infraction of such constitution and by-laws, such company may have process before any competent court of jurisdiction, in the name of the United States, for the use of such company, and prosecute to final judgment and execution all such fines and penalties, provided for by such constitution or by-laws: *Provided*, That said constitution and by-laws are not inconsistent with this act, or the constitution of the United States, or the organic act organizing the Territory of Dakota: *Provided, also*, That in no case will the territory pay any costs of such prosecution.

Proviso.

Proviso.

Of military
commissions.

SECT. 14. That all the military commissions issued, except the quartermaster-general, adjutant-general, paymaster-general, and aide-de-camp to the commander-in-chief shall expire in two years from the date thereof: *Provided*, That any officer holding a commission under the provisions of this act, who may be reappointed to the same office, shall retain the same rank as he was entitled to under his former commission: *Provided, also*, That nothing in this act shall be so construed as to disqualify any staff-officer or any officer of

Proviso.

Proviso.

the line from holding a commission after he may have arrived at the age of forty-five years: and further *Provided*, That every officer who shall remove out of the bounds of his command, or who shall be absent from his command without leave of the commanding officer of his brigade, shall be considered as having vacated his office, and a new appointment shall be made without delay, to fill the vacancy so created: *Provided*, That nothing in this act shall be [so] construed or understood as to prevent any appointed officer from being removed from his office whenever, in the opinion of the officer appointing him, he shall deem it advisable to remove him.

Proviso.

Proviso.

SECT. 15. There shall be held, once in each year, a brigade muster and encampment of all the volunteer militia in the territory, commencing at ten o'clock, A. M., and continuing not more than four nor less than two days. Said muster and encampment shall be held at the most suitable place, to be selected by the commandant of brigade, and the officers and soldiers forming such encampment shall be drilled in accordance with the requirements of the rules and usages of the United States army: and the commandant of the brigade shall give thirty days' public notice of the time and place of such muster, which shall be held in the month of July, August, or September.

Annual muster, when and where held.

SECT. 16. All officers appointed according to the provisions of this act shall be entitled to a certificate from the officer making such appointment, which certificate and taking the necessary oath shall entitle such officer to command, and to perform such other duties as may pertain to the office to which he is appointed, until the commission can be procured; and in all cases, the officers giving such certificate shall administer to such officer the necessary oath of office, and indorse the same upon the back of his certificate with the day and date on which such oath was administered: *Provided*, also, That every staff-officer who may be appointed shall also be entitled to a certificate in like manner.

What entitles officer to command.

Proviso.

SECT. 17. For good cause shown, the commander-in-chief may accept the resignation of brigadier-generals, and the brigadier-general may accept the resignation of colonels, or the commandants of regiments, lieutenant-colonels, majors, captains, and lieutenants; and for good cause shown, the

Of resignations.

commandant of any regiment, squadron, or battalion shall accept the resignation of any regimental, squadron, or battalion staff-officer: *Provided, also,* That the brigadier-general may accept the resignation of his staff-officers; and in all cases when a resignation is accepted, the cause of such resignation shall be indorsed by the officer accepting the same, on the back of the commission so resigned; but the command of such officer shall not cease until the officer accepting such resignation shall have indorsed his acceptance.

Proviso.

Staff-officers of
brigades and regi-
ments, and how
appointed.

SECT. 18. To each brigade there shall be one brigade-major — to serve as brigade inspector — two aides-de-camp, one brigade quartermaster, one brigade engineer, one brigade judge advocate, one brigade surgeon, and one brigade chaplain, which brigade staff shall be appointed by the commander-in-chief. To each regiment or battalion of artillery, rifle, light infantry, or infantry, there may be one chaplain, one adjutant, one quartermaster, one surgeon, one surgeon's mate, one sergeant major, one quartermaster-sergeant, one drum-major, and one fife-major, to be appointed by the commandant of such regiment or battalion. To each regiment or battalion of cavalry there shall be one adjutant, one quartermaster, one paymaster, one surgeon, one surgeon's mate, one quartermaster-sergeant, one sergeant-major, and two regimental or squadron buglers, which shall be appointed by the commandant of such regiment or squadron.

Staff-officers
rank, how.

SECT. 19. The staff-officers herein enumerated shall rank as follows, namely, the quartermaster-general and adjutant-general as brigadier-generals; the paymaster-general, engineer in chief, judge advocate general, and aides-de-camp to the commander-in-chief, as colonels; the aides-de-camp to brigadier-generals, chaplains, and surgeons, as captains; company ensign, adjutants, quartermasters, paymasters, surgeon's mates of regiments, battalions, and squadrons, as lieutenants; and all other regimental or squadron staff, as non-commissioned officers.

Officer's uni-
form.

SECT. 20. The uniform of the respective officers herein mentioned shall be the same as the uniform of the officers in the United States army.

Of company.

SECT. 21. Each company shall muster as often as twice in each year, independent of the general muster.

SECT. 22. Each officer, before he enters upon the discharge of his duty, shall take and subscribe an oath to support the constitution of the United States, the provisions of this act, and the act organizing the Territory of Dakota, and to faithfully and impartially discharge his duty, to the best of his ability.

Officer to take oath.

SECT. 23. Officers and privates shall be tried for misdemeanors and offences in the same manner as provided in the army regulations of the United States.

Officers and privates tried, how.

SECT. 24. This act to take effect from and after its passage, and approval by the governor.

Take effect, when.

Approved May 8, 1862.

W. JAYNE, Governor.

M O R T G A G E S .

CHAPTER 61.

AN ACT TO PROVIDE FOR THE FILING OF CHATTEL MORTGAGES.

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

SECTION 1. Any mortgage of personal property, or a copy thereof, may be filed in the office of the register of deeds of any county where the mortgagor executing the same resides; or, in case he is a non-resident of the territory, then in the office of the register of the county where the property mortgaged may be at the time of executing such mortgage; and such register shall indorse on such instrument or copy the time of receiving the same, and shall record the same in a book kept for the purpose of recording chattel mortgages.

Chattel mortgage filed, where.

SECT. 2. Such register of deeds shall also enter, in a book to be provided by him for that purpose, the names of all the parties to such instruments, arranging the names of

Record names of parties, and note time of filing.

mortgagors alphabetically, and shall note therein the time of filing such instrument or copy.

Fees.

SECT. 3. The register of deeds shall receive the same fees for recording chattel mortgages as is provided for recording of mortgages of real estate.

Take effect,
when.

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

Approved May 12, 1862.

W. JAYNE, *Governor.*

NOTARIES-PUBLIC.

CHAPTER 62.

AN ACT TO PROVIDE FOR THE OFFICE OF NOTARY-PUBLIC,
AND TO DEFINE THE DUTIES OF THE SAME.

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

Governor ap-
point for how
long. Jurisdic-
tion.

SECTION 1. The governor shall appoint in each of the organized counties in this territory one or more notaries-public, who shall be considered territorial officers, and shall hold their office for the term of four years, unless sooner removed by the governor, and who shall have power to act by virtue of their office throughout the territory.

To take oath
and give bond.

SECT. 2. Each and every notary-public, before he enters on the duties of his office, shall take an oath to support the constitution of the United States, and to faithfully and impartially discharge the duties of his said office, and shall give bond to the governor, with sufficient surety in the penal sum of five hundred dollars, conditioned for the faithful discharge of the duties of his said office; [and] shall have his commission, oath of office, and bond recorded in the office of register of deeds in the county where said notary-public may reside.

SECT. 3. Whenever the office of any notary-public shall become vacant, the records of said notary-public, together with all the papers relating to the office, shall be deposited in the office of the clerk of the district court in the county in which the said notary-public resides; and any notary-public who, on his resignation or removal from office, shall neglect to deposit such records and papers in the clerk's office, as aforesaid for the space of three months, shall forfeit and pay a sum not less than fifty dollars, nor more than five hundred dollars; and if any executor or administrator of any deceased notary-public shall neglect to lodge such records and papers as aforesaid, which come into his hands, in the clerk's office, for the space of three months after said records and papers shall come into his possession, he shall forfeit and pay a sum not less than fifty dollars nor more than five hundred dollars; and if any person shall knowingly destroy, deface, or conceal any records or papers of any notary-public, he shall forfeit and pay a sum not less than fifty dollars, nor more than five hundred dollars, and shall be moreover liable to an action by the party injured.

In case of vacancy or removal, — records and papers to be deposited with clerk of district court.

Penalty if not deposited, when.

SECT. 4. It shall be the duty of each and every notary-public, when any bill of exchange, promissory note, or other written instrument, shall be by him protested for non-acceptance or non-payment, to give notice in writing thereof to the maker, and each and every indorser of a bill of exchange, and to the maker or makers of, and each and every security or indorser of any promissory note or other written instrument, immediately after such protest shall have been made.

Duty of notary in case of protest.

SECT. 5. It shall be the duty of every notary-public personally to serve the notice upon the person or persons protested against; in case the person cannot be found, said notary-public shall serve notice of protest by leaving a copy of the same at the last and usual place of abode of said person or persons: *Provided*, He or they reside within two miles of the residence of such notary-public; but if such person or persons reside more than two miles from such residence, the said notice may be forwarded by mail or other safe conveyance.

Notice of protest, how served.

SECT. 6. Each and every notary-public shall keep a record of all such notices, and of the time and manner in which the same shall have been served, and of the names of all the par-

Keep record of what.

ties to whom the same were directed, and the description and amount of the instrument protested; which record shall at all times be competent evidence to prove such notice in any trial, before any court in this territory, where proof of such notice may become requisite.

Duties of district clerks.

SECT. 7. It shall be the duty of the several clerks of the district courts to receive and keep safe all the records and papers directed by this chapter to be deposited in their office, and give attested copies of any of said records or papers when required; and copies so given by the said clerk are hereby declared to be as valid as if the same had been given by the said notaries-public. All forfeitures under this act shall be, one half to the use of this territory, and the other half to him or them who shall sue for the same; to be recovered in a civil action, in any court having jurisdiction of the same in the county where such notary-public shall reside.

Of forfeitures.

Shall keep a seal.

SECT. 8. Every notary-public, before he enters upon the duties of his office, shall provide an official seal and deposit an impression of the same, together with said oath and bond, in the office of the secretary of the territory.

Other powers of notaries.

SECT. 9. Notaries-public shall have full power and authority to take acknowledgments of deeds, and administer oaths, in all cases where oaths are required by law to be made.

Faith and credit given to all their publications.

SECT. 10. Full faith and credit shall be given to all the protestations, attestations, and other instruments of publication of all notaries-public now in office, or hereafter to be appointed under the provisions of this chapter.

Take effect, when.

SECT. 11. This act shall take effect and be in force from and after its passage, and approval by the governor,

Approved April 21, 1862.

W. JAYNE, *Governor.*

OATHS AND AFFIRMATIONS.

CHAPTER 63.

AN ACT TO AUTHORIZE CERTAIN OFFICERS TO ADMINISTER
OATHS AND AFFIRMATIONS IN ALL CASES.

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

SECTION 1. That oaths and affirmations may be adminis-
tered, in all cases, by judges of the supreme court, judges of
the district court, clerks of the supreme court, clerks of the
district courts within their respective districts, and by probate
judges, justices of the peace, notaries-public, county clerks,
and county commissioners within their respective counties,
and all other officers authorized by law. Administered
by what officers.

SECT. 2. That all officers who administer oaths (except
county clerks and county commissioners, who shall have the
privilege only for their official business), shall keep a record
of the same. All officers
keep record of
same.

SECT. 3. This act shall take effect and be in force from
and after its passage. Take effect,
when.

Approved May 7, 1862.

W. JAYNE, *Governor.*

P A R D O N S .

CHAPTER 64.

AN ACT REGULATING PARDONS BY THE GOVERNOR.

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

May grant
pardons, when
and how.

SECTION 1. That, in all cases where the governor is authorized to grant pardons, he may, upon the petition of the person convicted, grant a pardon, upon such conditions, and with such restrictions, and under such limitations, as he may think proper, and he may issue his warrant to all proper officers to carry into effect such pardon ; which warrant shall be obeyed and executed instead of the sentence, if any, which was originally awarded.

When convict
is pardoned.
Proceedings.

SECT. 2. Whenever any convict is pardoned by the governor, or his punishment commuted, the officer to whom the warrant for that purpose is issued after executing the same, shall make return thereof, under his hand, with his doings thereon to the governor, as soon as may be, and he shall also file with the clerk of the district court, in which the offender was convicted, an attested copy of the warrant and return, together with a brief abstract of which the clerk shall subjoin to the record of his conviction and sentence.

Take effect,
when.

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

Approved May 14, 1862.

W. JAYNE, *Governor.*

PARTNERSHIPS.

CHAPTER 65.

AN ACT TO REGULATE LIMITED PARTNERSHIPS.

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

SECTION 1. Limited partnerships, for the transaction of mercantile, mechanical, or manufacturing business within this territory, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed; but the provisions of this act shall not be construed to authorize any such partnership for the purpose of banking or making insurance.

Partnership by two or more persons.

Not for banking purposes.

SECT. 2. Such partnership may consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible as general partners now are by law; and one or more persons, who shall contribute in actual cash payments, a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the fund so contributed by him or them to the capital.

May consist of general and special partners.

Their liability.

SECT. 3. The general partners only shall be authorized to transact business and sign for the partnership and to bind the same.

General partners transact business, &c.

SECT. 4. The persons desirous of forming such partnership shall make and severally sign a certificate, which shall contain: 1. The name or firm under which such partnership is to be conducted. 2. The general nature of the business to be transacted. 3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence. 4. The amount of capital which each special partner shall have contributed to the common stock. 5. The period at which the partnership is to commence, and the period at which it is to terminate.

Persons forming to make and sign certificate, containing what.

Certificate acknowledged by whom.

SECT. 5. The certificate shall be acknowledged or proved as to the several persons signing the same, before the same persons before whom a conveyance of lands may be now or hereafter acknowledged or proved, and such acknowledgment or proof shall be made and certified in the same manner as the acknowledgment or proof of the conveyance of lands may be made or certified.

Certificate filed, where.

SECT. 6. The certificate, so acknowledged and certified, shall be filed in the office of the register of deeds of the county in which the principal place of business of the partnership shall be situated, and shall also be recorded by him at large in a book to be kept for that purpose, open to public inspection. If the partnership shall have place of business situated in different counties, a transcript of the certificate and acknowledgment thereof, duly certified by the register of deeds in whose office it shall be filed, under his official seal, shall be filed and recorded in like manner in the office of the register of deeds of every such county.

Affidavit made as to amount paid in by special partners.

SECT. 7. At the time of filing the original certificate, with the evidence of the acknowledgment thereof, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating the sums specified in the certificate to have been contributed by each of the special partners to the common stock, have been actually and in good faith paid in cash.

Partnership only formed, when.

SECT. 8. No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed, and recorded, nor until an affidavit shall have been filed as above directed; and if any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof, as general partners.

If false statement made.

Partners shall publish term of partnership.

SECT. 9. The partners shall publish the term of the partnership, when registered, for at least six weeks immediately after such registry, in a newspaper, to be designated by the register of deeds in the county where such registry shall be made, if there is [one] published therein; and if there is none published in said county, then in a newspaper published at the capital of the territory; and if such publication be not made, the partnership shall be deemed general.

SECT. 10. Affidavit of the publication of such notice, by

the publishers (or their foreman) of the newspaper in which the same shall be published, may be filed with the register of deeds directing the same, and shall be evidence of the fact therein contained. Affidavit of publication may be filed.

SECT. 11. Every renewal or continuance of such partnership, beyond the time originally fixed for its duration, shall be certified, acknowledged, and recorded, and an affidavit of a general partner be made and filed, and notice given in the manner herein required for its original formation, and every such partnership which shall be otherwise renewed or continued, shall be deemed a general partnership. Of renewal and continuance of partnership.

SECT. 12. Every alteration which shall be made in the names of the parties, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and any such partnership which shall in any manner be carried on after any such alteration shall have been made, shall be deemed a general partnership, unless renewed as a special partnership, according to the provisions of the last section. When alteration made, deemed dissolution.

SECT. 13. The business of the partnership shall be conducted under a firm in which the name of the general partners only shall be inserted, without the addition of the word "company," or any other general term; and, if the name of any special partner shall be [used] in such firm with his privity, he shall be deemed a general partner. When special deemed general partner.

SECT. 14. Suits in relation to the business of the partnership shall be brought and conducted by and against the general partners, in the same manner as if there were no special partners. Suits against and by general partners.

SECT. 15. No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him or paid, or transferred to him in the shape of dividends, profits, or otherwise, at any time during the continuance of the partnership; but every partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital, and if, after the payment of such interest, any profits shall remain to be divided, he may also receive his portion of such profits. No part of special partner's stock withdrawn. Annual interest and profits.

SECT. 16. If it shall appear that, by the payment of in- If capital reduced.

terest or profits to any special partner, the original capital has been reduced, the parties receiving the same shall be bound to restore the amount necessary to make good his share of capital, with interest.

Special partner may examine and advise, but not transact business.

SECT. 17. A special partner may, from time to time, examine into the state and progress of the partnership concerns, and may advise as to their management; but he shall not transact any business on account of the partnership, nor be employed for that as agent or attorney, or otherwise. If he shall interfere contrary to these provisions, he shall be deemed a general partner.

General partners liable to account.

SECT. 18. The general partners shall be liable to account to each other and to the special partners for their management of the concern, both in law and equity, as other parties now are by law.

Partners guilty of fraud, how liable.

SECT. 19. Every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable, civilly, to the party injured, to the extent of his damage, and shall also be liable to an indictment for a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried.

Certain assignments void.

SECT. 20. Every sale, assignment, or transfer of any of the property or effects of such partnership, made by such partnership, when insolvent, or in contemplation of insolvency, or after, or in contemplation of the insolvency of any partner, with the intent of giving a preference to any creditor of such partnership, or insolvent partner, every other creditor or creditors of such partnership, and every judgment confessed, lien created, or security given by such partnership, under the like circumstances and with like intent, shall be void as against the creditors of such partnership.

Same.

SECT. 21. Every such sale, assignment, or transfer of any of the property or effects of a general or special partner made by such general or special partner, when insolvent or in contemplation of insolvency, or after or in contemplation of the insolvency in the partnership, with the intent of giving to any creditor of his own, or of the partnership, a preference over creditors of the partnership, and every judgment confessed, lien created, or security given by such partner, under the like circumstances and with the like intent, shall be void as against the creditors of the partnership.

SECT. 22. Every special partner who shall violate any provisions of the two last preceding sections, or who shall concur in or assent to any such violation of the partnership, or by any individual partner, shall be liable as a general partner. Same.

SECT. 23. In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as a creditor, until the claims of all the other creditors of the partnership shall be satisfied. No special partner claims until all others are satisfied.

SECT. 24. No dissolution of such partnership by the act of the parties shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the office of the register of deeds in which the original certificate was recorded, and published once in each [week] for four weeks, in a newspaper printed in each of the counties where the partnership may have places of business; and, if there be no newspaper published in such county or counties, then by publishing the same as aforesaid, in a newspaper published at the capital of the territory. Dissolution before time specified, how.

SECT. 25. This act shall take effect and be in force from and after its passage. Take effect, when.

Approved May 12, 1862.

W. JAYNE, *Governor.*

PENITENTIARY.

CHAPTER 66.

AN ACT TO LOCATE THE PENITENTIARY.

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

SECTION 1. That the penitentiary for Dakota Territory is hereby located at Bon Homme, in said territory, on the Located at Bon Homme.

north-east quarter (1-4) of section number thirteen (13), in township ninety-three (93), of range number fifty-nine (59) west, and shall not be removed except by a two-third vote of the legislative assembly of Dakota Territory, and the approval of said vote by the governor.

Take effect,
when.

SECT. 2. This act to take effect from and after its passage, and approval by the governor.

Approved May 5, 1862.

W. JAYNE, *Governor.*

PUBLIC LANDS.

CHAPTER 67.

AN ACT TO PROTECT PERSONS HOLDING CLAIMS ON THE PUBLIC LANDS.

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

Persons hold-
ing may main-
tain action, &c.

SECTION 1. Any person settled upon the public lands belonging to the United States, on which settlement is not expressly prohibited by congress, or some department of the general government, may maintain an action for any injuries done to the same, also an action to recover the possession thereof, in the same manner as if he possessed a fee-simple title to said lands.

Possessory right
considered to ex-
tend to bounda-
ries.

SECT. 2. On the trial of any such cause, the possession or possessory right of the plaintiff shall be considered as extending to the boundaries embraced by the claim of such plaintiff, so as to enable him to have and maintain any of the aforesaid actions without being compelled to prove a natural inclosure: *Provided*, That such claim shall not exceed in any case one hundred and sixty acres.

Proviso.

Every claim
must be marked
out, how, &c.

SECT. 3. Every such claim, to enable the holder thereof to maintain any of the aforesaid actions, shall be marked out,

so that the boundaries thereof may be easily traced, and the extent of such claim easily known, by the owner thereof placing or having placed within three months after the passage of this act, or thirty days after the taking of such claim, a post at each corner of said claim, having the name of the owner of such claim marked or written on said post or stakes, stating which corner of said claim said post is intended to designate, and no person shall be entitled to the provisions or protection of this act unless he or she be a citizen of this territory, unless he or she have improvements made on said claim every six months to at least the amount of twenty dollars, or has a crop growing on said claim, or resides upon the same.

SECT. 4. A neglect to occupy or cultivate such claim for the period of six months, shall be considered such an abandonment as to preclude the claimant from maintaining either of the aforesaid actions. Neglect to cultivate six months, deemed abandonment.

SECT. 5. This act shall take effect on and after its passage. Take effect, when.
Approved April 30, 1862.

W. JAYNE, *Governor.*

RELIGION.

CHAPTER 68.

AN ACT TO FORM AND REGULATE RELIGIOUS SOCIETIES.

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

SECTION 1. It shall be lawful for all persons of full age Trustees elected. how. belonging to any church, congregation, or religious society, not already incorporated, to assemble at the church or meeting-house, or other place where they stately attend for divine worship, and by a plurality of votes elect any number of discreet persons of their church, congregation, or society, not less than three nor more than nine in number, as trustees, to take charge of the estate and property belonging thereto, and to transact all affairs relative to the temporalities thereof.

SECT. 2. It shall be lawful for any such church, congrega-

President
chosen, how —
who may vote.

tion, or religious society to choose a president of the said corporation, and of their meetings by a vote as aforesaid; and, at the election provided for in this chapter, every person of full age, who has statedly worshipped with such church, congregation, or society, and has been formerly considered as belonging thereto, shall be entitled to a vote.

Notice of elec-
tion to be given,
how.

SECT. 3. The minister of such congregation or society, and in case of his death or absence, one of the elders or deacons, church-wardens or vestrymen thereof, and, for want of such officers, any other person being a stated hearer in such church, congregation, or society, shall publicly notify the congregation of the time when and the place where the said election shall be held, at least fifteen days before the day of election; and such notification shall be given for two successive Sabbaths, on which such church, congregation, or society shall statedly meet for public worship preceding the election.

Who receives
votes, and deter-
mines qualifica-
tions of voters.

SECT. 4. Any two of the elders, deacons, church-wardens, or vestrymen of such church, congregation, or society, or, if such officers shall not be present, then any two voters present, to be nominated by a majority of the voters, shall preside at such election, receive the votes and determine the qualifications of voters; and they shall, immediately after the election, certify, under their hands and seals, the names of the persons elected to serve as trustees, in which certificate the name by which the said trustees, under their successors in office, shall forever thereafter be called and known, shall be particularly mentioned and specified.

Certify who is
elected.

Certificate
acknowledged
and recorded.

SECT. 5. Such certificate shall be acknowledged by the persons making the same, or proved by a subscribing witness thereto, before some officer authorized to take the acknowledgment of deeds, and recorded together with the certificate of such acknowledgment or proof, by the register of deeds of the county in which the church or place of worship shall be situated, in a book provided by him for that purpose, who shall be entitled to receive seventy-five cents for such record; and thereafter such trustees and their successors shall be a body corporate, by the name expressed in such certificate.

Fee of register
of deeds.

Trustees have
seal, and have
possession of
church property.

SECT. 6. Such trustees may have a common seal, and may alter the same at pleasure; and they may take into their possession and custody all the temporalities of such church, congregation, or society, whether the same shall consist of real or personal estate, and whether the same may have been

given, granted, or devised, directly or indirectly, to such church, congregation, or society, or to any other person or persons for their use.

SECT. 7. Such trustees may, also, in their corporate name, General powers of trustees. sue and be sued, in all courts and places, and they may recover and hold all the debts, demands, rights, and privileges, all churches, buildings, burying-places, and all the estate and appurtenances belonging to such church, congregation, or society, in whatsoever manner the same may have been acquired, or in whose hands soever the same may be held, as fully and amply as if the right and title thereto had been originally vested in the said trustees; and they may hold other real or personal estate, and demise, lease, and improve the same; but the whole of such estate, real and personal, shall not exceed the yearly value or income of three thousand dollars.

SECT. 8. The said trustees shall also have authority to May build, alter, and repair churches and houses. alter and repair their churches and meeting-houses, and under the direction of the society or congregation, to erect churches or meeting-houses, and dwelling-houses for their ministers, and other buildings for the use of their church, congregation, or society.

SECT. 9. They shall also have authority to Make rules, and orders, &c. make rules and orders for managing the temporal affairs of such church, congregation, or society, and to dispose of all moneys belonging thereto; and to order and regulate the renting of pews or slips in their churches and meeting-houses, and the perquisites for the breaking of the ground in the cemetery or churchyard, and in the said churches or meeting-houses for burying the dead.

SECT. 10. They may appoint a clerk and treasurer of their May appoint and remove clerk, treasurer, and collector. board, and a collector to collect and receive their rents and revenues, and may regulate the fees to be allowed to such clerk, treasurer, and collector, and may remove them and appoint others in their stead, at pleasure, and such clerk shall enter all rules and orders made by such trustees and payments ordered by them, in a book to be procured by them for that purpose.

SECT. 11. Any two of the trustees may, at any time, Any two may call meeting, &c. call a meeting of the trustees, and a majority of them being lawfully convened, shall be competent to do and perform all

matters and things which such trustees are authorized to do and perform.

Hold office three years, and be divided into classes.

SECT. 12. The said trustees shall hold their offices for three years ; and immediately after their first election, as hereinbefore provided, the said trustees shall be divided by lot into three classes, numbered one, two, and three ; and the seats of the first class shall be vacated at the end of the first year, of the second class at the end of the second year, and of the third class at the end of the third year, to the end that, as near as may be, one third part of the whole number of trustees may be annually chosen.

Notices of expiration and election to be given, how.

SECT. 13. It shall be the duty of the clerk of said trustees, at least one month before the expiration of the office of any of the said trustees, to notify the same in writing to the minister, or, in case of his death or absence, to the elders or church-wardens ; and, if there be no elders or church-wardens, then to the deacons or vestrymen of any such church, congregation, or society, specifying in such notice the names of the trustees whose office will expire, and the minister or other officer receiving such notice shall, in the manner aforesaid, notify the members of such church, congregation, or society, of such vacancies, and appoint the time and place for the election to supply the same.

Election held and conducted, how.

SECT. 14. Such elections shall be held at least six days before vacancies shall happen as aforesaid, and all subsequent elections shall be held and conducted in the same manner as hereinbefore provided for the first election ; and, in case a vacancy shall happen by the death of a trustee, his refusal to act or removal from the society, before his term of office expires, or otherwise, notice thereof shall be given as aforesaid ; and an election shall be held and another trustee chosen in his stead for the remainder of such term.

Qualifications of voters.

SECT. 15. No person belonging to any such church, congregation, or society, incorporated under the provisions of this act, shall be entitled to vote at any election after the first, until he shall have been an attendant on public worship in such church, congregation, or society, at least six months before such election, and shall have contributed to the support of such church, congregation, or society, according to the customs and usages thereof.

SECT. 16. The clerk of the trustees shall keep a register of

the names of all such persons as shall desire to become stated hearers in the said church, congregation, or society, and shall therein note the time when such request was made; and the said clerk shall attend all subsequent elections, in order to test the qualifications of such voters, in case they shall be questioned.

Clerk keep register of stated hearers.

Clerk attend elections.

SECT. 17. Nothing in this chapter contained shall be construed to give such trustees [power] to fix or ascertain the salary or compensation to be paid to any minister, but the same shall be ascertained and fixed by a majority of such society entitled to vote at the election of trustees: *Provided*, Nothing in this section shall be construed to apply to churches, societies, or denominations whose constitution, rules, or usages provide differently for fixing or ascertaining the amount of salary or compensation to be allowed to such minister.

Trustees cannot fix salary.

Proviso.

SECT. 18. It shall be lawful for the district [court] of the county in which any such religious corporation shall have been constituted, on the application of such corporation, if the court shall deem it proper, to make an order for the sale of any real estate belonging to such corporation, and to direct the moneys arising therefrom to such uses as the said corporation, with the approbation of said court, shall conceive to be for the interest of such corporation.

District court may make order of sale of church property, when, &c.

SECT. 19. At least thirty days' previous notice of such application to the district court shall be given, by publishing the same in some newspaper published in the county, if one be published therein, and if not, by posting up notices in three or more public places in such county.

Thirty days' notice of application for sale, necessary.

SECT. 20. In case of the dissolution of any corporation hereafter to be formed in pursuance of the provisions of this act, for any cause whatever, the same may be incorporated under the provisions of this act, at any time within six years after such dissolution; and thereupon, all the estate, real and personal, formerly belonging to the same, and not lawfully disposed of, shall vest in such corporation, as if there had been no such dissolution.

In case of dissolution, how reincorporated and when.

SECT. 21. All lands, tenements, and hereditaments that have been or may hereafter be lawfully conveyed by devise, grant, purchase, or otherwise, to any person or trustee in trust, for the use of any religious society organized, or which may be hereafter organized within this territory, either for a

Lands, &c., lawfully conveyed to such society, how held.

meeting-house, burying-ground, or for the residence of a preacher, shall descend with the improvements in perpetual succession to, and shall be held by, such trustee in trust for such society.

