GENERAL LAWS

OF

THE TERRITORY OF DAKOTA.

CRIMINAL CODE.

CHAPTER 1.

AN ACT TO PROVIDE FOR A CRIMINAL CODE FOR THE TERRITORY OF DAKOTA.

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

CRIMES AND PUNISHMENTS.

Section 1. A crime or public offense is an act or omission forbidden by law, and to which is annexed upon conviction, either of the following punishments: Crime or public offense defined.

1. Death;
2. Imprisonment;
3. Fine;
4. Removal from office;
5. Disqualification to hold and enjoy any office of honor, trust, or profit under the laws of this territory.

Sec. 2. Crimes and public offenses are divided into: Division of crimes and public offenses.

1. Felonies; and
2. Misdemeanors.

Crimes and public offenses, and criminal proceedings, are modified as prescribed in these statutes. How modified.

Felony defined. Sec. 3. A felony is a public offense punishable with death, or which is, or in the discretion of the court may be, punishable by imprisonment in the penitentiary or territorial prison.

Misdemeanor. Sec. 4. Every other public offense is a misdemeanor.

Party prosecuted designated defendant. Sec. 5. The party prosecuted in a criminal action is designated as the defendant.

CHAPTER 2.

RIGHTS OF PERSONS ACCUSED OF CRIMES AND OFFENSES.

[redacted]son not held answer except on presentment or indictment. Section 1. No person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand-jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army, or militia when in actual service in time of war or public danger.

Rights of defendant in criminal actions. Sec. 2. In all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him, to meet the witnesses face to face; to have compulsory process to compel the attendance of witnesses in his behalf, and in prosecutions by indictment or information, to a speedy public trial by an impartial jury of the county or district wherein the offense shall have been committed, which county or district shall have been previously ascertained by law.

Person not to be convicted except upon confession or verdict of jury. Sec. 3. No person indicted for an offense shall be convicted thereof, unless by confession of his guilt in open court, or by admitting the truth of the charge against him by his plea or demurrer, or by the verdict of a jury accepted and recorded by the court.

Person not held to answer on second indictment, &c. Sec. 4. No person shall be held to answer on a second indictment for an offense of which he has been acquitted by the jury upon the facts and merits on a former trial; but such acquittal may be pleaded by him in bar of any subsequent prosecution for the same offense, notwithstanding any defect in the form or in the substance of the indictment on which he was acquitted.

Sec. 5. If any person who is indicted for any offense, shall on his trial be acquitted upon the ground of a variance between the indictment and the proof, or upon any exception to the form or to the substance of the indictment, he may be arraigned again on a new indictment, and may be tried and convicted for the same offense notwithstanding such former acquittal. Person acquitted on ground of variance may be again indicted.

Sec. 6. No person who is charged with any offense against the law, shall be punished for such offense unless he shall have been duly and legally convicted thereof in a court having competent jurisdiction of the cause and of the person. Person not to be punished for crime until after legal conviction.

CHAPTER 3.

OFFENSES AGAINST LIFE AND PERSON.

Section 1. The killing of a human being without the authority of law, by poison, shooting, stabbing, or any other means, or in any other manner, is either murder, manslaughter, or excusable or justifiable homicide, according to the facts and circumstances, of each case. The killing of a human being what to be.

Sec. 2. Such killing when perpetrated with a premeditated design to effect the death of a person killed, or any human being, shall be murder in the first degree, and the person who shall be convicted of the same shall suffer the penalty of death; but any person convicted of any capital crime, shall be kept in solitary confinement for a period of not less than one month nor more than six months, in the discretion of the judge before whom the conviction is had; at the expiration of which time, it shall be the duty of the governor to issue his warrant of execution. When perpetrated by any act eminently dangerous to others, and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual, shall be murder in the second degree, and shall be punished by imprisonment in the territorial prison or penitentiary, for life; when perpetrated without any design to effect death by a person engaged in the commission of any fel- Murder in first degree. Warrant for execution. Murder in second degree. Penalty. Murder in third degree.

Penalty.

ony, shall be murder in the third degree, and shall be punished by imprisonment in the territorial prison not more than fourteen years, nor less than seven years.

What killing of human being in other cases to be.

Sec. 3. The killing of one human being, by the act, procurement, or omission, of another, in cases where such killing shall not be murder according to the provisions of this chapter, is either justifiable, or excusable homicide, or manslaughter.

Justifiable homicide.

Sec. 4. Such homicide is justifiable when committed by public officers and those acting by their command, in their aid and assistance, either in obedience to any judgment of any competent court; or when necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty; or when necessarily committed in retaking felons who have been rescued, or who have escaped; or when necessarily committed in arresting felons fleeing from justice.

Justifiable homicide.

Sec. 5. Such homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder such person, or to commit any felony upon him or her, or upon or in any dwelling house in which such person shall be; or

2. When committed in the lawful defense of such person, or of his or her husband, wife, parent, child, master, mistress, or servant, when there shall be a reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and there shall be imminent danger of such design being accomplished; or,

3. When necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed; or lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Homicide when excusable.

Sec. 6. Such homicide is excusable when committed by accident or misfortune in lawfully correcting a child or servant, or in doing any other lawful act by lawful means, with ordinary caution, and without any unlawful intent.

When jury to find not guilty on indictment for murder.

Sec. 7. Whenever it shall appear to the jury, on the trial of any person for murder, or manslaughter, that the alleged homicide was committed under circumstances, or in cases where by law such homicide was justifiable or excusable, the jury shall render a verdict of not guilty.

Manslaughter in the first degree.

Sec. 8. The killing of a human being, without a design to effect death, by the act, procurement, or culpable negligence of any other, while such other is engaged in the perpetration of any crime or misdemeanor, not amounting to felony; or in an attempt to perpetrate any such crime or misdemeanor, in cases where such killing would be murder at the common law, shall be deemed manslaughter in the first degree.

Manslaughter in the first degree.

Sec. 9. Every person deliberately assisting another in the commission of self-murder, shall be deemed guilty of manslaughter in the first degree.

Manslaughter in the first degree.

Sec. 10. The willful killing of an unborn infant child, by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter in the first degree.

Manslaughter in the second degree.

Sec. 11. Every person who shall administer to any woman pregnant with a quick child, any medicine, drug, or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter in the second degree.

Manslaughter, how defined.

Sec. 12. The killing of a human being by another, in a heat of passion, upon sudden provocation, or in sudden combat, intentionally, but without premeditation, shall be deemed manslaughter, in the second degree.

Manslaughter in the second degree, how defined.

Sec. 13. Every person who shall unnecessarily kill another, except by accident or misfortune, and except in cases mentioned in subdivision two of section five of this chapter, either while resisting an attempt by such other person to commit any felony, or to do any other unlawful act, or after such attempt shall have failed, shall be deemed guilty of manslaughter in the second degree.

Manslaughter in the second degree defined.

Sec. 14. The killing of a human being by another in the heat of passion, without a design to effect death, but with a dangerous weapon, or in a cruel or unusual manner, shall be deemed manslaughter in the second degree.

Manslaughter in third degree defined.

Sec. 15. The involuntary killing of a human being by the act, procurement, or culpable negligence of another, while such

other person is engaged in the commission of a trespass, or other injury to private rights or property, or engaged in an attempt to commit such injury, or were engaged in an unlawful act, which killing would not be manslaughter in the first or second degree, according to the provisions of the preceding sections of this chapter, shall be deemed manslaughter in the third degree.

Manslaughter in the third degree.

Sec. 16. If the owner of a mischievous animal, knowing its propensities, willfully suffer it to go at large, or shall keep it without ordinary care, and such animal while so at large or not confined, kill any human being who shall have taken all the precautions which the circumstances may permit to avoid such animal, such owner shall be deemed guilty of manslaughter in the third degree.

Manslaughter in the third degree.

Sec. 17. Any person navigating any boat or vessel for gain who shall willfully or negligently receive so many passengers, or such a quantity of other lading that by means thereof such boat or vessel shall sink or overset, and thereby any human being shall be drowned or otherwise killed, shall be deemed guilty of manslaughter in the third degree.

Manslaughter in the third degree.

Sec. 18. If the captain, or any other person, having charge of any steamboat used for the conveyance of passengers, or if the engineer or other person, having charge of the boiler of such boat, or of any other apparatus, for the generation of steam, shall, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, create or allow to be created such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which in bursting or breaking any person shall be killed, every such captain, engineer or other person, shall be deemed guilty of manslaughter in the third degree.

Manslaughter in the third degree.

Sec. 19. If any physician, while in a state of intoxication, shall without a design to effect death, administer any poison, drug or medicine, or do any other act to another person, which shall produce the death of such other, he shall be deemed guilty of manslaughter in the third degree.

