

## Civil Procedure.

### CHAPTER 32.

#### ATTACHMENTS.

AN ACT to amend Sub-division Two of Section One Hundred and Ninety-nine, (199) and Section Two Hundred and Eighteen, (218) of the Code of Civil Procedure.

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

§ 1. AFFIDAVIT—REQUISITES OF.] That sub-division two, of section 199, of the Code of Civil Procedure be and the same is hereby amended by adding thereto, after the word “or,” in the last line of said sub-division, the words, “that the debt was incurred from property obtained under false pretences, or.”

§ 2. WHEN ACTION MAY BE BROUGHT BEFORE CLAIM IS DUE.] That section 218 of said code be and the same is hereby amended by adding thereto after the word “or” in the fourth line of said section the words, “when the debt was incurred for property obtained under false pretences or.”

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

Approved, February 25th, 1881.

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### CHAPTER 33.

#### EXCEPTIONS AND NEW TRIALS.

AN ACT to amend Sections Two Hundred and Eighty-one, Two Hundred and Eighty-seven, Two Hundred and Eighty-eight, and Two Hundred and Ninety of the Code of Civil Procedure.

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

§ 1. TIME FOR PRESENTING AND SETTLING BILL OF EXCEPTIONS.] That section two hundred and eighty-one of the Code of Civil Procedure be, and the same is, hereby amended to read as

follows: "§ 281. If a bill is not presented at the time of the ruling, a bill containing the exceptions, or any of them, relating to any ruling had up to the time of the entry of judgment, may, upon five days' notice to the adverse party, at any time after such ruling is made, and within thirty days after the entry of judgment, or such other times as may be fixed by the court or judge thereof, be presented to the judge and settled; and such settlement may be made either in term time, or in vacation."

§ 2. APPLICATION FOR NEW TRIAL, HOW MADE.] That section two hundred and eighty-seven of the Code of Civil Procedure be, and the same is, hereby amended to read as follows: "§ 287. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the preceding section, it must be made upon affidavits; for any other cause it may be made at the option of the moving party, either upon a bill of exceptions or a statement of the case, or upon the minutes of the court. On such hearing reference may be had in all cases to the pleadings and orders of the court on file; and where the motion is made on the minutes, reference may also be had to any depositions, documentary evidence and stenographic report of the testimony or other papers used upon the trial."

§ 3. TIME FOR SERVING NOTICE OF INTENTION TO MOVE FOR NEW TRIAL.] That section two hundred and eighty-eight of the Code of Civil Procedure be, and the same is, hereby amended to read as follows: "§ 288. The party intending to move for a new trial must, within ten days after the verdict of the jury, if the action was tried by a jury, or after notice of the decision of the court, or referee, if the action was tried without a jury, serve upon the adverse party a notice of his intention to move for a new trial, designating the grounds upon which the motion will be made. The time for serving such notice may be extended by the court or judge thereof, or upon written consent of the parties. Motions for a trial on the ground of newly discovered evidence may be made at the term at which the cause is tried, or at the next succeeding term."

§ 4. WHEN MOTION FOR NEW TRIAL MAY BE HEARD AT CHAMBERS.] That section two hundred and ninety of the Code of Civil Procedure, be, and the same is, hereby amended to read as fol-

lows: "§ 290. When the action is tried by a district judge in his district out of the county of his residence, the motion for a new trial, if not made and brought to a hearing during the term, may be brought to a hearing before such judge at chambers, or in open court, in the county of his residence, or in any other county."

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

Approved, March 4, 1881.

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## CHAPTER 34.

### EXEMPTIONS.

AN ACT to amend Section Three Hundred and Thirty-two of the Code of Civil Procedure.

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

§ 1. PERSONAL PROPERTY WHEN NOT EXEMPT. PROVISOS.] That section three hundred and thirty-two of the Code of Civil Procedure be, and the same is, hereby amended so as to read as follows: "§ 332. Nothing in this chapter shall be so construed as to exempt any personal property from execution for laborer's or mechanic's wages or physician's bills, except that absolutely exempt: *Provided, however,* That a physician in order to be entitled to the benefits of this act must be a physician who has graduated at some reputable school of medicine, either of the United States or some foreign country, or who can produce a certificate of qualification from some State or Territorial medical society, or who has been continuously engaged in the practice of medicine for a period of ten years or more: *Provided,* That in case of physician's bills there shall also be exempt household and kitchen furniture including stoves, of the debtor to an amount in value not exceeding four hundred dollars, and also two cows: *Provided, however,* That this shall not apply to physician's bills contracted before the

passage of this act: *And further provided*, That the collection of physician's bills shall not be enforced by legal process in less than six (6) months from the accruing thereof, except when the debtor is about to remove from the Territory."