When trustees are appointed, certificate necessary.

SECT. 22. Whenever by the constitution, rules, and usage of any particular church or religious denomination, trustees are required to be appointed by any ministers, presiding elders, or other officer or officers of such church or denomination, it shall be the duty of such ministers, presiding elders, or other officer or officers to give to such trustees a certificate of their appointment, under the hand and seal of the person making the same, specifying the name by which such trustees and their successors shall thereafter be called and known, which certificate shall be acknowledged and proved, and recorded as hereinbefore directed; whereupon such trustees and their successors, appointed in the same manner, shall be a body corporate, by the name expressed in such certificate, with all the rights, powers, and privileges of other religious corporations constituted according to the provisions of this act.

When officers of church are made trustees.

SECT. 23. Whenever, by the constitution, rules, and usages of any particular church or denomination, the minister or ministers, elders and deacons, or other officers elected by any church or congregation, according to such constitution, rules, or usages are thereby constituted the trustees of such church or congregation, it shall be lawful for such minister or ministers, elders and deacons or other officers, to assemble together and execute, under their hands and seals, a certificate, stating therein the name by which they and their successors in office shall forever thereafter be called and known, which certificate shall be acknowledged or proved, as hereinbefore directed; whereupon such persons and their successors in office, shall be a body corporate by the name expressed in such certificate, with all the rights, powers, and privileges of other religious corporations, constituted according to the provisions of this act.

When church already organized, how it may avail itself of the privileges of this act.

SECT. 24. Whenever any church or religious society now organized, or which may hereafter be organized as a church or congregation, but not incorporated in pursuance of law, shall comply with the provisions of this act and thereby become a body corporate, according to the intent and meaning

of this act, all the estate, real and personal, which shall have been lawfully conveyed to the said church or religious society, or to the trustees or vestry thereof in trust for the use of such church or society, whether by devise, gift, grant, purchase, or otherwise, and not lawfully disposed of, shall thereupon vest in said corporation as fully and amply as if the said church had been legally incorporated from the date of its religious organization: *Provided, always,* That the name or title publicly assumed or borne by such church or society from the date of its organization as such, and none other, shall be the title by which it shall forever be known in law, and as a body politic and corporate.

Proviso.

SECT. 25. It shall be lawful for the male persons of full age, of any church or congregation in communion with the Protestant Episcopal church in the territory, who shall have belonged to such church or congregation for the last three months preceding such election, and who shall have been baptized in the Episcopal church, or shall have been received therein, either by the right of confirmation or by receiving the holy communion, or by purchasing or hiring a pew in said church, or by some joint act of the parties and rector, whereby they shall have attached themselves to the Protestant Episcopal church, and not already incorporated, at any time to meet for the purpose of incorporating themselves under this act, and by a majority of voices to elect two church-wardens, and not less than four nor more than eight vestrymen, and to determine on what day of the week, called Easter week, the said officers of church-wardens and vestrymen shall annually thereafter cease and their successors in office be chosen; of which first election notice shall be given in the time of morning service, on two Sundays previous thereto by the rector, or if there be none, by any other person belonging to such church or congregation, and that said rector, or if there be none, or he be necessarily absent, then one of the church-wardens or vestrymen, or any other person called to the chair, shall preside at such election, and together with two other persons shall make certificate under their hands and seals, of the church-wardens and vestrymen so elected, of the day of Easter week so fixed on for the annual election of their successors, and of the name or title by which such church or congregation shall be known in law; which certificate being

Rules applicable to Protestant Episcopal church.

Rules applica-
ble to Protestant
Episcopal
church.

duly acknowledged or proved by one or more of the subscribing witnesses, before one of the judges of the supreme court or one of the judges of the court of common pleas of the county where such church or place of worship of such congregation shall be situated, shall be recorded by the register of deeds of such county, in a book to be by him provided for such purpose, and that the church-wardens and vestrymen so elected, and their successors in office, of themselves, but if there be a rector, then together with the rector of such church or congregation shall form a vestry and be the trustees of such church or congregation; and such trustees and their successors shall thereupon, by virtue of this act, be a body corporate by the name and title expressed in such certificate, with all the rights, powers, and privileges of other religious corporations, constituted according to the provisions of this act; and the persons qualified as aforesaid shall, in every year thereafter, on the day in Easter week so to be fixed for that purpose, elect such church-wardens and vestrymen; and whenever any vacancy shall happen before the stated annual election by death or otherwise, the said trustees shall appoint a time for holding an election to supply such vacancy, of which notice shall be given in the time of divine service, at least ten days previous thereto; and such election, and also the stated annual elections, shall be holden immediately after the morning service, and at all such elections the rector, or if there be none or he be absent, one of the church-wardens or vestrymen shall preside and receive the votes of the electors and be the returning officer, and shall enter the proceedings in the book of the minutes of the vestry, and sign his name thereto, and offer the same to as many electors present as he shall think fit, to be by them also signed and certified; and the church-wardens and vestrymen to be chosen at any of the said elections, shall hold their offices until the expiration of the year for which they shall be chosen, and until others be chosen in their stead, and shall have power to call and induct a rector to such church or congregation as often as there shall be a vacancy therein: *Provided, however,* That no meeting or board of such trustees shall be held, unless at least three days' notice thereof shall be given in writing, under the hand of the rector or one of the church-wardens; and that no such board shall be competent to trans-

Proviso.

act any business, unless the rector, if there be one, and at least one of the church-wardens and a majority of the vestrymen be present; and such rector, if there be one, and if not, then the church-warden present, or if both the church-wardens be present, then the church-warden who shall be called to the chair by a majority of voices, shall preside at every such meeting or board, and have the casting vote.

SECT. 26. This act shall be in force from and after its passage, and approval by the governor. Take effect, when.

Approved May 13, 1862.

W. JAYNE, *Governor.*

REVENUE.

CHAPTER 69.

AN ACT IN RELATION TO REVENUE.

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

SECTION 1. That the board of county commissioners of each county in this territory shall annually, as hereinafter provided, levy the following taxes upon the assessed value of the taxable property in the territory. The governor and secretary of the territory are hereby authorized to fix the amount of territorial tax for each year, according to the provisions of this act: 1. For territorial purposes, the tax shall be three fourths of a mill on the dollar, when no rate is fixed by the governor and secretary of the territory; but in no case shall a levy for territorial purposes exceed one and one half mill on a dollar. 2. The [For] county revenue, including the support of the poor, not more than two mills on the dollar, and a poll-tax of one dollar. 3. For making and repairing roads and bridges, not more than one mill on the dollar. County commissioners levy, and governor and secretary fix tax.

Property exempt from taxation.

SECT. 2. The following described property is hereby exempt from taxation: 1. The property of the United States and that of this territory; the property of any county, township, incorporated town, or school district, when devoted entirely to public use; public grounds, by whomsoever devoted to the public, including all places for the burial of the dead. 2. Fire engines and implements used for extinguishing fires, with the grounds used exclusively for the buildings of a fire company. 3. All grounds and buildings of literary or scientific institutions, [incorporated] under the laws of this territory; also the grounds and buildings of benevolent, agricultural, and religious institutions, and societies devoted solely to the appropriate objects of these institutions, not exceeding six hundred and forty acres in extent. 4. The books, papers, and apparatus belonging to the above institutions, and used for the purpose above contemplated, and the like property of students in any such institutions; moneys and credits belonging to said institutions, not exceeding in amount the sum prescribed in their charter. 5. Animals not specified in the next section, the wool shorn from sheep belonging to the person giving the list. The provisions for any family, sufficient for the sustenance of the family for one year; private libraries, not exceeding one hundred dollars in value; family pictures; libraries of clergymen; household furniture, not exceeding two hundred dollars in value; the wearing apparel of every person. 6. The polls or estates or both of persons who, by reason of age or infirmity, may, in the judgment of the assessor, be unable to contribute to the public revenue. 7. The farming utensils of any person who makes his livelihood by farming, and the tools of any mechanic, not in either case to exceed one hundred dollars in value. 8. Government lands shall not be taxed for the year in which the entry, location, or purchase is made.

Taxed property embraces, what.

SECT. 3. All other property, real and personal, within this territory, is subject to taxation in the manner herein directed. This section is intended to embrace lands and lots in towns, including lands bought from the United States, term [ferry] franchises and toll-bridges, which for the purpose of this act, are considered real property, horses, cattle, mules, asses, swine, and money, whether on deposit or in possession, and including bank-bills, money, or property, due from solvent

debtors, on contract, or judgment, property situated in this territory, belonging to any bank or company, incorporated or otherwise, public stocks or loans, household furniture, including gold and silver plate, private libraries, exceeding one hundred dollars in value, carriages, stages, hacks, wagons, farming utensils, machines and machinery, and mechanics' tools, for their value over one hundred dollars, boats and vessels of every description, wherever registered or licensed, and whether navigating the waters of the territory or not, if owned wholly or in part by persons who are inhabitants of this territory, annuities, but not including pensions from the United States, nor salaries or payment expected for services to be rendered.

SECT. 4. Every inhabitant of this territory, of full age and sound mind, shall assist the assessor in listing all property subject to taxation in this territory of which he is the owner or has the control or management, in the manner hereinafter described. The property of a ward is to be listed by his guardian; of a minor by his father if living, if not, then by his mother if living, and if not, then by the persons having the property in charge; if a married woman, by herself or husband; if a beneficiary for whom property is held in trust, by the trustee; and the personal property of a decedent, by the executor; of a body corporate, company, society, or partnership, by its principal accounting officer, agent, or partner. Property under mortgage or lease is to be listed by and taxed to the mortgagor or lessor, unless it be listed by the mortgagee or lessee.

Who shall assist in listing property.

SECT. 5. Commission merchants and all persons trading on commission and assignees authorized to sell, when the owner of the goods does not reside in the county, are for the purposes of taxation to be deemed the owners of the property in their possession.

Of property in commission or assigned.

SECT. 6. Any person required to list property belonging to another, shall list it in the same county in which he would be required to if it were his own (except as herein otherwise directed); but he shall list it separately from his own, giving the assessor the name of the person or estate to whom it belongs; but the individual property of a person deceased, belonging to his heirs, may be listed as belonging to his heirs without enumerating them.

Where listed, and how.

If business in more than one county — of partnership taxes.

SECT. 7. When a person is doing business in more than one county, the property and credits existing in any one of the counties, shall be listed and taxed in that county, and the credits not existing in or pertaining especially to the business in any one county, shall be listed and taxed in that where the principal place of business may be. Any individual of a partnership is liable for the taxes due from the firm.

Insurance companies, how taxed.

SECT. 8. Insurance companies of every description, existing in other territories and states and operating in this, shall be taxed one per cent. for county purposes, and one per cent. for territorial purposes, upon the amount of the premiums taken by them during the year previous to the listing in the county where the agent conducts that business, and the agent shall render the list and shall be personally liable for the tax; and if he refuses to render the list or to swear as herein required, the amount may be assessed according to the best knowledge and discretion of the assessor.

Of personal property.

SECT. 9. All personal property shall be listed, assessed, and taxed in the name of the owner thereof, on the first day of January of the then current year, and each owner shall be required to pay taxes thereon; but if the owner resides out of the county, it shall be listed by the agent or person having charge of the same.

Taxed every year — listed, how often.

SECT. 10. All taxable property shall be taxed each year, and personal property shall be listed and assessed each year; real property shall be listed and valued in the year 1863, and in each second year thereafter, and shall be assessed at its true cash value, having regard to its quality, location, natural advantages, the general improvement in the vicinity, and in each year in which real estate is not regularly assessed, it shall be the duty of the assessor to list and value any real property not included in the previous assessment.

Bank-notes, stocks, credits, &c., how listed.

SECT. 11. Bank-notes, and the stocks of corporations and companies shall be assessed at their cash value; credits shall be listed at such sum as the person listing them believes will be received or can be collected thereon, and annuities at the value which the person listing believes them to be worth in money.

Debts of party listing may be deducted, when.

SECT. 12. In making up the amount of money and credits which any person is required to list or have listed and as-

sessed, he will be entitled to deduct from the gross amount all bona fide debts owing by him, but no acknowledgment of indebtedness not founded on actual consideration, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the intent of this section, and so much only of any liability of such person as security for another shall be deducted, as the person making the list believes he is equitably or legally bound to pay, and so much only as he believes he will be compelled to pay on account of the inability of the principal debtor, and if there are other sureties able to contribute, then so much only as he in whose name the list is made, will be bound to contribute; but no person will be entitled to any deduction on account of any obligation of any kind given to any insurance company for the premiums of insurance, nor on account of any unpaid subscription to any institution, society, corporation, or company.

SECT. 13. Any person owning or having in his possession or under his control within this territory, with authority to sell the same, any personal property purchased either in or out of this territory, with a view of its being sold at an advanced price or profit, or which has been assigned to him from any place out of this territory, for the purpose of being sold within the same, shall be listed for taxation, and in estimating the value thereof, the merchant shall take the average value of such property in his possession or under his control during the next year, previous to the time of assessing, and if he has not been engaged in the business so long, then he shall take the average during such time as he shall have been so engaged, and if he be commencing, he shall take the value of the property at the time of the assessment.

Of the salable property of merchants. How listed.

SECT. 14. There shall be elected, at the general election in each year, by the qualified voters of each county in this territory, one county assessor, who shall hold his office for one year, and until his successor is elected and qualified.

County assessor elected.

SECT. 15. Each assessor, before entering upon the duties of his office, shall give a bond, with two or more sureties, to be approved by the county commissioners, in the sum of five hundred dollars, payable to said commissioners, conditioned for the faithful discharge of the duties of his office, which

Assessor give bond.

bond shall be filed and preserved by the clerk of said commissioners.

If he fail to give bond and take oath.

SECT. 16. If any assessor shall fail to give the bond and surety as required in the preceding section, or shall fail to take the oath of office, as hereinafter required, on or before the Tuesday after the first Monday of January following his election, the office shall be considered vacant, and in all cases of vacancies in such office, the county commissioners shall appoint some suitable person to fill the vacancy, which appointee shall hold said office until the next succeeding election, and until his successor is elected and qualified.

Take oath.

SECT. 17. Any person elected or appointed an assessor, as herein provided, shall take and subscribe on his bond an oath for the faithful and impartial discharge of his duty.

His compensation.

SECT. 18. The assessor shall be allowed two dollars for each day he shall have been faithfully employed in discharging the duties of his office, to be paid out of the county treasury.

Assessors to meet, when and where.

SECT. 19. The several assessors shall meet at the office of the secretary of the territory, on the second Monday of January of each year, and classify the several descriptions of property to be assessed for the purpose of equalizing such assessment.

County commissioners to furnish what books.

SECT. 20. On or before the second Monday of January in each year, the board of county commissioners shall furnish each assessor with suitable books in duplicate, properly ruled and headed, in which to enter the following items: 1. The name of the individual, corporation, company, society, partnership, or firm, to whom any property shall be taxable. 2. His or their lands by township, range, section, or part of section, and when such part is not a legal division or subdivision, some other description [sufficient] to identify it, and town lots, naming the town in which they are situated and their proper description by number and block, or otherwise, according to the system of numbering in the town. 3. Personal property as follows: number of cattle, horses, mules, swine, carriages, capital employed in manufacture, amount of money and credits, amount of taxable furniture, amount of stock in any corporation, amount of taxable farming utensils, mechanics' tools, amount of all other personal property, and the number of polls, and a column for remarks.

SECT. 21. Each assessor shall enter upon the discharge of the duties of his office within six days after the second Monday of January of each year, and shall, with the assistance of each person assessed, or who may be required by law to list property belonging to another, enter in the books furnished him for that purpose in the several items specified in the preceding section, entering the names of the persons assessed, in alphabetical order, so far as practicable, by allotting to each letter its requisite number of pages in each of said books.

Assessor's duties, and when commenced.

SECT. 22. It shall be the duty of the assessor to list each and every person in his county, and to assess all the property personal and real therein, and any person who shall refuse to assist in making out a list of his property or of any property of which he is required by law to assist in listing, or refuse to make the oath or affirmation required by this act, shall forfeit the sum of one hundred dollars, to be recovered in the name of the county for the use of the common schools therein; and when any person refuses to make out a list of his property which, by law, he is required to do, the assessor shall assess such person according to the best information he can get, as to the amount of taxable property which such person has.

If person refuses to assist in listing his property, &c.

SECT. 23. The assessor is hereby required to administer an oath or affirmation to each person assessed, to the effect that he has given in a full and correct inventory of all the taxable property owned by him, and all property held by him as agent, guardian, or otherwise, which he is required by law to list to the best of his knowledge and belief; and in case any one refuses to take such oath, the assessor shall note the fact in the column of remarks opposite to such person's name, and should it afterwards appear that such person has not given a full list of his property or that under his control, any property so omitted shall be entered on the book at double the ordinary assessable value, and taxed accordingly.

Oath administered to person assessed.

SECT. 24. Each assessor shall, on or before the first Monday of May of each year, return the assessment book, properly footed up, to the clerk of the board of county commissioners.

Assessor's returns, to whom and when made.

SECT. 25. When the name of the owner of any real estate is unknown, and the assessor finds it impracticable to

When name of owner unknown.

obtain the same, it shall be proper to assess such real estate without connecting therewith any name, but inserting at the head of the page the words "owner unknown," and such property shall be listed as other like property.

If assessor fails to perform duty.

SECT. 26. If any assessor shall fail or neglect to perform any of the duties required of him by this act, at the time and in the manner specified, he shall be liable to a fine of not less than twenty nor more than five hundred dollars, to be recovered in an action brought in the district court by the board of county commissioners; the judgment shall be against him and his bondsmen, and the proceeds of such fine shall go to the school fund of the county.

Board of equalization of the county.

SECT. 27. The board of county commissioners of each county shall constitute a board for the equalization of the assessment, and shall have power to equalize the assessment of the several persons and townships in the county substantially in the same manner as is required of the territorial board of equalization to equalize among the several counties of the territory, at their first regular meeting after the general election in each year, and at such meetings they shall add to said assessment any taxable property in the county not included in the assessment as returned by the assessor, and shall assess the value thereof.

If person aggrieved.

SECT. 28. Any person who may feel aggrieved at any thing in the assessment of his property, may appear before the board of equalization, either in person or by agent, at the time mentioned in the preceding section, and have the same corrected in such manner as to said board shall seem just and equitable.

Clerk of county make what return to secretary of territory.

SECT. 29. Each clerk of the county commissioners shall, on or before the first day of July of each year, make out and transmit to the secretary of the territory, by mail or otherwise, an abstract of the real property in his county, in which he shall set forth: 1. The number of acres of land in his county and the aggregate value of the same, exclusive of town lots returned by the assessors as corrected by the county commissioners. 2. The aggregate value of real property in each town in the county, according to the valuation of the board of county commissioners. 3. The aggregate value of personal property in his county.

SECT. 30. The governor and secretary of the territory

constitute a board of equalization, and shall, on or before the first day of August in each year in which real estate is assessed, equalize the valuation of real property among the several counties and towns in the territory in the following manner: 1. They shall add to the aggregate valuation of real property of each county, which they shall believe to be valued below its proper valuation, such per centum in each case as will raise the same to its proper valuation. 2. They shall deduct from the aggregate valuation of real property of each county which they shall believe to be valued above its proper valuation, such per centum in each case as will reduce the same to its valuation.

Territorial board of equalization, and its duties.

SECT. 31. Said governor and secretary shall keep a full record of their doings, and immediately after which the secretary of the territory shall transmit to the clerk of the county commissioners of each county a statement of the per centum to be added to or deducted from the valuation of real property in his county. The clerk of the county commissioners shall add to or deduct from the valuation of each tract or parcel of real property in his county the required per centum on the same, and in each year the governor and secretary shall determine the rate of tax to be levied and collected, which shall not exceed one and one half mills on the dollar, and the secretary of the territory shall notify the clerks of the county commissioners of the several counties of the rate of such tax.

Same, and equalization, how effected.

SECT. 32. If any clerk of the county commissioners shall neglect or refuse to transmit to the secretary of the territory the abstract of the assessment of the real property in the county, or to add or deduct the per centum fixed by the territorial board of equalization as required by this act, such clerk shall be deemed guilty of a misdemeanor for which he shall be prosecuted in the district court by indictment, and if found guilty, shall be fined in any sum, not more than one thousand dollars, and shall also be liable on his official bond to any person who may have suffered damage thereby.

If county clerk fails in stated duties.

SECT. 33. The treasurer, on receiving the text-book for each year, shall enter upon the same in separate columns opposite each parcel of real property, or person's name, on which, or against whom, any tax remains unpaid for either of the preceding years, the year or years for which such delin-

Duties of treasurer.

quent tax so remains due and unpaid. The treasurer, after making the above entry, shall proceed to collect the taxes, and the list and warrant shall be his authority and justification against any illegality in the proceedings prior to receiving the list, and he is required to attend at his office from the second Monday of November to the first Monday in January following, and he is also authorized and required to collect so far as practicable the taxes unpaid on the tax books of previous years.

No demand for taxes necessary.

SECT. 34. No demand of taxes shall be necessary, but it is the duty of every person subject to taxation to attend at the office of the treasurer (unless otherwise provided) at some time during the time mentioned in a previous section of this act, and pay his or her taxes, and if any one neglects to pay them before the first day of February following the levy of the tax, the treasurer is directed to make the same by distress and sale of his or her personal property, excepting such as is exempt from taxation, and the tax list alone shall be a sufficient warrant for such distress.

When he distrains goods.

SECT. 35. When the treasurer distrains goods, he may keep them at the expense of the owner, and shall give notice of the time and place of their sale within five days after the taking, in the manner usually required to give notice of the sale of personal property under execution, and the time of sale shall not be more than twenty days from the day of the taking; but he may adjourn the day of sale from time to time, not exceeding five days, and shall adjourn at least once when there are no bidders; and in case of adjournment he shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges of keeping, and fees of sale, shall be returned to the owner, and the treasurer shall, on demand, render an account in writing of the sale and charges.

Taxes draw interest, when — of lien for taxes.

SECT. 36. On the first day of February, the unpaid taxes for the preceding year shall draw interest as hereinafter provided; and taxes upon real property are hereby made a perpetual lien thereon against all persons; and taxes due from any person on personal property shall be a lien on any real property owned by such person.

Penalty for non-payment of taxes.

SECT. 37. The treasurer shall continue to receive taxes after they have become delinquent, until collected by distress

and sale, but if they are not paid before the first day of March, he shall collect as a penalty for non-payment, from each tax payer so delinquent, one per cent. of the amount of his tax additional, and if not paid before the first day of April, he shall collect another one per cent. additional, and so on for each full month which shall expire before the tax shall have been paid.

The treasurer shall in all cases make out and deliver to the tax payer a receipt for taxes paid, stating the time of payment, the description of the land, the amount of any kind of tax, the interest on each, and costs, if any, giving a separate receipt for each year, and shall make the proper entries of such payment in the books of his office: *Provided*, That it shall be the duty of each county treasurer to receive the full amount of any county, state, or school tax, whenever the same shall be tendered, and give a separate receipt therefor.

Treasurer to give receipt.

Proviso.

SECT. 38. In all cases where any person shall pay any tax or any portion thereof that shall thereafter be found to be erroneous or illegal, whether the same be owing to clerical or other errors, the board of county commissioners shall direct the treasurer to refund the same to the tax payer; or in case any real property, subject to taxation, shall be sold for the payment of such erroneous tax, the error in the tax may at any time be corrected as above provided, and shall not affect the validity of the sale.

Of errors in payment of taxes.

SECT. 39. On the first Monday in October, 1864, and in each year thereafter, the county treasurer is required to offer at public sale at the court house, or if there is no court house, at the office of the county treasurer, all lands on which taxes of any description for the preceding year or years shall have been delinquent and remain due, and such sale shall be made for and in payment of the total amount of taxes, interest, and cost, due and unpaid on such real property.

Sale of lands for taxes, when.

SECT. 40. The county treasurer is required to give notice of the sale by publishing an advertisement thereof in some newspaper printed in his county if any such there be, and if there be no such paper printed in his county, then in the newspaper printed in this territory nearest the county seat, and by posting a copy of said notice on the door of the court house in said county, but if there is no court house, then upon the door of the county treasurer's office, at least four weeks before the day of the sale. Such advertisement shall

Notice of same how given, and how paid for.

state the time and place of sale, and contain a description of the several parcels of real property to be sold, as the same are recorded on the tax list, the amount of tax, interest, and costs due on each tract, and the names of owners when known, to whom taxed. The treasurer is directed to charge and collect, in addition to the taxes and interest, the sum of twenty cents on each tract of land advertised for sale, when the same is included in one line of single column width of the paper in which the publication is made, but if the description occupies more than one line of such single column width, then the same shall be thirty cents for each, which sum shall go into the county treasury.

Treasurer to attend sale.

SECT. 41. The county treasurer shall attend at the court house or at his own office as herein provided, on the day of sale, and then and there, at the hour of ten o'clock in the forenoon, proceed to offer for sale separately, each tract or parcel of real property advertised for sale, on which taxes and costs have not been paid.

Who shall be purchaser.

SECT. 42. The purchaser who offers to pay the amount of taxes due on any parcel of land for the smallest portion of the same, is to be considered the purchaser. The homestead is liable to be sold for no tax, save that which is due on itself exclusively, and to that end the quantity of land bid may be obtained by drawing the division line in any direction so as to avoid the homestead.

Sale continued.

SECT. 43. The treasurer shall continue the sale from day to day as long as there are bidders, or until the taxes are paid.

Purchaser to pay taxes forthwith.

SECT. 44. The person purchasing any lot or parcel of land shall forthwith pay to the treasurer the amount of taxes and costs on said lot or parcel of land, and on failure to do so, said land shall at once be sold again in the same manner as if no sale had been made.

Of informality in advertisement.

SECT. 45. No irregularity or informality in the advertisements shall affect in any manner the legality of the sale or the title to any real property conveyed by the treasurer's deed under this act, but in all cases the provisions of this act shall be deemed sufficient notice to the owners, of the sale of their property.

Certificate of publication.

SECT. 46. The treasurer shall file in the office of the clerk of county commissioners the certificate of the publisher

of the newspaper in which the advertisement shall have been published, substantially in the following form :

I, A—— B——, publisher of the ——, a —— newspaper, printed and published in county of ——, and Territory of Dakota, do hereby certify that the foregoing notice and list were published in the said newspaper once in each week for three successive weeks, the last of which publication was made prior to the first —— of ——, A. D. 18——, and that copies of each number of said paper in which said notice and list were published, were delivered by carriers or transmitted by mail to each of the subscribers to said paper, according to the accustomed mode of business in this office.

A—— B——,
Publisher of the ——.

THE TERRITORY OF DAKOTA, } ss.
—— county, }

The above certificate of publication, subscribed and sworn to before me, by the above-named A—— B——, who is personally known to be the person, described in the above certificate, on the —— day of ——, A. D. 18——.

C—— D——,
Clerk of the board of county commissioners
of —— county, Territory of Dakota.

SECT. 47. If any county treasurer or clerk shall be hereafter, either directly or indirectly, concerned in the purchase of any real property sold for the payment of any tax, he shall be liable to a penalty of not more than one thousand dollars, to be recovered by an action in the district court, brought by the board of county commissioners, the judgment shall be against such treasurer or clerk as the case may be, and his bondsmen, and the proceeds shall go to the school fund, and such sale shall be void.

If treasurer or clerk interested in purchase. Penalty.

SECT. 48. When all the parcels of real property advertised for sale shall have been offered for sale as provided for in this act, and a portion thereof shall remain unsold for the want of bidders; it shall be the duty of the treasurer to adjourn the sale to some day, not exceeding two months from the time of the adjournment, due notice of which day shall be given at the time of adjournment, and also by keeping a notice thereof posted in a conspicuous place in the treasurer's

When part of property unsold.

office. The same proceedings shall be had as provided for the original sale.

If treasurer or deputy fails to attend.

SECT. 49. If any treasurer shall fail to attend any sale of lands as required by this act, either in person or by a competent deputy, he shall be liable to a fine not less than fifty nor more than three hundred dollars, to be recovered by an action in the district court by the board of county commissioners. The judgment shall be against the treasurer and his bondsmen, and the proceeds go to the school fund.

Certificate of purchase to be given.

SECT. 50. The county treasurer shall make out, sign, and deliver to the purchaser of any real property sold for the payment of taxes as aforesaid, a certificate of purchase, describing the property on which the taxes and costs were paid by the purchaser as the same are described in the record of sales, and also how much and what part of each lot was sold. If any person shall become the purchaser of more than one parcel of land, he may have the whole put in one certificate. For each certificate the purchaser shall pay a fee of twenty cents to the treasurer.

Certificate assignable.

SECT. 51. Such certificate shall be assignable by indorsement.

Real property sold, how redeemed.

SECT. 52. Real property sold under this act may be redeemed at any time before the expiration of three years from the date of the sale, by the payment in specie to the clerk of the board of county commissioners, to be held by him subject to the order of [the] purchaser, the amount for which the same was sold and twenty per cent. on the same, with ten per cent. interest per annum on the whole amount from the day of sale, and the amount of all taxes accruing after such sale with ten per cent. interest per annum on such subsequent taxes, unless such subsequent taxes have been paid by the person for whose benefit the redemption was made: *Provided*, That if real property of any minor, married woman, or lunatic be sold for taxes, the same may be redeemed at any time within one year after such disability be removed upon the terms specified in this section, which redemption may be made by the guardian or legal representatives.

Proviso.

Duty of clerk in case of redemption.

SECT. 53. The county treasurer [clerk] shall, upon application of any party to redeem any real property sold under the provisions of this act, and being satisfied that such party has a right to redeem the same, and upon the payment of the

proper amount, issue to such party a certificate of redemption, setting forth the facts of the sale substantially as contained in the certificate of sale, the date of the redemption, the amount paid, and by whom redeemed; and he shall make the proper entries in the book of sales in his office, and shall immediately give notice of such redemption to the county treasurer.