Manslaughter in the fourth degree defined.

Sec. 20. The involuntary killing of a human being by another, with any weapon not dangerous, or by any means neither

cruel nor unusual, in the heat of passion, shall be deemed manslaughter in the fourth degree.

Manslaughter in the fourth degree.

Sec. 21. Every other killing of a human being by the act, procurement, or culpable negligence of another where such killing is not justifiable or excusable, or is not declared in this chapter murder, or manslaughter in some other degree, shall be deemed manslaughter in the fourth degree.

Punishment for manslaughter in the first, second and third degrees.

Sec. 22. Persons convicted of manslaughter in the first, second, or third degrees, shall be punished by imprisonment in the territorial prison as follows: Persons convicted of manslaughter in the first degree, for a term not less than seven years; if convicted of manslaughter in the second degree, for a term not more than seven nor less than four years; if convicted of manslaughter in the third degree, for a term not more than four years nor less than two years.

Punishment for manslaughter in the fourth degree.

Sec. 23. Every person convicted of manslaughter in the fourth degree, shall be punished by imprisonment in the territorial prison for two years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Murder in a duel.

Sec. 24. Every person who shall by previous engagement or appointment, fight a duel within the jurisdiction of this territory, and in so doing shall inflict a wound upon any person, whereof the person so injured shall die, shall be deemed guilty of murder in the second degree.

Second in a duel.

Sec. 25. Every person who shall be the second of either party in such duel as is mentioned in the preceding section, and shall be present when such wound shall be inflicted, whereof death shall ensue, shall be deemed to be an accessory before the fact to the crime of murder in the second degree.

Engaging in duel, challenging, &c.

Sec. 26. Every person who shall fight a duel, or act as a second or surgeon in the same, by previous arrangement, without this territory, shall be incapable of voting or holding any office within this territory, forever thereafter.

Duel out of the territory.

Sec. 27. Every person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any written or verbal message, purporting or intending to be such challenge, although no duel ensue, shall be punished by imprisonment in the territorial prison not more than ten years, nor less

than three years, and shall be incapable of voting or holding any office of trust or profit under the laws of this territory.

Accepting or carrying challenge, &c.

Sec. 28. Every person who shall accept such challenge, or who shall, knowingly, carry or deliver any such challenge or message, whether a duel ensue or not, and every person who shall be present at the fighting of a duel with deadly weapons, as an aid, or second, or surgeon, or who shall advise, or encourage, or promote such duel, shall be punished in the territorial prison not more than two years, nor less than one year.

Posting another &c.

Sec. 29. If any person shall post another, or in writing or print he shall use any reproachful and contemptuous language to, or concerning another, for not fighting a duel, or for not sending or accepting a challenge, he shall be punished by imprisonment in the territorial prison not more than one year, nor less than six months, or by fine not exceeding five hundred dollars, nor less than one hundred dollars.

Maiming or disfiguring.

Sec. 30. If any person with malicious intent to maim or disfigure, shall cut out or maim the tongue, put out or destroy an eye, cut or tear off an ear, cut or slit or mutilate the nose or lip, or cut off or disable a limb or member of any person, every such offender and every person privy to such intent, who shall be present aiding in the commission of such offense, shall be punished by imprisonment in the territorial prison not more than five years, nor less than one year, or by fine not exceeding one thousand dollars, nor less than two hundred dollars.

Assault with intent to murder, &c.

Sec. 31. If any person shall assault another, with intent to murder, or to maim, or to disfigure his person in any of the ways mentioned in the next preceding section, he shall be punished by imprisonment in the territorial prison not more than five years, nor less than one year, or by fine not exceeding one thousand dollars, nor less than one hundred dollars.

Attempt to murder by poison, &c.

Sec. 32. If any person shall attempt to commit the crime of murder, by poisoning, drowning, or strangling another person, or by any means not constituting an assault, with intent to murder, every such offender shall be punished by imprisonment in the territorial prison not more than ten years, nor less than one year.

Robbing, being armed, &c.

Sec. 33. If any person shall assault another, and shall feloniously rob, steal, and take from his person any money or other property which may be the subject of larceny, such rob-

ber being armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed, or if being so armed, he shall wound or strike the person robbed, he shall be punished by imprisonment in the territorial prison not more than ten years, nor less than three years.

Assault with intent to rob, &c., being armed.

Sec. 34. If any person, being armed with a dangerous weapon, shall assault another with intent to rob or to murder, he shall be punished by imprisonment in the territorial prison not more than five years, nor less than one year.

Robbing not being armed.

Sec. 35. If any person shall by force and violence, or by assault and putting in fear, feloniously rob, steal, and take from the person of another, any money or other property which may be the subject of larceny, such robber not being armed with a dangerous weapon, he shall be punished by imprisonment in the territorial prison, not more than three years, nor less than one year.

Assault to rob, not being armed.

Sec. 36. If any person, not being armed with a dangerous weapon, shall assault another with force and violence, and with intent to rob or steal, he shall be punished by imprisonment in the territorial prison, not more than two years, nor less than six months.

Attempt to extort money by threats, &c.

Sec. 37. If any person, either verbally or by any written or printed communication, shall maliciously threaten any injury to the person or property of another, with intent thereby to extort money, or any pecuniary advantage whatever, or with intent to compel the person so threatened to do any act against his will, he shall be punished by imprisonment not more than one year, nor less than six months, or by fine not exceeding five hundred dollars, nor less than one hundred dollars.

Rape.

Sec. 38. If any person shall ravish, and carnally know any female, of the age of ten years or more, by force and against her will, he shall be punished by imprisonment in the territorial prison, not more than thirty years, nor less than ten years; but if the female on trial shall be proven to have been at the time of the offense, a common prostitute, he may be imprisoned not more than one year.

Rape and abuse of a child.

Sec. 39. If any person shall unlawfully and carnally know and abuse any female child under the age of ten years, he shall be imprisoned in the territorial prison for life.

Assault with intent to commit rape.

Sec. 40. If any person shall assault any female, with intent to commit the crime of rape, he shall be punished by imprisonment in the territorial prison, not more than ten years, nor less than one year.

False imprisonment, how punished.

Sec. 41. Every person who, without lawful authority, and willfully or maliciously, and with a wrongful intent, shall forcibly or secretly confine or imprison any other person in this territory against his will, or shall forcibly carry or send such person out of the territory against his will, or forcibly seize and confine, or inveigle or kidnap any other person, with intent either to cause such person to be secretly confined or imprisoned in this territory, against his will, or to cause such person to be sent out of this territory, against his will, or to be sold as a slave, or in any way held to service against his will; and every person who shall sell, or in any manner transfer for any term, the service or labor of any negro, mulatto or other person of color, who shall have been unlawfully seized, taken, inveigled or kidnapped from this territory, to any state, place or country, shall be punished by imprisonment in the territorial prison, not more than five years, nor less than one year, or by fine not exceeding one thousand dollars, nor less than five hundred dollars.

Kidnapping, how punished

Kidnapping and where to be prosecuted.

Sec. 42. Every offense mentioned in the next preceding section, may be tried either in the county in which the same may have been committed, or in any county in or to which the person so seized, taken, inveigled, kidnapped, or sold, or whose services shall be so sold or transferred, shall have been taken, confined, held, carried, or brought, and upon the trial of any such offense, the consent thereto of the person so taken, inveigled, kidnapped or confined, shall not be a defense, unless it shall be made satisfactorily to appear to the jury, that such consent was not obtained by fraud, nor extorted by duress or by threats.

Poisoning food, &c.

Sec. 43. If any person shall mingle any poison with any food, drink, or medicine, with intent to kill or injure any other person, or shall willfully poison any spring, well, or reservoir of water, with such intent, he shall be punished by imprisonment in the territorial prison, not more than ten years, nor less than one year.

Sec. 44. If any person shall assault another, with intent to commit any burglary, robbery, rape, manslaughter, mayhem, or any felony, the punishment of which assault is not herein prescribed, shall be punished by imprisonment in the territorial prison, not more than three years, nor less than six months, or by fine not exceeding one thousand dollars, nor less than one hundred dollars. Assault with intent to commit burglary, &c., or other felony.

CHAPTER 5.

OFFENSES AGAINST PROPERTY.

Section 1. Every person who shall willfully and maliciously burn in the night time, the dwelling house of another, whereby the life of any person shall be destroyed, or shall in the night time, willfully and maliciously set fire to any other building owned by himself or another, by the burning whereof such dwelling house shall be burnt in the night time, whereby the life of any person shall be destroyed, shall suffer the same punishment as provided for the crime of murder in the second degree; but if the life of no person shall have been destroyed, he shall be punished by imprisonment in the territorial prison not more than fourteen years, nor less than seven years; and if at the time of committing the offense there was no person lawfully in the dwelling house so burnt, he shall be punished by imprisonment in the territorial prison not more than ten years, nor less than three years. Burning dwelling in the night time by which life of person is destroyed. When life of person not destroyed.

