

**GENERAL LAWS.**

OF THE

**TERRITORY OF DAKOTA.**

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**CODE OF CIVIL PROCEDURE.**

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

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

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

**GENERAL DEFINITIONS AND DIVISIONS.**

**SECTION 1.** Division of remedies.

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

**SECTION 1. Remedies.** Remedies in the courts of justice are **Remedies** divided into:

1. Actions;
2. Special proceedings.

Definition of  
action

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

Special proceeding

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

Division of  
actions

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

1. Civil;
2. Criminal.

Criminal.

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

Civil

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

Remedies not  
merged.

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

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## PART I.

### OF THE COURTS OF JUSTICE AND THEIR JURISDICTION.

TITLE I. Of the courts in general.

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

#### TITLE I.

##### OF THE COURTS IN GENERAL.

SECTION 8. The several courts of this Territory.

9. Their jurisdiction generally.

Of the courts  
in general.

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

1. The supreme court;

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

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

## TITLE II.

### THE SUPREME COURT.

SECTION 10. Its jurisdiction.

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

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

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

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

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

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

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

its powers.

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

Terms  
Preferences of  
causes.

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

Concurrence of  
Judges.

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



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

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

Court, where held.  
Adjournment.

### TITLE III.

#### OF THE DISTRICT COURTS.

SECTION 15. District court. Terms.

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

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

District court.  
Terms.

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

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

Special terms

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

Inability of judge.

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

Business out of court.

Rooms &amp;c

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

## TITLE IV.

### OF PROBATE COURTS.

SECTION 20. Jurisdiction and proceedings therein.

Probate courts]  
jurisdiction

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

## TITLE V.

### OF COURTS OF JUSTICES OF THE PEACE.

Courts of jus-  
tices of the  
Peace.  
Their jurisdic-  
tion and prac-  
tice.

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

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## PART II.

### OF CIVIL ACTIONS.

TITLE I. Of their form.

II. Of the time of commencing them.

III. Of the parties.

IV. Of the place of trial.

V. Of the manner of commencing them.

VI. Of the pleadings.

VII. Of the provisional remedies.

VIII. Of the trial and judgment.

IX. Of the execution of the judgment.

TITLE X. Of the costs.

XI. Of appeals.

XII. Of the miscellaneous proceedings.

XIII. Actions in particular cases.

XIV. Provisions relating to existing suits.

XV. General provisions.

## TITLE I,

### FORM OF CIVIL ACTION.

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

23. Parties, how designated.

24. Actions on judgments.

25. Feigned issues abolished.

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

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

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

Parties, how designated.

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

Actions on judgment.

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

Feigned issues abolished.

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

## TITLE II.

### TIME OF COMMENCING CIVIL ACTIONS.

#### CHAPTER I. Actions generally.

II. For the recovery of real property.

III. Other than for the recovery of real property.

IV. General provisions.

#### CHAPTER I.

##### TIME OF COMMENCING ACTIONS IN GENERAL.

SECTION 26. Repeal of existing limitations.

27. Period of limitations. Answers.

Repeal of exist-  
ing limitations.

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

Answerd.

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

#### CHAPTER II.

##### TIME OF COMMENCING ACTIONS FOR THE RECOVERY OF REAL PROPERTY.

SECTION 23. When the people will not sue.

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

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

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

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

1. Such right or title shall have accrued within forty years before any action or other proceeding for the same shall be commenced; or unless,

2. The people, or those from whom they claim, shall have received the rents and profits of such real property, or of some part thereof, within the space of forty years.

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

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

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

Seizin within  
twenty years,  
when necessary

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

in action or de-  
fence founded on  
title.

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

Action after  
entry or right  
of entry.

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

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

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

Occupation  
under written  
instrument

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

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

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

1. Where it has been usually cultivated or improved;
2. Where it has been protected by a substantial inclosure;
3. Where, although not inclosed, it has been used for the supply of fuel or of fencing timber, for the purposes of husbandry, or the ordinary use of the occupant;
4. Where a known farm or a single lot has been partly improved, the portion of such farm or lot that may have been left not cleared or not inclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

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

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

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

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

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

Descent cast.

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

Persons under disabilities.