SECT. 54. Immediately after the expiration of the term of three years from the date of the sale of any land for taxes under the provisions of this act, the treasurer then in office shall make out a deed for each lot of land sold and remaining unredeemed, and deliver the same to the purchaser upon the return of the certificate of purchase.

Deed to purchaser, when given.

SECT. 55. The treasurer is required to demand twenty-five cents for each deed made by him on such sales, but any number of parcels of land bought by any person may be included in one deed, as may be desired by the purchaser.

Fee for deed.

SECT. 56. Deed executed by the treasurer shall be substantially as follows:

Style of deed executed by treasurer to purchaser.

Know all men by these presents, that whereas the following described real property (here follows the description) situated in the county of —, and Territory of Dakota, now [was] subject to taxation for the year (or years) A. D. —, and whereas, the taxes assessed upon said real property for the year (or years) aforesaid, remained due and unpaid at the date of the sale hereinafter named; and whereas, the treasurer of the said county did, on the — day of —, A. D. 18—, by virtue of the authority in him vested by law, at the sale begun and publicly held on the first Monday of —, A. D. 18—, expose to public sale, at the court house, or office of the county treasurer in the county aforesaid, in substantial conformity with all the requisitions of the statute in such case made and provided, the real property above described, for the payment of the taxes, interest, and costs, then due and remaining unpaid on said property; and whereas, at the time and place aforesaid, A B, of the county of —, and state of —, having offered to pay the sum of — dollars and — cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on said property for (here follows the description of the property sold), which

Style of deed
executed by
treasurer to pur-
chaser.

was the least quantity bid for; and payment of said sum having been by him made to the treasurer, the said property was stricken off to him at the time; and whereas, the said A B did, on the — day of —, A. D. 18—, duly assign the certificate of the sale of the property to E F, of the county of —, and —, of —; and whereas, the three years have elapsed since the date of said sale, and the said property has not been redeemed therefrom, as provided for by law.

Now, therefore, I, C D, treasurer of the county aforesaid, for and in consideration of the said sum to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said A B, his heirs and assigns, the real property last hereinbefore described, to have and to hold unto him the said A B, his heirs and assigns, forever; subject, however, to all the rights of redemption provided by law. In witness whereof I, C D, treasurer as aforesaid, by virtue of the authority aforesaid, [have] hereunto subscribed my name on this — day of —, 18—. (Name.)

THE TERRITORY OF DAKOTA, }
— county, } ss.

I hereby certify that before —, in and for said county, personally appeared the above-named C D, treasurer of said county, personally known to me to be the treasurer of said county, at the date of the execution of the above conveyance, and to be the identical person whose name is affixed to, and who executed the above conveyance as treasurer of said county, and who acknowledged the execution of the same to be his voluntary act and deed as treasurer of said county, for the purposes therein expressed.

Given under my hand and seal this — day of —, A. D. 18—. — —.

Deed prima facie
evidence of what.

SECT. 57. The deed, when duly executed, acknowledged, and recorded, shall be prima facie evidence in all courts of this territory of the following facts: 1. That the real property conveyed was subject to taxation for the year or years stated in the deed. 2. That the taxes were not paid at any time.

before the sale. 3. That the property conveyed had not been redeemed from the sale at the date of the deed. And in all suits involving the title to property claimed by virtue of a deed executed substantially as aforesaid by the treasurer, the person claiming title adverse, shall be required to prove, in order to defeat the said title, either that the said property was not subject to taxation for the year or years named in the deed, that the taxes had been paid before the sale, or that the property had been redeemed from the sale according to the provisions of this act, and that such redemption was made for the use of persons having the right of redemption under the laws of the territory, but no person shall be permitted to question the title acquired by a treasurer's deed without first showing that he or she, or the person under whom he or she claims title, had title to the property at the time of the sale, or that the title was obtained from the United States after the sale, but in any case where any person had paid his taxes, and by any mistake of the treasurer such payment does not appear upon his books, and the land upon which the taxes were paid was afterwards sold, the treasurer's deed shall not convey the title: *Provided*, That in all cases where the owner of lands sold for taxes shall resist the validity of such tax title, he may show fraud committed by the officer selling the same or in the purchase, to defeat the same; and if fraud is so established, such sale shall be void.

Of suits involving title by such deed.

Proviso.

SECT. 58. When, by mistake or unlawful act of the treasurer, land has been sold on which no tax was due at the time, or whenever land is sold unlawfully, in consequence of any other mistake or irregularity rendering the sale void, the county shall hold the purchaser harmless by paying him the amount of principal and interest and costs to which he would have been entitled had the land been rightfully sold, and the treasurer and his sureties will be liable to the county for the amount of his official bond. *Provided*, That the treasurer or his sureties shall be liable only for his own or his deputy's acts.

When land is sold unlawfully.

Proviso.

SECT. 59. The books and records belonging to the offices of the clerk of the board of county commissioners and the county treasurer, or copies thereof duly certified, shall be deemed sufficient evidence to prove the sale of any real prop-

Books and records evidence.

erty for taxes, the redemption thereof, or the payment of taxes thereon.

Action for recovery brought, when.

SECT. 60. No action for the recovery of real property sold for non-payment of taxes shall be, unless the same be brought within six years after the date of the sale for taxes aforesaid.

Counties responsible to territory for tax levied.

SECT. 61. Each county is responsible to the state [territory] for the amount of tax levied for territorial purposes, excepting such amounts as are certified to be unavoidable, double, or erroneous assessments, as hereinafter provided.

If treasurer defaulter.

SECT. 62. If any county treasurer prove to be a defaulter for territorial revenue, such amount shall be made up to the territory within the next three years, in such manner as the county commissioners may direct; in such cases, the county can have recourse to the official bond of the treasurer for indemnity.

If treasurer loan out or use county funds.

SECT. 63. If any county treasurer shall loan out or in any way use county funds for private purposes, he shall be liable to a fine not exceeding one thousand dollars, for the benefit of common schools of the county, to be procured as other fines.

Treasurer to make yearly settlement.

SECT. 64. The county commissioners shall in January and June of each year make a full and complete settlement with the county treasurer.

When treasurer goes out of office.

SECT. 65. When any treasurer goes out of office, he shall make a full and complete settlement with the county commissioners, and shall deliver all books, papers, moneys, and all other property appertaining to his office, to his successor, taking his receipt therefor.

Officer neglecting or refusing to comply with this act.

SECT. 66. Any officer neglecting or refusing to comply with this act, for whose negligence no other penalty is provided by this act, shall be liable to a fine not exceeding one thousand dollars, to be prosecuted by the district attorney for the benefit of common schools.

Approved May 15, 1862.

W. JAYNE, *Governor.*

ROADS.

CHAPTER 70.

AN ACT RELATIVE TO THE LAW OF ROADS AND THE REGULATIONS OF PUBLIC CARRIAGES.

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

SECTION 1. Whenever any persons shall meet each other on any bridge or road, travelling with carriages, wagons, sleds, sleighs, or other vehicle, each shall pass to the right of the middle of the travelled part of such bridge or road, so that the respective carriages, or other vehicles aforesaid, may pass each other without interference. Vehicles keep to the right in meeting each other.

SECT. 2. Every person offending against the provisions of the preceding section shall, for each offence, forfeit a sum not exceeding twenty dollars, and shall also be liable to the party injured for all damages sustained by reason of such offence. Person offending. Penalty.

SECT. 3. No person owning or having the direction or control of any coach or other vehicle, running or travelling upon any road in this territory, for the conveyance of passengers, shall employ or continue in employment any person to drive such coach or other vehicle, who is addicted to drunkenness, or to the excessive use of intoxicating liquors, and if any such person shall violate the provisions of this section, he shall forfeit a sum not less than ten and not exceeding fifty dollars, and shall be liable for all damages sustained. No intemperate driver to be employed. Penalty.

SECT. 4. It shall not be lawful for the driver of any carriage or other vehicle used for the conveyance of passengers, to leave the horses attached thereto while any passenger remains in or upon the same, without making such horses fast with a sufficient halter, rope, or chain, or without some suitable person to take the charge or guidance of them, so as to prevent their running; and if any such driver shall violate the provisions of this section, he and his employer or em- Animals to be tied, when. Penalty.

ployers, jointly and severally, shall forfeit a sum not exceeding twenty dollars; but no prosecution shall be commenced therefor after the expiration of three months from the time of committing the offence.

Owners liable
for damages.

SECT. 5. The owners of every carriage or other vehicle, running or travelling upon any road or public highway, for the conveyance of passengers for hire, shall be liable, jointly and severally, to the party injured, in all cases, for all damages done by any person in the employment of such owners as a driver, while driving such carriage, to any person, or to the property of any person, whether the act occasioning such injury or damage be wilful, negligent, or otherwise, in the same manner as such driver would be liable.

Take effect,
when.

SECT. 6. This act to take effect from and after its passage.

Approved May 5, 1862.

W. JAYNE, *Governor*.

CHAPTER 71.

AN ACT CONFERRING POWERS UPON THE BOARD OF
COUNTY COMMISSIONERS RESPECTING ROADS.

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

Duties concern-
ing roads.

SECTION 1. That it shall be the duty of the board of county commissioners of the several counties of this territory, to divide their respective counties into convenient road districts; to appoint a road supervisor in each district, and to make all needful rules and orders for the opening and working of all roads in said counties; for the building and repairing of bridges; respecting the duties of road supervisors, and all other matters pertaining to roads in their respective counties. Said commissioners may also hear petitions for county roads, order the location of such roads, and appoint commissioners to survey, view, and locate the same.

Take effect,
when.

SECT. 2. This act shall take effect from and after its passage, and approval by the governor.

Approved May 14, 1862.

W. JAYNE, *Governor*.

CHAPTER 72.AN ACT TO ESTABLISH THE WIDTH OF TERRITORIAL
AND COUNTY ROADS.

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

SECTION 1. That all territorial roads not otherwise speci- Width of terri-
torial roads.
fied, shall be and are hereby required to be eighty feet wide.

SECT. 2. All county roads not otherwise specified, shall be Width of
county roads.
and are hereby declared to be eighty feet wide.

SECT. 3. This act shall take effect from and after its pas- Take effect,
when.
sage, and approval by the governor.

Approved April 10, 1862.

W. JAYNE, *Governor.*

CHAPTER 73.

AN ACT TO ESTABLISH CERTAIN TERRITORIAL ROADS.

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

SECTION 1. That John R. Wood, William Frisbie, and Commissioners
for road com-
mencing opposite
Ponka.
B. M. Smith, be and are hereby appointed commissioners to
locate, mark, survey, and establish a territorial road starting
from a point on the Missouri river, nearly opposite Ponka,
Nebraska Territory; thence, via Elk point, Brule creek, and
Commerce city, to Sioux falls.

SECT. 2. That B. Fowler, Barclay Jarrett, and B. Oleson Commissioners
for road com-
mencing at
Yankton.
be and are hereby appointed commissioners to locate, mark,
survey, and establish a territorial road from Yankton to
Sioux Falls city, thence to the state line of Minnesota in the
direction of New Ulm.

SECT. 3. The said commissioners, or a majority of them, How long a
time to perform
duties.
shall have until the first day of November next to locate,
survey, and establish said road.

If commission-
ers fail to serve.

SECT. 4. Should any of the above-named commissioners fail to serve, those serving shall have power to appoint substitutes, whose duties shall be the same as herein given to the other commissioners.

Expenses, how
paid.

SECT. 5. The expenses incurred in the surveying, marking, and establishing of said roads, shall be paid gratuitously by those interested in the establishment of the same.

Surveyor to
file plat.

SECT. 6. After the said roads shall be surveyed and located, it shall be the duty of the surveyor of said roads, on or before the first day of December next, to file, in the office of the register of deeds of each county through which said road or roads may pass, a plat of so much of said road as passes through said county.

Take effect,
when.

SECT. 7. This act to take effect from and after its passage.

Approved April 10, 1862.

W. JAYNE, *Governor.*

CHAPTER 74.

AN ACT TO LOCATE A TERRITORIAL ROAD FROM YANKTON
TO THE BIG SIOUX RIVER.

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

Commissioners.

SECTION 1. That John Stanage, Austin Cole, and Hugh Compton, be and are hereby appointed commissioners to locate, mark, survey, and establish a territorial road from Yankton by the way of Vermilion, Elk point, and Willow post-office, thence diverging, one branch to terminate at a point on the Big Sioux river at or near the dwelling-house of John McBride in section 22, in township 89, north of range 48 west, and the other branch of said road to terminate at a point on the Big Sioux river at or near the dwelling-house of Austin Cole and F. M. West in section 2, in township 89, north of range 48 west.

Meet where
and when.

SECT. 2. The said commissioners, or a majority of them, shall meet at the town of Yankton on the first Monday of

August, A. D. 1862, at the hour of 2 o'clock, P. M. of said day, and thence proceed to locate, survey, and mark said road.

SECT. 3. In case a majority of the above-named commissioners should fail to convene on the day as provided in section two, it shall be the duty of the commissioners that may be in attendance on the day as specified, to appoint substitutes, whose duties and powers shall be the same as herein given to the other commissioners. If majority not present.

SECT. 4. The expenses incurred in the surveying, marking, and establishing of said road, shall be paid by the several counties through which said road may pass, in proportion to the distance and the time employed in locating said road through each county respectively. Expenses, how paid.

SECT. 5. The commissioners and surveyor of said road shall each receive two dollars per day for every day actually employed in surveying and locating said road. Compensation.

SECT. 6. After the said road shall be surveyed and located, it shall be the duty of the surveyor of said road, on or before the tenth day of September next, to file in the office of the register of deeds of each county through which said road may pass, a plat of so much of said road as passes through said county. Surveyor to file plat.

SECT. 7. This act to take effect from and after its passage, and approval by the governor. Take effect, when.

Approved April 5, 1862.

W. JAYNE, Governor.

CHAPTER 75.

AN ACT TO ESTABLISH A TERRITORIAL ROAD FROM THE BIG SIOUX RIVER, BY WAY OF BRULE CREEK, VERMILION, AND INTERSECT THE ROAD FROM SIOUX CITY TO YANKTON.

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

SECTION 1. That Ole Anderson, Louis Johnson, and William Frisbie, be and they are hereby appointed commissioners to locate a territorial road, commencing at or near the hotel Commissioners.

of S. B. Mulholland, in the town of Vermilion, and running up a ravine north-east of said house to a point near the residence of A. P. Eckels; thence east on the best and most direct route via Brule Creek to the Big Sioux river, near the house of M. M. Rich.

Meet, when
and where.

SECT. 2. It shall be the duty of the said commissioners to meet at the house of William Frisbie, on or before the first of July, 1862, and proceed, with a competent surveyor and other necessary help, to locate said road.

Make and file
report.

SECT. 3. Said commissioners shall make a report of the location of said road, subscribed by them, and cause a copy of the same to be filed in the office of the secretary of the territory, on or before the first day of September, 1862.

Take effect,
when.

SECT. 4. This act shall take effect and be in force from and after its passage.

Approved May 14, 1862.

W. JAYNE, *Governor.*

CHAPTER 76.

AN ACT TO LOCATE AND ESTABLISH A TERRITORIAL ROAD.

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

Commissioners. SECTION 1. That William Benedict, J. Whitchorn, and Gustaf Jacobson, are hereby appointed commissioners to survey, stake, and locate a "territorial road," commencing on section No. 15, in township No. 92, north of range No. 52 west, near the house of William Benedict; thence westerly, by the nearest and most practicable route, to the town of Yankton.

Take effect,
when.

SECT. 2. This act shall take effect from and after its passage, and approval by the governor.

Approved April 24, 1862.

W. JAYNE, *Governor.*

CHAPTER 77.

AN ACT TO ESTABLISH A TERRITORIAL ROAD FROM THE TOWN OF VERMILION TO YANKTON.

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

SECTION 1. That George Pratt, Ole Botlfson, [and] O. B. Commissioners. Wheeler, be and they are hereby appointed commissioners to locate a territorial road, commencing at a point near the residence of H. Compton, in the town of Vermilion, running nearly north, to a grove formerly claimed by T. W. Jewell, thence crossing the Vermilion river, and striking Clay creek near the residence of J. Seiverson, thence along the bluffs to the ferry of J. B. Greenway, on Dakota river, thence to Yankton.

SECT. 2. It shall be the duty of the commissioners, or a Meet, when and where. majority of them, to meet at the house of George Pratt on or before the first day of September, A. D. 1862, and proceed with a competent surveyor to locate said road, and to select a person to fill the commission.

SECT. 3. Each county shall pay the expenses incurred in Expenses, how paid. locating, surveying, marking, and staking the same in the said county.

SECT. 4. The surveyor shall be entitled to receive two Compensation. dollars and fifty cents per day, while engaged in locating the same. It shall be the duty of the commissioners to file in the Plat filed. office of the register of deeds in each county through which said road passes, a plat of so much of said road as is contained in the respective counties.

SECT. 5. This act shall take effect and be in force from Take effect, when. and after its passage.

Approved May 13, 1862.

W. JAYNE, *Governor.*

CHAPTER 78.

AN ACT TO LOCATE AND ESTABLISH A TERRITORIAL ROAD
FROM YANKTON, VIA SMUTTY BEAR'S CAMP, BON HOMME,
SPRINGFIELD, AND NESHUDA, TO THE MOUTH OF CHO-
TEAU CREEK.

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

- Commissioners.** SECTION 1. That Henry Brooks, C. C. Cooper, and Samuel Mortimer, be and they are hereby appointed commissioners to locate and establish a territorial road from Yankton, via Smutty Bear's Camp, Bon Homme, Springfield, and Neshuda, to the mouth of Choteau creek.
- Meet, when and where.** SECT. 2. It shall be the duty of said commissioners or a majority of them, to meet at Yankton on or before the first Monday in June next, and proceed to locate said road.
- Their powers.** SECT. 3. Said commissioners shall have power to employ all necessary help for the location of said road, and that said commissioners be paid at the rate of two dollars per day, while necessarily engaged in making the said location.
- Expenses, how paid.** SECT. 4. Each county shall pay the expenses incurred in locating, surveying, marking, and staking the same in the said county.
- If majority do not meet.** SECT. 5. If a majority of the commissioners do not meet at the time prescribed, it shall be the duty of such as are there, to fill the commission and proceed to locate the same, and mark, and plat, and file the same, in the county clerk's office of the county through which it passes.
- Take effect, when.** SECT. 6. This act shall take effect immediately upon its passage, and approval by the governor.

Approved April 5, 1862.

W. JAYNE, *Governor.*

RIGHTS OF PERSONS.

CHAPTER 79.

AN ACT TO DEFINE THE RIGHTS OF PERSONS WHO ARE
ACCUSED OF CRIMES AND OFFENCES.

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

SECTION 1. No person shall be held to answer for criminal offence, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army, or in the militia when in actual service in time of war or public danger.

Held to answer
for criminal
offences only,
when.

SECT. 2. In all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of witnesses in his behalf, and in prosecutions by indictment or information, to a speedy public trial by an impartial jury of the county or district wherein the offence shall have been committed, which county or district shall have been previously ascertained by law.

Rights of ac-
cused.

SECT. 3. No person indicted for an offence shall be convicted thereof, unless by confession of his guilt in open court, or by admitting the truth of the charge against him by his plea or demurrer, or by the verdict of a jury accepted and recorded by the court.

No person con-
victed except,
when.

SECT. 4. No person shall be held to answer on a second indictment for an offence of which he has been acquitted by the jury, upon the facts and merits, upon a former trial; but such acquittal may be pleaded by him in bar of any subsequent prosecution for the same offence, notwithstanding any defect in the form or in the substance of the indictment on which he was acquitted.

No person held
to answer twice
for same offence,
when.

If acquitted on
ground of vari-
ance, &c.

SECT. 5. If any person who is indicted for an offence shall, on his trial, be acquitted upon the ground of a variance between the indictment and the proof or upon any exception to the form or the substance of an indictment, he may be arraigned again on a new indictment, and may be tried and convicted for the same offence, notwithstanding such former acquittal.

No punishment
until convicted,
how.

SECT. 6. No person who is charged with any offence against the law, shall be punished for such offence, unless he shall have been duly and legally convicted thereof, in a court having competent jurisdiction of the cause and of the person.

Take effect,
when.

SECT. 7. This act shall take effect and be in force from and after its passage, and approval by the governor.

Approved April 30, 1862.

W. JAYNE, *Governor.*

SALVAGE.

CHAPTER 80.

AN ACT RELATIVE TO SALVAGE.

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

When boat,
&c., found adrift,
may be secured
and retained,
with what effect.

SECTION 1. When any boat, canoe, or other vessel or raft shall be lost, wrecked, or found adrift and in a perishable condition, on or in any river in this territory, any person may take up and secure the same, at or near the place where found, and may retain the same against the rightful owner or owners thereof, until salvage be paid; or may have and maintain a civil action against such owner or owners for the amount of salvage due, under the provisions of this chapter.

Taken up, to do
what.

SECT. 2. Whenever any boat, canoe, or other vessel or raft, shall be taken up and secured, if the same shall exceed the

value of ten dollars, the taker up shall forthwith go before the justice of the peace nearest to the place, and in the precinct where such property shall have been secured, and make oath that the property was wrecked or lost, and found adrift, without the consent of the owner, as he believes, and was in a perishable condition, and that he was not directly or indirectly instrumental in causing the property to be so wrecked, lost, set adrift, or placed in a perishable condition; and shall further state, under oath, a description and the quantity and quality of such property, and the time it was taken up and secured, and that he has not secreted or disposed of, directly or indirectly, any part thereof; and shall forthwith put up notices in three public places near the place, and in the county in which said property was so taken up and secured, describing said property, and the time it was taken up, and notifying the owner thereof to prove property, pay charges, and take the same away.

SECT. 3. If the owners shall apply for and identify said property by proof, under oath, certified by any person authorized to administer the same, within thirty days from the day on which the same was taken up, and shall pay to the person so taking up and securing the same, the sum of five dollars for taking up and fifty cents per day for keeping said property, for each day that has expired between the day the said property was taken up and that on which the said owner shall have applied for and identified the same, he shall be permitted to take the same away; and, if the person so taking up said property shall refuse to deliver the same to the owner thereof, or his agent, after being tendered the amount above described, the said owner may apply to the nearest justice of the peace of the county in which said property was so secured, and before him prove his right of possession to the same; whereupon the said justice of the peace, if the property is not valued at more than one hundred dollars, shall receive the sum due for taking up and keeping said property, and shall forthwith issue a writ of restitution directed to the sheriff or constable of his county.

Duty of owners.

If taken up,
refuses to deliver.

SECT. 4. Said sheriff or constable shall thereupon proceed to take said property and deliver the same into the possession of the person legally entitled to the same; and the fees of said justice, as well as [of] the witnesses and officers executing

Sheriff or constable to deliver.

Fees, how paid.

If property valued at more than one hundred dollars.

the same, and all other costs arising from said examination and restitution, shall be paid by the person taking up and securing such property; but, if said property is valued at more than one hundred dollars, the said justice, after hearing the testimony in the case, shall take the same down in writing, and shall certify, to the clerk of the district court of his proper county, all his proceedings in the case, and a copy of all testimony taken therein, with a bill of costs incurred before him; and the said clerk of the district court, if satisfied that the person so applying, from the testimony given, is entitled to the possession of the said property, shall receive the amount due to the person so taking up and securing the same, and shall forthwith issue a writ of restitution, requiring the sheriff of the county to cause the property to be placed in the possession of the persons so appearing to be entitled to the same; and the said person, so taking up and securing the said property, shall be liable for all costs.

If property not applied for within thirty days.

SECT. 5. If said property shall not be applied for previous to the expiration of thirty days from the date of its being taken up, then the person taking up and securing the same shall notify the justice of the peace, before whom he made oath in the first instance, relative to the taking up and securing said property, and it shall be the duty of said justice of the peace to cause three disinterested persons to examine and assess, under oath, the value of said property so taken up, its position and condition, and make report of said examination and assessment to the said justice; and, if the property is assessed at more than ten dollars, the said justice shall forthwith cause a description and valuation of said property to be published in a newspaper of his county, for three successive weeks, and notice given that unless the owner of the said property shall appear and identify the same, and pay the charges incurred thereon, within fifty days, the property will be sold to pay the same; and, if there is no paper printed in his county, the same notice, description, and valuation of said property shall be given, by posting up the same in three public places within his county.

If property more than ten dollars.

If property exceeds one hundred dollars, to be sold by sheriff, how.

SECT. 6. At the expiration of thirty days from the date of said notice, if the property remains unclaimed and exceeds the value of one hundred dollars, said justice shall certify to the clerk of the district court of his proper county, a copy of all his doings in the case; and on receipt of said certified

copy of the proceedings, the clerk of the district court shall direct the sheriff, under the seal of the court, to sell said property at public sale, to the highest bidder, for cash, whereupon the sheriff shall give such notice of the time and place of said sale, not less than ten days, as will make the sale five days subsequent to the expiration of the fifty days' notice given by the justice of the peace.

SECT. 7. The sheriff shall pay the amount received for said property to the clerk of the district court, who shall pay all costs which have accrued in the taking up, assessing, advertising, or otherwise allowing the same fees, as are allowed in all other civil cases for the same duties; and allowing the person taking up and securing said property to select between receiving five dollars for taking up and securing, and thirty dollars for keeping the same, or twenty-five per cent. on the net proceeds of the sale thereof; the remainder of the proceeds of said sale shall be paid into the county treasury, the clerk of the district court taking the treasurer's receipt thereof, and shall be paid to the owner of such property, if application and satisfactory proof of such ownership be made within one year from the day of the sale of said property.

Of the proceeds of sale.

SECT. 8. If any property shall be assessed at one hundred dollars or less, then the justice of the peace, instead of certifying his doings to the clerk of the district court, as provided for in section six, shall, at the expiration of thirty days from the date of the notice to publisher, as provided for in this chapter, direct the sheriff or some constable to sell said property at public sale, to the highest bidder for cash, giving not less than twenty days' notice thereof; and said justice shall receive and dispose of the proceeds of such sale in the same manner and under the same regulations in all respects; and the amount, if any remaining, after paying the demands against said property, shall be paid to the county treasurer, subject to be claimed in the same manner as is provided for any sale made under the provisions of this chapter, under the authority of the clerk of the district court.

If less than one hundred dollars.

SECT. 9. In all cases when the property so taken up shall, in the opinion, under oath, of the person taking up and securing the same, not exceed the value of ten dollars, then, and in that case, the person so taking up and securing said property, shall forthwith give notice by posting up three writ-

If less than ten dollars.

ten or printed notices, in three of the most public places in the neighborhood, where such property was taken up and secured: and if the owner shall apply therefor, prove property, and pay one dollar for taking up and securing, and twenty-five cents per day for keeping the same, then said property shall forthwith be delivered to said owner; and in case of the refusal of any person having taken up and secured said property, he shall be proceeded against in the same manner as prescribed in section three of this chapter, for persons refusing to deliver to the owner thereof any property exceeding the value of ten dollars, so taken up and secured; and if no person shall apply for and prove his right to possess said property, for twenty days from the date of the taking up and securing the same, then the property may be removed from the water, or otherwise disposed of by the person so taking up and securing the same, for his own use or benefit.

Indian canoes, or lumber and logs not subject to this act, except when.

Proviso.

SECT. 10. No canoes belonging to Indians, or cribs of lumber or logs shall be subject to the provisions of this chapter, but it shall be returned to the owners thereof, on application for and proof of the right to possess the same: *Provided*, That rafts or cribs of lumber, staves or logs, not purposely put adrift by the owners thereof, or their agents, for the purpose of driving the same, but shall have broken away contrary to the desire and against the will of the owners or the agents, and which may be subject to be injured and broken to pieces if suffered to proceed, shall be subject to all the provisions of this chapter.

Owner may have immediate possession, how.

SECT. 11. The owner or his agent, on proof of ownership, before a justice of the peace, at any time previous to the day of sale, shall, on payment of five dollars for taking up the same, and fifty cents per day for each day thereafter, for keeping said property, together with any and all legal costs incurred for advertising, assessing, or otherwise, shall be entitled to the immediate possession of the property so taken up and secured.

If person unlawfully detains or embezzles such property. Penalty.

SECT. 12. If any person unlawfully detain or embezzle property wrecked, lost, or adrift, contrary to the provisions of this chapter, or shall neglect to keep in safety, or shall allow the same to get aground after he shall have taken up and secured property, as aforesaid, the person so offending shall

be liable to pay double damages to the party injured, in a civil action before any court having competent jurisdiction.

SECT. 13. If any clerk of the district court, justice of the peace, or other officer receiving money under the provisions of this chapter, shall secrete or embezzle the same, or any part thereof, such clerks or other officer shall forfeit fourfold the value thereof, to be recovered in a civil action in any court having competent jurisdiction, one half to the party injured, and the other half to the use of the county in which said cause may be tried.

If any public officer embezzles money received. Penalty.

SECT. 14. When any person shall make oath before any justice of the peace that he has lost any property by wreck or the rising of the waters or other accident, and that he has good cause to believe that such property so lost is secreted by or in the possession or custody of any other person, it shall be lawful for such justice of the peace, by warrant, under his hand, to direct any constable to search for and take into his custody and charge the property so secreted or in the possession of any person; and the person so secreting or having such property in his possession shall not be entitled to salvage, and shall be further liable to pay a fine of not more than twenty nor less than five dollars, for the use of the county, upon being convicted of secreting or having such property in his possession, without advertising, as provided for in this chapter.

When person makes oath as to his belief of property being secreted, &c.

SECT. 15. No loose saw logs, of pine or other wood, floating in any stream of this territory, shall be taken up or stopped, without the consent or authority of the owner thereof, under the penalty, if said logs are marked or branded as required by law, of double the price of said logs so taken up or stopped; to be recovered in a civil action, before any court having competent jurisdiction.