Sec. 2. Every person who shall willfully and maliciously burn in the day time the dwelling house of another, or any building adjoining such dwelling house, and shall willfully and maliciously set fire to any building owned by himself or another, by the burning whereof such dwelling house shall be burnt in the day time, or shall in the day time willfully and maliciously set fire to any building owned by himself or another, by the burning whereof such dwelling house shall be burnt in the night time, he shall be punished by imprisonment in the ter- Burning house in the day time.

ritorial prison, not more than fifteen years, nor less than five years.

Burning church, court-house, &c., at night.

Sec. 3. Every person who shall willfully and maliciously burn in the night time, any meeting house, church, court house, town house, college, academy, jail, or other building erected for public uses, or any ship, steamboat, or other vessel, or banking house, warehouse, store, manufactory, or mill of another, or any barn, stable, shop, or office of another, within the curtilage of any dwelling house, or any other building by the burning whereof any building mentioned in this section shall be burned in the night time, shall be punished by imprisonment in the territorial prison not more than fifteen years, nor less than five years.

Burning church in day time.

Sec. 4. Every person who shall willfully and maliciously burn, in the day time, any building mentioned in the next preceding section, the punishment for which, if burnt in the night time, would be imprisonment in the penitentiary not more than fifteen years nor less than five years, shall be punished by imprisonment in the territorial prison not more than eight years, nor less than four years.

Willful and malicious burning building, how punished.

Sec. 5. Every person who shall willfully and maliciously burn, in the night time or day time any banking house, warehouse, store, manufactory, mill, barn, stable, shop, out house, or other building whatever of another, other than is mentioned in the third section of this chapter, or any bridge, lock, dam, or flume, shall be punished by imprisonment in the territorial prison, not more than eight years, nor less than four years; and every person who shall make an unsuccessful attempt to commit either of the offenses mentioned in this or the preceding sections of this chapter, shall be punished by imprisonment in the territorial prison for a term not exceeding five years, nor less than one year.

Burning boards, timber, &c.

Sec. 6. Every person who shall willfully and maliciously burn any pile or parcel of boards, timber, or other lumber, or any stack of hay, grain, or other vegetable product severed from the soil but not stacked, or any standing grain, grass, or other standing product of the soil, shall be punished by imprisonment in the territorial prison not more than two years, nor less than six months.

Married women liable.

Sec. 7. The preceding sections shall severally extend to a married woman who may commit either of the offenses therein described, though the property burnt or set fire to may belong partly or wholly to her husband.

Burning property to injure insurer.

Sec. 8. Every person who shall willfully burn any goods, wares, merchandise, or other chattels, which shall be at the time insured against loss or damage by fire, with intent to injure the insurer, whether such person be the owner of the property burnt or not, shall be punished by imprisonment in the territorial prison not more than ten years, nor less than three years.

Burglary, being armed or making assault.

Sec. 9. Every person who shall break and enter any dwelling house in the night time, with intent to commit the crime of murder, rape, robbery, larceny, or any other felony, or after having entered with such intent, shall break any such dwelling house in the night time, any person being then lawfully therein, and the offender being armed with a dangerous weapon at the time of such breaking, or entering, or so arming himself in such house, or making an actual assault on any person lawfully therein, shall be punished by imprisonment in the territorial prison not more than twelve years, nor less than four years.

Burglary, not being armed or making assault.

Sec. 10. Every person who shall break and enter any dwelling house in the night time, with such intent as is mentioned in the last preceding section, or who, having entered with such intent, shall break such dwelling house in the night time, the offender not being armed or arming himself in such house with a dangerous weapon, nor making an assault upon any person then being therein, shall be punished by imprisonment in the territorial prison not more than five years, nor less than two years.

Breaking into office, &c., at night.

Sec. 11. Every person who shall break and enter in the night time, any office, shop, or warehouse, not adjoining to or occupied with a dwelling house, or any ship, steamboat or vessel, within the body of any county, with intent to commit the crime of murder, rape, robbery, larceny, or any other felony, shall be punished by imprisonment in the territorial prison not more than three years, nor less than one year.

Burglary, how punished.

Sec. 12. Every person who shall enter in the night time, without breaking, or shall break and enter in the day time, any

dwelling house, or any out house thereto adjoining, and occupied therewith, or any office, shop, or warehouse, or any ship, steamboat, or vessel, within the body of any county, with intent to commit the crime of murder, rape, robbery, larceny or other felony, shall be punished by imprisonment in the territorial prison not more than four years, nor less than six months; and every person who shall make an unsuccessful attempt to commit either of the offenses specified in this or the preceding six sections of this chapter, shall be punished by imprisonment in the territorial prison for a term not exceeding two years, nor less than six months.

Larceny in dwelling house, &c.

Sec. 13. Every person who shall commit the crime of larceny in any dwelling house, office, shop, bank, or warehouse, ship, steamboat, or vessel, or shall break and enter in the night time or day time, any meeting house, church, court house, town house, college, academy, or other public building erected for public use, and steal therein, shall be punished by imprisonment in the territorial prison, not more than three years, nor less than one year, or by imprisonment in the county jail not more than one year, nor less than three months, or by fine not exceeding five hundred dollars.

Stealing from the person.

Sec. 14. Every person who shall commit the offense of larceny, by stealing from the person of another, shall be punished by imprisonment in the territorial prison, not more than four years, nor less than two years, or by imprisonment in the county jail not more than two years, nor less than three months, or by fine not exceeding five hundred dollars.

Simple larceny exceeding $100 in value.

Sec. 15. Every person who shall commit the crime of larceny, by stealing of the property of another, any money, goods, or chattels, or any bank note, bond, promissory note, bill of exchange, or other bill, order, or certificate, or any book of accounts, for or concerning money or goods due or to become due, or to be delivered, or any deed or writing containing a conveyance of land, or any other valuable contract in force, or any receipt, release, or defeasance, or any writ, process, or public record, if the property stolen shall exceed the value of one hundred dollars, shall be punished by imprisonment in the territorial prison, not more than three years, nor less than one year; and if the property stolen shall not exceed the value of

one hundred dollars, he shall be punished by imprisonment in the county jail, not more than two years, nor less than three months, or by fine not exceeding three hundred dollars. Simple larceny less than $100.

Sec. 16. Every justice of the peace shall have jurisdiction concurrently with the district court, of all the larcenies mentioned in the fifteenth section of this chapter, when the money or other property stolen shall not be alleged to exceed the value of twenty dollars; and of all other larcenies whatever, and all embezzlements, when the money or other property stolen or embezzled, shall not be alleged to exceed the value of fifteen dollars; in all which cases, the punishment shall be by fine not exceeding fifty dollars, or by imprisonment in a county jail not exceeding three months, or by both such fine and imprisonment, saving to every person who shall be convicted before a justice, the right to appeal as in other cases. Justice of the peace to have concurrent jurisdiction of larcenies.

Sec. 17. Every person who shall buy, receive, or aid in the concealment of stolen money, goods, or property, knowing the same to have been stolen, shall be punished by imprisonment in the territorial prison, not more than four years, nor less than one year, or by imprisonment in the county jail not more than two years, nor less than three months, or by fine not exceeding five hundred dollars. Buying, &c., stolen goods.

Sec. 18. Every justice of the peace shall have jurisdiction concurrent with the district court, as before provided, of all offenses of buying, receiving, or aiding in the concealment of stolen goods or other property, in all cases in which they would have had jurisdiction of a larceny of the same goods or other property; and the punishment of buying, receiving, or aiding in the concealment of such goods or other property, shall be the same as in the case of a larceny of the same goods or other property, with the same right of appeal on conviction. Jurisdiction of justice in case of buying, &c., stolen goods.

Sec. 19. In any prosecution for the offense of buying, receiving, or aiding in the concealment of stolen money or other property known to have been stolen, it shall not be necessary to aver, nor on the trial thereof to prove that the person who stole such property, has been convicted. Receiver, &c., may be tried before thief is convicted.

Sec. 20. The officer who shall arrest any person charged as a principal or accessory in any robbery or larceny, shall use a reasonable diligence to secure the property alleged to be Officer arresting person and after seizure of property, is answerable for the same.

stolen, and after seizure, shall be answerable for the same; and he shall annex a schedule thereof to his return of the warrant, and upon conviction of the offender, the stolen property shall be restored to the owner.

Prosecutor and officer when and how paid.