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

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

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

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

### CHAPTER III.

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

##### SECTION 42. Limitations prescribed.

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



**SECTION 48. Action upon a current account.**

49. Action for penalties.

50. Action for other relief.

51. Action by the people.

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

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

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

2. An action upon a sealed instrument.

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

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

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

3. An action for trespass upon real property ;

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

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

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

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

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

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

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

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

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

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

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

**Action upon  
current account**Sec. 48. *Action upon a current account.* In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.**For penalties &c,**Sec. 49. *Actions for penalties &c.* An action upon a statute, for a penalty or forfeiture given in whole or in part to any person who will prosecute for the same, must be commenced within one year after the commission of the offence ; and if the action be not commenced within the year by a private party, it may be commenced within two years thereafter in behalf of the people of this Territory, by the district attorney of the county where the offence was committed.**For relief.**Sec. 50. *Actions for other relief.* An action for relief not hereinbefore provided for must be commenced within ten years after the cause of action shall have accrued.**Actions by the  
people.**Sec. 51. *Actions by the people.* The limitations prescribed in this chapter shall apply to actions brought in the name of the people of this Territory, or for their benefit, in the same manner as to actions by private parties.

## CHAPTER IV.

## GENERAL PROVISIONS AS TO THE TIME OF COMMENCING ACTIONS.

SECTION 52. When action deemed commenced.

53. Exception, defendant out of Territory.

54. Exception as to person under disabilities.

55. Death of person entitled before limitation expires.

56. Suits by aliens.

57. Where judgment reversed.

58. Stay of action by injunction, &amp;c.

**SECTION 59.** Disability must exist when right accrued.

60. Two or more disabilities.

61. This title when not to apply.

62. The like.

63. New promise must be in writing.

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

When action deemed commenced.

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

Exception, defendant out of Territory.

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

Exception, persons under disabilities.

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

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

Death of persons  
entitled before  
limitation ex-  
pires.

Sec. 55. *Death of person entitled before limitation expires.*

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

Actions by  
aliens.

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

Where judgment  
reversed

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

Time of stay by  
injunction.

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

Disability must  
exist when  
right of action  
accrued.

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

Where several  
disabilities, all  
must be re-  
moved.

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

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

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

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

## TITLE III.

### PARTIES TO CIVIL ACTIONS.

**Section 64.** Party in interest to sue. Action by grantee of land held adversely.

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

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

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

Assignment of  
thing in action.

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

Action by  
executor,  
trustee, &c.

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

Action by and  
against a  
married woman

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

1. When the action concerns her separate property, she may sue alone;

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

Infant to ap-  
pear by guardian

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

Appointment  
of guardian.

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

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

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

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

**Plaintiffs**

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

**Defendants**

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

**Parties to be joined, &c.**

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

**Parties to bills, notes, &c.**

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

**Action when not to abate**

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



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

Sec. 75. *Court may determine controversy, &c. Interpleader.*

*Courts may  
determine  
controversy &c.*

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

## TITLE IV.

### OF THE PLACE OF TRIAL OF CIVIL ACTIONS.

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

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

78. Actions to be tried where the parties reside.

79. Changing place of trial.

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

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

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

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

tion to be  
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ties reside

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

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

the place of trial in the following cases :

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

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

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

## TITLE V.

### MANNER OF COMMENCING CIVIL ACTIONS.

#### SECTION 80 Actions how commenced.

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

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

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

Notice to be  
inserted in  
summons

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

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

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

Complaint,  
service of

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

Notice of no  
personal claim

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

Notice of lis  
pendens.

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

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

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

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

Service of  
summons

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

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

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

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

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

Summons,  
return of

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

Service by  
publication

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

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

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

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

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

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

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

Service of  
publication.

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

*Joint and  
several debtors*

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

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

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

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

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



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

When service  
complete.

