

Sec. 3. The Governor shall appoint three persons, being residents and legal voters of said county, commissioners, with full power and authority to do and perform all acts and duties devolving upon the board of county commissioners of any organized county of this Territory. The said board of county commissioners shall have power to appoint all other officers that may be required to complete and perfect the organization of said county.

Governor to appoint three county commissioners. Power conferred upon said commissioners.

Sec. 4. It shall be the duty of said board of county commissioners to satisfy themselves that there are twenty legal and duly qualified voters in said county; and upon such fact ascertained, shall proclaim the same and declare the said county duly organized.

When to proclaim county duly organized.

Sec. 5. The county of Pembina shall be entitled to one representative in the legislative assembly of this Territory, who shall be elected at the annual election to be held on the second Tuesday of October, A. D., 1867.

County entitled to one representative.

Sec. 6. All acts or parts of acts which conflict with the provisions of this act, be and the same are hereby repealed.

Acts repealed.

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

When to take effect.

Approved, January 9th, 1867.

DIVORCE AND ALIMONY.

CHAPTER XVI.

AN ACT CONCERNING DIVORCE AND ALIMONY.

- Section 1. Causes for which divorces may be granted.
2. May also grant divorce where either party has procured a divorce in any other Territory or State.

DIVORCE AND ALIMONY.

3. Manner of commencing actions, and the proceedings under this act.
4. When divorce may be granted. Legitimacy of children not to be effected. Order for care and maintenance of children.
5. Admissions of parties to be received.
6. Proof of cohabitation and reputation of marriage to be admitted.
7. Rights of wife where divorce is granted by reason of aggressions of husband. When granted by reason of aggression of wife
8. Applications to be made in county where complainant resides, or where cause of action arose. Petitioner to be resident of Territory ninety days before filing petition.
9. Court may grant alimony during pendency of suit.
10. Wife may file petition for alimony alone. For what causes.
11. Proceedings for alimony alone to be conducted same as for divorce. Care and disposition of children. Rights of wife in such case.
12. Residence of husband not to preclude wife from provisions of this act.
13. When change of venue to be allowed. Where cause may be removed to on change of venue.
14. When husband may be enjoined from disposing of or interfering with property. Proceedings for such injunction.
15. When witness to be examined in open court. When depositions to be taken. Notice of taking depositions, how given.
16. Either party may appeal to supreme court on questions of law.
17. Acts declared null and void.
18. When act to take effect.

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

Causes for which divorce may be granted. Section 1. That the several district courts of this Territory shall have cognizance of granting divorces, for the following causes:

First. Where either of the parties had a former wife or husband living, at the time of solemnizing the second marriage;

Second. Where either of the parties shall have been willfully absent from the other five years;

Third. Adultery;

Fourth. Impotency; also, where the wife at the time of marriage, was pregnant by another than her husband, and the husband shall be ignorant of such pregnancy;

Fifth. Extreme cruelty;

Sixth. Habitual drunkenness;

Seventh. Where either party has been or shall hereafter be sentenced to imprisonment and actually imprisoned in the penitentiary of this Territory or state prison of any state or territory of the United States or the District of Columbia, for any violation of the laws of the United States, or where either party has been or shall hereafter be sentenced to imprisonment and actually imprisoned in the penitentiary in this Territory, for any violation of the criminal laws of this Territory, or in the penitentiary or state prison of either of the United States, or any of the territories thereof, or the District of Columbia, for any crime or offence against the laws of either said states or territories or of the District of Columbia; *Provided*, Such crime or offence against the laws of such state, territory, or District of Columbia, be of the same character or grade as is or may be, by the laws of this Territory, punished by imprisonment in the penitentiary; *And, provided also*, That all applications for divorces under the ninth [seventh] clause of this section shall be made during the imprisonment of the adverse party.

Sec. 2. That in addition to the causes of divorce already declared in this act, the several district courts of this territory shall have power to grant a divorce in favor of a party applying for the same, whenever it shall be made to appear that the husband or wife of such party has obtained a decree of divorce in any of the courts of any other territory or state, by virtue of which the party who shall have obtained such decree shall have been released from the obligation of the marriage contract, while the same remains binding upon the other party.

May also grant divorce where either party has procured a divorce in any other territory or state.

Manner of commencing action and the proceedings under this act.