If loose logs stopped. Penalty.

SECT. 16. Whenever any saw logs, owing to high waters, shall float or drift on the premises of any person, and shall there stop or lodge, the owner shall have authority to remove the same, doing as little damage to the fences, trees, or other property, as possible; and any person who shall attempt to prevent the owner of any logs, or his agent, taking said logs, shall be liable to a fine of not more than five dollars for every such offence.

If saw logs drift on to other premises.

SECT. 17. When saw logs or timber shall have lodged or

If not claimed for two months.

stopped on the premises of any person in this territory, and no person shall appear to claim the same for the space of two months, the owner [or] occupant of said land may convert the said logs or timber to his own use.

Of damage to
or secretion of
marked saw logs.

SECT. 18. Any person who shall wilfully cut, split, or otherwise injure any saw log that is marked or branded, or shall wilfully drive any saw logs into any slough, or on any island or bottom land, with a view to secrete the same, shall be liable to pay double damages to the owner of such logs.

Take effect,
when.

SECT. 19. This act to take effect from and after its passage, and approval by the governor.

Approved May 15, 1862.

W. JAYNE, *Governor.*

SCHOOLS.

CHAPTER 81.

AN ACT FOR THE REGULATION AND SUPPORT OF COMMON SCHOOLS.

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

County com-
missioners to ap-
point superinten-
dent.

SECTION 1. That the board of county commissioners of each county shall appoint a county superintendent of public instruction.

He shall take
oath and give
bond.

SECT. 2. The county superintendent of public instruction 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 office of the register of deeds. He shall also execute a bond with approved security, payable to the board of

county commissioners, for the use of common schools in said county, in a sum to be fixed by the said commissioners. Said bond must be approved by the register of deeds, and filed in his office.

SECT. 3. It shall be the duty of the board of county commissioners to divide the county into a convenient number of districts, and divide the same when the interests of the inhabitants of the several districts may require it; and shall describe and number the school districts of the county, and a copy of the paper or papers containing such description shall be delivered by the register of deeds to the county superintendent of public instruction.

Commissioners
to divide county
into districts.

SECT. 4. It shall be the duty of the judge of probate, on the first Monday of April in each year, to furnish the county superintendent of public instruction 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 the said superintendent.

Judge of pro-
bate to notify
superintendent
of amount of
money yearly.

DUTIES OF THE COUNTY SUPERINTENDENT.

SECT. 5. It shall be the duty of the county superintendent of public instruction, on the second Monday of April in each year, or as soon thereafter as he shall receive the statement of the judge of probate, certifying the amount of money in the county treasury, for the use of common schools for the current year, to apportion such amount to the several districts, or parts of districts, within the county, in proportion to the number of white 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.

Superintendent
to apportion
money to dis-
tricts, when.

Proviso.

SECT. 6. He shall visit each school in the county at least once each term, for the purpose of examining into the condition of the school, of ascertaining the text-books used, and of giving such advice as he may deem proper, in reference to

Visit schools,
when.

the course of studies pursued, and the general interests of the school.

See to annual report.

SECT. 7. He shall see that the annual reports of the clerks of the several school districts in his county are made correctly, and in due time.

Shall examine teachers and give certificates.

SECT. 8. He shall examine annually, all persons offering themselves as teachers of common schools in his county, in regard to moral character, learning, and ability to teach school, and he shall give to each person examined and found qualified to teach, a certificate signed by him, officially, and any person receiving such certificate, shall be deemed a qualified teacher within the meaning of this act.

When school district is formed.

SECT. 9. Whenever a school district shall be formed in any county, the county superintendent of public instruction 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.

Shall perform other lawful duties, and deliver books, &c., to successor.

SECT. 10. The county superintendent of public instruction shall perform all other duties of his said office that now are, or hereafter may be, prescribed by law, and he shall deliver to his successor within ten days after the expiration of his term of office, all the books and papers appertaining to his office.

In case of vacancy in office of superintendent.

SECT. 11. If a vacancy occurs in the office of county superintendent of public instruction, by death, resignation, or otherwise, notice thereof shall be given by the register of deeds to the board of county commissioners, who shall, as soon as practicable, appoint some suitable person to fill the vacancy, and the person receiving such appointment shall, before entering upon the discharge of the duties of his office, file his oath or affirmation in the register of deeds' office, as hereinbefore provided, and he shall discharge all the duties of the office of county superintendent of public instruction until a successor is elected and qualified. He shall also give a like bond to that required by this act to be given by the county superintendent of public instruction.

SECT. 12. 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 half of one per cent. on taxable property in the district, as the meeting shall deem sufficient to purchase or lease a site: *Provided*, When not included within the limits of an incorporated town or village, said site shall not contain less than one acre, and to build, hire, or purchase such school-house, and to keep in repair and furnish the same, with the necessary fuel and appendages. 6. To vote a district tax annually, not exceeding one fourth of one per cent. on the taxable property in the district for the 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 use of the district. 8. To vote such 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*, The said tax shall not exceed one fourth of one per cent. per annum. 9. To give such direction and make such provision as may be deemed necessary in relation to the prosecution or defence of any suit or proceeding in which the district may be a party. 10. To alter or repeal their proceedings from time to time as occasion may require, and to do any other business contemplated in this act.

SECT. 13. The following persons shall be entitled to vote at any district meeting: all persons possessing the qualifications of electors, as defined by the act organizing this territory, and the laws of said territory, and who shall be residents of the district at the time of offering to vote at such election.

SECT. 14. 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

Powers of school district meeting.

Proviso.

Proviso.

Persons entitled to vote.

If person is challenged as unqualified.

withdrawn, the chairman, who is hereby authorized, shall tender to the person offering to vote, the following oath or affirmation: "You do solemnly swear (or affirm) that you are an actual resident of this school 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.

Of the formation of school districts.

SECT. 15. Every school district shall be deemed duly organized when the officers constituting the district board shall be elected; they shall signify their acceptance to the county superintendent, in writing, which he shall file in his office. Every person duly elected to the office of director, clerk, or treasurer of any school district, who shall refuse or neglect, without sufficient cause, to accept of such office and serve therein, or who, having entered upon the duties of his office, shall neglect or refuse to perform any duty required of him by the provisions of this act, shall forfeit the sum of ten dollars.

Officers and term of office.

SECT. 16. 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.

Districts considered bodies corporate, with what powers.

SECT. 17. 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 a number as may be designated by the county commissioners), — county (the name of the county in which the district is situated), Territory of Dakota, and in that name may sue and be sued, and be capable of contracting and being contracted with, and holding such real or personal estate as it may come in possession of by will or otherwise, or as is authorized to be purchased by the provisions of this act.

Annual and special meetings.

SECT. 18. An annual meeting of each school district shall be held on the last Saturday of September of each year, at such hour as the board of directors shall name. Special meetings may be called by any member of the district board, or by any five legal voters, but notice of such special meeting, stating the purposes for which it is called, shall be posted in

at least three public places within the district, ten days previous to the time of meeting.

SECT. 19. Whenever the time for holding an annual meeting in any district shall pass without said meeting being held, the clerk, or, in his absence, any other member of the district board, within twenty days after the time for holding said annual meeting shall have passed, may give notice of a special meeting by putting up written notices thereof in three public places within the district, at least five days previous to the time of meeting; but if such meeting shall not be notified within twenty days as aforesaid, the county superintendent may give notice of such meeting in the manner provided for forming new districts, and the officers chosen at such special meeting shall hold their offices until the next annual meeting, and until their successors are elected and qualified.

When time passes without meeting.

SECT. 20. 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, which shall not be less than three months, 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.

Powers of meeting.

SECT. 21. The director of each district shall preside at all district meetings, and shall sign all 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.

SECT. 22. The clerk of each district shall record the proceedings of his district in a book provided by the district for that purpose, and enter therein copies of all reports made by him to the county superintendent, and he shall keep and preserve all records, books, and papers belonging to his office, and deliver the same to his successor in office.

Duties of clerk.

SECT. 23. The said clerk shall be clerk of the district

In case of his absence.

board and of all district meetings when present; but if such clerk shall not be present at any district meeting, the voters present may appoint a clerk of such meeting, who shall certify the proceedings thereof, and the same shall be recorded by the clerk of the district.

Clerk to give what notice, and when.

SECT. 24. 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 for money.

SECT. 25. The clerk of the district shall draw orders on the treasurer of the district, for moneys in the hands of such treasurer, which have been apportioned to or raised by the district to be applied to the payment of teachers' wages, and apply such money to the payment of teachers' wages as shall have been employed by the district board, or by the citizens of the district, and the said clerk shall draw orders on the said treasurer for moneys in the hands of such treasurer, to be disbursed for any other purpose ordered by a district meeting, or by the district board agreeably to the provisions of this act.

To make out tax lists.

SECT. 26. It shall be the duty of the clerk to make out tax lists of all taxes legally authorized by the district, and annex to such tax lists a warrant under the hand of said clerk, directed to the treasurer of said district, requiring said treasurer to collect the sums therein named.

Make out what reports, and when.

SECT. 27. 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 instruction, showing: 1. The number of white 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 white children attending school during the year, their sex, and

branches studied. 3. The length of time a school has been taught in the district by a qualified teacher, the name of the teacher, the length of time taught, and the wages paid. 4. The amount of money received from the county treasurer within the year, and the manner in which the same has been applied. 5. The amount of money raised by the district in such year, and the purposes for which it was raised. 6. The kind of books used in the school, and such other facts and statistics in regard to the district schools as the county superintendent may require.

SECT. 28. 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 public instruction of each of the counties in which such district may be partly situated.

When district lies in more than one county.

SECT. 29. The treasurer shall execute to the district a bond in double the amount of money, as near as can be ascertained, to come into his hands as treasurer of the district during the year, with sufficient securities to be approved by the director and clerk, conditioned to the faithful discharge of the duties of said office. Such bond shall be filed with the district clerk, and in case of the breach of any condition thereof, the director shall cause a suit to be commenced thereon, in the name of the district, and the money collected shall be applied by such director to the use of the district, as the same should have been applied by the treasurer, and if such director shall neglect or refuse to prosecute, then any householder of the district may cause such prosecution to be instituted.

Treasurer to execute bond.

SECT. 30. If the treasurer shall fail to give bond as required in this act, or from sickness or any other cause, shall be unable to attend to the duties of said office, the district board shall appoint a treasurer, who shall possess all the powers of the district treasurer, and shall, before entering upon the duties of said office, give a bond as the district treasurer is required to give.

If he fails to give bond.

SECT. 31. The treasurer of each district shall apply for and receive from the county treasurer all school moneys apportioned to his district, and shall collect all district taxes

Powers and duties of treasurer.

assessed in pursuance of the provisions of this act, and pay over on the order of the clerk, signed by the director of such district, all moneys so received or collected by said treasurer.

If he refuses to pay over money to successor.

SECT. 32. 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.

If school moneys lost by neglect.

SECT. 33. If by the neglect of any treasurer any school moneys shall be lost to any school district, which might have been received from the county treasurer, or collected from the district tax assessed, said treasurer shall forfeit to such district the full amount of the moneys so lost.

Treasurer to make annual report of moneys, &c.

SECT. 34. The treasurer shall present to the district at each annual meeting, a report in writing, containing a statement of all moneys received by him from the county treasurer during the year, also all moneys collected by him 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 over such balance to his successor in office.

Clerk to record same.

DISTRICT BOARD.

District board's duties relating to school-house, &c.

SECT. 35. The district board shall purchase or lease such a site for a school-house as shall have been designated by the 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.

Other duties.

SECT. 36. The district board shall have the care and keeping of the school-house, and other property belonging to the district. They shall have power to make such rules and regulations relating to the district library, as they may deem

proper, and to appoint some suitable person to act as librarian, and to take charge of the school apparatus belonging to the district.

SECT. 37. The district board shall have power to admit scholars from adjoining districts, and remove scholars for disorderly conduct. May admit and remove scholars.

SECT. 38. 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. Of contracting with teachers.

SECT. 39. The district board shall provide the necessary appendages for the school-house, during the time a 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. Shall provide necessary appendages.

SECT. 40. The district schools established under the provisions of this act, shall at all times be equally free and accessible to all the white 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. Schools, free to whom.

SECT. 41. 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. What branches shall be taught.

SECT. 42. If a vacancy should occur in the district board, in any district, the county superintendent shall appoint some suitable person to fill such vacancy. If a vacancy in district board.

DISTRICT TAXES.

SECT. 43. 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. Taxes, how assessed.

SECT. 44. The clerk of the school district, in making out any tax lists, shall enter therein the names of all persons liable to pay a school-district tax in such district, the amount of personal property to be taxed to each such person, and a description of all taxable real estate in the district, distinguishing Duty of clerk in making out tax lists.

that owned by non-residents of the district, and he shall set opposite to each description of taxable property the valuation of the same, and the amount of tax charged upon such property, and to each person respectively, or tract of land owned by non-residents; and such description and valuation of taxable property, shall be ascertained as far as possible from the last assessment roll of the county.

When real estate not separately valued.

SECT. 45. 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.

Warrant to be under hand of clerk, and contain what.

SECT. 46. The warrant annexed to any tax list shall be under the hand of the clerk of the district, and shall command the treasurer of such district to collect from each of the persons and corporations named in said tax list, and of the owners of the real estate described therein, the several sums set opposite to the persons and corporations so named, and to the several tracts of land owned by non-residents. within forty days from the date thereof, and within twenty days from the date of such warrants, to personally demand such tax of the persons charged therewith; and that if any tax shall not be paid within thirty days thereafter, to collect the same by distress and sale of property in the same manner as county taxes, and the said treasurer shall execute the said warrant and return the same to the clerk at the expiration of the time limited therein, for the collection of such tax list.

May be executed, where.

SECT. 47. 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 anywhere within the limits of the county, and such warrants shall have the like force and effect as a warrant issued for the collection of county taxes; and the treasurer of the district, to whom any such warrants may be delivered for collection of a tax list, shall possess the like powers in the execution of the same as are provided by law for the collection of county taxes.

Powers of treasurer, execution of same.

When money improperly collected.

SECT. 48. 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 re-

funded, and may authorize the clerk of the district to amend and correct such error in said tax list.

SECT. 49. Whenever any district tax, lawfully assessed, shall be paid by any person on account of any real estate whereof he is only a tenant, such tenant may charge and collect of the owner of such estate the amount of tax so paid by him, unless some agreement to the contrary shall have been made by the tenant.

When district tax collected of tenant.

SECT. 50. 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.

Register of deeds to make what report to district clerks.

GRADED SCHOOLS.

SECT. 51. 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 the respective districts, call a meeting of the voters of such districts, at some convenient place, by posting up written notices thereof in like manner as provided for calling district meetings, and if a majority of the voters of each of the two or more districts shall vote to unite for the purpose herein stated, they shall at that meeting or at an adjourned meeting, elect a board of directors, consisting of a director, clerk, and treasurer.

Graded schools, how formed.

SECT. 52. 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 of directors as prescribed in this act.

Their board have same powers as the regular.

SECT. 53. 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 white children attending the said graded school for each district.

Entitled to equitable share of school funds.

SECT. 54. The said union district may levy taxes for the

May levy taxes for what.

purpose of purchasing a building, or furnishing proper buildings for the accommodation of the school, or for the purpose of defraying necessary expenses and paying teachers, but shall be governed in all respects by the law herein provided for levying and collecting district taxes.

Clerk to make report to treasurers of district.

SECT. 55. 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 school district, and pay the same over to the treasurer of the union district on order of the clerk and director thereof.

To make report to county superintendent.

SECT. 56. The clerk of the union district shall make a report to the county superintendent of public instruction, and discharge all the duties of clerk, in like manner as the clerk of the district.

Treasurer give bond, &c.

SECT. 57. The treasurer of the union district shall perform all the duties of treasurer, and give the bond as prescribed in this act, in like manner as the district treasurer.

Public schools regulated by special law, have their share of school moneys.

Proviso.

SECT. 58. 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 school fund: *Provided*, The clerk of the board of education in such city, town, or village, shall make due report within the time and manner prescribed in this act, to the county superintendent of public instruction.

Single districts may establish graded schools.

SECT. 59. Any single district shall possess power to establish graded schools, subject to the provisions of this act, in like manner as two or more districts united.

Duties of county treasurer relating to school moneys.

SECT. 60. The county treasurer shall collect all moneys due the county for school purposes, from fines, forfeitures, or proceeds from the sale of estrays, and all moneys paid by persons as equivalent for exemption from military duty, and he shall pay the same to the said district treasurer, as prescribed in this act. He shall also collect the delinquent taxes on real estate in any district, in the same manner as county taxes are collected, whenever such delinquent tax list shall have been lawfully reported and returned to him, and he shall pay the same over to the treasurer of the district to which

delinquent taxes are due, and if any county treasurer shall refuse to deliver over to the order of the county superintendent any money in his possession, or shall use, or permit to be used for any other purpose than is specified in this act, any school money in his possession, he shall, on conviction thereof, be adjudged guilty of a misdemeanor, and be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year.

If county treasurer refuses to deliver money.

MISCELLANEOUS.

SECT. 61. 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.

Teachers to make what report.

SECT. 62. Every clerk of a district 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.

If clerk make false report. Penalty.

SECT. 63. Every school district clerk or treasurer who shall neglect or refuse to deliver to their successors in office all records, books, and papers belonging severally to their offices, shall be subject to a fine not exceeding fifty dollars.

Clerk or treasurer refusing to deliver records, &c., to successor. Penalty.

SECT. 64. Whenever any final judgment shall be obtained against any school district, the district board shall levy a tax on the taxable property in the district, for the payment thereof; such tax shall be collected as other school district taxes, but no execution shall issue on judgment against a school district.

When final judgment rendered against school district.

SECT. 65. 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

Justices have jurisdiction in what cases.

hundred dollars, and the parties shall have the right of appeal as in other cases.

School officers
not to receive pay
out of school
moneys.

SECT. 66. No school officer mentioned in this act shall receive any compensation for his services out of the territorial or school-district fund.

Fines and pen-
alties, how col-
lected.

SECT. 67. All fines and penalties not otherwise provided for in this act, shall be collected by an action in any court of competent jurisdiction.

Acts repealed.

SECT. 68. All acts and parts of acts, inconsistent with this act, upon the subject of education, are hereby repealed.

SECT. 69. The following forms shall be substantially followed in all cases where they apply.

F O R M S .

FORM OF NOTICE FOR THE FIRST SCHOOL DISTRICT MEETING.

Form of notice
for the first
school district
meeting.

SECT. 70. To —, a householder in school district number —.

The county commissioners have formed school district number —, in the county of —, of which the following is a description —, and you are hereby directed to post this notice in at least five public places in the said district, notifying the voters of the district to attend the first meeting thereof, which is appointed to be held at the house of —, in said district, on the — day of —, 186—, at — o'clock, —.

This — day of —, 186—.

—, County Sup't Pub. Instruction.

FORM OF NOTICE FOR ANNUAL DISTRICT MEETING.

Form of notice
for annual dis-
trict meeting.

SECT. 71. 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.

SECT. 72. To —, treasurer of school district number —, county of —: Form of order on district treasurer.

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 OF DISTRICT TREASURER.

SECT. 73. 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 sum of — dollars, to be paid to the school district, for the payment of which we bind ourselves severally and jointly, our heirs, executors, and administrators, firmly by these presents. Form of bond of district treasurer.

Sealed with our seals, and dated this — day of —, A. D. 186—.

The condition of the above obligation is such, that if the said —, treasurer as aforesaid, shall faithfully discharge the duties of his office as treasurer of school district number —, county of —, as prescribed by law, then this obligation to be void, otherwise to be and remain in full force.

Signed, sealed, and delivered in presence of — [SEAL.]

— [SEAL.]

FORM OF WARRANT FOR THE COLLECTION OF DISTRICT TAX.

SECT. 74. To —, the treasurer of school district number —, county of —. Form of warrant for the collection of district tax.

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 and collect the same as authorized by law, by distress and sale of property, and make due return according to law.

Given under my hand, this — day of —, A. D. 186—.
—, District Clerk.

[FORM OF] VOUCHERS.

Form of vouchers.

SECT. 75. Received —, 186—, of —, treasurer of school district number —, county of —, — dollars for services rendered as teacher in the said school district, for the term of — months.

—, Teacher.

FORM OF CONTRACT BETWEEN DISTRICT AND TEACHER.

Form of contract between district and teacher.

SECT. 76. 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 DISTRICT TREASURER.

Form of annual report of district treasurer.

SECT. 77. I —, treasurer of school district number —, county of —, submit the following report of all moneys received and disbursed by me since the last annual meeting:

Amount received from my predecessor, . . . \$—
 Amount received from county treasurer, . . . —
 Amount raised by tax in district and collected, . . . —
 Total amount received, . . . \$—
 Paid out, on order of 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 THE COUNTY SUPERINTENDENT OF PUBLIC INSTRUCTION.

Form of report of district clerk to the county superintendent of public instruction.

SECT. 78. — school district number —, county of —. Number of white children residing in the district over five and under the age of twenty-one years:

Males, . . . —
 Females, . . . —
 Total number, . . . —

Number who have attended school during the year :
 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 expended for teachers' wages, \$ _____
 Amount expended for building school-house, \$ _____
 Amount expended for furnishing school-house, \$ _____
 This _____ day of _____, 186-.

_____, District Clerk.

Add a copy of teacher's report.

SCHOOL TEACHER'S CERTIFICATE.

SECT. 79. 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.

School teacher's certificate.

_____,
 Sup. of Pub. Instruction of _____ county.

[NOTE.— Sects. 80, 81, 82, and 83 consisted of forms for "Teacher's Daily" and "General Register," and form of reports "to District Clerks" and of "Branches of Study Taught," which were not enrolled with the law.— PRINTER.]

FORM OF DEED.

SECT. 84. This indenture, made the _____ day of _____, one thousand eight hundred and sixty _____, between _____ and _____ his wife, of the county of _____, Dakota Territory, par-

Form of deed

ties of the first part, and — of district board of district number —, county and territory aforesaid, witnesseth, That the said parties of the first part, in consideration of — dollars to them duly paid before the delivery hereof, have bargained and sold, and by these presents do grant and convey to the said parties of the second part, their successors in office, and assigns forever (here describe the premises), with the appurtenances and all the estate, title, and interest of the said parties of the first part therein. And the said parties of the first part do hereby covenant and agree with the said parties of the second part, that at the time of the delivery hereof, the said parties of the first part were the lawful owners of the premises above granted, and seized thereof, in fee-simple absolute, and they will warrant and defend the above-granted premises, in the peaceful possession of the said parties of the second part, and their successors and assigns forever.

_____ [SEAL.]
 _____ [SEAL.]

Sealed and delivered in presence of

 THE TERRITORY OF DAKOTA, }
 _____ county. }

Personally appeared before me a —, within and for the county above named, — and — his wife, to me known to be the person whose names are affixed to the above deed as grantors, and acknowledged the same to be their voluntary act and deed; and the said — being at the same time, by me, made acquainted with the contents of the above deed, apart from her husband, acknowledged that she executed the same voluntarily, and that she is still satisfied therewith.

Witness my hand and seal this — day of —, A. D. 186—.

Take effect,
when.

SECT. 85. This act shall take effect from and after its passage, and approval by the governor.

Approved May 13, 1862.

W. JAYNE, Governor.

SEAT OF GOVERNMENT.

CHAPTER 82.

AN ACT TO LOCATE THE SEAT OF GOVERNMENT OF
DAKOTA TERRITORY.

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

SECTION 1. That the seat of government of the Territory of Dakota be, and the same is hereby located and established in a central part of the town of Yankton, on section eighteen (18), in township ninety-three (93), north range fifty-five (55), west of the fifth principal meridian, in the county of Yankton.

Seat of govern-
ment located at
Yankton.

SECT. 2. This act shall take effect and be in force from and after its passage, and approval by the governor.

Take effect,
when.

Approved April 8, 1862.

W. JAYNE, *Governor.*

SPIRITUOUS LIQUORS.

CHAPTER 83.

AN ACT TO REGULATE THE SALE OF SPIRITUOUS LIQUORS.

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

License neces-
sary in what
cases.

SECTION 1. That no person shall be permitted to sell spir-
ituous liquors in less quantities than one pint, without having
obtained a license from the board of county commissioners of
the proper county for that purpose.

Commissioners
to grant license
for what, and
when.

SECT. 2. That the commissioners granting the license
shall fix the price thereof, which shall not be more than one
hundred dollars, nor less than ten dollars per annum, having
proper regard to the apparent advantages of the applicant's
situation for business; and on the applicant's producing the
county treasurer's receipt for the payment of the sum so
fixed, he shall receive a license which shall continue for the
term of one year.

If person shall
violate first sec-
tion. Penalty.

SECT. 3. If any person or persons shall sell, barter, or dis-
pose of in any manner, any spirituous liquors in less quan-
tity or quantities than one pint, without having first obtained
a license, agreeably to the provisions of this act, he shall,
upon conviction thereof, by indictment in any court having
jurisdiction of the same, or by complaint before a justice of
the peace, be fined a sum not exceeding one hundred nor less
than thirty dollars, for the use of the county where the
offence shall have been committed; and upon failure to pay
the fine so assessed, shall be confined in the county jail
one day for every five dollars thereof, until said fine is dis-
charged.

If this law
evaded.

SECT. 4. Any person who shall dispose of any spirituous
or vinous liquors, under the pretext of exhibiting any show
or curiosity, or dispose of the same in connection with any
other article, or in any manner, from which an intention to

evade the provisions of this chapter may appear, shall be deemed guilty of a violation of the same, and shall be liable to the penalties prescribed in the third section of this act.

SECT. 5. And it is hereby made the duty of the prosecuting attorneys, sheriffs, 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 session of the district court of the county in which the offence may have been committed, after said violation, or to a justice of the peace, which justice shall have full power to proceed to judgment thereon. And the moneys collected on such judgment, except the taxable costs, shall be paid to the treasurer of the proper county for the use of said county.

Duty of what public officers to make complaint, when.

SECT. 6. That the clerk of the board of county commissioners shall, on the first day of each and every term of the district court, deliver to the grand jury an accurate list of all persons holding licenses, under the provisions of this act, within his county; which list shall show the date and expiration of said licenses.

Clerk to deliver list of licensed parties to grand jury.

SECT. 7. That it shall be the duty of the grand jury at each and every term of the district court in any county in the territory, to make strict inquiry and return bills of indictment against every person violating any of the provisions of this act.

Grand jury to indict parties violating.

SECT. 8. All the powers, duties, and authority conferred by this act upon the county commissioners, are hereby conferred upon the town council of any incorporated town, on all matters within the corporate limits of such town, and all moneys collected under the provisions of this act in such incorporated town, shall be paid into the treasury of said corporation, for the use of the schools in said town or city.

Powers conferred on town council.

SECT. 9. This act to take effect on and after its passage.

Take effect, when.

Approved May 13, 1862.

W. JAYNE, *Governor.*

SURVEYING, PLATTING, AND RECORDING.

CHAPTER 84.

AN ACT TO PROVIDE FOR SURVEYING, PLATTING, AND RECORDING TOWNS AND CITIES.

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

Survey and
plat necessary.

SECTION 1. When any person wishes to lay out a town in this territory, or an addition or subdivision of out lots, such person shall cause the same to be surveyed and a plat thereof made, which shall particularly describe and set forth all the streets, alleys, commons, or public grounds, and all in and out lots or fractional lots, within or adjoining to said town, giving the names, width, courses, boundaries, and extent of all such streets and alleys.

Lots and
squares num-
bered.

SECT. 2. All the in lots intended for sale shall be numbered in progressive numbers or by squares in which they are situated, and their precise length and width shall be stated on said map or plat; and out lots shall not exceed ten acres in size, and shall, in like manner, be surveyed and numbered, and their precise length and width stated on the plat or map, together with any streets, alleys, or roads which shall divide or border the same.

Base line, how
formed.

SECT. 3. The proprietor or proprietors of the town, addition or subdivision of out lots, by themselves or agents, shall, at the time of surveying and laying the same, cause to be planted and firmly fixed in the ground on the line of the main streets of said town, two good and sufficient stones of such size and dimension as the surveyor shall direct. Said stones to be at least two hundred and fifty yards apart, and the lines thus formed shall be a base line from which to make future surveys; and the point or points where the same may be found, shall be distinguished on the plat or map.

SECT. 4. The plat or map, after having been completed,

shall be certified by the surveyor and the officers, and every person or persons whose duty it shall be to comply with the foregoing requisitions, shall, at or before the time of offering said plat or map for record, acknowledge the same before any person authorized to take the acknowledgment of deeds. A certificate of such acknowledgment shall, by the officer taking the same, be indorsed on the plat or map, which certificate of the survey and acknowledgment shall also be recorded and form a part of the record.

Plat or map certified and acknowledged.

SECT. 5. When the plat or map shall have been made out and certified, acknowledged and recorded, as required by this chapter, every donation or grant to the public, or any individual or individuals, religious society or societies, or to any corporation or body politic, marked or noted as such on said plat or map, shall be deemed, in law and equity, a sufficient conveyance to vest the fee-simple of all such parcel or parcels of land as are therein expressed, and shall be considered to all [intents] and purposes a general warranty against such donor or donors, their heirs or representatives to said donee or donees, grantee or grantees, for his, her, or their use, for the uses and purposes therein named, expressed and intended, and no other use and purpose whatever; and the land intended to be [used] for the streets, alleys, ways, commons, or other public uses, in any town or city or addition thereto, shall be held in the corporate name thereof, in trust to and for the use and purposes set forth and expressed or intended.

Of lands donated or granted.

Land for streets, &c.

SECT. 6. If the county in which said town or addition is situated shall not be organized, then in that case the plat or map shall be recorded in the register's office of that county to which the county in which said town is situated shall at the time be attached for judicial purposes.

If county not organized, plat recorded, where.