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

Proof of  
service

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

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

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

Jurisdiction.  
Appearance

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

## TITLE VI.

### CHAPTER I. The complaint.

#### II. The demurrer.

#### III. The answer.

#### IV. The reply.

#### V. General rules of pleading.

#### VI. Mistakes and amendments.

## CHAPTER I.

## THE COMPLAINT.

## SECTION 93. Forms of pleading.

94. Complaint.

95. Complaint, what to contain.

Forms of  
pleadings

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

Complaint

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

What to  
contain

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

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

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

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

## CHAPTER II.

## THE DEMURRER.

## SECTION 96. Defendant to demur or answer.

97. When the defendant may demur.

98. Demurrer, what to specify.

99. How to proceed if complaint be amended.

100. Objection not appearing on complaint.

101. Objection, when waived.

Defendant to  
demur or  
answer

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

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

- 1, That the court has no jurisdiction of the person of the defendant, or the subject of the action; or,
  - 2, That the plaintiff has not legal capacity to sue; or,
  - 3, That there is another action pending between the same parties, for the same cause; or,
  - 4, That there is a defect of parties, plaintiff or defendant; or,
  - 5, That several causes of action have been improperly united;
- or,
- 6, That the complaint does not state facts sufficient to constitute a cause of action.

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

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

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

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

## CHAPTER III.

### THE ANSWER.

**SECTION** 102. Answer, what to contain.

103. Counter-claim. Several defences.

104. Demurrer and answer, when allowed.

105. Sham and irrelevant defences to be stricken out.

Answer, what  
to contain.

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

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

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

Counter claim;

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

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

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

Demurrer and  
answer, when  
allowed

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

Sham and  
irrelevant  
defences

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

## CHAPTER IV.

### THE REPLY.

Section 106. Reply. Demurrer to answer.

107. Motion for judgment upon answer.

108. Demurrer to reply.

Reply. Demurrer  
to answer

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

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

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

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

## CHAPTER V.

### GENERAL RULES OF PLEADING.

**SECTION 100.** Pleadings to be subscribed and verified.

110. Pleadings, how verified.

111. How to state an account in pleading.

112. Pleadings to be liberally construed.

113. Irrelevant or redundant matter to be stricken out, and indefinite matter made more definite.

114. Judgment, how to be pleaded.

115. Conditions precedent, how to be pleaded.

116. Private statutes, how to be pleaded.

117. Libel and slander, how stated in complaint.

118. Answer in such cases.

119. Answer in actions to recover property distrained for damage.

120. What causes of action may be joined.

121. Allegation not denied, when to be deemed true.

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

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

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

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

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

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

Irrelevant or  
redundant. In-  
definite or uncer-  
tain

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

Judgments, how  
to be pleaded

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

Conditions  
precedent, how  
to be pleaded

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

Private statutes  
how pleaded

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

Libel and  
slander

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

Answer

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

Answer to  
recover property  
distrained for  
damage

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

What causes of  
action joined

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

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

or

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

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

Allegation when  
deemed true

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



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

## CHAPTER VI.

### MISTAKES IN PLEADING, AND AMENDMENTS.

SECTION 122. Material variances, how provided for.

123. Immaterial variances, how provided for.

124. What not to be deemed a variance.

125. Amendments of course and after demurrer.

126. Amendments by the court.

127. Court may give relief in case of mistake.

128. Suing a party by a fictitious name.

129. No error or defect to be regarded unless it affect substantial rights.

130. Supplemental complaint; answer and reply.

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

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

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

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

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

Amendment by  
order

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

Relief in case of  
mistake

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

Fictitious name

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

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

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

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

## TITLE VII.

### OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS.

#### CHAPTER I. Arrest and bail.

II. Claim and delivery of personal property.

III. Injunction.

IV. Attachment.

V. Provisional remedies.

#### CHAPTER I.

##### ARREST AND BAIL.

SECTION 131. No person to be arrested in civil action, except as prescribed.

132. Arrest in civil actions, in what cases.

133. Order for arrest, by whom to be made.

134. Affidavit to obtain order for arrest. To what actions this chapter applies.

135. Security by plaintiff before obtaining order for arrest.

136. Order for arrest, when it may be made, and its form.

137. Original affidavit and order to be delivered to sheriff, and copy to be delivered to defendant.

138. Arrest, how made.

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

**Arrests, how made**

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

**In what cases**

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

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

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

or in a professional employment ;

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

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

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

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

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

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

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

order, form of.

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

Affidavit, to whom delivered

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

Arrest, how made

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

Defendant discharged on giving bail.

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

Bail, how given.

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

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

Surrender of defendant.

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

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

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

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

Bail, how proceeded against.

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

How exonerated.

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

Delivery of undertaking to plaintiff.

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

Notice of justification new bail.

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

Qualifications of bail.