Sec. 21. Upon any conviction of burglary, robbery or larceny, the court may order a meet recompense to the prosecutor, and also to the officer who has secured and kept the stolen property, not exceeding their actual expenses, with a reasonable allowance for their time and trouble, to be paid by the county treasurer.

Embezzlement by officers, &c., of corporation.

Sec. 22. If any cashier or other officer, or any agent, clerk, or servant of any incorporated bank, shall embezzle or fraudulently convert to his own use, or shall fraudulently take or secrete, with intent to convert to his own use, any bullion, money, note, bill, obligation or security, or any other effects or property belonging to and in possession of such bank, or belonging to any person and deposited therein, he shall be deemed to have committed the crime of larceny in such bank.

Embezzlement by officers, agents, clerks, &c

Sec. 23. If any officer, agent, clerk or servant of any incorporated company, or if any clerk, agent or servant of any private person, or of any copartnership, except apprentices and other persons under the age of sixteen years, shall embezzle or fraudulently convert to his own use, or shall take and secrete with intent to embezzle and convert to his own use, without consent of his employer or master, any money or property of another which shall have come to his possession, or shall be under his care by virtue of such employment, he shall be deemed to have committed the crime of larceny.

Embezzlement by carrier and others.

Sec. 24. If any carrier or other person to whom any money, goods or other property, which may be the subject of larceny, shall have been delivered to be carried for hire, or if any other person who shall be intrusted with such property, shall embezzle or fraudulently convert to his own use, or shall secrete with intent to embezzle or fraudulently convert to his own use, any money, goods or property, either in the mass as the same was delivered, or otherwise, and before delivery of such money, goods or property, at the places where or to the persons to whom they were to be delivered, he shall be deemed to have committed the crime of larceny.

Embezzlement or fraudulent selling by warehousemen, &c.

Sec. 25. Any warehouseman, storage, forwarding or commission merchant or miller, or his or their agents, clerks or servants who shall embezzle or fraudulently convert to his or their own use, or fraudulently sell or otherwise dispose of for his or their own gain, profit or advantage, without the consent of the owner thereof, any grain, flour, pork, beef, wool, or other goods, wares or merchandize, which shall have been received by such warehouseman, miller, or storage, forwarding or commission merchant, to be stored for hire or for other purpose, shall be deemed to have committed the crime of larceny.

Persons converting to their own use public moneys; how punished.

Sec. 26. If any person having in his possession any money belonging to this territory, or any county, town, city, or other municipal corporation, or school district, or in which this territory, or any county, town, city, village or other municipal corporation, or school district, has any interest, or if any collector or treasurer of any town or county, or incorporated city, town or village, or school district, or the treasurer or other disbursing officer of the territory, or any other person holding any office under any law of this territory, or any officer of an incorporated company, who now is by virtue of his office, or shall hereafter be intrusted with the collection, safe keeping, receipt, transfer or disbursement, of any tax, revenue, fine, or other money, shall convert to his own use, in any way or manner whatever, any part thereof, or shall loan, with or without interest, any portion of the money intrusted to him as aforesaid, or shall improperly neglect or refuse to pay over the same, or any part thereof, according to the provisions of law, he shall be deemed and adjudged to be guilty of embezzlement.

Punishment therefor.

Sec. 27. Any person who shall be guilty of embezzling any money prohibited by this or the last preceding section, not exceeding in amount the sum of one hundred dollars, shall, upon conviction thereof, be punished by imprisonment in the county jail not more than twelve months, nor less than three months; and any person who shall be convicted of embezzling a greater sum than one hundred dollars, shall be punished by imprisonment in the territorial prison, not more than three years nor less than one year, and by a fine in each case of twice the amount so embezzled; and if the court cannot determine from the

verdict of the jury or otherwise, the amount of the sum embezzled, they shall impose such fine as in their discretion shall be adequate and corresponding as nearly as may be, with the penalty imposed by this section; and every refusal by an officer, to pay any sum lawfully demanded, shall be deemed an embezzlement of the sum so demanded.

Who deemed an accessory.

Sec. 28. Any person demanding of any officer any sum of money which he may be entitled to demand and receive, who shall be unable to obtain the same, by reason of the money having been embezzled as aforesaid, if he shall neglect or refuse, for thirty days after making such demand, to make complaint against such officer, shall be deemed an accessory, and upon conviction thereof, shall be fined in a sum not exceeding one hundred dollars.

Constructive embezzlement.

Sec. 29. The refusal of any officer to pay any demand in specie, where the sum so demanded was actually received by such officer, in good faith, in checks, drafts, certificates of deposit, or currency which may have depreciated in value, provided payment be tendered in the checks, drafts, certificates of deposit, or currency by such officer, or to pay any sum demanded of him, when there is reasonable doubt as to his duty or authority to pay the same, on such demand, or where such refusal is not with a wrongful intent, shall not be construed to be an embezzlement, according to the intent and meaning of the twenty-sixth and twenty-seventh sections of this chapter.

Officer, &c., to pay over same money received, &c.

Sec. 30. Every officer or other person mentioned in the twenty-sixth section of this chapter, shall pay over the same money that he may have received in the discharge of his duties, and shall not set up any amount as a set-off against any money so received, and all justices of the peace, clerks of the district courts, sheriffs, and other officers, shall pay into the respective treasuries, all the money collected on fines, within thirty days after said moneys may be collected.

Money for fines where to be paid.

Warehousemen, &c., making false receipt, &c.

Sec. 31. If any warehouseman, miller or storage, forwarding or commission merchant, or his or their agents, clerks or servants, shall willfully and fraudulently make or utter any receipt, or other written evidence of the delivery into any warehouse, mill, store, or other building belonging to him, them, or either of them, or his, or their employers, of any

grain, flour, pork, beef, wool or other goods, wares or merchandize, which shall not have been so received or delivered into such mill, warehouse, store or other building, previous to the making and uttering of such receipt or other written evidence thereof, shall be punished by imprisonment in the territorial prison not more than two years nor less than one year.

Falsely personating another.

Sec. 32. Every person who shall falsely personate or represent another, and in such assumed character shall receive any money or other property whatever, intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be deemed by so doing to have committed the crime of larceny.

Obtaining property by false pretenses.

Sec. 33. If any person shall designedly, by any false pretense or by any privy or false token, and with intent to defraud, obtain from any other person any money or goods, wares, merchandize, or other property, or shall obtain with such intent the signature of any person to any written instrument, the false making whereof would be punishable as forgery, he shall be punished by imprisonment in the territorial prison not more than five years, nor less than one year, or by fine not exceeding five hundred dollars, nor less than fifty dollars.

Gross fraud, how punished.

Sec. 34. Every person who shall be convicted of any gross fraud or cheat at common law, shall be punished by imprisonment in the territorial prison not more than four years nor less than one year, or by fine not exceeding one thousand dollars nor less than fifty dollars.

Casting away, burning, &c. vessels, &c.

Sec. 35. If any person shall willfully cast away, burn, sink, or otherwise destroy any ship, steamboat or vessel, within the body of any county, with intent to injure or defraud any owner of such vessel, steamboat, or ship or the owner of any property laden on board the same, or any insurer of such vessel or property, or of any part thereof, he shall be punished by imprisonment in the territorial prison not more than ten years nor less than three years.

Lading or fitting out vessel, &c., with intent to destroy it.

Sec. 36. If any person shall lade, equip, or fit out, or assist in lading, equipping, and fitting out any steamboat, ship or vessel, with the intent that the same shall be cast away, burnt, sunk, or otherwise destroyed, to injure or defraud any owner or insurer of such vessel, or of any property laden on board

the same, he shall be punished by imprisonment in the territorial prison not more than five years, nor less than two years, or by fine not exceeding five thousand dollars, nor less than one hundred dollars.

Making out or exhibiting false invoice of cargo.

Sec. 37. If the owner of any ship, steamboat, or vessel, or any property laden or pretended to be laden on board the same, or if any other person concerned in the lading or fitting out of such ship, steamboat or vessel, shall make out or exhibit or cause to be made out or exhibited, any false or fraudulent invoice, bill of lading, bill of parcels, or other false estimates of any goods or property laden or pretended to be laden on board such vessel, with intent to injure or defraud any insurer of such vessel or property, or any part thereof, he shall be punished by imprisonment in the territorial prison not more than three years, nor less than one year, or by fine not more than five hundred dollars, nor less than one hundred dollars.

Making or procuring false protest, &c.