SECT. 7. When any town, addition, or subdivision has been heretofore laid out and lots sold in this territory, by agents or proprietors, and a plat or map of the same has not been acknowledged and recorded in conformity with acts heretofore in force, it shall be the duty, and it is hereby required of the county commissioners, or a majority of them, in such county, or proprietor or proprietors, who have laid out the same, or his, her, or their legal representatives, to have the same fairly, fully, and clearly made out, acknowledged and recorded in the proper county, in the form and manner required by this

If towns, &c., have been laid out without complying with this act.

chapter; noticing and particularly [describing] the donation of lands or otherwise, to individual societies, bodies politic, or for common or public purposes: *Provided*, That if the lots shall have been differently numbered and sales made, and they cannot be well changed, they shall be returned as originally stated, but in all other respects the plat or map shall conform to the requisitions of this chapter.

Proviso.

Fees of surveyor and register.

SECT. 8. The surveyor who shall lay out, survey, and plat any town or addition, shall be entitled to receive twenty-five cents for each and every in and out lot the same may contain, unless otherwise agreed; and the register of deeds of the county recording the same, shall receive the sum of two cents for each and every lot as aforesaid, the said plat and survey to be by him transcribed or copied into a book to be provided for that purpose.

If sale or lease offered before this act is complied with. Penalty.

SECT. 9. If any person or persons shall dispose of, offer for sale, or lease for any time, any out or in lots in any town or city, or in any addition to any town or city, or any part thereof, which shall hereafter be laid out, until all the foregoing requisitions of this chapter shall have been complied with; every person so offending shall forfeit and pay the sum of ten dollars for each and every lot or part of a lot sold or disposed of, leased or offered for sale.

If officer or other person neglect to do duty. Penalty.

SECT. 10. If any county officer or other person or persons whose duty it is to comply with any of the requisitions of this chapter, shall neglect or refuse so to do, he or they shall forfeit and pay a sum of not less than ten nor more than one hundred dollars, for each and every month he or they shall delay a compliance.

Towns heretofore laid out must be recorded within three months.

SECT. 11. All towns heretofore laid out, shall be platted or mapped in accordance with the provisions of this act, and the plats or maps of the same shall be recorded within three months from the passage of this act, in the office of the register of deeds of the proper county.

Of forfeitures and liabilities.

SECT. 12. All forfeitures and liabilities which may be incurred or arise under this act, shall be prosecuted for and recovered in the name of the county treasurer; and any officer or officers paying over any money to the said treasurer, received under any of the provisions of this act, shall take his receipt therefor, and forthwith file the said receipt with the clerk of the board of county commissioners, and the said clerk

shall charge the amount of said receipt against said treasurer on the books of the county commissioners.

SECT. 13. The district courts are hereby authorized and empowered, on application made by the proprietors of any town within their proper county, to alter or vacate the same or any part thereof. District court may alter or vacate towns.

SECT. 13. If any proprietor or proprietors of a town shall be desirous of altering or vacating the same or any part thereof, such proprietor or proprietors shall give notice in writing of such intended application, in at least two of the most public places in the county wherein such town may be situated, and insert a copy thereof in a newspaper printed or in circulation in said county, if there be one, at least forty days prior to the sitting of the court to which he or they intend to make such application. Notice of application for vacation, how given.

SECT. 15. If such applicant or applicants shall produce to said court satisfactory evidence that the notice required by the preceding section of this chapter has been given, the court shall proceed to hear and determine said petition, and may alter or vacate said town or any part thereof, and order their proceedings thereon to be recorded by the clerk, with the records of said court. Proceedings before the court.

SECT. 16. The words chapter and act as used in the foregoing provisions, shall be construed to mean one and the same thing. Words "chapter" and "act" mean same thing.

SECT. 17. This act shall take effect from and after its passage, and approval by the governor. Take effect, when.

Approved April 24, 1862.

W. JAYNE, Governor.

S W I N E .

CHAPTER 85.

AN ACT TO PREVENT SWINE RUNNING AT LARGE.

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

Swine not to
run at large,
when.

SECTION 1. That no swine shall be permitted to run at large in any of the counties of this territory at any time between the first day of April and the last day of October of each year.

If found at
large.

SECT. 2. Any such swine found running at large, contrary to the provisions of the foregoing section, may be taken up and secured until the owners of such hogs shall call for, pay charges and damages, and take away the same.

Taker up to
give what notice.

SECT. 3. Any person or persons taking up any swine or hogs found running at large, shall within three days after taking up the same, give notice thereof by publication for three consecutive weeks, in some newspaper published within the county, or by posting up written notices for three weeks in three of the most conspicuous places in the township in which such hogs may be taken up.

If no owner
calls for hogs.

SECT. 4. If no owners call for said hogs within six weeks after notice of the taking up of the same, it shall be lawful for the taker up to keep and dispose of said hogs for the satisfaction of charges and damages, and to pay the residue if any into the county treasury.

Counties may
adopt or reject
this law, how.

SECT. 5. That at the next general election the qualified voters of each county shall designate upon their ballots whether they are for or against the hog law, and if upon canvassing the votes cast at said election there shall be a majority against the provisions of this act, then the act shall be null and void in said county or counties where said vote shall be cast, otherwise to remain and be in full force.

SECT. 6. This act shall take effect and be in force from Take effect, when. and after its passage.

Approved April 24, 1862.

W. JAYNE, *Governor.*

TERRITORIAL OFFICERS.

CHAPTER 86.

AN ACT TO PROVIDE FOR THE ELECTION OF CERTAIN TERRITORIAL OFFICERS.

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

SECTION 1. That at the first annual election for the year Auditor and treasurer to be elected, when and for how long. A. D. 1862, and every second year thereafter, there shall be elected by the qualified voters of the territory, one territorial treasurer and one territorial auditor, for the term of two years.

SECT. 2. The territorial treasurer shall take and subscribe Treasurer to take oath and give bond. Duties. to the same oath as county officers, and shall give bonds in the penal sum of two thousand dollars, to be approved by the governor, conditioned that he shall faithfully discharge the duties of his office. He shall keep a correct account of all monies paid over to him, and by whom, and of all monies paid by him on the warrant of the territorial auditor, and to whom the warrant was drawn. He shall report the condition of the treasury to the legislative assembly at the commencement of each session, giving the items; and he shall be Salary. entitled to a salary of fifty dollars per annum therefor.

SECT. 3. The territorial auditor shall take and subscribe Auditor to take oath and give bond. Duties. to the same oath that is required of the territorial treasurer, and shall give bonds in the sum of one thousand dollars, to be approved by the governor, conditioned that he shall faithfully discharge the duties of his office. He shall audit all claims

against the territory, and if correct and allowed by law, shall issue a warrant for the same upon the territorial treasurer, to be paid out of any moneys not otherwise appropriated. He shall receipt for all moneys due the territory and pay the same over to the treasurer, taking his receipt for the same. He shall keep a correct account of all moneys received and who from, and of all claims audited and paid, and to whom. He shall report to the legislative assembly at the commencement of each session the financial condition of the territory, giving the items of moneys received and paid out by warrant. He shall also be territorial librarian, and have charge of the territorial library. He shall be entitled to a salary of fifty dollars.

Salary.

Governor appoint.

SECT. 4. The governor shall appoint, by and with the consent of the council, the above officers, to serve until their successors are elected and qualified.

Take effect, when.

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

Approved May 13, 1862.

W. JAYNE, *Governor.*

TOWN SITE CLAIMANTS.

CHAPTER 87.

AN ACT GRANTING TO TOWN SITE CLAIMANTS CERTAIN POWERS.

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

Town site claimants may become bodies corporate, how.

SECTION 1. That whenever any of the public lands of the United States, within the limits of this territory, have been or hereafter shall [be] settled upon, occupied, and claimed as a town or village site, it shall be lawful for the inhabitants, occupants, and claimants thereof, or a majority of them, to

meet at such time and place as they may agree upon, and when so met to organize themselves into a body corporate, by choosing a president and a secretary, and agreeing upon a name and articles of association, by the time [terms] of which the rights of the bona fide claimants of such lands shall be protected, and by choosing three trustees of such corporation; such articles of association shall define the duty of such trustees, and shall also determine the tenure of its officers, and the time and manner of holding of [the meetings of] such corporation.

SECT. 2. The trustees of such corporation shall have power to establish all such by-laws as may be needful and consistent with the provisions of this act. Trustees may establish by-laws.

SECT. 3. The president and secretary of the first meeting shall cause a certified copy of the doings of said first meeting to be recorded in the office of the register of deeds in the county where such land is situated, and such record shall be evidence of the incorporation and corporate existence of the company therein named. Doings of first meeting to be certified and recorded.

SECT. 4. The president so as aforesaid chosen, and his successor in office, shall have full power and authority to enter or purchase said lands at the proper land-office, in trust for the corporation whom they represent, according to the provisions of the laws of the United States in relation to town sites, and to convey the same to the proprietors thereof, according to their respective interests therein, according to the laws of this territory. President may enter or purchase land, &c.

SECT. 5. This act shall take effect from and after its passage, and approval by the governor. Take effect, when.

Approved May 13, 1862.

W. JAYNE, *Governor.*

UNIVERSITY.

CHAPTER 88.

AN ACT TO LOCATE THE UNIVERSITY OF THE TERRITORY
OF DAKOTA.

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

University
located at Ver-
million.

SECTION 1. That the territorial university of the Territory of Dakota be, and the same is hereby established and located on lot number four, of section twenty-four, in township number ninety-two, north of range number fifty-two west of the fifth principal meridian in the town of Vermilion in Clay county.

Take effect,
when.

SECT. 2. This act shall take effect and be in force from and after its passage, and approval by the governor.

Approved April 21, 1862.

W. JAYNE, *Governor.*

WARRANTS.

CHAPTER 89.

AN ACT TO PROVIDE FOR THE ISSUING OF SEARCH-WAR-
RANTS, AND PROCEEDINGS THEREON.

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

Magistrate may
issue search-
warrant on what
complaint.

SECTION 1. When complaint shall be made, on oath, to any justice of the peace or magistrate authorized to issue war-

rants in criminal cases, that personal property has been stolen or embezzled, or obtained by false tokens or pretences, and the complainant believes it is concealed in any particular house or place, the magistrate, if he is satisfied that there is reasonable cause for such belief, shall issue his warrant to search for such property.

SECT. 2. Any such justice of the peace or magistrate, when satisfied there is reasonable cause, may, also, on like complaint made on oath, issue search-warrants in the following cases, to wit: 1. To search for and seize any counterfeit or spurious coin, forged bank-notes, and other forged instruments or tools, machines or materials, prepared or provided for making either of them. 2. To search for and receive any books, pamphlets, ballads, printed papers, or other things containing obscene language or obscene pictures, figures, or descriptions, manifestly intending to corrupt the morals of the youth, and intended to be sold, loaned, circulated, distributed, or introduced into any family, school, or place of education. 3. To search for and seize any gaming apparatus or implements used or kept, and to be used in unlawful gaming in any gaming-house, or in any building, apartment, or place resorted to for the purpose of unlawful gaming.

Search-warrants in what other cases.

SECT. 3. All such warrants shall be directed to the sheriff of the county or his deputy, or to any constable of the county, commanding such officer to search the house or place where the stolen property or other thing for which he is required to search are believed to be concealed, which place or things and property to be searched for shall be described in the warrant, and to bring such stolen property or other things, when found, before the magistrate who issued the warrant, or before some other magistrate or court having cognizance of the same.

Warrants, how directed, and command what.

SECT. 4. When any officer, in the execution of a search-warrant, shall find any stolen or embezzled property, or shall seize any other thing for which a search is allowed by this act, all the property and things so seized shall be safely kept by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced as evidence on any trial, and as soon as may be afterwards, all such stolen and embezzled property shall be restored to the owner thereof, and all other things seized by virtue of such

Property found or seized, how kept.

warrant, shall be destroyed under the direction of the court or magistrate.

Take effect,
when.

SECT. 5. This act shall take effect from and after its passage, and approval by the governor.

Approved May 13, 1862.

W. JAYNE, *Governor.*

WILLS.

CHAPTER 90.

AN ACT CONCERNING WILLS OF REAL AND PERSONAL PROPERTY.

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

Who may will
property, &c.

SECTION 1. Every person of full age and sound mind, being seized in his own right of any lands or any right thereto, or entitled to any interest therein descendible to his heirs, may devise or dispose of the same by his last will and testament in writing; and all such estate not disposed of by will, shall descend as the estate of an intestate, being chargeable in both cases with the payment of all debts; and any married woman may devise and dispose of any real or personal property held by her, or to which she is entitled in her own right, by her last will and testament in writing, and may alter or revoke the same in like manner that a person under no disability may do the same.

Devise con-
strued to con-
vey all property,
except when.

SECT. 2. Every devise of land in any will hereafter made shall be construed to convey all the estate of the devisor therein which he could lawfully devise, unless it shall clearly appear by the will that the devisor intended to convey a less estate.

If estate ac-
quired after will
is made.

SECT. 3. Any estate, right, or interest in lands acquired by the testator after the making of his will, shall pass thereby in

like manner as if possessed at the time of making the will, if such shall manifestly appear by the will to have been the intention of the testator.

SECT. 4. Every person of full age and sound mind may, by his last will and testament in writing, bequeathe and dispose of all his personal estate remaining at his decease, and all his rights thereto and interest therein; and all such estate not disposed of by the will, shall be administered as intestate estate.

Person may bequeathe and dispose of personal property.

SECT. 5. No will made within this territory, except such nuncupative wills as are mentioned in the following section, shall be effectual to pass any estate, whether real or personal, nor to charge, or in any way affect the same, unless it be in writing and signed by the testator, or by some person in his presence and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses; and if the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency, from whatever cause it may arise, shall not prevent the probate and allowance of the will, if it be otherwise satisfactorily proved.

Wills, how proved.

SECT. 6. No nuncupative will shall be good when the estate thereby bequeathed shall exceed the value of one hundred and fifty dollars, that is not proved by the oath of three witnesses at least, that were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, to bear witness that such was his will, or to that effect; nor unless such nuncupative will were made at the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she had been resident for the space of ten days or more next before the making of such will, except when such person was unexpectedly taken sick, being from home, and died before he or she returned to the place of his or her habitation.

Nuncupative will good only when.

SECT. 7. After six months shall have passed after speaking any pretended testamentary words, no testimony shall be received to prove the same as a nuncupative will, unless the said words, or the substance thereof, were reduced to writing within six days after the same testamentary words were spoken; nor shall letters testamentary or probate of any nun-

Testamentary words must be recorded, when.

Letters sealed only after fourteen days.

Interested parties called in, before will approved.

Of soldiers and mariners.

Devises, &c., to subscribing witness void, when.

If witness would have been entitled to share, if will was not established.

No will or part of will revoked, unless what.

Will may be deposited with probate judge. Receipt to be given.

cupative will pass the seal of any probate court, until fourteen days at least after the decease of the testator be fully expired, nor shall any nuncupative will be at any time approved and allowed, unless process shall first have been issued to call in the widow and other person or persons principally interested, if resident within the territory, to the end that they may contest the same if they please. Nothing herein contained shall prevent any soldier, being in actual service, nor any mariner, being on ship-board, from disposing of his wages and other personal estate by a nuncupative will.

SECT. 8. All beneficial devises, legacies, and gifts whatsoever, made or given in any will, to a subscribing witness thereto, shall be wholly void, unless there be two other competent subscribing witnesses to the same; but a mere charge on the lands of the devisor for the payment of debts, shall not prevent his creditors from being competent witnesses to his will.

SECT. 9. But if such witness to whom any beneficial devise may have been made or given, would have been entitled to any share of the estate of the testator, in case the will was not established; then so much of the share that would have descended or been distributed to such witness, as will not exceed the devise or bequest made to him in the will, shall be saved to him, and he may recover the same of the devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

SECT. 10. No will nor any part thereof, shall be revoked, unless by burning, tearing, cancelling, or obliterating the same, with the intention of revoking it, by the testator, or by some other will or codicil in writing, executed as prescribed in this chapter; or by some other writing, signed, attested, and subscribed in the manner provided in this chapter, for the execution of a will; excepting only that nothing contained in this section, shall prevent the revocation implied by law, from subsequent changes in the condition or circumstances of testator.

SECT. 11. Any will in writing being inclosed in a sealed wrapper, and having indorsed thereon the name of the testator, and his place of residence, and the day when, and the person by whom it is delivered, may be deposited by the person making the same, or by any person for him, with the

judge of probate in the county where the testator lives, and the judge of probate shall receive and safely keep such will, and give a certificate of the deposit thereof.

SECT. 12. Such will shall, during the lifetime of the testator, be delivered only to himself, or to some person authorized by him, by an order in writing, duly proved by the oath of a subscribing witness; and after the death of the testator, and at the first probate court after notice thereof, it shall be publicly opened by the judge of probate, and be retained by him.

Only to be delivered to order of testator.

After his death, publicly opened.

SECT. 13. The judge of probate shall give notice of such will being in his possession to the executor therein appointed, if there be one, otherwise, to the persons interested in the provisions of the same, to be presented for probate in such other court.

Judge of probate to give notice of will to whom.

SECT. 14. Every person other than the judge of probate, having the custody of any will, shall within thirty days after he has knowledge of the death of the testator, deliver the same into the probate court which has jurisdiction of the case, or to the person named in the will as executor.

Other person, having possession of will, to deliver same to whom and when.

SECT. 15. Every person named as executor in any will, shall within thirty days after the death of the testator, or within thirty days after he has knowledge that he is named executor, if he obtains such knowledge after the death of the testator, present such will to the probate court which has jurisdiction of the case, unless the will shall have been otherwise deposited with the judge of probate, and shall within the period above mentioned, signify to the court his acceptance of the trust, or make known in writing to such court his refusal to accept it.

Duty of person named executor.

SECT. 16. Every person who shall neglect to perform any of the duties required in the last two preceding sections, without reasonable cause, shall be guilty of a misdemeanor, and shall be liable to each and every person interested in such will, for the damages which each person may sustain thereby.

Person neglecting to perform duty.

SECT. 17. If any person having the custody of any will, after the death of the testator, shall, without reasonable cause [fail] or neglect to deliver the same to the probate court having jurisdiction of it, after he shall have been duly notified by such court for that purpose, he may be committed to the

If person fail or neglect to deliver will. Penalty.

jail of the county, by warrant issued by such court, and there be kept in close confinement, until he shall deliver the will as above directed.

Court to appoint time and place of proving will, &c.

SECT. 18. When any will shall have been delivered into or deposited in any probate court having jurisdiction of the same, such court shall appoint a time and place for proving it, when all concerned may appear and contest the probate of the will, and shall cause public notice thereof to be given by personal service on all persons interested, or by publication under an order of such court, in such newspaper printed in this territory, as the judge shall direct, three weeks successively, previous to the time appointed, and no will shall be proved until notice shall be given as herein provided.

If will not contested.

SECT. 19. If no person shall appear to contest the probate of will at the time appointed for that purpose, the court may, in its discretion, grant probate thereof, on the testimony of one of the subscribing witnesses only, if such witness shall testify that such will was executed in all the particulars as required in this chapter, and that the testator was of a sound mind at the time of the execution thereof.

If subscribing witnesses reside out of territory.

SECT. 20. If none of the subscribing witnesses shall reside in this territory at [the] time appointed for proving the will, the court may in its discretion admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and as the evidence of the execution of the will may admit proof of the handwriting of the testator and of the subscribing witnesses.

No will effectual, except when.

SECT. 21. No will shall be effectual to pass either real or personal estate, unless it shall have been duly proved and allowed in the probate court, as provided in this chapter; or on appeal in the district court; and the probate of a will of real or personal estate, as above mentioned, shall be conclusive as to its due execution.

Of wills allowed in other parts.

SECT. 22. All wills which shall have been duly approved and allowed in any of the United States, or in any foreign country or state, according to the laws of such state or country, may be allowed, filed, and recorded in the probate court of any county in which the testator shall have real and personal estate, on which such will may operate in the manner mentioned in the following sections.

SECT. 23. When a copy of such will, and the probate

thereof, duly authenticated, shall be produced by the executor or other person interested in such will, to the probate court, such court shall appoint a time and place of hearing, and notice shall be given in the same manner as in the case of an original will presented for probate.

When a copy of such will is presented.

SECT. 24. If, on hearing the case, it shall appear to the court that the instrument ought to be allowed in this territory, as the last will and testament of the deceased, the copy shall be filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in the same court.

If it appear that it ought to be allowed.

SECT. 25. When any will shall be allowed, as mentioned in the preceding section, the probate court shall grant letters testamentary, or letters of administration, with the will annexed, and such letters testamentary or letters of administration, shall extend to all the estate of the testator in this territory, and such estate, after payment of his just debts, and expenses of administration, shall be disposed of according to such will, so far as such will may operate upon it, and the residue shall be disposed of as is provided by law in cases of estates in this territory, belonging to persons who are inhabitants of any other territory, state, or county.

Court shall grant letters, with what effect.

SECT. 26. When any child shall be born after the making of his parent's will, and no provisions shall be made therein for him, such child shall have the same share in the estate of the testator, as if he had died intestate, and the share of such child shall be assigned to him, as provided by law in cases of intestate estate.

When child born after such will is made.

SECT. 27. When any testator shall omit to provide in his will for any of his children, or for the issue of any deceased child, and it shall appear that such omission was not intentional, but was made by mistake or accident, such child, or the issue of such child, shall have the same share in the estate of the testator as if he had died intestate, to be assigned as provided in the preceding section.

When testator omits to provide for children, &c.

SECT. 28. When any share of the estate of a testator shall be assigned to a child born after the making of a will, or to a child or the issue of a child, omitted in the will as hereinbefore mentioned, the same shall first be taken from the estate not disposed of by the will, if any; if that shall not be sufficient, so much as shall be necessary shall be taken from

Share of such child, how made up.

all the devisees or legatees, in proportion to the value of the estate they may respectively receive under the will, unless the obvious intention of the testator, in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated, in which case such specific devise, legacy, or provision, may be exempted from such apportionment, and a different apportionment may be adopted, in the discretion of the probate court.

When devisee or legatee die before testator.

SECT. 29. When a devise or legacy shall be made to any child or other relation of the testator, and the devisee or legatee shall die before the testator, leaving issue who shall survive the testator, such issue shall take the estate so given by the will, in the same manner as the devisee or legatee would have done if he had survived the testator, unless a different disposition shall be made or directed by the will.

Estate liable for debts, and judge may make reasonable allowance for support of widow, until when.

SECT. 30. All the estate of the testator, real and personal, not exempt from execution by law, shall be liable to be disposed of for the payment of his debts and the expenses of administering his estate, and the probate court may make such reasonable allowance as may be judged necessary for the expenses of the maintenance of the widow and minor children, or either, constituting the family of the testator, out of his personal estate or the income of his real estate, during the progress of the settlement of the estate, but never for a longer period than until their shares in the estate shall be assigned to them.

If testator designates property to be used in payment of debts.

SECT. 31. If the testator shall make provisions by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, or so far as the same may be sufficient.

If such provision not sufficient.

SECT. 32. If the provisions made by the will, or the estate appropriated shall not be sufficient to pay the debts, expenses of administration, and family expenses, such part of the estate, real or personal, as shall not have been disposed of by the will, if any, shall be appropriated according to the provisions of the law for that purpose.

Estate devised liable for debts, except when.

SECT. 33. The estate, real or personal, given by will to any devisees or legatees, not exempt from execution by law, shall be held liable to the payment of the debts, expenses of

administration, and family expenses, in proportion to the amount of the several devises or legacies, except that specific devises and legacies, and the persons to whom they shall be made, may be exempted, if it shall appear to the court necessary in order to carry into effect the intention of the testator, if there shall be other sufficient estate.

SECT. 34. When the estate given by any will shall be liable for the payment of debts and expenses, as mentioned in the preceding section, or is liable to be taken to make up the share of a child born after the execution of the will, or of a child or of the issue of a child not provided for in the will, as hereinbefore provided; the executor shall have a right to retain possession of the same until such liability shall be settled by order of the probate court; and until the devises and legacies so liable, shall be accordingly assigned by order of such court, and when the same can properly be done, any devisee or legatee may make his claim to such court to have such liability settled, and his devise or legacy assigned to him.

In such cases executor may retain property until debts settled.

SECT. 35. All the devisees and legatees who shall, with the consent of the executor or otherwise, have possession of the estate given to them by will, before such liability shall be settled by the probate court, shall hold the same, subject to the several liabilities mentioned in the preceding section, and shall be held to contribute according to their respective liabilities to the executor, or to any devisee or legatee from whom the estate devised to him may have been taken, for the payment of debts or expenses, or to make up the share of a child born after the making of the will, or of a child or the issue of a child omitted in the will: and the persons who may as heirs have received the estate not disposed of by the will, as provided in this chapter, shall be liable to contribute in like manner as the devisees or legatees.

Devisees or legatees holding property liable for their share of debts.

SECT. 36. If any of the persons liable to contribute according to the provisions of the preceding section, shall be insolvent and unable to pay his share, the others shall be severally liable for the loss occasioned by such insolvency, in proportion to, and to the extent of the estate they may have received; and if any of the persons so liable to contribute shall die before having paid his share, the claim shall be valid

If any person liable become insolvent or die.

against his estate, in the same manner as if it had been his proper debt.

Court may settle amount of the several liabilities. SECT. 37. The probate court may, by decree for that purpose, settle the amount of the several liabilities, as provided in the preceding sections, and decree how much and in what manner each person shall contribute, and may issue execution as circumstances may require; and the claimant may also have a remedy in any proper action or complaint in law or equity.

When wills are sufficient evidence in court. SECT. 38. Every will, when proved as provided in this chapter, shall have a certificate of such proof indorsed thereon or annexed thereto, signed by the judge of probate and attested by his seal; and every will so certified, and the record thereof or a transcript of such record certified by the judge of probate and attested by his seal, may be read in evidence in all courts within this territory without further proof.

Attested copy to be recorded. SECT. 39. An attested copy of every will devising lands, or any interest in lands, and the probate thereof, shall be recorded in the registry of deeds of the county in which the lands thereby devised are situated.

Certain words mean what. SECT. 40. The word "executor" in this act shall be construed to mean an administrator with the will annexed, and the [word] "chapter" shall be construed to mean act, and the words "he," "him," and "his" shall be construed to mean she, her, and hers, as the case may be.

Take effect, when. SECT. 41. This act shall take effect from and after its passage, and approval by the governor.

Approved May 13, 1862.

W. JAYNE, *Governor.*

CHAPTER 91.AN ACT CONCERNING LETTERS TESTAMENTARY AND OTHER
PROCEEDINGS ON THE PROBATE OF A WILL.

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

SECTION 1. When a will shall have been duly proved and allowed, the probate court shall issue letters testamentary thereon to the person named executor therein, if he is legally competent, and shall accept the trust, and give bond as required by law.

When probate court to issue letters testamentary.

SECT. 2. Every executor, before he shall enter upon the execution of this trust, and before letters testamentary shall issue, shall give bond to the judge of probate in such reasonable sum as he may direct, with one or more sufficient sureties, with conditions as follows: to make and return to the probate court within three months a true and perfect inventory of all goods, chattels, rights, credits, and estate of the deceased, which shall come to his possession or knowledge, or to the possession of any other person for him; to administer, according to law and to the will of the testator, all his goods, chattels, rights, credits, and estate, which shall at any time come to his possession, or to the possession of any other person for him, and out of the same to pay, and discharge all debts, legacies, and charges, chargeable on the same, or such dividends thereon as shall be ordered and decreed by the probate court; to render a true and just account of his administration to the probate court, within one year, and at any other time when required by such court; to perform all orders and decrees of the probate court, by the executors to be performed in the premises.

Executor to give bond, with what conditions.

SECT. 3. If, however, the executor shall be a residuary legatee, instead of the bond prescribed in the preceding section, he may give a bond, in such sum and with such sureties as the court may direct, with a condition only to pay all the debts and legacies of the testator, and in such case he shall not be required to return an inventory.

If executor be a residuary legatee.

SECT. 4. No person named as executor in any will,

If person named, neglects

trust for twenty days.

who shall refuse to accept the trust, or shall neglect to give bond as prescribed in this chapter, for twenty days after the probate of such will, shall intermeddle or act as executor.

Same.

SECT. 5. If a person named executor in any will shall refuse to accept the trust, or shall, for the space of twenty days after the probate of the same, neglect to give bond as required by law, the probate court may grant letters testamentary to the other executors, if there be any who are capable and willing to accept the trust; and if there be no such other executor who will give bond, the court may commit administration of the estate, with the will annexed, to such person as would have been entitled to the same, if the testator had died intestate.

If person named executor is under age.

SECT. 6. When the person named executor in any will is under full age at the time of proving the will, administration shall be granted, with the will annexed, during the minority of the executor, unless there shall be another executor who shall accept the trust and give bond; and in that case the executor who shall give bond shall have letters testamentary, and shall administer the estate until the minor shall arrive at full age, when he may be admitted as joint executor, on giving bond according to law.

Of administrator with will annexed.

SECT. 7. Every person who shall be appointed administrator, with the will annexed, shall, before entering upon the execution of his trust, give bond to the judge of probate, in the same manner and with the same conditions as is required of an executor, and shall proceed in all things to execute the trust in the same manner as an executor would be required to do.

If unmarried, executrix is married.

SECT. 8. When an unmarried woman, appointed an executrix, alone or jointly with another person, shall marry, her marriage shall extinguish her authority as executrix, and her husband shall not be executor in her right.

When executor may be removed.

SECT. 9. If an executor shall reside out of this territory, or shall neglect, after due notice given by the judge of probate, to render his account and settle the estate according to law, or to perform the decree of the court, or shall abscond, or become insane, or otherwise incapable or unsuitable to discharge the trust, the probate court may remove such executor.