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

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

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

Justification of bail

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

Allowance of bail

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

Deposit with sheriff

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



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

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

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

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

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

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

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

Bail liable to  
sheriff

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

Vacating order  
of arrest

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

Affidavits on  
motion

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

## CHAPTER II.

### CLAIM AND DELIVERY OF PERSONAL PROPERTY.

SECTION 159. Claim and delivery of personal property.

160. Affidavit and its requisites.

161. Requisition to sheriff to take and deliver property.

162. Security by plaintiff.

163. Exception to sureties.

164. Defendant, when entitled to re delivery.

165. Justification of defendant's sureties.

166. Qualification and justification of sureties.

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

168. Property, how kept.

169. Claim of property by third person.

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

Delivery of  
personal prop-  
erty

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

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

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

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

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

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

5, The actual value of the property.

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

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

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

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

**Defendant,  
when entitled to  
redelivery**

Sec. 164. *Defendant, when entitled to re-delivery.* At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required, within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section 162.

**Defendants  
sureties justifi-  
cation of**

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

**Qualification of  
sureties**

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

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

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

Property how taken when concealed

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

How kept

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

Claim of by third person

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

Notice of affidavit, filing of

## CHAPTER III.

## INJUNCTION.

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

Injunction by  
order

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

In what cases  
granted

Sec. 172. *Injunction in what cases.*

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

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

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

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

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

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

Injunction after answer

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

Injunction security on Damages

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

Order to show cause

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

Security upon injunction to suspend business of corporation

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

Motion to vacate or modify injunction

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

Affidavits on motion

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

## CHAPTER IV.

### ATTACHMENT.

Section 180. Property of foreign corporations, and of non-resident or absconding or concealed defendants, may be attached.

181. Attachment, by whom granted.

182. In what cases attachment may be issued. Affidavits to be filed.

183. Security on obtaining attachment.

184. Attachment, to whom directed, and what to require.

185. Mode of proceeding in executing attachment.

186. Proceedings in case of perishable property or vessels.

187. Interest in corporations or associations liable to attachment.

188. Attachment, how executed on property incapable of manual delivery.

189. Certificate of defendant's interest to be furnished by corporations.

190. Judgment, how satisfied.



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

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

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

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

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

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

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

Security on obtaining

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

Warrant, to whom directed.

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

Mode of proceeding in executing

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

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

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

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

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

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

Corporations to furnish certificate

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

Satisfaction of  
Judgment;

Sec. 120. *Judgment, how satisfied.* In case judgment be entered for the plaintiff in such action, the sheriff shall satisfy the same out of the property attached by him, if it shall be sufficient for that purpose:

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

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

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

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

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

Satisfaction of judgment

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

Action to recover notes &c.

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

Bond to sheriff how disposed

warrant shall be discharged, and the property released therefrom.

Discharge of  
attachment,  
return of  
property, &c

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

Defendant's  
undertaking

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

this section applicable to such undertaking shall be applied thereto.

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

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

## CHAPTER V.

### PROVISIONAL REMEDIES.

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

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

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

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

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

Powers of  
resolvers

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

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

## TITLE VIII.

### OF THE TRIAL AND JUDGMENT IN CIVIL ACTIONS.

#### CHAPTER I. Judgment upon failure to answer, &c.

- II. Issues and mode of the trial.
- III. Trial by jury.
- IV. Trial by the court.
- V. Trial by referees.
- VI. The manner of entering judgment.

#### CHAPTER I.

##### JUDGMENT UPON FAILURE TO ANSWER, &c.

SECTION. 198. Judgment defined.

199. Judgment on failure of defendant to answer, or for excess over counterclaim.



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

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

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

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

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

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

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

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

Judgment on  
frivolous  
demurrer &c

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

## CHAPTER II.

### ISSUES, AND MODE OF TRIAL.

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

## CHAPTER II.

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

1, Of law ; and 2, Of fact.

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

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

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

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

2, Upon new matter in the answer controverted by the reply ; or

3, Upon new matter in the reply, except an issue of law is joined thereon.

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

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

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

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

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

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

Either party  
may give notice  
of trial  
Note of issue

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

Order to dis-  
pose of issues

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

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

## CHAPTER III.

### TRIAL BY JURY.

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

## CHAPTER III.

Notice of trial,

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

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

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

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

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

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

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

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

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

Entry of verdict  
New trial

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

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

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

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

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

## CHAPTER IV.

### TRIAL BY THE COURT.

SECTION 218. Trial by jury, how waived.