Sec. 3. The manner of commencing an action for a divorce, the issuing and service of the summons, whether the service be made personally or by publication, and all the proceedings pertaining to such action for divorce, shall be the same as in other cases, and as is now or may hereafter be provided by the Code of Procedure of this Territory.

When divorce may be granted legitimacy of children not to be affected Order for care and maintenance of children

Sec. 4. The party, by such summons, shall be required to appear and answer said petition; and, if the party complained of shall not appear, or, appearing, shall admit or deny the allegations in said petition, the court shall thereupon proceed to hear and determine the same; and if, upon hearing any or all of the charges in said petition, (to be confined to the causes enumerated in the first section of this act.) it shall, by disinterested testimony, be proved to the satisfaction of said court, the court may proceed to pronounce the marriage contract dissolved, and both of the parties released from the obligation of the same; that the dissolution of such marriage shall in no wise effect the legitimacy of the children thereof; and the court shall make such order for the disposition, care and maintenance of the children of such marriage, if any there be, as shall be just and reasonable.

Admission of parties to be received

Sec. 5. That, upon the hearing of the petitions for divorce, the court may admit proofs of the admission of the parties to be received in evidence, carefully excluding such as they shall find reason to believe have been obtained by connivance, fraud, coercion, or other improper means.

Proof of cohabitation and reputation of marriage to be admitted.

Sec. 6. That, in all cases where an application is made for divorce, under the provisions of this act, proof of cohabitation and reputation of the marriage of the parties shall be admitted, and, at the discretion of the court or jury trying the cause, may be received as sufficient evidence of such marriage, any law, usage or custom to the contrary notwithstanding.

Rights of wife where divorce is granted by reason of aggression of husband

Sec. 7. That where a divorce shall be granted by reason of the aggression of the husband, the wife shall be restored to all her lands, tenements and hereditaments, not previously disposed of, and to her maiden name, if she so desires, and shall be allowed such alimony out of her husband's real and personal property as the court shall think reasonable, having due regard

to the property which came to him by marriage, and the value of his real and personal estate, at the time of said divorce; which alimony may be allowed to her in real or personal property, or both, or by decreeing to her such sum of money, payable either in gross or installments, as the court may deem just and equitable; and, if the wife survive her husband, shall, also be entitled to her right of dower in the real estate of her husband, not allowed her as alimony, of which he was seized at any time during the coverture, and to which she had not relinquished her right of dower; but, if the divorce shall arise by reason of the aggression of the wife, she shall be barred of all right of dower in the lands of which her husband shall be seized at the time of the filing of the petition for divorce, or which he may thereafter acquire, whether there be issue not; and the court shall order to her restoration of the whole of her lands, tenements or hereditaments, not previously disposed of, and also, such share of her husband's real or personal property, or both, as to such court may appear just and reasonable.

When granted by reason of aggression of wife.

Sec. 8. That all applications for divorce or for alimony under the provisions of this act, shall be made in the county where the complainant bona fide resides at the time of making such application, or in the county where the cause of complaint arose or took place; and the court shall hear and determine the same, whether the marriage took place or the cause of divorce occurred within the territory or elsewhere; *Provided*, The petitioner shall be a resident of the territory at least ninety days before the filing of his or her petition in the clerk's office of said court.

Application to be made in county where complainant resides, or where cause of action arose.

Petitioner to be resident of territory ninety days before filing petition.

Sec. 9. The said court shall have power to grant alimony to the wife for her sustenance, during the pendency of a petition for divorce, filed for any of the causes aforesaid.

Court may grant alimony during pendency of suit.

Sec. 10. That the wife may file her petition, as aforesaid, in the district court, for alimony alone, without the prayer for the dissolution of the marriage contract, for the following causes, to wit:

Wife may file petition for alimony alone. For what causes.

First. Adultery;

Second. Gross neglect of duty;

Third. Abandonment of the wife without good cause;

Fourth. When there is a separation in consequence of ill-treatment on the part of a husband;

Fifth. Habitual drunkenness; and

Sixth. Confinement in the penitentiary of Dakota, or in the penitentiary or state prison of any of the United States, or either of the territories thereof, or of the District of Columbia, for any crime or offense of the same character or grade as is or may be, by the laws of this territory punished with imprisonment in the penitentiary, in which case the application shall be made while the husband is so confined.

Proceedings for alimony alone to be conducted same as for divorce.

Care and disposition of children.