Sec. 38. If any master or other officer or mariner of a ship, steamboat or vessel, shall make or cause to be made, or shall swear to any false affidavit or protest, or if any owner or other person concerned in such vessel, or in the goods or property laden on board of such vessel, shall procure any such false affidavit or protest to be made, or shall exhibit the same with intent to injure or deceive or defraud any insurer of such ship, steamboat or vessel, or of the goods or property laden on board the same, or any other person, he shall be punished by imprisonment in the territorial prison not more than five years, nor less than two years, or by fine not exceeding one thousand dollars, nor less than one hundred dollars.

Maliciously killing or maiming cattle or injuring personal property.

Sec. 39. Every person who shall willfully and maliciously kill, maim, or disfigure any horses, cattle, or other beasts, of another person, or shall willfully and maliciously administer poison to any such beasts, or expose any poisonous substance with intent that the same may be taken or swallowed by them, or shall willfully and maliciously destroy or injure the personal property of another, in any manner by any means not particularly mentioned or described in this chapter, shall be punished by imprisonment in the county jail not more than two years, nor less than three months, or by fine not exceeding five hundred dollars, nor less than fifty dollars.

Selling lands without title.

Sec. 40. If any person shall falsely or fraudulently represent that he is the owner of any parcel or tract of land to which he has no title, and shall execute any deed of the same, with intent to defraud any person whatever, he shall be punished by imprisonment in the territorial prison not more than two years, nor less than six months.

Malicious injury to dams, &c.

Sec. 41. Every person who shall willfully and maliciously break down, injure, remove or destroy any dam, reservoir, canal or trench, or any gate, flume, flash boards, or other appurtenances thereof, or of the wheels, mill gear, or machinery of any mill, or shall willfully or wantonly, and without color of right, draw off the water contained in any mill-pond, reservoir, canal, or trench, shall be punished by imprisonment in the territorial prison, not more than two years, nor less than six months, or by fine not exceeding four hundred dollars, nor less than fifty dollars.

Malicious injury to bridges, roads, &c.

Sec. 42. Every person who shall willfully or maliciously break down, injure, remove or destroy any public toll or bridge, or railroad, or plank road, or telegraph posts or wires, or any turnpike or plank road gate, or any lock, culvert, or embankment of any canal, or shall willfully or maliciously make any aperture or breach in any such embankment, with intent to destroy or injure the same, shall be punished by imprisonment in the territorial prison, for not more than three years, nor less than six months, or by fine not exceeding six hundred dollars, nor less than fifty dollars.

Malicious injury to fruit and ornamental trees, &c.

Sec. 43. Every person who shall willfully and maliciously or wantonly and without cause, cut down and destroy, or by girdling, lopping, or otherwise, shall injure any fruit tree, or any other tree not his own, standing or growing for shade, ornament or other useful purposes, or shall maliciously or wantonly break the glass, or any part of it, in any building not his own, or shall maliciously break down any fence belonging to or inclosing land not his own, or shall maliciously throw down or open any bars, gate or fence, and leave the same down or open, or shall maliciously and injuriously sever from the freehold of another any produce thereof, or anything attached thereto, shall be punished by imprisonment in the county jail, not more than one year, nor less than three months, or by fine not exceeding two hundred dollars.

Malicious injury to monuments, guide boards, &c.

Sec. 44. Every person who shall willfully and maliciously break down, injure, remove, or destroy, any monument erected for the purpose of designating the boundaries of any tract or lot of land, or any tree marked for that purpose, or shall so break down, injure, remove, or destroy, any milestone, mile board, or guide board, erected upon any highway, or other public way, turnpike, or railroad, plank road, or shall willfully or maliciously deface or alter the inscription on any such stone or board, or shall willfully or maliciously mar or deface any building, or any sign board, or shall extinguish any lamp, or break, destroy, or remove any lamp or lamp post, or any railing or post, erected on any bridge, side walk, street, highway, court or passage, shall be punished by fine, not exceeding one hundred dollars, or by imprisonment in the county jail not more than six months.

Trespassing in gardens, orchards, &c.

Sec. 45. Every person who shall willfully commit any trespass by entering upon the garden, orchard, or other improved land of another without permission of the owner thereof, and with intent to cut, take, carry away, destroy, or injure the trees, grain, grass, hay, fruit or vegetables there growing, or being, shall be punished by fine, not exceeding fifteen dollars nor less than three dollars.

Jurisdiction of justices.

Sec. 46. Every justice of the peace shall have concurrent jurisdiction in his own county, with the district court, of all offenses mentioned in the last three preceding sections of this chapter, when the value of the trees, fruit, grain or other property injured, destroyed, taken, or carried away, or the injury occasioned by the trespass shall not exceed the sum of one hundred dollars, and in such case, the punishment shall be by fine, not exceeding fifty dollars nor less than five dollars.

Willful injury to trees, &c., upon lands of any person.

Sec. 47. Any person who shall willfully and without authority, cut down or destroy, or shall injure by girdling, or otherwise any tree growing or standing upon the private property of any individual or cut any timber or wood upon such property, or take, carry, or haul away therefrom, any timber or wood, previously cut or severed from the freehold; or who shall willfully and without authority, dig or carry away any mineral, earth or stone, from any such land, shall be held guilty of a misdemeanor, and upon conviction of any of the said of-

fenses, shall be punished by imprisonment in the county jail of the proper county, not more than one year, or by fine not exceeding five hundred dollars, nor less than five dollars.

Jurisdiction of justices of the peace.

Sec. 48. Any justice of the peace shall have concurrent jurisdiction in his own county, with the district court, of any offenses in the preceding section specified, when the value of trees, wood, timber, mineral, earth or stone, shall be alleged not to exceed the sum of one hundred dollars, and in such case the punishment shall be by fine, not less than five, nor more than one hundred dollars; and if any person, on conviction of such offense, shall refuse or neglect for the space of ten days, to pay such fine, it shall be lawful for the justice before whom the conviction was had, to commit such person to the jail of the proper county, for a period not less than ten, nor more than thirty days.

Firing woods and prairies, &c.

Sec. 49. If any person shall willfully and maliciously set on fire, or cause to be set on fire, any woods or prairie, or other grounds, other than his own, or shall intentionally, or by neglect, permit the fire to pass his own prairie or grounds, to the injury of any other person or persons, every person so offending shall, on conviction thereof, for every such offense, be fined in a sum not exceeding five hundred dollars, nor less than ten dollars.

Setting on fire of prairies prohibited except by notice; penalty.

Sec. 50. That if any person shall, at any time hereafter, willingly and intentionally, or negligently and carelessly set on fire, or cause to be set on fire, any woods, prairies or other grounds whatsoever in any part of this territory, every person so offending shall forfeit any pay not less than five dollars nor more than one hundred dollars: *Provided*, that this section shall not extend to any person who shall set on fire, or cause to be set on fire, any woods or prairie adjoining his or her own farm or enclosure, for the necessary protection thereof from accident by fire, by giving to his or her neighbors one day's notice of such intention: *Provided, further*, that in case the neighbors come together and participate in the burning of any wood, prairies or grounds, the notice specified in this section shall not be necessary or given: *Provided, also*, that this section shall not be construed to take away any civil remedy, which any person may be entitled to for any injury which may be done or received in consequence of such firing.

Penalty; manner of recovery.

Sec. 51. The penalties provided in the foregoing section shall be recovered by action of debt, before any justice of the peace in the county where such offense shall have been committed, upon complaint of any legal voter residing in the county where such offense has been committed.

Prosecution by persons knowing to the offense.

Sec. 52. It shall be the duty of any person who shall have any knowledge of such offense, or of any legal voter of the county in which such offense has been committed, to prosecute such offender in the name of the Territory of Dakota, and all fines and penalties so recovered, shall be applied to the use and support of the public schools in the township in which such offense shall have been committed.

CHAPTER 5.

FORGERY AND COUNTERFEITING.

Forgery of records, deeds, contracts, &c.

Section 1. Every person who shall falsely make, alter, forge, or counterfeit any public record, or any certificate, return, or attestation of any clerk of a court, register, notary public, justice of the peace, or any other public officer, in relation to any matter wherein such certificate, return, or attestation may be received as legal proof, or any charter, deed, will, testament, bond, or writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange, promissory note, or any order, acquittance, or discharge for money or other property, or any acceptance of a bill of exchange, indorsement, or assignment of a bill of exchange or promissory note, or any accountable receipt for money, goods or other property, with intent to injure or defraud any person, shall be punished by imprisonment in the territorial prison, not more than five years, nor less than two years, or by imprisonment in the county jail, not more than two years, nor less than one year.

Uttering forged records for contracts.

Sec. 2. Every person who shall utter and publish as true, any false, forged, or altered record, deed, instrument, or other writing mentioned in the next preceding section, knowing the

same to be false, forged, or altered, with intent to injure or defraud as aforesaid, shall be punished by imprisonment in the territorial prison, not more than five years, nor less than one year.