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

220. Exceptions, how and when taken.

221. Proceedings upon judgment on issue of law.

## CHAPTER IV.

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

Trial by jury,  
how waived

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

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

Trial by court,  
judgment how  
given

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

Exceptions,  
manner of  
taking

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

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

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

Proceedings on  
judgment

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

## CHAPTER V.

### TRIAL BY REFEREES.

SECTION 222. All issues referable by consent.

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

224. Referees, how chosen.

## CHAPTER V.

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

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



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

## CHAPTER VI.

### MANNER OF ENTERING JUDGMENT.

Section 225. Judgment may be for or against any of the parties to the action; may grant defendant affirmative relief. Complaint may be dismissed for neglect to prosecute the action. Judgment against married woman.

226. The relief to be awarded to the plaintiff.

227. Rate of damages, where damages are recoverable.

228. Judgment in action for recovery of personal property.

229. Judgment, how directed.

230. Clerk to keep a judgment book.

231. Judgment to be entered in judgment book.

232. Judgment-roll.

233. Judgments, how and when to be docketed.

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

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

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

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

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

Dismissal of  
complaint

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

Judgment  
against married  
woman

Relief awarded  
to plaintiff

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

Rate of damages  
if recoverable

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

Judgment for  
personal prop-  
erty

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

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

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

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

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

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

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

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

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

## TITLE IX.

### OF THE EXECUTION OF THE JUDGMENT IN CIVIL ACTIONS.

#### CHAPTER I. The execution

#### II. Proceedings supplementary to the execution

### CHAPTER 1.

#### THE EXECUTION.

#### Section 234. Execution within five years of course

235. Execution can only be issued by leave of court after five years. Leave, how obtained

236. Judgments, how enforced

237. The different kinds of execution

238. To what counties execution may be issued. Execution against a married woman.

239. Execution against the person, in what cases

240. Form of the execution

241. Execution to be returned in sixty days

242. Existing laws relating to execution continued

Execution with-  
in five years of  
course

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

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

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

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

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

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

Against the  
person

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

Form of  
execution

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

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

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

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

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

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

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

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

## CHAPTER II.

### PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

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

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

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

## SECTION 246. Witnesses required to testify.

247. Compelling party or witnesses to attend.

248. What property may be ordered to be applied to the execution.

249. Judge may appoint receiver, and prohibit transfer of property.

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

251. Reference by judge.

252. Costs of proceeding.

253. Disobedience of order, how punished.

*Order for discovery of property,*

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

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

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

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



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

Order for discovery of property

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

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

Debtor may pay execution

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

Examination of judgment debtor, &c

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

Witness re-  
quired to testify

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

Compelling par-  
ty to attend

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

What property  
applied to  
execution

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

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

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

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

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

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

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

## TITLE X.

### OF THE COSTS IN CIVIL ACTIONS:

SECTION 254. Agreement of parties with attorneys, &c

255 Costs, when allowed of course to the plaintiff

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

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

Agreement of parties and attorneys

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

When costs allowed of course to the plaintiff

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

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

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

When to  
defendant

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

When to  
other parties

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

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

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

Amount of costs  
allowed

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

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

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

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

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

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

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

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

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

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

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

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

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

For proceedings before notice of trial three dollars;

For all subsequent proceedings before trial, three dollars;

For trial of an issue of law, five dollars;

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

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

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



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

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

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

Sec. 259. *Addition allowance.* In addition to these allowances, Additional allowance there shall be allowed to the plaintiff, upon the recovery of judgment by him, in any action for the partition of real property, or for the foreclosure of a mortgage, or in any action in which a warrant of attachment has been issued, or for an adjudication upon a will or other instrument in writing, and in proceedings to compel the determination of claims to real property, the sum of five per cent. on the recovery, as in the next section prescribed for any amount not exceeding two hundred dollars; an additional sum of  $2\frac{1}{2}$  per cent. for any additional amount not exceeding four hundred dollars; and an additional sum of one per cent. for any additional amount not exceeding one thousand dollars.

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

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

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

Allowance of  
interest on  
verdict or report

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

Costs how to  
be inserted in  
judgment  
Adjustment of  
interlocutory  
costs

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

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

Fees of clerk

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

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

On entering a judgment by filing transcript, ten cents ;

On entering judgment, one dollar.