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

Received at Executive Office, February 19, at 4:30 P. M.

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**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 Council of the Legislative Assembly in which it originated, within the time prescribed by the Organic Act, has become a law without his approval.

GEO. H. HAND,  
*Secretary of the Territory.*

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**CHAPTER 35.**

**PLACE OF TRIAL OF CIVIL ACTIONS.**

AN ACT to amend Section Ninety-four of the Code of Civil Procedure.

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

§ 1. WHEN ACTION TO BE TRIED IN CERTAIN CASES.] That section ninety-four of the Code of Civil Procedure be, and the same is, hereby amended to read as follows: "§ 94. That in all other cases the action shall be tried in the judicial subdivision in which the defendant or defendants or any of them shall reside or may be served, at the commencement of the action; or if none of the defendants 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."

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

Approved, March 5, 1881.

## CHAPTER 36.

## POWERS OF DISTRICT COURT.

AN ACT to amend Sections Thirty-one and Two Hundred and Thirty-seven of the Code of Civil Procedure.

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

§ 1. DISTRICT COURT ALWAYS OPEN FOR CERTAIN PURPOSES.] That section thirty-one of the Code of Civil Procedure be, and the same is, hereby amended by adding at the end thereof the following: “§ 31. And the judge may hear and determine the same, and make an order in vacation at any place within his district.”

§ 2. WHAT ISSUES MAY BE TRIED IN VACATION.] That section two hundred and thirty-seven of the Code of Civil Procedure be, and the same is, hereby amended by adding at the end thereof the following: “§ 237. But the judge may try issues of law or fact, or both, in vacation, at any place within his district, upon the written consent of the parties, signed by them or their attorneys.”

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

Approved, March 3, 1881.

## CHAPTER 37.

## SERVICE OF SUMMONS.

AN ACT to amend Section One Hundred and Two of the Code of Civil Procedure.

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

§ 1. MANNER OF SERVING SUMMONS.] That section one hundred and two of the Code of Civil Procedure be, and the same is, hereby amended to read as follows: “§ 102. The summons shall be served by delivering a copy thereof as follows:

“1. If the action be against a private 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 in this Territory, or the cause of action arose therein, or when such service shall be made within this Territory personally upon the president, treasurer, secretary, or duly authorized agent thereof.

“2. In an action against a railroad corporation, in addition to the service provided in subdivision one of this section, to any acting ticket, station, or freight agent of such railroad company in the county or subdivision where the action or proceeding is commenced.

“3. If the action be against a public corporation within this Territory, to the mayor or any of the aldermen of any city, to any of the commissioners of a county, to the president or any of the trustees of any incorporated town, to any of the supervisors of an organized township, to any of the members of a school district board.

“4. 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.

“5. 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 guardian has been appointed, to such guardian and to the defendant personally.

“6. In all other cases to the defendant personally; and if the defendant cannot conveniently be found, by leaving a copy thereof at his dwelling house in the presence of one or more of the members of his family, over the age of fourteen years; or if the defendant reside in the family of another, with one of the members of the family in which he resides, over the age of fourteen years. Service made in any of the modes provided in this section shall be taken and held to be personal service; and all writs, process, or orders issued by any of the courts of this Territory, or by the judges thereof, in any action or proceeding, shall be served in the manner,

and upon the persons or officers mentioned in this section, and none other, except in cases where service of papers can be made upon an attorney after appearance, as provided by the code of civil procedure.”

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

Approved, February 21, 1881.

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## Costs in Criminal Proceedings.

### CHAPTER 38.

AN ACT to Provide for the Taxation and Collection of Costs in certain Criminal Proceedings.

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

§ 1. COURT SHALL TAX COSTS.] In all cases of security to keep the peace under chapter three of the Code of Criminal Procedure, the court in addition to the orders mentioned in said chapter shall tax the costs against the complainant or defendant, or both, as justice may require, and enter judgment therefor, which may be enforced as judgments for costs in criminal cases, and execution may issue therefor.

§ 2. WHEN COURT SHALL TAX COSTS AGAINST COMPLAINANT.] If the defendant on a preliminary examination for a public offense be discharged as provided in section one hundred and forty-seven of the Code of Criminal Procedure; and if the magistrate find that the prosecution was malicious or without probable cause, he shall enter such judgment on his docket and tax the costs against the complaining witness, which shall be enforced as judgments for costs in criminal cases, and execution may issue therefor.

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

Approved, February 14, 1881.