Forging notes, &c., issued by officer.

Sec. 3. Every person who shall falsely make, alter, forge, or counterfeit, any note, certificate, or other bill of credit issued by any commissioner or other officer authorized to issue the same for any debt of this territory, with intent to injure or defraud as aforesaid, shall be punished by imprisonment in the territorial prison, not more than seven years, nor less than three years.

Forging bank notes, &c.

Sec. 4. Every person who shall make, alter, forge, or counterfeit any bank bill, promissory note, draft, or other evidence of debt issued by any corporation or company duly authorized for that purpose, by the laws of the United States, of any state of the United States, or of this territory, or of any territory of the United States, or of any other state, government, or country, with intent to injure or defraud, shall be punished by imprisonment in the territorial prison, not more than five years, nor less than one year.

Having counterfeit bills, &c., with intent to pass them.

Sec. 5. Every person who shall have in his possession any forged, counterfeit, or altered bank bill, promissory note, draft, or other evidence of debt issued or purporting to have been issued as is mentioned in the next preceding section, with intent to utter the same as true or false, knowing the same to be so forged, counterfeited, or altered as aforesaid, shall be punished by imprisonment in the territorial prison, not more than five years, nor less than one year.

Passing counterfeit bills, &c.

Sec. 6. Every person who shall utter or pass, or tender in payment as true, any false, altered, forged, or counterfeit note, certificate, or bill of credit for any debt of this territory, or bank bill, promissory note, draft, or other evidence of debt, issued or purporting to have been issued as is mentioned in the fourth section of this chapter, knowing the same to be false, altered, forged, or counterfeit, with intent to injure or defraud, shall be punished by imprisonment in the territorial prison, not more than five years, nor less than one year.

Making or having tools &c., for counterfeit-

Sec. 7. Every person who shall engrave, make or mend, or begin to engrave, make or mend any plate, block, press, or

ing with intent, &c.

other tool, instrument, or implement, or shall make or provide any paper or other materials adapted and designed for the forging or making any false and counterfeit note, certificate, or other bill of credit in the similitude of the notes, certificates, or bills of credit issued by lawful authority for any debt of this territory, or any false counterfeit note, or bill in the similitude of the notes or bills issued by any bank or banking company established in this territory, or within the United States, or any territory thereof, or within any other government or country, and every person who shall have in his possession any such plate or block engraved in any part, or any press or other tool, instrument or implement, paper or other material adapted and designed as aforesaid, with intent to use the same, or to cause or permit the same to be used in forging or making any such false and forged certificates, bills, or notes, shall be punished by imprisonment in the territorial prison not more than five years, nor less than one year.

Testimony of president, &c., of banks when dispensed with.

SEC. 8. In all prosecutions for forging or counterfeiting any notes, or bills of the banks before mentioned, or for uttering, publishing, or tendering in payment as true, any forged, or counterfeit bank bills or notes, or for being possessed thereof with the intent to utter and pass them as true, the testimony of the president and cashier of such banks may be dispensed with, if their place of residence shall be out of this territory, or more than forty miles from the place of trial; and the testimony of any person acquainted with the signature of the president or cashier of such banks, or who has knowledge of the difference in the appearance of the true and counterfeit bills or notes thereof, may be admitted to prove that any such bills or notes are counterfeit.

Sworn certificate of certain officers made evidence.

SEC. 9. In all prosecutions for forging or counterfeiting any note, certificate, bill of credit, or security issued on behalf of the United States, or on behalf of any state or territory, or for uttering, publishing, or tendering in payment as true, any such forged or counterfeit note, certificate, bill of credit, or security, or for being possessed thereof with intent to utter or pass the same as true, the certificate under oath of the secretary of the treasury, or of the treasurer of the United States, or of the secretary or treasurer of any state or territory on whose behalf

such note, certificate, bill of credit, or security purports to have been issued, shall be admitted as evidence for the purpose of proving the same to be forged or counterfeit.

Fraudulent connecting parts of instruments.

Sec. 10. If any person shall fraudulently connect together different parts of several bank notes, or other genuine instruments, in such manner as to produce an additional note or instrument, with intent to pass all of them as genuine, the same shall be deemed a forgery in like manner as if each of them had been falsely made or forged.

Affixing fictitious signatures.

Sec. 11. If any fictitious or pretended signature, purporting to be the signature of an officer or agent of any corporation, shall be fraudulently affixed to any instrument or writing, purporting to be a note, draft, or other evidence of debt issued by such corporation, with intent to pass the same as true, it shall be deemed a forgery, though no such person may ever have been an officer or agent of such corporation, nor such corporation ever have existed.

Intent to defraud statement and proof.

Sec. 12. In any case where the intent to defraud is necessary to constitute the offense of forgery, or any other offense that may be prosecuted, it shall be sufficient to allege in the indictment, an intent to defraud, without naming therein the particular person or body corporate intended to be defrauded; and on the trial of such indictment, it shall be sufficient, and shall not be deemed a variance if there appear to be an intent to defraud the United States, or any state, territory, county, city, town, or village, or any body corporate, or any public officer in his official capacity, or any copartnership or member thereof, or any particular person.

Counterfeiting coin or having ten pieces in possession.

Sec. 13. Every person who shall counterfeit any gold or silver coin, current by law or usage within this territory, and every person who shall have in his possession, at the same time, ten or more pieces of false money or coin, counterfeited in the similitude of any gold or silver coin current as aforesaid, knowing the same to be false and counterfeited, and with intent to utter or pass the same as true, shall be punished by imprisonment in the territorial prison, not more than five years, nor less than one year.

Having less than ten pieces in possession.

Sec. 14. Every person who shall have in his possession, any number of pieces less than ten of the counterfeit coin mentioned

in the next preceding section, knowing the same to be counterfeit, with intent to utter or pass the same as true, and any person who shall utter or pass the same as true, and any person who shall utter, pass, or tender in payment as true, any such counterfeit coin, knowing the same to be false and counterfeit, with intent to injure or defraud, shall be punished by imprisonment in the territorial prison, not more than three years, nor less than one year.

Making tools, &c., for coining, &c.

Sec. 15. Every person who shall cast, stamp, engrave, make or mend, or shall knowingly have in his possession any mould, pattern, die, puncheon, engine, press, or other tool or instrument, adapted and designed for coining or making any counterfeit coin in the similitude of any gold or silver coin, current by law or usage in this territory, with intent to use the same, or cause or permit the same to be used or employed in coining or making any such false and counterfeit coin as aforesaid, shall be punished by imprisonment in the territorial prison, not more than five years, nor less than two years.

Punishment on conviction of second offense.

Sec. 16. Any person who may be convicted of a second offense, shall be punished by imprisonment not exceeding twice the term mentioned in the section under which he may be indicted and tried.

CHAPTER 6.

OFFENSES AGAINST PUBLIC JUSTICE.

Perjury, punishment of.

Section 1. Every person being lawfully required to depose the truth in any proceedings in a court of justice, who shall commit perjury, shall be punished, if such perjury was committed on the trial of an indictment for a capital crime, by imprisonment in the territorial prison, not more than fifteen years, nor less than three years, and if committed in any other case, by imprisonment in the territorial prison, not more than five years, nor less than two years.

What deemed perjury.

Sec. 2. If any person of whom an oath shall be required by law, shall willfully, swear falsely in regard to any matter or thing, respecting which such oath is required, such person shall be deemed guilty of perjury.

Subornation of perjury.

Sec. 3. Every person who shall be guilty of a subornation of perjury, by procuring another person to commit the crime of perjury as aforesaid, shall be punished in the same manner as for the crime of perjury.

Inciting person to commit perjury.

Sec. 4. If any person shall endeavor to procure or incite any other person to commit the crime of perjury though no perjury be committed, he shall be punished by imprisonment in the territorial prison, not more than three years, nor less than one year.

Proceeding when perjury suspected by the court.

Sec. 5. Whenever it shall appear to any court of record, that any witness or party who has been legally sworn and examined, or has made an affidavit in any proceedings in a court of justice, has testified in such a manner as to induce a reasonable presumption that he has been guilty of perjury, therein, the court may take a recognizance with sureties for his appearing to answer to an indictment for perjury, and thereupon the witness to establish such perjury may be bound over to the proper court, and notice of the proceedings shall forthwith be given to the district attorney.

Copies of papers, &c., may be taken.

Sec. 6. If in any proceeding in a court of justice, in which perjury shall be reasonably presumed as aforesaid, and any papers, books, or documents shall have been produced which shall be deemed necessary to be used in any prosecution for such perjury, the court may order a certified copy of such books, papers, or documents to be taken, to be used in such prosecution, and such certified copy shall be used in such prosecution in the same manner as the original might have been.