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

Fees of referees

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

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

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

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

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

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

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

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

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

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

Costs in an  
action by the  
people

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

Costs in an  
action by the  
people

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

Costs of assignee  
after action  
brought of case  
of action

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

Costs on a  
settlement

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

## TITLE XI.

### ON APPEALS IN CIVIL ACTIONS.

#### CHAPTER 1. Appeals in general

##### 11. Appeals in the supreme court

## CHAPTER I.

### APPEALS IN GENERAL.

#### SECTION 274. Appeals

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

276. Who may appeal

277. Parties, how designated on appeals

278. Appeals, how made

**Section 279.** Clerk to transmit papers to appellate court.

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

281. Judgment on appeal

282. Time for appealing.

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

Appeal in general

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

Orders made out of court how vacated or modified

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

Who may appeal

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

Parties how designated on appeal

**Sec. 278. Appeal, how made :**

appeal how made

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

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

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

Transmission of papers in case of appeal

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

Intermediate  
orders affecting  
the judgment  
may be reviewed  
on appeal

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

Judgment on  
appeal

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

Time of appeal

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

## CHAPTER II.

### APPEALS TO THE SUPREME COURT.

#### SECTION 283. Appeal, in what cases

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

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

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

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

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

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

In case of  
judgment to  
deliver docu-  
ment &c

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

In case of judg-  
ment to  
execute convey-  
ance

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



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

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

In case of judgment for sale of mortgaged premises

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

Stay of proceedings on giving security

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

Undertaking may be in one instrument or several

Security must  
be approved &c

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

When perishable  
may be sold

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

Undertaking  
must be filed

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

## TITLE XII.

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

#### CHAPTER I. Submitting a controversy without action.

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

## CHAP. VIII. Motions and orders.

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

## CHAPTER I.

## SUBMITTING A CONTROVERSY WITHOUT ACTION.

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

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

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

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

## CHAPTER II.

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

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

parties not  
summoned on  
joint contract  
may be summoned  
at judgment

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

On death of  
judgment debtor  
who summoned  
Form of summons

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

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

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

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

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

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

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

### CHAPTER III.

#### CONFESSION OF JUDGMENT WITHOUT ACTION.

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

305. Statement in writing and form thereof.

306. Judgment and execution.

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

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

Statement in  
writing

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

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

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

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

Judgment and  
execution

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

## CHAPTER IV.

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

SECTION 307. Offer of compromise.

308. Defendant may offer to liquidate damages.

309. Effect of acceptance or refusal of offer.

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

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

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

## CHAPTER V.

## ADMISSION OR INSPECTION OF WRITINGS.

SECTION 310. Admission or inspection of writings.

Admission of  
writings

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

## CHAPTER VI.

### EXAMINATION OF PARTIES.

SECTION 311. Action for discovery abolished.

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

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

314. Party, how compelled to attend.

315. Testimony of party may be rebatted.

316. Effect of refusal to testify.

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

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

Action for  
discovery abol-  
ished

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



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

A party may examine his adversary as witness

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

Such examination allowed before trial

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

How to compel party to attend

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

Rebutting testimony allowed

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

Refusal to testify

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

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

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

Plaintiff or defendant may be examined

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

## CHAPTER VII.

### EXAMINATION OF WITNESSES.

Section 319. Interest not to exclude a witness.

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

Interest not to  
exclude a wit-  
ness

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

Parties exam-  
ined on their  
own behalf

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

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

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

## CHAPTER VIII.

### MOTIONS AND ORDERS.

SECTION 321. Definition of an order.

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

323. Notice of motion.

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

325. Enlarging time for the proceedings in an action.

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

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

1, An application for an order is a motion.

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

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

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

sional remedy, shall have preference over all other motions.

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

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

**In absence &c  
of judge at  
chambers**

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

**Extension of  
time for the  
proceedings in  
action**

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

## CHAPTER IX.

### ENTITLING AFFIDAVITS.

**Entitling  
affidavits**

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

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

## CHAPTER X.

### COMPUTATION OF TIME.

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

## CHAPTER XI.

### NOTICES, AND FILING AND SERVICE OF PAPERS.

SECTION 328. Notices, &c, how served.