SECT. 10. When an executor shall die, or be removed, or his authority shall be extinguished, the remaining executor, if there be any, may execute the trust; and, if there shall be no other executor, administration, with the will annexed, may be granted of the estate not already administered.

When executor die, &c.

SECT. 11. When all the executors appointed in any will shall not be authorized, according to the provisions of this chapter, to act as such, such as are authorized shall have the same authority to perform every act, and discharge every trust required and allowed by the will; and their acts shall be as valid and effectual for every purpose as if all were authorized and should act together; and administrators, with the will annexed, shall have the same authority to perform every act and discharge every trust, as the executor named in the will would have had, and their acts shall be as valid and effectual for any purpose.

When all executors named are not authorized, part may act.

SECT. 12. The executor of an executor shall not, as such, have any authority to administer the estate of the first testator; but, on the death of the only surviving executor of any will, administration of the estate of the first testator, not already administered, may be granted, with the will annexed, to such person as the probate court may judge proper.

Executor of executor has what powers.

SECT. 13. When two or more persons shall be appointed executors of any will, the judge of probate may take a separate bond from each of them, with sureties, or a joint bond from all of them, with sureties.

Separate bonds taken, when.

SECT. 14. When the word "chapter" occurs in this act, it shall be construed to mean "act."

"Chapter" means "act."

SECT. 15. This act shall take effect from and after its passage, and approval by the governor.

Take effect, when.

Approved May 7, 1862.

W. JAYNE, *Governor.*

MEMORIALS AND RESOLUTIONS.

MILITARY POSTS.

CHAPTER 92.

MEMORIAL AND JOINT RESOLUTION [RELATIVE TO MAKING FORT RANDALL A DISTRIBUTING POST.]

To the Honorable E. M. Stanton, Secretary of War :

Relative to
making Fort
Randall a dis-
tributing post.

YOUR memorialists, the legislative assembly of Dakota Territory, respectfully represent, That your department could materially enhance the business and growth of this territory by making Fort Randall the distributing depot for the North-West, instead of Fort Leavenworth. Your department must be aware that freights can be transported via Fort Randall to Laramie and Salt lake much cheaper than by any other route. While the route by the Niobrara valley is equally practicable, the distance in overland transportation is at least three hundred miles less than from Fort Leavenworth. It is needless to remind you of the obvious advantage to border settlements resulting from the establishment of an important military depot in this [their] midst. It is an assistance with which all other territories have been favored except Dakota. We ask what we believe will result in a great saving to the general government, and at the same time confer substantial benefit upon the people of Dakota. And we shall ever pray.

Be it resolved by the council and house of representa-

tives of the Territory of Dakota, That our delegate in congress be, and hereby is requested to use all honorable means to bring this subject to the favorable consideration of the proper department.

Delegate in congress instructed.

Approved May 12, 1862.

W. JAYNE, *Governor.*

CHAPTER 93.

A MEMORIAL OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF DAKOTA PRAYING FOR THE ESTABLISHMENT OF A MILITARY POST AT SIOUX FALLS CITY.

To the President of the United States :

Your memorialists, the legislative assembly of the Territory of Dakota, beg, most respectfully, to represent to your Excellency that military protection should be, and we pray that it may be afforded to the settlements in Eastern Dakota and Western Iowa, by the immediate establishment, and occupation of a military post at Sioux Falls city, on the Big Sioux river; and your memorialists will ever pray, &c.

For the establishment of a military post at Sioux Falls city.

Approved April 24, 1862.

W. JAYNE, *Governor.*

CHAPTER 94.

A MEMORIAL TO CONGRESS PRAYING FOR THE CONSTRUCTION OF A FORT IN THE VALLEY OF THE RED RIVER OF THE NORTH.

To the Honorable the Senate and House of Representatives in Congress assembled :

Your memorialists of the legislative assembly of the territory of Dakota would respectfully represent that

Whereas, an appropriation has been made, by a late session of congress, for the construction of a United States fort in the

Appropriation already made.

valley of the Red river of the North ; and, whereas, the expenditure of said appropriation has been delayed, causing great discouragement among the settlers, thus retarding the development of a country rich in natural resources : Therefore your memorialists do earnestly petition that such fort may be constructed at an early date, at some point within the territory on the Pembina river.

Immediate building necessary, and the objects.

The urgent necessity of the immediate building and garrisoning of such a fort will appear still more obvious, when the fact is considered that a bitter feud has long existed between the Chippewa and Sioux Indians, the Red river of the North being the only barrier between these contending tribes, and, in the absence of an armed force to prevent hostilities between these tribes, it is rendered extremely dangerous for our citizens to use the Red river of the North as a thoroughfare for the transportation of merchandise and mails.

Objects.

Your memorialists would further represent that they do not deem it necessary for them to enlarge upon the importance of keeping open a line of communication between St. Paul, Minnesota, and the Red river settlements, as they have heretofore memorialized the congress of the United States upon that subject, in connection with a request that a treaty be made with the Chippewa Indians of Pembina and Red lake ; and your memorialists would now represent that unless said treaty is formed and a fort erected and occupied in the vicinity of Pembina, the peace of the country will be endangered and the prosperity of this flourishing territory seriously impeded : for it is not an unfrequent occurrence that white settlers have been deprived of their property by these bands of Indians, and many of them, in the thinly settled portions of the Red river valley, have been inhumanly butchered by these predatory bands of Indians.

Same.

Finally, your memorialists will conclude by representing that incalculable advantages will be derived by this territory, if protection is only afforded to the tide of immigration now steadily advancing towards British America.

For which your memorialists will ever pray, &c.

Approved April 30, 1862.

W. JAYNE, *Governor.*

DAKOTA CAVALRY.

CHAPTER 95.

A MEMORIAL TO THE HON. E. M. STANTON, SECRETARY OF
WAR OF THE UNITED STATES.

Your memorialists, the legislative assembly of the Territory of Dakota, would respectfully represent, that in the opinion of your memorialists, the frontier settlements of this territory need, and will need for some time to come, military protection located at different points in the settlements of the territory, to save them and their property from attacks from hostile Indians that are constantly traversing the country; and that no one thing that can be done will have so great an effect to increase settlement and open up this country, as a proper relief afforded to the settlers in this respect; and inasmuch as Fort Randall is situated at a great distance from a large part of the settlements in the territory, thereby rendering [it] of but little direct protection to the citizens; therefore, your memorialists would respectfully pray that the cavalry company raised within this territory for garrisoning Fort Randall, be ordered to coöperate with the civil authorities of the territory, to be stationed at such places as the governor may deem the necessities and wants of the people demand, and will ever pray.

Objects to be attained by placing Dakota cavalry at the disposal of the governor.

Approved May 12, 1862.

W. JAYNE, *Governor.*

MILITARY ROADS.

CHAPTER 96.

A MEMORIAL OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF DAKOTA TO CONGRESS, FOR AN APPROPRIATION FOR THE CONSTRUCTION OF MILITARY ROADS.

To the Honorable the Senate and House of Representatives of the United States.

The memorial of the legislative assembly of the Territory of Dakota respectfully represents :

Supplies for soldiers and Indians.

SECTION 1. That the transportation of supplies for the use of the military and Indian departments of government on the Upper Missouri, forms an important item of the expenditures for these departments in this territory.

Supplies necessarily carried by land.

SECT. 2. That during the season of low-water, the supplies for these departments must be carried by land a distance of some hundred and fifty miles, over roads that have been constructed temporarily, and at great expense, and therefore as yet inconvenient, and, at certain seasons of the year, difficult to pass over.

Difference in cost, if over good road.

SECT. 3. That the difference in the cost of transportation of government supplies would, in a few years, repay the government for an expenditure of money in the construction of a good road for the transportation of military and Indian supplies necessary for Fort Randall and the Yankton Sioux agency.

Open valuable lands.

SECT. 4. That the construction of a military road would tend to open to settlement a large tract of valuable agricultural lands along the line of the road, and thus by the increased value of the government lands, contribute largely toward refunding to the national treasury any expenditure in constructing such road. Your memorialists would therefore most respectfully, but urgently ask your honorable bodies to make an appropriation of ten thousand dollars for the construction of a military road commencing opposite Fort Randall and

Appropriation asked for road between Fort Randall and Sioux city.

running down on the east bank of the Missouri river, via Greenwood on the Yankton agency, mouth of Choteau creek, Springfield, Bon Homme, Yankton, Vermilion, and Elk point to Sioux city, Iowa. And as in duty bound your memorialists will ever pray.

Approved April 5, 1862.

W. JAYNE, *Governor.*

CHAPTER 97.

A MEMORIAL TO CONGRESS FOR THE CONSTRUCTION OF A MILITARY ROAD.

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

Your memorialists, the legislative assembly of the Territory of Dakota, respectfully represent:

That the interest of that portion of our territory being on the west side of the "Red river of the North," would be greatly advanced by the construction of a military road, commencing at a point on the west bank of the said river opposite Georgetown, in Minnesota, thence to Pembina, in this territory.

Road asked for between Georgetown, Minn., and Pembina, Dakota.

Your memorialists further represent, that the government has been very liberal in the construction of similar roads in Minnesota during her territorial organization, among which are the territorial roads leading west from points on the Mississippi river to points on the said river, and we respectfully represent that this is but a continuation of said roads.

Object.

That said road will also run through a great portion of public lands a distance of one hundred and twenty miles, and across numerous streams, important in size, and the construction of said road will thereby tend to develop the resources of that section of our rapidly improving territory, and at the same time confer a great boon on the hardy pioneers who have already settled thereon. Your memorialists further represent that a large trade is carried on between the Red river settlements and St. Paul, Minnesota, which require large trains of carts to annually pass over this route to and from these points; and that from this date large trains, in going to and from the

Cariboo and Saskatchewan gold mines, in British America, will be compelled to travel this route. Your memorialists would further represent that there are streams, to the number of ten, that would require good bridges, and numerous smaller ones of less importance that would require bridging to insure the safety of transit for the different conveyances which pass through this section.

Appropriation
asked for.

And to aid in the construction of this road, your memorialists would respectfully urge upon your honorable body an appropriation of the sum of ten thousand dollars, and that the expenditure of this sum may be placed in charge of the War Department, to be used for the above-named purpose under the direction of said department.

And in duty bound your memorialists will ever pray, &c.

Approved May 3, 1862.

W. JAYNE, *Governor.*

CHAPTER 98.

[MEMORIAL TO ESTABLISH A ROAD FROM THE EASTERN LINE OF THE TERRITORY NEAR SIOUX FALLS TO YANKTON.]

To the Congress of the United States:

The legislature of the Territory of Dakota would respectfully represent:

Minnesota
state road.

Best route
between Forts
Ridgley and
Randall.

Appropriation
called for.

That, whereas, the state of Minnesota has, by a recent act of its legislature, established a state road from Mankato west to the line between Minnesota and the Territory of Dakota, in the vicinity of Sioux falls; and, whereas, this is the most direct route from Fort Ridgley to Fort Randall; and, whereas, there is now no travelled route between said forts, except the route by Spirit lake and Sioux city, Iowa, therefore your memorialists would pray that an appropriation of ten thousand dollars (\$10,000) be made, or such other sum as shall be deemed adequate to lay out and construct a military road from the western terminus of said state road by Sioux falls to Yankton, a distance of ninety miles, intersecting at that

place a road from Sioux city to Fort Randall, thereby shortening the distance from Fort Ridgley and Southern Minnesota to Fort Randall and Southern Dakota, one hundred miles.

And your memorialists would further show, that all mails from Southern Minnesota would pass over the same, and that all emigration from Wisconsin and Southern Minnesota to Dakota would pass over said road instead of passing over the circuitous route now travelled by Spirit lake and Sioux city in Iowa. ^{Mails from Minnesota.}

It is further shown, that said road would pass over a fine rolling country, free from marsh and slough, well watered and timbered, nearly every acre of which is capable of cultivation. ^{Of the country traversed.} And your memorialist, will ever pray.

Approved April 20, 1862.

W. JAYNE, *Governor.*

INDIAN TREATIES.

CHAPTER 99.

MEMORIAL AND JOINT RESOLUTION [RELATIVE TO A PROPOSED TREATY WITH THE BRULE SIOUX INDIANS.]

To the Honorable Secretary of the Interior:

Your memorialists, the legislative assembly of the Territory of Dakota, would respectfully represent that the interests of this territory would be greatly promoted, and its early settlement rapidly hastened, if the Indian title to the country now claimed and occupied by the Brule Sioux Indians was extinguished. ^{Treaty of cession asked for.}

Only a small fragment of the vast region embraced within the boundaries of Dakota, is open for settlement. These Indians possess a belt of land extending from the Missouri to the Niobrara rivers, and lying next beyond the country ceded ^{Country needed for white settlements.}

in 1858 by the Ponca Indians, including a portion of the valleys of the Niobrara and Missouri rivers, and all the valley of the White river, together with the country in the neighborhood of and embracing the Black hills. This region is believed to abound in mineral wealth, and portions of it are well timbered with pine and other valuable forest trees, rendering it—in consequence of the scarcity of timber and fuel in the territory already ceded—of almost vital importance to the future of Dakota. At present, these Indians are a formidable barrier to any further advance into this interesting part of the public domain.

Other objects. The cession of their lands to the United States would at once open the door to the gold fields of the north-west, and the pine regions of the tributaries of the Upper Missouri. It will also open the shortest and most practicable thoroughfare leading from all the North-Western states to the western slope of the Rocky mountains.

Your memorialists entreat your prompt attention to the subject, confidently believing that the interests of the general government and the people of the North-West will be greatly subserved by an early treaty with these Indians. And we shall ever pray.

Representative instructed.

Be it resolved by the council and house of representatives of the Territory of Dakota, That our delegate in congress be and is hereby requested to use all honorable means to bring this subject to the favorable consideration of the Interior Department.

Governor instructed.

And be it resolved further, That his Excellency Governor William Jayne, superintendent of Indian Affairs for Dakota Territory, be and hereby is respectfully requested to urge the subject upon the attention of the Indian Department.

Approved May 12, 1862.

W. JAYNE, *Governor.*

CHAPTER 100.

A MEMORIAL TO CONGRESS ASKING FOR A TREATY TO BE MADE WITH THE CHIPPEWA INDIANS OF RED LAKE AND PEMBINA ON THE RED RIVER OF THE NORTH.

To the Honorable the Senate and House of Representatives in Congress assembled.

Your memorialists of the legislative assembly of the Territory of Dakota, would respectfully represent the importance and necessity of a treaty being made with the Chippewa Indians of Red lake and Pembina on the Red river of the North.

Treaty asked for.

The importance of such a treaty is quite apparent to your memorialists when they consider that it has been the policy of the general government to encourage the march of empire in its westward course, and, especially, when it is self-evident to them that, by the formation of such a treaty, a beautiful tract of country, which cannot be surpassed for a fertile and exuberant soil, will be opened for settlement, and speedily developed. Your memorialists would also represent that inasmuch as the Hudson Bay Company have for the past two years nearly abandoned their route via Hudson's bay, using the route via St. Paul, Minnesota, to their settlement, they believe it a matter of vast importance to the commercial interests of the West, that protection be afforded to those engaged in transporting goods from the city of St. Paul and other cities on the Mississippi river, to the British settlements on Red river, and also that protection ought to be afforded to our own citizens engaged in conveying goods to the northern part of the territory.

Development of country.

Of the necessary safety in transporting goods to British possessions, &c.

And your memorialists would further represent, that the aforesaid tribe of Indians have endeavored during the past summer to prevent the navigation of the Red river, by taking possession of the steamboat Anson Northrup, when moored at the town of Pembina, for the purpose of changing the United States mail, and that said tribe of Indians have, by numerous threats made during the past winter, exhibited such a spirit of hostility against the use of their country for a

Navigation obstructed.

thoroughfare for transportation, that little hope can be reasonably entertained for the continuance of said route, unless the Indian title to the country be extinguished and the Indians removed therefrom.

On reasonable terms.

And, finally, your memorialists believing that a treaty for the purchase of their lands can be effected on very reasonable terms, do earnestly hope that a government, ever watchful for the real interest of this new territory and the safety of the people, will use every possible means to protect and encourage the enterprising and intrepid pioneers of that portion of the territory.

For which your memorialists will ever pray.

Approved April 26, 1862.

W. JAYNE, *Governor.*

MAIL ROUTES.

CHAPTER 101.

A MEMORIAL TO CONGRESS FOR THE ESTABLISHMENT OF A MAIL ROUTE FROM MANKATO, IN BLUE EARTH COUNTY, STATE OF MINNESOTA, VIA MADELIA, SIOUX FALLS, UPPER JAMES CROSSING, YANKTON, SMUTTY BEARS' CAMP, BON HOMME, WANANRA, TUFTSVILLE (OR NESHUDA), PHILBRICK'S CROSSING (OR CHOTEAU), AND GREENWOOD, TO FORT RANDALL, IN DAKOTA TERRITORY.

To the Congress of the United States:

Route asked for, and benefits.

The legislature of the Territory of Dakota would respectfully represent, that a great inducement for immigration and settlement in a new country, is the early establishment of mail routes and postal facilities. That affording the pioneer direct and accessible mail facilities with the East, removes one of the greatest privations experienced by the early settlers, and induces others to join him in making the Western coun-

try their home. That although mail routes in sparsely settled communities may not pay in a pecuniary sense, yet the government may be doubly paid by the more speedy settlement and advancement of the country. And your memorialists would more especially call the attention of your honorable body to the fact that, at present, there is no mail connection between Minnesota and Southern Dakota; and that it is of the greatest importance to the future growth and development of south-western Minnesota, the Big Sioux valley, and the Missouri river country, that direct communications by mail be established, connecting the two sections.

And they would further represent, that a large portion of the country lying between Mankato and the settlements on the Missouri, in Dakota Territory, is within convenient acceptable mail facilities; and that thereby the settlers of those regions have not the means of communication with the East; and that the settlement and advancement of that country is impaired and retarded. It is further believed that, were postal facilities established, connecting these two sections by way of the proposed route, that it would have great inducement and attractions, and great advantages over any other route leading into the territory; and in view of the prospect of the rapid settlement of the rich agricultural lands in south-western Minnesota and Southern Dakota, and of the prospective rush of immigration, at a very early period, to the mineral region of the latter, just west of the Missouri, known as the Black hills; and in view of the fact that Fort Randall is gaining importance as a distributing and outfit[ting] post for those vast regions up the Missouri, the Black hills, the Pacific, via South pass, and the Niobrara or Running Water river; and that it is to be a starting-point for a Pacific mail route (as by schedule for the next mail letting); and in view of the fact that a large portion of the emigration which has already gone into the territory, has gone by this route, the evidence is conclusive that it is the natural thoroughfare.

Therefore, your memorialists, the legislature of the Territory of Dakota, would most urgently ask for the immediate establishment of a daily connection by mail, to be carried by first class conveyances, connecting Fort Randall, on the Missouri, with the nearest navigable waters in Minnesota, at Mankato; or the continuation, in fact, of route number thir-

Other benefits.

Same.

teen thousand five hundred and seventy-seven (13,577) from St. Paul to Mankato, to Fort Randall, in Dakota Territory; an initiatory step to a project ardently desired by both sections; that is, a railroad connecting the large pine and timber forest of Minnesota, with the rich and fertile prairies of Southern Dakota.

And your memorialists will ever pray.

Approved May 5, 1862.

W. JAYNE, *Governor.*

CHAPTER 102.

MEMORIAL TO CONGRESS FOR A MAIL ROUTE FROM SIOUX FALLS CITY TO VERMILION.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled:

Route asked
for, and benefits.

The memorial of the legislative assembly of the Territory of Dakota respectfully represents, that the convenience and interests of a respectable portion of the population of Southern Dakota Territory demand the establishment of a mail route from Sioux Falls city to Vermilion. That the distance between said points is about fifty-five miles; that the route is practicable, and may be travelled without serious difficulty at all seasons of the year; that without such mail route a large settlement on the Missouri river in this territory will be destitute of a direct communication with Sioux Falls city, and important points in Southern Minnesota. Your memorialists would therefore pray your honorable bodies to establish a mail route as above, and that the mail be transferred at least once per week.

Approved April 5, 1862.

W. JAYNE, *Governor.*

CHAPTER 103.

MEMORIAL OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF DAKOTA, FOR A MAIL ROUTE FROM ELK POINT TO SIOUX FALLS CITY.

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 the mail facilities afforded to the people of the Big Sioux valley are entirely insufficient to meet their wants; that the commercial and social interest of the people in that portion of the territory demand the establishment of a mail route, with weekly service on the same, from Elk point, via Brule creek, Calliope, Iowa, and Commerce city, to Sioux Falls city, Dakota Territory.

Route asked for, and benefits.

Approved April 21, 1862.

W. JAYNE, *Governor.*

MISCELLANEOUS.**CHAPTER 104.**

[MEMORIAL] TO THE HONORABLE SECRETARY OF THE INTERIOR, FOR A PORTION OF THE FUND APPROPRIATED BY CONGRESS TO ASSIST EMIGRANTS TO THE PACIFIC.

The memorial of the legislative assembly of the Territory of Dakota respectfully represents:

That parties are now being formed in the state of Minnesota for the purpose of organizing an expedition across the continent to the recent gold discoveries in Washington Territory.

Parties now forming.

tory, known as the Salmon river gold mines, which are now attracting so much attention throughout the country, and already drawing great numbers to them from California, Oregon, and Pike's Peak.

Part of appropriation asked for Dakota company to explore Black hills.

And further, that our own people in Southern Dakota, have long contemplated an expedition westward, to a country as yet but little known except by the information gained from a few traders, trappers, and friendly Indians, who have invariably given it the brightest description, representing it as abounding in coal, iron, and gold. The presence of this latter mineral has been fully confirmed by Lieut. Warren, U. S. topographical engineer, in his report of 1857, of the Black hills. And further, your memorialists would represent that there is unity of action between those parties in Minnesota, who contemplate an expedition to the Salmon river gold mines, and the parties in Southern Dakota, who wish to explore the Black hills. That those parties from Minnesota go via Southern Dakota to the Black hills, from thence bearing northward through the Crow country, to Lieut. Mullen's wagon road pass, through the Rocky mountains and into the valleys of Snake and Salmon river. That parties from Southern Dakota wish to join and accompany them to the Black hills, and there make a satisfactory exploration of the country, of so much interest to every Dakotian, and gain that knowledge, by personal observation, so long desired, excited by the narrative of every returned adventurer. Your memorialists would most earnestly ask that, inasmuch as an expedition of this character must necessarily involve a great expense to all parties engaged in it, that a portion of the recent appropriation made by congress to assist emigrants to the Pacific, be set apart for the use of this expedition. And your memorialists, as in duty bound, will ever pray.

Approved April 21, 1862.

W. JAYNE, *Governor.*

CHAPTER 105.

JOINT MEMORIAL AND RESOLUTION RELATIVE TO A GEOLOGICAL SURVEY OF THE 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, respectfully represent, that a geological survey should be made without delay. It is well known that extensive coal-fields underlay large portions of our Dakota plains and valleys, in places where timber is too scarce to admit of settlement, unless coal be procured for fuel. There are also valuable salt springs and salt lakes; and recent discoveries, by the American Fur Company, furnishes valuable proof that gold exists in dust and quartz, at the eastern base of the Black hills, in sufficient quantities to attract the attention of our government.

Geological survey necessary for what purpose.

Your memorialists believe that the time has arrived in our national affairs when the nation should turn her eyes for gold north of latitude $36^{\circ} 30'$, and that a geological survey, by demonstrating the mineral wealth of this territory, would facilitate the settlement and sale of the public lands, by an industrious population, who would speedily develop the hidden resources of the North-West, which has hitherto been regarded as a barren waste. We, therefore, pray your honorable body to make a reasonable appropriation for a geological survey of this territory.

Approved April 26, 1862.

W. JAYNE, *Governor.*

CHAPTER 106.

A MEMORIAL RELATIVE TO THE DIRECT TAX.

To the Honorable the Senate and House of Representatives in Congress assembled.

Tax to be retained from appropriation.

Your memorialists, the legislative assembly of the Territory of Dakota, respectfully request you to take out of the appropriation made by congress for legislative purposes for the Territory of Dakota, for the year ending June 30, 1862, the amount of tax due the United States government, from the Territory of Dakota, and your memorialists will ever pray, &c.

Approved May 13, 1862.

W. JAYNE, *Governor.*

CHAPTER 107.

JOINT RESOLUTION.

Resolved by the Council and House of Representatives of the Territory of Dakota:

Enacting clause.

1. That hereafter the style of the heading of all laws of this territory shall be: "Be it enacted by the legislative assembly of the Territory of Dakota."

Take effect, when.

2. This resolution shall take effect immediately on its passage by the two houses.

Approved March 29, 1862.

W. JAYNE, *Governor.*

CHAPTER 108.

JOINT RESOLUTIONS RELATIVE TO THE REBELLION.

Be [it] resolved by the Legislative Assembly of the Territory of Dakota :

1. That the rebellion existing in several of the states is without any adequate or just cause ; that it was devised, organized, and armed for the disruption of the Union, the destruction of the government, and the abridgment or overthrow of the liberties of the people. Cause of rebellion.

2. That the present war is prosecuted for the integrity of the union, the preservation of the constitution, and the supremacy of the government ; and that the plain, simple, stern alternative is now presented to the people of crushing out treason, or yielding the national existence. Prosecution of the war.

3. That we fully indorse the policy of the administration in every particular ; that we have the utmost confidence in the wisdom, patriotism, and ability of the president and his constitutional advisers, and that as the great work of their administration is the suppression of the rebellion and the salvation of the country, that the administration deserves and ought to receive the cordial and earnest support of every true and patriotic citizen. President and advisers sustained.

4. That the people demand and have a right to expect in this extraordinary emergency, a system of most rigid economy and accountability in the public expenditures, in all departments of the national and territorial governments. Economy recommended.

5. That this territorial administration, by the faithful discharge of their duties in raising for the service of the general government all the troops required by the secretary of war, have placed the territory among the foremost of the territories of the Union, and are entitled to receive the highest commendation from every citizen. Acts of territorial officers commended.

6. That we tender to all those noble patriots, whether native or foreign born, who are now battling for the maintenance of the constitution of the United States, the supremacy of the laws, and the preservation of the Union, our heartfelt thanks for their patriotic sacrifices. May their services ever be remembered only to be honored, and we wish them a happy and speedy Thanks to soldiers.

return to their homes of peace, with the glorious satisfaction of having preserved us an undivided people, with the constitution of the United States as the supreme law of the nation.

Of recent battles.

7. That the spontaneous voice of true American gratitude cannot but exult over the success of our arms at the recent battles of Fort Henry, Fort Donelson, and Pittsburg landing; and that we believe the conduct of our forces in those battles will be a lasting honor to them, as well as the American nation, and a proof to the latest time of true American valor.

Resolutions forwarded to president.

8. That the secretary of the territory be requested to forward a copy of these resolutions to the president of the United States.

Approved May 14, 1862.

W. JAYNE, *Governor.*

CHAPTER 109.

JOINT RESOLUTION.

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

Auditor to do what.

That the territorial auditor be and he is hereby authorized to audit all military claims and demands against the territory.

Approved May 15, 1862.

W. JAYNE, *Governor.*

CHAPTER 110.

RELATING TO THE PRINTING OF THE LAWS AND JOURNALS
OF THE FIRST SESSION OF THE LEGISLATIVE ASSEMBLY
FOR THE YEAR 1862.

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

1. That the secretary of the territory be and is hereby requested to procure thirteen hundred printed copies of the laws, memorials, and resolutions passed at this session of the legislative assembly, to be bound as follows: nine hundred copies in law sheep, and four hundred in heavy paper covers; also, two hundred and fifty copies of the journals of each house, to be bound as follows: fifty copies in law sheep, and the remainder in substantial paper covers — both books to be properly indexed.

Of the numbers
and style of laws
and journals.

2. That the printed volume of laws aforesaid shall be prefaced by the Declaration of Independence, the Constitution of the United States, and the Organic Act of Dakota Territory.

Preliminary
chapters.

3. That, in comparing and arranging the copies of the laws for publication, the secretary of the territory shall be and is hereby authorized to make such corrections in the orthography, grammatical construction, and punctuation of the said copies as he shall deem necessary to complete the sense of the laws: *Provided*, That when words and clauses are inserted, such change shall be denoted by inclosing said words and clauses in brackets.

Necessary cor-
rections al-
lowed.

Approved May 14, 1862.

W. JAYNE, *Governor.*

CHAPTER 111.

[RESOLUTION RELATIVE TO EXTRA PAY OF CLERKS OF THE
LEGISLATURE.]

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

Extra allow-
ance to James
Tufts and J. R.
Hanson.

SECTION 1. That there shall be allowed James Tufts, secretary of the council, and J. R. Hanson, chief clerk of the house of representatives, for forty days' extra service in making up the final record of their respective houses, one hundred and twenty dollars each, in full compensation.

Same to Wil-
liam Goodfellow.

SECT. 2. That there is due William Goodfellow, for sixty days' services rendered as the engrossing and enrolling clerk of the council, two hundred and forty dollars.

Same to Daniel
Gifford.

SECT. 3. That there is due Daniel Gifford, for sixty days' services rendered as the engrossing clerk of the house of representatives, one hundred and eighty dollars.

Auditor to
issue warrants

SECT. 4. The territorial auditor is hereby instructed to issue territorial warrants to each of the above-named individuals, to the amount allowed by this resolution.

Approved May 15, 1862.

W. JAYNE, *Governor.*

CHAPTER 112.

JOINT RESOLUTION.

Resolved, by the Legislative Assembly of the Territory of Dakota:

Committee to
report sale.

That a joint committee of three from the council, and three from the house of representatives, be appointed to select a territorial seal for the Territory of Dakota, and to agree upon an appropriate device and motto for the same. And that said committee report without delay.

Approved April 30, 1862.

W. JAYNE, *Governor.*

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PRIVATE LAWS

OF THE

TERRITORY OF DAKOTA,

PASSED AT THE FIRST SESSION

OF THE

LEGISLATIVE ASSEMBLY,

COMMENCED AT THE TOWN OF YANKTON MARCH 17, AND CONCLUDED MAY 15, 1862.