Rights of wife in such case.

Residence of husband not to preclude wife from provisions of this act.

When change of venue to be allowed.

Sec. 11. The proceedings on said petition for alimony alone shall, in all respects be conducted as in an application for divorce, under the provisions of this act; and the said court shall, upon satisfactory proof of any or all the charges in said petition, make such order for the disposition, care and maintenance of the children of such marriage, if any there be, as shall be just and reasonable, and restore to the wife all her lands, tenements and hereditaments not previously disposed of, and shall give judgment in her favor for such alimony, out of her husband's real and personal property, as may be just and equitable, to be allowed to her in real or personal property, or both, or in moneys, payable either in gross or in installments; and the court shall, also by their said judgment, vest in her the right and power to acquire, hold, and manage and dispose of property, money and choses in action, and to bring and maintain suits in her own behalf, free from the control or interference of her said husband; or the same may be vested in trustees for her use or benefit.

Sec. 12. That when the wife shall file her petition, under the provisions of this act, praying for a divorce from her husband, or for alimony alone, the residence of her husband shall not be so construed as to preclude her from the provisions of this act.

Sec. 13. A change of venue shall be allowed, by any court in which any petition for divorce or alimony may be filed for the hearing and determination of the same, upon the petitioner making application therefor, and making an affidavit in his or her behalf that a fair and impartial hearing and determination

can not be had before the court in which the petition is filed ; and, in case of such change of venue the cause shall be removed to any county in any judicial district in the territory where court may by law be held for hearing and determination.

Where cause may be removed to on change of venue.

Sec. 14. That any married woman may file her petition in any district court, setting forth that her husband from habitual intemperance or any other cause, is about to waste and squander the property, (legal or equitable) money, credits and choses in action to which she is entitled by her own right, or any part thereof, or is proceeding fraudulently to convert the same or any part thereof, to his own use, for the purpose of placing the same beyond her reach and depriving her of the benefit thereof; and the court, upon the hearing of the case, may enjoin the husband from disposing of or otherwise interfering with such property, moneys, credits, and choses in action, and may appoint a receiver to manage and control the same, for the benefit of the wife, and may, also, make such other order in the premises as they may deem just and proper; and, upon the filing of such petition, a provisional injunction may be allowed as in other cases; and such petition shall be filed in the county where said petitioner resides, and the husband of said petitioner shall be made a party defendant to said petition, in the same manner as is provided for by the second section of this act, in the case of a petition for divorce.

When husband may be enjoined from disposing of or interfering with property.

Proceedings for such injunction.

Sec. 15. In all applications for divorce or alimony alone, and in cases where the petition is filed under the eleventh section of this act, where the witness shall reside in the county in which the application is made or the petitions filed, they shall be examined in open court; but, if they shall reside without the county or are unable to attend court, their depositions may be taken as in other cases; but where the adverse party shall not reside within the county, where the application or petition is pending, or in an adjoining county, or shall not have an attorney residing in the county where such application or petition is pending, or in an adjoining county, the usual notice of the time and place of taking such deposition shall not be required; but in such cases, notice of the time and place of taking such depositions shall be given by publication in some newspaper

When witnesses to be examined in open court.

When deposition to be taken.

Notice of taking
depositions to
how given.

printed within the territory, for three consecutive weeks before the time of taking such depositions, and a copy of such notice shall, at or before the first publication thereof be deposited in the post office, properly directed to the party defendant, at his or her place of residence, when such residence is known to the petitioner, or can, with reasonable diligence, be ascertained by him or her.

Either party
may appeal to
supreme court
on questions of
law.

Sec. 16. In actions for divorce, under the provisions of this act, appeals shall be allowed on questions of law, from the district to the supreme court, as in other cases, and the manner of taking such appeal shall be as provided by law.

Acts declared
null and void.

Sec. 17. That all acts or parts of acts, which in any way conflict with the provisions of this act are hereby declared null and void.

When act to
take effect.

Sec. 18. This act shall take effect and be in force from and after its passage.

Approved, January 10th, 1867.

DEBTS.

CHAPTER XVII.

AN ACT LIMITING THE TIME FOR COLLECTION OF DEBTS.

Section 1. What debts forever barred.

2. Accounts barred after two years. Promissory notes, bills of exchange &c., barred after six years.
3. When parties have absented themselves from the Territory.
4. Acts repealed.
5. When to take effect.