Giving or offering bribes to officers.

Sec. 7. Every person who shall corruptly give, offer, or promise, to any executive, judicial, or legislative officer, after his election or appointment, and either before or after he shall have been qualified, or shall have taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision or judgement in any matter, question, cause or proceeding, which may then be pending, or may by law come to be brought before him in his official capacity, shall be pun-

ished by imprisonment in the territorial prison, not more than three years, nor less than one year, or by fine not exceeding five hundred dollars, nor less than one hundred dollars.

Accepting bribes by officers.

SEC. 8. Every executive, legislative or judicial officer who shall corruptly accept any gift or gratuity, or any promise to make any gift or do any act beneficial to such officer, under an agreement or with an understanding that his vote, opinion or judgment shall be given in any particular manner, or upon any particular side of any question, cause or proceeding which is or may be by law brought before him in his official capacity, or that in such capacity he shall make any particular nomination or appointment, shall be punished by imprisonment in the territorial prison, not more than four years, nor less than two years, or by fine not exceeding six hundred dollars, nor less than two hundred dollars.

Corrupting jurors, &c.

SEC. 9. Every person who shall corrupt or attempt to corrupt any court, commissioner, juror, arbitrator, umpire, or referee, by giving, offering, or promising any gift or gratuity whatever, with intent to bias his opinion, or influence the decision of such court, commissioner, juror, arbitrator, umpire or referee, in relation to any cause or matter which may be pending in the court or before an inquest, or for the decision of which such arbitrator, umpire, or referee shall have been appointed, shall be punished by imprisonment in the territorial prison, not more than three years, nor less than one year, or by fine not exceeding five hundred dollars, nor less than one hundred dollars.

Accepting bribes by jurors.

SEC. 10. If any person summoned as a juror, chosen or appointed as an arbitrator, umpire, or referee, or if any court, commissioner, shall corruptly take any thing to give his verdict, award or report, or shall corruptly receive any gift or gratuity whatever, from a party to any suit, cause or proceeding, for the trial or decision of which such juror shall have been summoned, or for the hearing or determining of which such court, commissioner, arbitrator, umpire or referee shall have been chosen or appointed, he shall be punished by imprisonment in the territorial prison, not more than three years, nor less than one year, or by fine not exceeding six hundred dollars, nor less than two hundred dollars.

Attempts to aid escapes from prison, &c.

SEC. 11. Every person who shall convey into any jail, house of correction, house of reformation or other like place of confinement, any disguise, or any instrument, tool, weapon, or other thing, adapted or useful to aid any prisoner to make his escape, with intent to facilitate the escape of any prisoner there lawfully committed or detained, or shall by any means whatever, aid or assist any such prisoner in his endeavor to escape therefrom, whether such escape be attempted or effected or not; and every person who forcibly rescues any prisoner held in custody, upon any conviction or charge of an offense, shall be punished by imprisonment in the territorial prison, not more than four years, nor less than two years, or if the person whose escape or rescue was effected or intended, was charged with an offense not capital, nor punishable by imprisonment in the territorial prison, then the punishment for the offense mentioned in this section, shall be by imprisonment in the county jail not more than one year, or by fine not exceeding two hundred dollars.

Aiding an escape from officers.

SEC. 12. Every person who shall aid or assist any prisoner in escaping, or in attempting to escape from any officer or person who shall have the lawful custody of such prisoner, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars.

Suffering a voluntary escape from prison.

SEC. 13. If any jailor or other officer shall voluntarily suffer any prisoner in his custody, upon conviction of any criminal charge, to escape he shall suffer, unless the prisoner was charged with or convicted of a capital offense, the like punishment and penalties as the prisoner so suffered to escape was sentenced to, or would be liable to suffer upon conviction for the crime or offense wherewith he stood charged; and if the prisoner was charged with or convicted of a capital offense, he shall be punished by imprisonment in the territorial prison not more than thirty years, nor less than five years.

Suffering negligent escape and refusing to receive prisoner.

SEC. 14. If any jailor or other officer shall, through negligence, suffer any prisoner in his custody, upon conviction or upon any criminal charge, to escape, or shall willfully refuse to receive into his custody any prisoner lawfully committed thereto on any criminal charge or conviction, or on any lawful process whatever, he shall be punished by imprisonment in the county jail not more than two years, or by a fine not exceeding three hundred dollars.

Refusing to arrest and suffering escape.

Sec. 15. If any officer authorized to serve process, shall willfully and corruptly refuse to execute any lawful process to him directed, and requiring him to apprehend or confine any person convicted or charged with an offense, or shall willfully and corruptly omit or delay to execute such process whereby such person shall escape, and go at large, he shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding three hundred dollars.

Refusing to aid officer.

Sec. 16. If any person being required in the name of the United States, or of the territory of Dakota, by any sheriff, deputy sheriff, coroner, or constable, shall neglect or refuse to assist them in the execution of their office, in any criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in any case of escape or rescue of persons arrested upon civil process, he shall be punished by fine not exceeding one hundred dollars.

Refusing to aid justices.

Sec. 17. If any justice of the peace upon view of any breach of the peace, or any other offense proper for his cognizance, shall require any person to apprehend and bring before him the offender, every person so required who shall refuse or neglect to obey such justice, shall be punished in the same manner as is provided in the next preceding section, for refusing assistance to a sheriff; and no person to whom such justice shall be known, or shall declare himself to be a justice of the peace, shall be permitted to plead any excuse on pretence of ignorance of his office.

Falsely assuming to be justice or officer.

Sec. 18. If any person shall falsely assume or pretend to be a justice of the peace, sheriff, deputy sheriff, coroner, or constable, and shall take upon himself to act as such, to require any person to aid or assist him in any matter pertaining to the duty of a justice of the peace, sheriff, deputy sheriff, coroner, or constable, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding two hundred dollars.

Disguising to obstruct execution of the law.

Sec. 19. Every person who shall in any manner disguise himself with intent to obstruct the due execution of the law, or with intent to intimidate, hinder, or interrupt any officer or any other person in the legal performance of his duty, or the exercise of his rights under the laws of the United States, or

of this territory, whether such intent shall be effected, or not, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding one hundred dollars.

Persons compounding offenses; how punished.

Sec. 20. If any person shall take any money, or gratuity, or reward, or an engagement therefor, upon any agreement or understanding, express or implied, to compound or conceal the commission of any offense, or not to prosecute therefor, or not to give evidence thereof, he shall, where such offense was punishable with death, be punished by imprisonment in the territorial prison, not more than three years; and where the offense was punishable in any other manner, he shall be punished by imprisonment in the territorial prison, not exceeding one year, or in the county jail not more than six months, or by fine not exceeding one hundred dollars.

Officers taking reward for omitting duty.

Sec. 21. If any sheriff, constable, or other officer authorized to serve legal process, shall receive from a defendant, or any other person, any money or other valuable thing, as a consideration, reward, or inducement for delaying or omitting to arrest any defendant, or to carry him before a magistrate, or for delaying to take any person to prison, or for postponing the sale of any property under an execution, or for omitting or delaying to perform any duty pertaining to his office, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars.

CHAPTER 7.

OFFENSES AGAINST THE PUBLIC PEACE.

Unlawful assemblies how suppressed.

Section 1. If any persons, to the number of twelve or more, any of whom being armed with any dangerous weapons; or if any persons to the number of thirty or more, whether armed or not, shall be unlawfully, riotously, or tumultuously assembled in any city, town, or county, it shall be the duty of the

mayor and each of the aldermen of such city, and of the president and each of the trustees of such town, and of every justice of the peace living in such city or town, and of the sheriff of the county, and his deputies, and also of every constable and coroner living in such city or town, to go among the persons so assembled, or as near them as may be with safety, and in the name of the United States to command all the persons so assembled, immediately and peaceably to disperse; and if the persons so assembled shall not thereupon immediately and peaceably disperse, it shall be the duty of each of the magistrates and officers to command the assistance of all persons there present, in seizing, arresting, and securing in custody the persons so unlawfully assembled, so that they may be proceeded with according to law.

Refusing to assist officers.

SEC. 2. If any person present, being commanded by any of the magistrates or officers mentioned in the preceding section, to aid or assist in seizing and securing such rioters or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, shall refuse or neglect to obey such command, he shall be deemed to be one of the rioters or persons unlawfully assembled, and shall be liable to be prosecuted therefor, and punished accordingly.

Neglect of officers to be punished.