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

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

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

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

idence, with some person of suitable age and discretion.

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

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

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

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

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

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

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

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

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

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

## CHAPTER XII.

## DUTIES OF SHERIFFS AND CORONERS

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

Duty of officers  
in serving  
process

## CHAPTER XIII.

## ACCOUNTABILITY OF GUARDIANS.

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

Guardian not to  
receive property  
until security  
given

## CHAPTER XIV.

## POWERS OF REFEREES.

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

Powers of  
referees

## CHAPTER XV.

## MISCELLANEOUS PROVISIONS.

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

SECTION 344. Time for publication of notices, how computed

345. Laws of other states and governments how proved

Papers lost or  
withheld how  
supplied

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

When underta-  
king to be filed

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

Time for publi-  
cation of notice  
how computed

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

Laws of other  
states and  
governments  
how proved

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

## TITLE XIII.

### ACTIONS IN PARTICULAR CASES.

#### CHAPTER I. Actions against foreign corporations

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



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

## CHAPTER I.

### AGAINST FOREIGN CORPORATIONS.

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

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

## CHAPTER II.

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

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

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

## SECTION 358. Damages, how recovered

359. One action against several persons claiming office or franchise

360. Penalty for usurping office or franchise, how awarded

361. Judgment of forfeiture against a corporation

362. Costs against a corporation or persons claiming to be such, how collected

363. Restraining corporation, and appointment of a receiver

364. Action for forfeiture of property to the people

*Scire facias* and  
*quo warranto*  
abolished

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

Action may be  
brought by any  
prosecuting  
attorney to  
vacate a charter  
by the direction  
of the legisla-  
ture

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

Manner of  
bringing an  
action to annul  
a charter

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

1. Offend against any of the provisions of the act or acts creating, altering, or renewing such corporation; or,

2. Violate the provisions of any law by which such corporation shall have forfeited its charter by abuse of its power; or,

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

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

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

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

Leave how  
obtained

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

Action upon  
information or  
complaint of  
course

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

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

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

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

Action when  
and how brought

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

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

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

Relator when to be joined as plaintiff

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

Complaint and arrest of defendant in for usurping an office

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

Judgment in such actions

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

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

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

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

Proceeding  
against defen-  
dant on refusal  
to deliver up  
books and  
papers

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

Damages how  
recovered

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

In case of  
several persons  
claiming office

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

Penalty for  
usurping

Judgment of  
forfeiture  
against corpora-  
tion

Sec. 361. *Judgment of forfeiture against a corporation.*

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

Costs against  
corporation

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

Restraining cor-  
poration and  
appointing re-  
ceiver

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

Action for for-  
feiture of prop-  
erty to the  
people

Sec. 364. *Actions for forfeiture of property to the people.*

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

## CHAPTER III.

### ACTION FOR THE PARTITION OF REAL PROPERTY.

Provisions of  
existing statutes  
how applied

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

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

## CHAPTER IV.

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

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

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

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

369. Writ of nuisance abolished.

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

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

Actions to determine claims to real property how prosecuted

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

Action of waste abolished

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

When judgment of forfeiture and eviction to be given

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

Writ of nuisance abolished

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

Remedy for  
injuries

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

## CHAPTER V.

### GENERAL PROVISIONS RELATING TO ACTIONS CONCERNING REAL PROPERTY.

Application of  
existing statutes

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

## TITLE XIV.

### GENERAL PROVISIONS.

SECTION 372. Definition of real property

373. Definition of personal property

374. Definition of property

375. Definition of district

376. Definition of clerk

377. Rule of construction

378. Inconsistent statutory provisions repealed

379. Inconsistent rules and practice abrogated

380. Act, when to take effect

Real property  
defined

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

Personal property  
defined

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



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

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

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

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

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

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

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

*Attest :*

HORACE J. AUSTIN,  
*President of the Council.*

ENOS STUTSMAN,  
*Speaker of House of Representatives.*

GEO. I. FOSTER,  
*Secretary of Council.*

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

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

S. L. SPINK, *Secretary.*]

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## CHAPTER I.

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

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

Or docketing  
an execution

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

When to take  
effect

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

Approved, January 8, 1868.

## CHAPTER II.

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

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

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

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

Approved, January 8, 1868.

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## AMENDMENTS.

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### CHAPTER III.

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

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

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