PUBLISHED BY AUTHORITY.

YANKTON, DAKOTA TERRITORY:

JOSIAH C. TRASK,

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1862.

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AUTHENTICATION.

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

I DO hereby certify, that the laws contained in this volume are true and correct copies of the original enrolled bills, passed by the Legislative Assembly, at the first session thereof, begun and held at Yankton, March 17th, A. D. 1862, now on file in my office.

Witness my hand and the seal of the territory here-
unto affixed, this fifteenth day of July,
{ L. S. } in the year of our Lord one thousand
eight hundred and sixty-two.

JOHN HUTCHINSON,
Secretary of Dakota Territory.

PRIVATE LAWS.

PRIVATE LAWS.

CITIZENSHIP CONFERRED.

CHAPTER 1.

AN ACT CONFERRING THE RIGHTS OF CITIZENSHIP UPON
CERTAIN HALFBREEDS IN THIS TERRITORY.

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

SECTION 1. That James McBride, John McBride, Robert ^{Certain persons} McBride, Charles Papin, Nicholas Angie, Collin Lamont, ^{declared citizens.} Collin Campbell, Lewis Lacompt, J. B. Laplant, Benj. Cadotte, Alexis Dicou, and Frank LaFromboise, residents of the Territory of Dakota, be, and are hereby, declared to be citizens of the Territory of Dakota, and shall be entitled to all the rights and privileges of citizens of this territory.

SECT. 2. This act shall take effect from and after its pas- ^{Take effect,} sage. ^{when.}

Approved May 15, 1862.

W. JAYNE, *Governor.*

CHAPTER 2.

AN ACT CONFERRING THE RIGHTS OF CITIZENSHIP UPON
F. B. CHARDON.

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

F. B. Chardon
declared a cit-
izen.

SECTION 1. That F. B. Chardon, a resident of the Terri-
tory of Dakota, be, and is hereby, declared to be a citizen of
the Territory of Dakota, and shall be entitled to all the rights
and privileges of citizens of this territory.

Take effect,
when.

SECT. 2. This act shall take effect from and after its
passage.

Approved May 15, 1862.

W. JAYNE, *Governor.*

CHAPTER 3.

AN ACT CONFERRING THE RIGHTS OF CITIZENSHIP ON
CHARLES F. PICOTTE.

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

Charles F.
Picotte declared
a citizen.

SECTION 1. That Charles F. Picotte, of the county of
Yankton, be, and is hereby, declared to be a citizen of the
Territory of Dakota, and he shall be entitled to all the rights
and privileges enjoyed by any citizen of said Dakota Terri-
tory.

Take effect,
when.

SECT. 2. This act shall take effect from and after its pas-
sage.

Approved May 12, 1862.

W. JAYNE, *Governor.*

DIVORCES.

CHAPTER 4.

AN ACT TO DISSOLVE THE MARRIAGE CONTRACT BETWEEN
SARAH A. TRIPP AND WILLIAM TRIPP.

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

SECTION 1. That the marriage contract heretofore exist- Sarah A. Tripp
and William
Tripp divorced.
ing between Sarah A. Tripp, and William Tripp, be, and
the same is hereby, dissolved; and the said parties are hereby
restored to all the rights and privileges of unmarried per-
sons.

SECT. 2. This act shall take effect and be in force from Take effect,
when.
and after its passage.

Approved April 29, 1869.

W. JAYNE, *Governor.*

CHAPTER 5.

AN ACT DISSOLVING THE BONDS OF MATRIMONY EXISTING
BETWEEN MINNIE OMEG AND C. OMEG.

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

SECTION 1. That the bonds of matrimony existing be- Minnie Omeg
and C. Omeg
divorced.
tween Minnie Omeg and C. Omeg, be, and the same are
hereby, dissolved.

SECT. 2. All property acquired and now owned by the Rights of par-
ties.
said Minnie Omeg, be, and the same is hereby, declared
exempt from any debts or liabilities of the said C. Omeg, and

the said C. Omeg is forever barred from any alimony in and to said property, both real and personal, and the said Minnie Omeg shall have full power to sell any real estate now owned by her, and make and execute deeds therefor, which shall be binding both in law and equity.

Of the children. SECT. 3. And be it further enacted, that the said Minnie Omeg shall have exclusive control of the children begotten in wedlock until they arrive at the age of majority.

Take effect, when. SECT. 4. This act to take effect and be in force from and after its passage.

Approved April 10, 1862.

W. JAYNE, *Governor.*

FERRIES.

CHAPTER 6.

AN ACT REGULATING FERRIES ON JAMES RIVER.

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

Who may establish ferries, and where.

SECTION 1. That from and after the passage of this act, a ferry charter be, and the same is hereby, granted to each actual freeholder, residing upon lands bordering upon either bank of James river, to keep and run a ferry within the boundaries of his own premises, with the right to land his ferry upon the opposite shore, on the premises of another person, for the space of fifteen years.

Rights apply to whom.

SECT. 2. The right herein conferred shall be construed to pertain only to such as shall keep good and reliable boats at all times of the season, for the safe crossing of the public travel, [in] which case, and not otherwise, each ferryman shall have the right to cross the public, and to demand and receive therefor toll at the following rates, to wit:

Two horses and wagon, or carriage,	30 cts.	Rates of ferryage established.
Two oxen or two mules and wagon,	30 "	
Two additional horses, mules, or oxen,	20 "	
One horse and buggy,	20 "	
One horse and man,	15 "	
Footman,	05 "	
Loose cattle and horses, per head,	10 "	
Loose hogs and sheep,	05 "	

SECT. 3. Every person keeping or running a ferry under the provisions of this act, shall keep a list of the tolls in section two, posted up in a conspicuous place near each ferry landing; and any ferryman who shall violate any of the provisions of this act, upon conviction thereof before any justice of the peace of the proper county, shall forfeit to the county the sum of one hundred dollars, and damages to the injured party.

Approved April 10, 1862.

W. JAYNE, Governor.

CHAPTER 7.

AN ACT GRANTING A FERRY CHARTER ACROSS THE VERMILION RIVER.

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

SECTION 1. That E. M. Bond, his heirs, executors, administrators, or assigns, shall have the exclusive privilege, for the period of twenty years from and after the passage and approval of this act, of keeping and maintaining a ferry or bridge across the Vermilion river, within the boundary lines of land now claimed by him.

SECTION 2. That the said party shall, at all times, keep a safe and good boat or bridge in good repair, for the accommodation of all persons wishing to cross said river at said ferry or bridge, and shall give prompt and ready attention to all passengers, teams, stock, or freight on all occasions, from sunrise to sunset, excepting in fogs and tempestuous weather.

To give bond.

SECT. 3. That the said party, his heirs, executors, administrators, or assigns shall, within two years after the passage of this act, file or cause to be filed, in the office of register of deeds of Clay county, a bond to said register for the use of the public, in the penal sum of one thousand dollars, with one or more approved sureties, conditioned that they will fulfil all the duties that are imposed upon them in this act.

Rates of ferryage.

SECT. 4. The rates charged for crossing at said ferry or bridge, shall not exceed those allowed Arthur C. Van Meter on the same river, under the provisions of the charter granted him by this legislative assembly.

To be posted up.

SECT. 5. Said ferryman shall keep a bill of legal rates posted up in a conspicuous place, at or near said ferry or bridge, in view of the passing public.

Persons injured or overcharged.

SECT. 6. Any person or persons who shall sustain any injury to person or property from the negligence or default of said parties, or of the ferryman in their employ; or if a higher rate shall be charged than is allowed by this act, such person or persons so injured or aggrieved, may have a remedy by a civil action upon the bond required in this act.

No benefits until bond filed.

SECT. 7. The said party or parties shall not be entitled to receive any benefit from the provisions of this act, until he or they shall have complied with the provisions of the third section of this act.

Legislature reserve right to repeal.

SECT. 8. The legislative assembly of Dakota Territory do hereby reserve the right to repeal said charter whenever the said E. M. Bond, his heirs, executors, administrators, or assigns, shall fail to comply with the provisions of this act.

Take effect, when.

SECT. 9. This act shall take effect from and after its passage, and approval by the governor.

Approved May 13, 1862.

W. JAYNE, Governor.

CHAPTER 8.AN ACT GRANTING A FERRY CHARTER ACROSS THE
MISSOURI RIVER.

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

SECTION 1. That Henry Brooks, George Detwiler, and Robert M. Hagaman, and their associates and assigns, shall have the exclusive privilege of keeping a ferry across the Missouri river in the Territory of Dakota, for the distance of fourteen miles on said river, commencing at a point on said river, opposite the mouth of the Niobrara river, and extending seven miles above and seven miles below said point, subject to such rates of toll as are or may be hereafter imposed by the legislative assembly of Dakota.

Certain persons have ferry privileges.

SECT. 2. This act shall take effect from and after its passage.

Take effect, when.

Approved May 14, 1862.

W. JAYNE, *Governor.*

CHAPTER 9.AN ACT GRANTING TO HENRY A. KENERLY AND JAMES M.
ALLEN, A CHARTER TO KEEP A FERRY ACROSS THE
MISSOURI RIVER, NEAR THE MOUTH OF CROW CREEK.

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

SECTION 1. Henry A. Kenerly and James M. Allen, their heirs, executors, administrators, and assigns, shall have the exclusive privilege, for the period of ten years from and after the passage and approval of this act, of keeping and maintaining a ferry across the Missouri river, at a point on said river at or near the mouth of Crow creek, where Noble's Pacific wagon road crosses said Missouri river, and extend-

H. A. Kenerly and James M. Allen have ferry privileges.

ing five miles down and five miles up said river to old Fort Lookout.

When rights to be secured, and how.

SECT. 2. In order that said parties may receive the benefits of this act, they shall within two years from the passage of this act, establish and keep a good and safe boat or boats in good repair, for the accommodation of all persons wishing to cross said river, at said ferry, and shall give prompt and ready attention to all passengers, teams, stock, or freight, on all occasions, from sunrise till sunset, except in fogs and tempestuous weather.

Rates of ferriage to be advertised.

SECT. 3. Whenever said ferry shall be established, said parties shall advertise their rates of ferriage in some newspaper published at the capital of the territory, and if in any case said rates are overcharged by said parties, they shall forfeit all the benefits of this act.

Legislature reserves right to repeal.

SECT. 4. The legislative assembly do hereby reserve the right to repeal said charter, whenever the said parties shall fail to comply with the provisions of this act.

Take effect, when.

SECT. 5. This act shall take effect from and after its passage.

Approved May 12, 1862.

W. JAYNE, *Governor.*

CHAPTER 10.

AN ACT GRANTING TO GEORGE C. GRANGER AND HIS HEIRS
A CHARTER TO KEEP A FERRY ACROSS THE MISSOURI
RIVER.

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

Geo. C. Granger has what ferry privileges.

SECTION 1. That George C. Granger, his heirs, executors, administrators, or assigns, shall have the exclusive privilege, for the period of ten years, of keeping and maintaining a ferry across the Missouri river in said territory, at a point on the Missouri river, commencing one mile west of the range line between ranges number fifty-eight and fifty-nine, and extending one mile up and one mile down said river.

SECT. 2. That said party shall, at all times, keep a safe and good boat or boats in good repair, for the accommodation of all persons wishing to cross at said ferry, and shall give prompt and ready attention to all passengers or teams on all occasions, from sunrise to sunset, except in fogs and tempestuous weather. His duties.

SECT. 3. The rate charged for crossing at said ferry, shall not exceed the following, to wit: Rates of ferriage.

For two horses, mules, or oxen, and wagon and driver,	\$1 00
For each additional pair of horses, mules, or oxen,	25
For each horse, mule, and rider,	50
For each two horses and mules and buggy, with driver,	1 00
For each one horse or mule and buggy, with driver,	75
For each led horse or mule,	25
For loose cattle, per head,	10
For sheep and hogs, per head,	10
For each hundred weight of merchandise,	10
For each thousand feet of lumber,	1 00

SECT. 4. That said incorporator shall, within one year after the passage of this act, file, or cause to be filed, in the office of the register of deeds of the county in which said ferry is situated, a bond to said register, in the penal sum of five hundred dollars, with one or more sureties, conditioned that he will fulfil all the duties that are imposed upon him in this act; and in case of his failure or neglect to do so, he shall forfeit all the benefits that might have accrued to him from this act. File bond.

SECT. 5. Any person who shall sustain any injury from the negligence or default of said party, or of the ferryman in his employ, may have a remedy by a civil action upon the bond required in this act. If persons sustain injury.

SECT. 6. The legislative assembly do hereby reserve the right to repeal said charter whenever the said incorporator shall fail to comply with the provisions of this charter. Legislature reserves right to repeal.

SECT. 7. This act shall be in force from and after its passage, and approval by the governor. Take effect, when.

Approved April 21, 1862.

W. JAYNE, Governor.

CHAPTER 11.

AN ACT GRANTING FERRY CHARTERS ACROSS THE MISSOURI RIVER.

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

Certain persons
granted ferry
privileges.

SECTION 1. That Josiah Whitcomb and Preston M. Hotchkiss, their heirs, executors, administrators, and assigns, shall have the exclusive privilege, for the period of ten years, of keeping and maintaining a ferry across the Missouri river in said territory, at a point on the Missouri river nearly opposite Ponka in Nebraska Territory, and for the distance of three miles above and below said point.

Their duties.

SECT. 2. That said parties shall at all times keep a safe and good boat or boats in good repair, for the accommodation of all persons wishing to cross said ferry, and shall give prompt and ready attention to all passengers or teams on all occasions, from sunrise to sunset, except in tempestuous weather.

Rates of fer-
riage.

SECT. 3. The rates charged for crossing said ferry shall not exceed the following, to wit :

For two horses, mules, or oxen, and wagon with driver,	\$1 00
To each additional pair of horses, mules, or oxen,	30
For each two horses or mules, and buggy with driver,	75
For each one horse or mule, with buggy and driver,	50
For each led horse or mule,	25
For loose cattle, per head,	15
For sheep and hogs, per head,	10
For each hundred weight of freight and merchandise,	10
For each thousand feet of lumber,	1 00

File bond.

SECT. 4. That said incorporation shall, within six months after the passage of this act, file, or cause to be filed, in the office of the clerk of the county commissioners within which said ferry is situated, a bond to said board, with one or more sureties, to be approved by said board, in the penal sum of five hundred dollars, conditioned that they will fulfil all the duties that are imposed upon them in this act; and in case

of failure or neglect to do so, they shall forfeit all the benefits that might have accrued to them from the passage of this act.

SECT. 5. Any person who shall sustain any injury from the negligence or default of said ferry or ferryman in his employ, may have a remedy by an action upon the bond required in this act. If person sustain injury.

SECT. 6. This act shall take effect from and after its passage. Take effect, when.

Approved April 21, 1862.

W. JAYNE, *Governor.*

CHAPTER 12.

AN ACT GRANTING TO C. M. COOPER AND R. M. JOHNSON, AND THEIR HEIRS, A CHARTER TO A FERRY ACROSS THE MISSOURI.

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

SECTION 1. That C. M. Cooper, and R. M. Johnson, their heirs, executors, administrators, or assigns, shall have the exclusive privilege, for the period of ten years, of keeping and maintaining a ferry across the Missouri river, in said territory, at a point on the Missouri river, commencing on range line between ranges number 59 and 60, and extending two miles up and one mile down said river. Persons entitled to ferry privileges.

SECT. 2. That said parties shall, at all times, keep a safe and good boat or boats in good repair, for the accommodation of all persons wishing to cross at said ferry, and shall give prompt and ready attention to all passengers or teams on all occasions, from sunrise to sunset, except in fogs and tempestuous weather. Their duties.

SECT. 3. The rate charged for crossing at said ferry shall not exceed the following, to wit: Rates of ferrriage.

For two horses, mules, or oxen, wagon and driver,	\$1 00
For each additional pair of horses, mules, or oxen,	25
For each two horses and mules, and buggy with driver,	75

For each one horse, mule, and buggy with driver,	50
For each led horse or mule,	15
For loose cattle, per head,	10
For sheep and hogs, per head,	05
For each hundred weight of merchandise,	10
For each thousand feet of lumber,	75

File bond.

SECT. 4. That said incorporators shall, within one year after the passage of this act, file, or cause to be filed, in the office of the register of deeds of the county in which said ferry is situated, a bond to said registrar in the penal sum of five hundred dollars, with one or more sureties, conditioned that he will fulfil all the duties that are imposed upon him in this act, and in case of a failure or neglect to do so, he shall forfeit all the benefits that might have accrued to him from this act.

If person sustain injury.

SECT. 5. Any person who shall sustain any injury from the negligence or default of said parties, or of the ferryman in their employ [may] have a remedy by a civil action upon the bond required in this act.

Legislature reserve right to repeal.

SECT. 6. The legislative assembly do hereby reserve the right to repeal said charter whenever the said incorporators shall fail to comply with the provisions of this charter.

Take effect, when.

SECT. 7. This act shall be in force from and after its passage, and approval [by] the governor.

Approved April 30, 1862.

W. JAYNE, Governor.

CHAPTER 13.

AN ACT TO ESTABLISH A FERRY ACROSS THE MISSOURI RIVER OPPOSITE IONIA IN NEBRASKA.

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

Persons granted ferry privileges.

SECTION 1. That Loren T. Hill, his heirs and assigns, be, and they are hereby, granted the exclusive privilege to establish and keep a ferry across the Missouri river opposite Ionia in Dixon county, Nebraska Territory, or at any point within two miles and a half by way of the river above and below,

commencing at a point opposite the foot of Green street in said town of Ionia. Said privileges granted herein shall continue for the term of ten years from the passage of this act.

SECT. 2. Said Loren T. Hill, his heirs and assigns, shall ^{Rates of ferriage.} be allowed the following rate of ferriage :

For two horses, mules, or oxen, and wagon, . . .	\$1 00
Each additional pair of horses, mules, or oxen, . . .	25
Each horse, mule, and rider,	30
Each horse or mule, led,	25
Loose cattle, per head,	10
Footman,	10
Sheep and hogs, per head,	05
Each hundred weight of freight,	10
One thousand feet of lumber,	1 00
Each horse or mule, and buggy,	75

SECT. 3. This legislative assembly hereby reserves the ^{Legislature reserves right to repeal.} right to repeal said charter, if said L. T. Hill does not keep a good and sufficient boat, and run the same at all times when said river is passable.

SECT. 4. That said incorporation shall, within one year ^{File bond.} after the passage of this act, file, or cause to be filed in the office of the register of deeds of the county in which said ferry is situated, a bond to said register in the penal sum of five hundred dollars, with one or more sureties, conditioned that he will fulfil all the duties that are imposed upon him in this act, and in case of his failure or neglect to do so, he shall forfeit all the benefits that might have accrued to him from this act.

SECT. 5. Any person who shall sustain any injury from ^{If person injured.} the negligence or default of said party, or of the ferryman in his employ, may have a remedy by a civil action upon the bond required in this act.

SECT. 6. This act shall take effect and be in force from ^{Take effect, when.} and after its passage.

Approved April 10, 1862.

W. JAYNE, Governor.

CHAPTER 14.

AN ACT TO AUTHORIZE MICHAEL McCUE AND FRANK VERZANI TO ESTABLISH AND KEEP A FERRY ON THE MISSOURI RIVER.

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

Persons granted
ferry privileges.

SECTION 1. That Michael McCue and Frank Verzani, their heirs, executors, and assigns, shall have for the period of ten years from the passage of this act, the exclusive privilege of keeping a ferry on the Missouri river, for the purpose of crossing the same at the place hereinafter designated.

Rights extend,
how far.

SECT. 2. That such exclusive right to keep such ferry shall extend a distance of three miles above the point where the line between lots Nos. 3 and 4, in section eight, in township No. ninety-one, north of range No. fifty-one west of the fifth principal meridian, intersects said river, and a like distance of three miles below said point; and it shall be unlawful for any other person or persons to keep a ferry within said limits.

Their duties.

SECT. 3. The owners of said ferry shall, on or before the first day of July, A. D. 1862, place at said ferry for the use of the same, a good and sufficient ferry-boat, and shall, from sunrise in the morning until sunset in the evening, when the navigation of said river is not dangerous, be prepared to cross all persons and their property, with the least possible delay.

Rates of fer-
riage.

SECT. 4. The owners of said ferry shall be allowed the following rates of ferriage at such ferry :

For each pair of horses, mules, or oxen, and wagon,	\$1 00
For each additional pair of horses, mules, or oxen,	25
For horse or mule, and buggy,	75
For led horse, or mule,	20
For loose cattle, per head,	10
For sheep and hogs, per head,	05
For footman,	10
For cwt. of freight,	10
For M. feet of lumber,	1 00

SECT. 5. A list of the above rates shall be placed by said owners upon the ferry-boat, or on some conspicuous place near the landing; and, if the owner or owners tax and receive from any person a greater sum than is herein allowed for ferrying, he or they shall, upon conviction thereof, forfeit and pay to the party aggrieved the sum of ten dollars for each offence, and suit for the recovery of the same may be commenced by action of debt before a justice of the peace, in the name of the party so aggrieved.

Rates to be posted.

Of overcharges

SECT. 6. Any person or persons crossing or ferrying any person or property across said Missouri river, within the above-named limits for compensation, shall be deemed guilty of an infringement of the privilege, and shall forfeit and pay to owners of said ferry ten dollars for each person, or article of property so carried over said river, to be recovered in an action of debt in the name of the owners of said ferry.

Any other person ferrying.

SECT. 7. This legislative assembly reserves the right to repeal said charter, provided said parties do not fulfil all the provisions of this charter.

Legislature reserves right to repeal.

SECT. 8. This act to be in full force from and after its passage.

Take effect, when.

Approved April 5, 1852.

W. JAYNE, *Governor.*

CHAPTER 15.

AN ACT GRANTING M. M. RICH A FERRY CHARTER ACROSS BIG SIOUX RIVER.

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

SECTION 1. That M. M. Rich, his heirs, executors, and assigns, shall have the exclusive privilege for the period of ten years of keeping and maintaining a ferry across the Big Sioux river, at a point to be selected by him on his, said M. M. Rich's claim, in the county of Cole; and no other ferry shall be established within one mile above and below the same.

M. M. Rich granted ferry privileges.

His duties.

SECT. 2. The said M. M. Rich shall, at all times, keep boats in good repair, sufficient for the accommodation of all persons wishing to cross at said ferry, and shall give prompt and ready attendance on passengers and teams on all occasions, when wind and ice permit.

Rates of ferriage.

SECT. 3. The rates charged for crossing at said ferry, shall not exceed the following :

For each foot-passenger,	10 cts.
For each horse or mule, with or without rider,	15 "
For each cow or ox,	10 "
For each two horse, two mule, or two ox team, loaded or unloaded, with or without driver,	25 "
For each single horse and carriage,	25 "
For each additional span of horses or oxen,	10 "
For each swine or sheep,	05 "
All freight of lumber, merchandise, or other articles not in teams, at the rate of 5 cents per hundred pounds, and 50 cents per thousand feet of lumber.	

File bond.

SECT. 4. The said M. M. Rich, within six months after the passage of this act, shall file, or cause to be filed with the county commissioners of the county of Cole, a bond for the benefit of said county, with two or more sureties, to be approved by said commissioners, in the penal sum of five hundred dollars, conditioned that he fulfil all the duties imposed on him in this act.

Penalty for neglect.

SECT. 5. For every neglect in keeping good and sufficient boats, or failure to give prompt and due attendance, the said M. M. Rich shall forfeit and pay a sum of not exceeding ten dollars, to be recovered by a civil action before any court having competent jurisdiction, and shall forfeit the above charter.

Take effect, when.

SECT. 6. This act shall take effect on and after its passage.

Approved April 21, 1862.

W. JAYNE, Governor.

CHAPTER 16.

AN ACT TO GRANT THE RIGHT TO ESTABLISH FERRIES,
AND MAINTAIN THE SAME, TO CERTAIN PERSONS IN
THIS TERRITORY.

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

SECTION 1. That each and every one of the following Rights, of what
duration. named persons, their heirs, executors, administrators, assigns, and legal representatives, shall have the exclusive right to establish and maintain ferries across the Big Sioux river within this territory. The said exclusive right to remain to them for the space of fifteen years, subject to all the provisions herein and hereafter provided.

SECT. 2. 1. To Austin Cole, and F. M. West, at a point Persons granted
what privileges,
and where. commencing at the centre of section No. 2, in township No. 89, north of range forty-eight west, extending one mile up, and half the distance down, said river to Paul Paquette's house. 2. To Paul Paquette, commencing at a point opposite his house and running up said river to the line of said Cole and West's charter, and down said river to a point half the distance to John McBride's house or place of ferrying. 3. To John McBride, commencing at a point opposite his residence, and running up said river to Paul Paquette's charter line, and down said river one mile.

SECT. 3. The rates charged for crossing at the above- Rates of fer-
riage. named ferries shall not exceed the following :

Foot-passengers, each,	10 cts.
For each horse, mare, mule, with or without rider,	15 "
For each cow or ox,	15 "
For two horse, two ox, or two mule team, loaded or unloaded, with driver,	50 "
For each single horse carriage,	25 "
For each additional horse, mule, ox, or cow,	15 "
For each swine, or sheep, or goat,	05 "
All freight, lumber, merchandise, or other articles not in teams, at the rate of 5 cents per hundred, 50 cents per thousand feet of lumber.	

Legislature reserves right to repeal.

SECT. 4. If the said parties to whom these grants are given, fail in any of the provisions of this charter, then this legislative assembly reserves the right to repeal said charters.

Take effect, when.

SECT. 5. This act to take effect from and after its passage, and approval by the governor.

Approved April 5, 1862.

W. JAYNE, *Governor.*

CHAPTER 17.

AN ACT GRANTING TO ARTHUR C. VAN METER AND HIS HEIRS, A CHARTER TO KEEP A FERRY ACROSS THE VERMILION RIVER.

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

A. C. Van Meter granted ferry privilege.

SECTION 1. That Arthur C. Van Meter, his heirs, executors, administrators, or assigns, shall have the exclusive privilege, for the period of ten years, of keeping and maintaining a ferry across the Vermilion river, in the Territory of Dakota, at a point on said river, commencing where his ferry now is situated, opposite his dwelling-house, and extending up and down said river, as far as the land now claimed by him extends along the Vermilion river.

File bond.

SECT. 2. That said Arthur C. Van Meter, his heirs, executors, administrators, or assigns, shall, within six months after the passage of this act, file, or cause to be filed, in the office of the register of deeds of the county in which said ferry is situated, a bond to said county, for the use of the public, in the penal sum of five hundred dollars, with one or more sureties, to be approved by said register, conditioned that he, the said Arthur C. Van Meter, his heirs, executors, administrators, or assigns, will fulfil all the duties that are imposed upon him, or them, in this act; and in case of his or their failure or neglect to do so, he or they shall forfeit all the benefits that might have accrued to him or them from this act.

His duties.

SECT. 3. That said Arthur C. Van Meter, his heirs, exec-

utors, administrators, or assigns, shall, at all times, keep a safe and good boat or boats in good repair, for the accommodation of all persons wishing to cross said river at said ferry; and shall give prompt and ready attention to all passengers, teams, or freight, on all occasions, from sunrise to sunset, excepting in fogs and tempestuous weather.

SECT. 4. Any person or persons who shall sustain any ^{If person injured.} injury to person or property from the negligence or default of the person or persons in charge of said ferry, may have a remedy by a civil action upon the bond required in this act, in any court of competent jurisdiction.

SECT. 5. The rates charged for crossing at said ferry, shall ^{Rates charged.} not exceed the rates allowed by an act to regulate ferries on the Dakota river.

SECT. 6. Said ferryman is hereby required to keep a bill ^{Rates to be posted.} of his legal rates posted up in some conspicuous place near or at said ferry.

SECT. 7. The legislative assembly do hereby reserve the ^{Legislature reserves right to repeal.} right to repeal said charter, whenever the said Arthur C. Van Meter, his heirs, executors, administrators, or assigns, shall fail to comply with the provisions and requirements of this act.

SECT. 8. This act shall take effect from and after its ^{Take effect, when.} passage, and approval by the governor.

Approved April 21, 1862.

W. JAYNE, *Governor.*

CHAPTER 18.

AN ACT GRANTING TO JOSEPH LEMAY THE RIGHT TO ESTABLISH AND MAINTAIN A FERRY ACROSS THE PEMBINA RIVER.

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

SECTION 1. That Joseph Lemay, his heirs, executors, administrators, or assigns, shall have the exclusive right and ^{Joseph Lemay granted ferry privileges.} privilege of keeping and maintaining a ferry across the Pem-

bina river in the county of Kittson, at a point to be selected by him, within a mile from its mouth, for the period of fifteen years, and no other ferry shall be established within one mile either above or below said point on the said river.

His duties.

SECT. 2. That the said Joseph Lemay shall, at all times, keep a safe boat or boats, in good repair, sufficient for the accommodation of all persons wishing to cross said ferry, and shall give prompt and ready attendance on passengers and teams on all occasions, and at all times, both at night or day; but persons wishing to cross said ferry (at night) after nine o'clock, may be charged double the fare hereinafter prescribed.

Rates of ferriage.

SECT. 3. The rates charged for crossing the above ferry shall not exceed the following:

For each foot-passenger,	6 cts.
“ “ horse, mare, mule, or ass, with or without rider,	12 “
“ “ single horse carriage, with or without rider,	25 “
“ “ two horse, two ox, or two mule team, loaded, with or without driver,	35 “
“ “ additional horse, mule, ox, or cow,	12 “
“ “ swine or sheep,	6 “
“ lumber, per thousand feet,	50 “
“ all articles of merchandise, in barrels,	6 “
“ all other articles, per hundred pounds,	2 “

File bond.

SECT. 4. The said Joseph Lemay shall, within six months after the passage of this act, file, or cause to be filed, with the clerk of the board of county commissioners, if the county wherein said ferry shall be located is organized, or as soon as the county wherein said ferry may be located is organized, with the clerk of the board of commissioners of said county, with two or more good, sufficient sureties, to be approved by the said commissioners, a bond, in the penal sum of five hundred dollars, conditioned that they will fulfil all the duties that are required of and imposed upon them by this act. And in case of failure to file such bond as aforesaid, they shall forfeit all the benefits that might have accrued to them from the passage of this act.

Penalty for neglect, &c.

SECT. 5. For every neglect in keeping good and sufficient boats, or failure to give prompt and due attendance, the said

Joseph Lemay shall forfeit a sum not exceeding ten dollars, to be recovered by a civil action before any court having competent jurisdiction.

SECT. 6. Any person who shall sustain any injury, by the negligence of the said Joseph Lemay, or any ferryman in his employ, may have remedy on the bond required by this act. If person injured.

SECT. 7. The legislature may at any time alter, amend, modify, or repeal this act. Reserved rights of legislature.

SECT. 8. This act shall take effect and be in force from and after its passage. Take effect, when.

Approved April 30, 1862.

W. JAYNE, *Governor.*

RAILROADS.

CHAPTER 19.

AN ACT TO INCORPORATE THE MISSOURI AND NIOBRARA VALLEY RAILROAD COMPANY.

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

SECTION 1. That the persons hereinafter named in section thirteen (13) of this act be, and the same are hereby, made and constituted a body corporate and politic by the name and style of the Missouri and Niobrara Valley Railroad Company, with perpetual succession, and by that name and style shall be capable in law of taking, purchasing, holding, leasing, selling, and conveying real and personal estate and property, so far as the same may be necessary for the purposes hereinafter mentioned; and in their said corporate name to sue and be sued, to have a common seal, which they may alter or renew at pleasure; to have a capital stock of two millions of dollars, to be divided into shares of — dollars each, which Powers of company.

Proviso.

said capital may be increased from time to time by a vote of a majority of the directors of the corporation, to the sum of six millions of dollars: *Provided*, This sum be requisite to the completion and fulfilment of the objects and purposes of the corporation hereby created, and the hereinafter named persons shall be, and constitute the first board of directors, and may have and exercise all the powers, rights, privileges, and immunities, which are or may be necessary to carry into effect the purposes and objects of this act as hereinafter set forth.

Board, how organized.

SECT. 2. Said directors shall organize the board as soon as practicable after the passage of this act, by electing one of their number president, and by appointing a secretary and treasurer, which organization shall be certified by said directors, or a majority of them, and such certificate shall be recorded in the record book of said company, and said record shall be sufficient evidence of the facts therein stated, and said directors shall hold their offices until the first Tuesday of August, A. D. 1862, and until their successors shall be elected and qualified as hereinafter provided. All vacancies in said board may be filled by a vote of a majority of the directors present at any regular meeting of the board, or at a special meeting called for that purpose.

Vacancies, how filled.

Location of railroad.

SECT. 3. The said company are hereby authorized and empowered to locate, and, from time to time, to alter, change, relocate, construct, reconstruct, and fully to finish, perfect, and maintain a railroad, with one or more tracks, commencing at a point on the west bank of the Big Sioux river, where the said river shall or may be intersected on the east bank by a railroad running west from the city of Dubuque, through the northern portion of the state of Iowa, thence westerly through the counties of Cole, Clay, Yankton, Bon Homme, and Todd, via the villages of Vermilion, Yankton, and Bon Homme, to a point on the Missouri river within seven miles of the mouth of the Niobrara river, at some practicable point for the establishment of a ferry across the Missouri river, thence up the valley of the Niobrara river to any point which may be selected by said company as the most suitable place for leaving said Territory of Dakota in order to reach, by the shortest and most practicable route, the South pass of the Rocky mountains; and said company are further authorized to use and operate

Other powers granted.

said railroad, and shall have power and authority to regulate the time and manner in which persons, goods, and effects shall be transported on the same, and to prescribe the manner in which said railroad shall be used, and the rate of toll for the transportation of persons and property under their charge, and shall have power to provide all necessary stock and materials for the operation of said railroad, and shall have power to erect and maintain all necessary depots, stations, shops, and other buildings and machinery for the accommodation, management, and operation of said road, and said company shall have the exclusive right to keep and maintain a ferry across the Missouri river for the space of seven miles below and seven miles above said railroad crossing, during the continuance and life of this charter incorporating said railroad company.

SECT. 4. Said directors shall, as soon after the passage of this act as practicable, open books for the purpose of receiving subscriptions to the capital stock of said company, at such places along the line of said road and elsewhere as said directors shall determine, under the direction of such agents as said directors shall appoint, and said books shall be kept open, from time to time, until the amount of said capital stock shall be subscribed, or until said directors shall determine to close the same.

Books to be opened for subscriptions.

SECT. 5. Said company may at any time take voluntary relinquishments for the right of way for said road, the necessary depots, water stations, wood yards, and out-buildings, and may receive, and are hereby authorized to receive any grant or grants of land which may hereafter be made by the congress of the United States to this territory, to encourage and aid in the building and equipment of this line of road, and such connections as may be provided by said territory or future state, and if the land through which the road shall pass belongs to a minor, in whole or in part, the guardian of such minor shall have power to convey to said company, on fair and equitable terms; but every such conveyance by a guardian shall be subject to the approval of the court having probate jurisdiction, in the county in which said lands are situated.

Company may receive what grants.

SECT. 6. If any owner of a tract of land through which said road may pass, refuse to relinquish the right of way for

If right of way refused.

said road to said company, or if the owner be an infant, or person of unsound mind, or a non-resident of the territory, the facts of the case shall be clearly stated in writing to the judge of the district court of the county in which said land is situated, either in vacation or term time, and the judge shall appoint three disinterested citizens of the county, as commissioners, to view such lands, who shall take into consideration the value of the land and the advantages and disadvantages of the road to the same, and shall report, under oath, what damage shall be done to said road [land], or any improvement thereon, stating the amount of damages assessed, and shall return a plat of the land thus condemned. Written notice of such application to the judge shall be given to the owner of such land, five days before making such application, if such owner reside within the county where said land is situated. If such owner is a non-resident of said county, he may be served by actual notice, or by publication for four weeks in some newspaper published nearest to said land: *Provided*, Such newspaper shall be a paper published within the territorial limits of the Territory of Dakota.

Proviso.

Persons to view and value land to file report, and court to order.

SECT. 7. The persons to view and value such lands shall file their report in the office of the clerk of the district court of the county where such lands are situated, and if no valid objection be made to said report within ten days, the court shall enter judgment against said company for the amount of damages so assessed, and shall make an order vesting in said company the fee-simple title to the lands described in said plat and report, as given to the use of said road. Objections to such report must be filed within ten days from the time the same was filed, which objections may be examined by said judge in term time or vacation, and he may hear testimony, and by judgment confirm said report, or may set aside the same and appoint three other viewers, who shall proceed in the same manner and make their report, until the same be confirmed; in all such cases the court shall adjudge the costs of the proceedings according to the equity of the case, and the said court shall have power to make such orders, and take such other steps as will promote the ends of justice between the owner of said lands and said company.

Company may occupy said land

SECT. 8. In case of refusal of said right of way, by the

owner of land, the said company may occupy the same for the purpose of constructing the said road, upon filing good and sufficient bonds conditioned to pay all damages that may be adjudged against them, with the judge of the district court of the county, where the land is situated, and upon his approval of the same.

SECT. 9. The said company are authorized and empowered to borrow, from time to time, such sums of money, not exceeding at any one time double the amount of stock subscribed, and upon which not less than five per cent. shall have been paid in, as may be necessary for constructing, completing, and finishing or operating said railroad, and to issue and dispose of their bonds in denominations of not less than one hundred dollars for any amount so borrowed, and to pay a rate of interest therefor not exceeding ten per cent. per annum, and to pledge and mortgage the said road and its appendages, or any part thereof, or any other property or effects, rights, credits, or franchises of the said company, as security for any loan of money and interest thereon, and to dispose of the bonds issued for said loan at such rates and on such terms as a majority of the directors may determine, and may make such bonds convertible into the capital stock of said company at the option of the holder; and the president and secretary shall have power, and it shall be lawful for them on the written consent of a majority of the directors, or by resolution passed at any regular or called meeting for such purpose, to issue certificates of indebtedness, or bills or promissory notes, duly certified and signed by each of them in their official capacity, to an amount not exceeding the whole amount of capital stock held by said incorporation, and the said company may provide a sinking fund for the redemption of said bonds, certificates of indebtedness, bills or promissory notes, out of the earnings of said road.

SECT. 10. The said company may annually or semi-annually make such dividends among the stockholders as they may deem proper, said dividend to be declared out of the net profits, receipts, or income of said company, and after first having deducted from said net profits a reasonable amount to be set apart for a sinking fund for the ultimate liquidation of the indebtedness of said company. The rights, privileges, and immunities accruing to the following named persons and

their successors in office, by the provisions of this bill, are declared to be perpetual.

May establish
by-laws, &c.

SECT. 11. Said company have power to make, ordain, and establish all such by-laws, rules, and regulations as may be deemed expedient and necessary to fulfil the purposes and carry into effect the provisions of this act, and for the well-ordering and securing the affairs and interests of said company: *Provided*, That the same be not repugnant to the constitution of the United States and the laws of this territory. This act, and all by-laws that may be adopted by the directors of said company, and all additions thereto and alterations thereof shall, from time to time, be printed in a convenient form, and be distributed among the stockholders of said company.

Proviso.

By-laws, &c.
to be printed.

Stock deemed
personal prop-
erty.

SECT. 12. The stock of said company shall be deemed personal estate, and shall be transferable in the manner and under such restrictions and conditions as may be provided by the by-laws of said company; and it is hereby further provided that twenty per cent. of the original capital stock of said company shall be denominated unassessable stock, which said stock shall not be liable by any by-laws or rules and regulations of said company to be assessed for the construction, equipment, or management of said road, or in any manner taxed by said incorporation. The balance of said original stock, and all other stock created under the privileges of this charter by said company, shall be chargeable and liable to be assessed pro rata for the expenses incurred in the construction and equipment of said road.

Names of cor-
porators.

SECT. 13. The following-named persons are hereby constituted a body corporate, according to the provisions of this act, to wit: Erastus Corning, R. N. Rice, W. B. Ogden, Elihu Washburn, J. N. Arnold, L. R. Kimball, W. W. Hamilton, James F. Joy, A. W. Hubbard, Isaac Pendleton, John H. Charles, George Jerome, R. B. Mason, Henry Hill, W. F. Shaffer, John J. Bagley, Enos Stutsman, M. K. Armstrong, Austin Cole, John McBride, Christopher Maloney, D. T. Bramble, John Stanage, Jacob Deuel, Lyman Burgess, Jacob A. Jacobson, J. Shaw Gregory, John L. Tiernon, John H. Shober, Reuben Wallace, George M. Pinney, James Tufts, Newton Edmunds, Lyman W. Gilbert, W. W. Brookings,

W. P. Lyman, A. W. Puett, G. P. Waldron, B. Wood, H. S. Donaldson, J. W. Boyle, and H. D. Betts.

SECT. 14. It shall be lawful for a majority of the persons named in this act, or their successors, by giving thirty days' notice, stating the objects, to call a meeting of the stockholders of said company, and the secretary of said company shall certify said call, and record the same, as well as all matters that may be transacted under said call, in a suitable book provided for such purpose.

Majority may call meeting of stockholders — records how kept.

SECT. 15. Said company shall have power to unite its road, in whole or in part, with any other railroad or railroads either in this territory or in the states of Iowa, Minnesota, Illinois, Indiana, Michigan, Ohio, New York, or Territory of Nebraska, and to grant to any such company or companies, the right to construct, operate, or use this line of road, and to lease its right of way and franchises, together with its equipments, rolling stock, furniture, and materials used in constructing or operating said road, and authorize such railroad company or companies to complete, finish, use, and operate such line of roads so purchased or leased, upon such terms as may be mutually agreed between the said company or companies, or may consolidate the capital stock with the capital stock of any railroad company or companies with which it shall intersect, and shall have power to place the road of said company and its capital stock so consolidated, under the direction of a board of directors of not less than five persons, who shall be chosen from the stockholders of the company so consolidated, not less than two of which shall have been members and stockholders of the company previous to its consolidation as aforesaid.

May unite with other roads on what conditions.

SECT. 16. Notice shall be published in at least one newspaper printed in the territory, for the election of directors and calls for instalments to be made upon the capital stock, and all meetings of stockholders; all matters intended for the action of stockholders, by the directors or stockholders authorized to call meetings, shall be published in the notice given for the meeting before which said matters will be brought.

Notices, how given.

SECT. 17. The said corporation shall be bound to repair all public highways or bridges which may be injured in constructing said railroad, and shall restore them, as far as prac-

Highways and bridges to be left in good repair.

licable, to as good condition as they were before they were injured.

Subscribers
may pay with
convertible prop-
erty.

SECT. 18. Said company are hereby authorized to take and receive from the several subscribers to said capital stock, money, labor, materials, cars, locomotives, or other articles adapted to the construction or operation of said railroad, or any property that, in the opinion of the board of directors, may be exchanged or converted to such use, and upon receiving full payment in manner aforesaid of such subscription of stock, may issue to such subscriber or subscribers, certificates therefor.

When road to
be commenced.

SECT. 19. The company shall be allowed fifteen years from the passage of this act for the commencement of said road, and in case at least twenty miles of the same shall not be completed in ten years thereafter, the privileges herein granted shall be forfeited.

Act, how con-
strued, and to be
public.

SECT. 20. This act shall be construed beneficially for all purposes herein specified or intended, and shall be deemed and taken as a public act.

Take effect,
when.

SECT. 21. This act shall take effect and be in force from and after its passage.

Approved May 14, 1862.

W. JAYNE, *Governor.*

INCORPORATED TOWNS.

CHAPTER 20.

AN ACT TO INCORPORATE THE TOWN OF BON HOMME.

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

Town of Bon
Homme.

SECTION 1. That so much land as is contained in the north-east quarter of section number thirteen, and the north-east quarter of north-west quarter of section number thirteen, and

lots number two, three, and four, in section number thirteen, in township number ninety-three, north of range fifty-nine west, be, and the same is hereby, created a town corporate, by the name of Bon Homme, and shall have and enjoy all the powers, privileges, and responsibilities usually enjoyed by municipal corporations.

SECT. 2. That for the good order and government of said town, it shall be lawful, and there shall be established a president, recorder, and three trustees, who shall constitute the town council of said town, and shall be known as "The Town Council of Bon Homme," and any three of whom shall constitute a quorum for the transaction of business.

The town council.

SECT. 3. Reuben Wallace as president, and Daniel C. Gifford as recorder, and Edward Gifford, George M. Pinney, and Jonathan Brown, shall be known and are hereby constituted the town council of said town, who shall hold their respective offices for one year, and until their successors shall be elected and qualified, and who shall have full power and authority to make and establish all needful rules and regulations for the government of the said town.

Who compose same — with what powers.

SECT. 4. It shall be the duty of the president, with the consent of the town council of said town corporate, to enter so much land within the corporate limits of said town as can be entered under the provisions of the act of congress, entitled "An Act for the relief of citizens of towns upon the lands of the United States, under certain circumstances," approved May 23, 1854.

President to enter land.

SECT. 5. It shall be the duty of the town council, as soon as the title to said lands shall be obtained pursuant to the third section of this act, to ascertain the number of persons entitled, legally or equitably, to lots or squares within said town, and to deed, under the hand of the president and seal of the corporation, to every such person entitled as aforesaid: *Provided*, That any person or persons to whom lots or squares shall be so deeded, shall previously have paid the sum of one dollar for each deed and acknowledgment so required to be made.

Town council to deed property equitably.

Proviso.

SECT. 6. If any vacancy should occur in any of the offices of the town council aforesaid, a quorum of said town council, duly assembled, shall at any time fill the vacancy.

Of vacancies in council.

Take effect,
when.

SECT. 7. This act shall take effect from and after its passage, and approval by the governor.

Approved April 10, 1862.

W. JAYNE, *Governor*

CHAPTER 21.

AN ACT TO INCORPORATE THE TOWN OF ELK POINT.

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

Town of Elk
Point.

SECTION 1. That so much land as is contained in the south-west quarter of the north-west quarter of section nineteen, township ninety-one, north range forty-nine west; and the south-east one quarter of the north-east one quarter of section twenty-four, township ninety-one, north range fifty west, be, and the same is hereby, created a town corporate by the name of Elk Point, and shall have and enjoy all the powers, privileges, and responsibilities usually enjoyed by municipal corporations.

The town coun-
cil.

SECT. 2. That, for the good order and government of said town, it shall be lawful, and there shall be established a president, recorder, and three trustees, who shall constitute the town council of said town, and shall be known as "The Town Council of Elk Point," and any three of whom shall constitute a quorum for the transaction of business.

Who compose
same, with what
powers.

SECT. 3. John R. Wood as president, E. B. Wixson as recorder, and Myron Sheldon, William Adams, and Preston M. Hotchkiss, shall be known and are hereby constituted the town council of said town, who shall hold their respective offices for one year, and until their successors shall be elected and qualified, and who shall have full power and authority to make and establish all needful rules and regulations for the government of the said town.

President to
enter land.

SECT. 4. It shall be the duty of the president, with the consent of the town council of said town corporate, to enter so much land within the corporate limits of said town, as

can be entered under the provisions of the act of congress, entitled "An Act for the relief of citizens of towns upon the lands of the United States under certain circumstances, approved May 23, 1854.

SECT. 5. It shall be the duty of the town council, as soon as the title to said lands shall be obtained, pursuant to the third and fourth sections of this act, to ascertain the number of persons entitled legally or equitably to lots or squares within said town, and to deed, under the hand of the president and seal of the corporation, to every such person as aforesaid: *Provided*, That any person or persons to whom lots or squares shall be deeded, shall previously have paid the sum of one dollar for each deed and acknowledgment so required to be made.

Town council
to deed land
equitably.

Proviso.

SECT. 6. If any vacancy should occur in any of the offices of the town council aforesaid, a quorum of said town council, duly assembled, shall at any time fill said vacancy.

Of vacancy in
council.

SECT. 7. This act shall take effect from and after its passage.

Take effect,
when.

Approved April 24, 1862.

W. JAYNE, *Governor*.

CHAPTER 22.

AN ACT TO INCORPORATE THE TOWN OF RICHLAND.

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

SECTION 1. That so much land as is contained in the south half of the north-east one quarter of section twenty-nine, township ninety-two north of range forty-nine west, be, and the same is hereby, created a town corporate by the name of Richland, and shall have and enjoy all the powers, privileges, and responsibilities usually enjoyed by municipal corporations.

The town of
Richland.

SECT. 2. That, for the good order and government of said town, it shall be lawful, and there shall be established a president, recorder, and three trustees, who shall constitute the

The town coun-
cil.

town council of said town, and shall be known as "The Town Council of Richland," and any three of whom shall constitute a quorum for the transaction of business.

Who compose same — with what powers.

SECT. 3. P. Bliss as president, M. M. Rich as recorder, and A. R. Phillips, W. Frisbie, and Ole Kittleson, shall be known and are hereby constituted the town council of said town, who shall hold their respective offices for one year, and until their successors shall be elected and qualified, and who shall have full power and authority to make and establish all needful rules and regulations for the government of said town.

President to enter land.

SECT. 4. It shall be the duty of the president, with the consent of the town council of said town corporate, to enter so much land within the corporate limits of said town as can be entered under the provisions of the act of congress, entitled "An Act for the relief of citizens of towns upon the lands of the United States under certain circumstances," approved May 23, 1854.

Town council to deed land equitably.

SECT. 5. It shall be the duty of the town council, as soon as the title to the said lands shall be obtained pursuant to the third and fourth sections of this act, to ascertain the number of persons entitled legally or equitably to lots or squares within said town, and to deed, under the hand of the president and seal of the corporation, to every such person as aforesaid: *Provided*, That any person or persons to whom lots or squares shall be deeded, shall previously have paid the sum of one dollar for each deed and acknowledgment so required to be made.

Proviso.

Of vacancy in council.

SECT. 6. If any vacancy should occur in any of the offices of the town council aforesaid, a quorum of said town council duly assembled, shall at any time fill said vacancy.

Take effect, when.

SECT. 7. This act shall take effect from and after its passage.

Approved May 12, 1862.

W. JAYNE, *Governor*.

CHAPTER 23.

AN ACT TO INCORPORATE THE TOWN OF SPRINGFIELD.

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

SECTION 1. That so much land as is contained in the south-east quarter of section number twenty-three, and the east half of the south-west quarter of section twenty-three, and the fractional part of the north-east quarter of section number twenty-six, and the north-east quarter of the north-west quarter of section number twenty-six, in township number ninety-three north, of range number sixty west, be, and the same is hereby, created a town corporate, by the name of Springfield, and shall have and enjoy all the powers, privileges, and responsibilities usually enjoyed by municipal corporations.

SECT. 2. That, for the good order and government of said town, it shall be lawful, and there shall be established a president, recorder, and three trustees, who shall constitute the town council of said town, and shall be known as "The Town Council of Springfield," and any three of whom shall constitute a quorum for the transaction of business.

SECT. 3. Charles M. Cooper as president, Richard M. Johnson as recorder, and Samuel Hardy, Jacob Teele, and Jonathan Gates, shall be known and are hereby constituted the town council of said town, who shall hold their respective offices for one year, and until their successors shall be elected and qualified, and who shall have full power and authority to make and establish all needful rules and regulations for the government of said town.

SECT. 4. It shall be the duty of the president, with the consent of the town council of said town corporate, to enter so much land, within the corporate limits of said town, as can be entered under the provisions of an act of congress, entitled "An Act for the relief of citizens of towns upon the lands of the United States, under certain circumstances," approved May 23, 1854.

SECT. 5. It shall be the duty of the town council, as soon as the title to said lands shall be obtained, pursuant to the

third section of this act, to ascertain the number of persons entitled, legally or equitably, to lots or squares within said town, and to deed, under the hand of the president and seal of the corporation, to every such person entitled as aforesaid:

Proviso.

Provided, That any person or persons to whom lots or squares shall be so deeded, shall previously have paid the sum of one dollar, for each deed and acknowledgment so required to be made.

Of vacancy in council.

SECT. 6. If any vacancy should occur in any of the offices of the town council aforesaid, a quorum of said town council, duly assembled, shall, at any time, fill the vacancy.

Take effect, when.

SECT. 7. This act to take effect from and after its passage, and approval by the governor.

Approved April 30, 1862.

W. JAYNE, *Governor*.

CHAPTER 24.

AN ACT TO INCORPORATE THE TOWN OF ST. JOSEPH.

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

Town of St. Joseph.

SECTION 1. That so much land as is contained in the town of St. Joseph, on the Pembina river, be, and the same is hereby, created a town corporate, by the name of St. Joseph, with all the powers, privileges, and responsibilities usually enjoyed by municipal corporations.

President and common council—their powers.

SECT. 2. That the corporate authorities of said town shall be a president and common council, which shall be known as "The President and Common Council of St. Joseph." That for the good order and government of said town, it shall be lawful for the president thereof, on the first Monday of September, A. D. 1862, to appoint not less than three discreet persons as the common council, who shall [have served] until their successors be chosen and qualified, and who, with the consent of the president, shall have full power and authority to make and establish all needful rules and regulations for the government of said town corporate.

SECT. 3. It shall be the duty of the common council, as soon as the title to the said lands shall be obtained, to ascertain the number of persons legally or equitably entitled to lots or squares within said town, and to deed, under the hand of the president and seal of the corporation, to every such person entitled as aforesaid: *Provided*, That every person or persons to whom lots or squares shall be so deeded, shall previously have paid the sum of one dollar for each deed and acknowledgment, so required to be made.

Council to deed lands equitably.

Proviso.

SECT. 4. It shall be the duty of the president and common council to cause a plat of the survey of said town to be recorded in the office of the register of the county wherein said town is located, in conformity with the provisions of the statutes authorizing the record of town plats in this territory.

To cause plat to be recorded.

SECT. 5. That John B. Wilkie shall be the first president of said town corporate, and shall serve from and after this act, until his successor shall be chosen and qualified, under such rules and regulations as the common council, with the consent of the president, shall establish; and in the event of any vacancy of the president, the common council may fill the same, and if in the common council, the same shall be filled by the president of the said town corporate.

John B. Wilkie first president.

Of vacancy.

SECT. 6. This act shall take effect and be in force from and after its passage.

Take effect, when.

Approved May 5, 1862.

W. JAYNE, *Governor*.

CHAPTER 25.

AN ACT TO INCORPORATE THE TOWN OF YANKTON.

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

SECTION 1. That so much land as is contained in the following described tracts, to wit: lots number three and four (3 and 4), in section eighteen (18); the north half of the south-west quarter of section eighteen (18); the north-west

The town of Yankton.

fractional quarter of section eighteen (18); and the south half of the south-west quarter of section seven (7), in township ninety-three (93), north of range fifty-five (55) west of the fifth principal meridian; and lots number three and four of section thirteen (13); the north-east quarter of section thirteen (13); and the south half of the south-east quarter of section twelve (12), in township ninety-three (93), north of range fifty-six (56) west of the fifth principal meridian, be, and the same is hereby, a town corporate, by the name of Yankton, and shall have and enjoy all the powers, privileges, and responsibilities usually enjoyed and possessed by municipal corporations.

The town council.

SECT. 2. That, for the good order and government of said town, it shall be lawful, and there shall be established a recorder and three trustees. Said trustees, at their first meeting, shall elect one of their members president of the town council. The president, two trustees, and recorder shall constitute the town council of said town, and shall be known and styled as "The Town Council of Yankton," and the president, recorder, and one trustee shall constitute a quorum for the transaction of business.

In case of absence or vacancy.

SECT. 3. In case of the absence of the president, the two trustees and recorder may elect one of the trustees present, president pro tem.; and, in the event of a vacancy or vacancies of either of the members of the council, by death, removal, or otherwise, any two members of said council may order an election to fill such vacancy or vacancies.

Names of first town council, and their powers.

SECT. 4. William Miner as recorder, and Henry C. Ash, Charles S. White, and Justus Townsend, as trustees (one of said trustees to be president), shall be known, and are hereby constituted the town council of said town, who shall hold their respective offices for one year from and after the approval of this act, and until their successors shall be elected and qualified; and said town council shall have full power and authority to make and establish all needful rules, regulations, and ordinances for the government of said town.

Election, how ordered and held.

SECT. 5. The president of said council shall order an election to be held, within the corporate limits of said town, on the last Monday in August, A. D. 1862, for the election of three trustees, recorder, treasurer, assessor, and marshal. Said

president shall also appoint the judges and clerks of said election, and shall give at least ten days' notice thereof. Said officers, so elected, shall hold their respective offices for one year, and until their successors are elected and qualified.

SECT. 6. Any legal voter of this territory, who shall have been a resident of said town, within the corporate limits thereof, thirty days next preceding a municipal election, shall be entitled to vote at said election, and any legal voter shall be eligible to any office mentioned in this act.

Qualifications
of voters.

SECT. 7. Said officers, before entering upon the duties of their respective offices, shall take and subscribe to an oath, before some person qualified and authorized to administer an oath, to support the constitution of the United States and the organic act and laws of this territory, and to faithfully perform the duties of their respective offices, which said oath shall be filed in the office of the recorder of said town council.

Officers to
make what oath.

SECT. 8. The treasurer, recorder, assessor, and marshal shall give such bonds as may be required of them by the town council, which said bonds must be approved by the council, and filed with the president.

Officers give
bonds.

SECT. 9. Said town council is hereby vested with full power and authority to prescribe the duties of the officers of said corporation, to provide for the keeping of the public money and property, to provide for the levying and collection of taxes, to order assessments upon all taxable property, real and personal, within said town limits, for the auditing and payment of claims against said corporation, for the working and improvement of roads, streets, and alleys, for the granting and issuing of licenses, abating nuisances, and all other matters usually attended to by like corporations.

Powers of town
council.

SECT. 10. The said council may hold its regular meetings at such times and places, within said town, as may be provided for by ordinance, and may hold called sessions, by the president giving proper notice thereof, may establish all needful rules respecting town elections, and the returns and the counting of the votes.

Of regular and
special meetings.

SECT. 11. The president, with the advice and consent of the council, is hereby authorized and empowered to enter so much land, within the corporate limits of said town, not em-

President to
enter lands.

braced in any treaty grants, as can be entered under the provisions of an act of congress, entitled "An Act for the relief of citizens of towns, upon the lands of the United States, under certain circumstances," approved May 23, 1854; and, as soon as the title to said lands shall be obtained, pursuant to the provisions of said act of congress, the said president, with the advice and consent of the town council, shall convey, by deed or deeds of special warranty, lots or blocks, within said town, to such person or persons or company as may be entitled thereto, and said deed or deeds, so made and executed, shall be valid in law and equity.

Town council
to fix fees of officers.

SECT. 12. The said town council is hereby authorized to regulate and fix the compensation and fees of all the officers mentioned and provided for in this act.

President has
what powers.

SECT. 13. The said president of the town council of Yankton is hereby authorized and empowered to take acknowledgments to deeds, bonds, and all other papers relative to lands within the corporate limits, and to administer oaths, and his fees in all such cases shall be the same as are allowed to justices of the peace for like business. The said president shall provide himself with a seal containing the following words: "President of the Town Council of Yankton, D. T."

Officers deliver
what to successors.

SECT. 14. At the expiration of the term of office of either of the officers provided for in this act, he or they shall hand over to his or their successor or successors in office, all moneys, papers, books, and property in his hands belonging to said office.

Take effect,
when.

SECT. 15. This act shall take effect from and after its passage, and approval by the governor.

Approved May 8, 1862.

W. JAYNE, *Governor.*