SEC. 3. If any mayor, alderman, president, trustee, justice of the peace, sheriff, or deputy sheriff, constable, or coroner, having notice of any such riotous or tumultuous and unlawful assembly as is mentioned in this chapter, in the city, town, or county in which he lives, shall neglect or refuse immediately to proceed to the place of such assembly, or as near thereto as he can with safety, or shall neglect or omit to exercise the authority with which he is invested by this chapter, for suppressing such riotous, or unlawful assembly, and for arresting and securing the offenders, he shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding three hundred dollars.

Duty of persons refusing to disperse.

SEC. 4. If any persons who shall be so riotously and unlawfully assembled, and who have been commanded to disperse, as before provided, shall refuse or neglect to disperse without unnecessary delay, any two of the magistrates or officers before mentioned may require the aid of a sufficient number of per-

sons, in arms or otherwise, as may be necessary, and shall proceed in such manner as in their judgment shall be expedient, forthwith to disperse and suppress such unlawful, riotous, or tumultuous assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law.

Armed force called out by governor.

Sec. 5. Whenever an armed force shall be called out for the purpose of suppressing any tumult or riot, or dispersing any body of men acting together by force, with intent to commit any felony, or to offer violence to persons or property, or with intent by force or violence, to resist or oppose the execution of the laws of this territory, such armed force, when they shall arrive at the place of such unlawful, riotous, or tumultuous assembly, shall obey such orders for suppressing the riot or tumult, and for dispersing and arresting all the persons who are committing any of the said offenses, as they may have received from the governor, or from any judge of the court of record, or the sheriff of the county; and also such further orders as they there shall receive from any two of the magistrates or officers mentioned in the first section.

Officers may fire upon rioters.

Sec. 6. If by reason of any of the efforts made by any of the said magistrates or officers, or by their direction, to disperse such unlawful, riotous, or tumultuous assembly, or to seize and secure the persons composing the same who have refused to disperse, though the number remaining may be less than twelve, any such person or other persons then present as spectators, or otherwise, shall be killed or wounded, the said magistrate and officers, and all persons acting by their order, or under their direction, shall be held guiltless and fully justified in law; and if any of the said magistrates or officers, or any person acting by their order or under their direction, shall be killed or wounded, all the persons so unlawfully, riotously and tumultuously assembled, shall be held answerable therefor.

Rioters demolishing buildings, &c.

Sec. 7. If any of the persons so unlawfully assembled, shall demolish, pull down, or destroy any dwelling house, or any other building, or any shop, steamboat, or vessel, he shall be punished by imprisonment in the territorial prison, not more than seven years, nor less than three years.

CHAPTER 8.

OFFENSES AGAINST PUBLIC POLICY.

Setting up or promoting illegal lotteries.

Section 1. Every person who shall set up or promote any lottery for money, or shall dispose of any property of value, real or personal, by way of lottery, and every person who shall aid, either by printing or writing, or shall in any way be concerned in setting up, managing, or drawing any such lottery, or who shall, in any house, shop, or building owned or occupied by him, or under his control, knowingly permit the setting up, managing, or drawing of any such lottery, or the sale of any lottery ticket, or share of a ticket, or any other writing, certificate, bill, token, or any other device purporting or intended to entitle the holder, bearer, or any other person to any prize or interest, or share of any prize to be drawn in a lottery, shall, for every such offense, be punished by imprisonment in the county jail not more than six months, nor less than one month.

Selling lottery tickets or aiding therein.

Sec. 2. Every person who shall sell, either for himself or for any other person, or shall offer for sale, or shall have in his possession with intent to sell or to offer for sale, or to exchange or negotiate, or shall in any wise aid or assist in the selling, negotiating, or disposing of a ticket in any such lottery, or a share of a ticket, or any such writing, certificate, bill, token, or other device, as is mentioned in the preceding section, shall be punished by fine not exceeding five hundred dollars, nor less than one hundred dollars.

On second conviction.

Sec. 3. If any person shall, after being convicted of any offense mentioned in either of the two preceding sections, commit the like offense, or any other of the offenses therein mentioned, he shall be punished by imprisonment in the territorial prison, not more than two years, nor less than six months.

Advertising lottery tickets, &c.

Sec. 4. Every person who shall advertise any lottery ticket, or any share in any such ticket for sale, either by himself or any other person, or who shall set up or exhibit any sign, symbol, or any emblematic or other representation of a lottery, or of the drawing thereof, or any such writing, certificate, bill, token, or other device before mentioned, or where the same

may be purchased or obtained, or shall in any way invite or entice, or attempt to invite or entice any other person to purchase or receive the same, shall be punished by fine not exceeding one hundred dollars.

Making or selling tickets in fictitious lottery.

Sec. 5. Every person who shall make or sell, or shall have in his possession with intent to sell, exchange, or negotiate, or who shall, by printing, writing, or otherwise, assist in making or selling, or in attempting to sell, exchange, or negotiate any false or fictitious lottery ticket, or any share thereof, or any writing, certificate, bill, token, or other device before mentioned, or any ticket or share thereof, in any fictitious or pretended lottery, knowing the same to be false or fictitious, or who shall receive any money, or other thing of value, for any such ticket or share of a ticket, or for any such writing, certificate, bill, token, or other device, purporting that the owner, bearer, or holder thereof shall be entitled to receive any prize, or any share of such prize, or any other thing of value, that may be drawn in any lottery, knowing the same to be false or fictitious, shall, for every such offense, be punished by imprisonment in the territorial prison not exceeding two years, nor less than six months.

Defendant to prove genuineness of tickets, &c.

Sec. 6. Upon a trial of an indictment for either of the offenses mentioned in the preceding section, any ticket or share of a ticket, or any other writing or thing before mentioned which the defendant shall have sold or offered for sale, or for which he shall have received any valuable consideration, shall be deemed to be false, spurious or fictitious, unless such defendant shall prove the same to be true and genuine, and to have been duly issued by the authority of some legislature within the United States, and that such lottery was existing and undrawn, and that such ticket or share thereof or other writing or thing before mentioned, was issued by lawful authority and binding upon the persons who issued the same.

Prizes forfeited to the territory.

Sec. 7. All sums of money, and every other valuable thing drawn as a prize, or share of a prize in any lottery, by any person being an inhabitant or resident within this territory, and all sums of money and other things of value received by such person by reason of his being the owner or holder of any ticket or share of a ticket in any lottery, or any pretended

lottery, contrary to the provisions of this chapter, shall be forfeited to the use of the territory, and may be recovered by an information to be filed, or by a civil action, to be brought by the attorney general or any district attorney in the name and on behalf of the said territory.

CHAPTER 9.

GAMING.

All gaming tables prohibited.

Section 1. All e. o. or roletto tables, faro or pharo banks, and all gaming with cards, gaming tables or gambling devices whatever, are hereby prohibited from being set up or used for gaming or gambling purposes in this territory.

Dealer at faro punished.

Sec. 2. Every person who shall deal cards at the game called faro, pharo, or forty-eight, whether the same shall be dealt with fifty-two, or any other number of cards, and every person who shall keep to be used in gaming, any gambling device whatever, designed to be used in gaming, shall forfeit and be punished by fine not exceeding one hundred, nor less than fifty dollars.

Persons betting how fined.

Sec. 3. Every person who shall bet any money, or other property at or upon any gaming table, game or device, prohibited by this chapter, shall be punished by fine not exceeding twenty, nor less than five dollars.

Persons suffering gaming devices to be set up, how liable.

Sec. 4. Every person who shall suffer any gaming table, bank, or gambling device prohibited in this chapter, to be set up or used for the purpose of gaming, in any house, building, steamboat, raft, keelboat, or boom, lot, yard or garden to him belonging, or by him occupied, or of which he has the control, shall forfeit and be punished by fine, not exceeding one hundred, nor less than seventy-five dollars.

Who not excused from testifying, &c.

Sec. 5. No person shall be incapacitated or excused from testifying touching any offense committed by another against any of the provisions of this chapter, relating to gaming, by reason of his having bet or played at the prohibited games or

gaming devices; but the testimony which may be given by such person shall in no case be used against such witness.

Jurisdiction of justices under this chapter

Sec. 6. All fines and forfeitures mentioned in this chapter may be recovered before any justice of the peace, in, and in the name of, and for the use of the county where such offense may have been committed.

Duties of district attorneys

Sec. 7. It shall be the duty of the district attorney, upon notice of commencement of a suit under any of the provisions of this chapter, to immediately prosecute the same, in the name of, and for the use of their respective counties.

Money lost by gaming may be recovered in a civil action

Sec. 8. If any person shall, by playing at cards, dice, or other game, or by betting on the hands or sides of such as are gaming, lose to any person so playing or betting any sum of money, or any goods whatever, and shall pay or deliver the same or any part thereof to the winner, the person so losing and paying or delivering the same, may sue for and recover such money by a civil action, before any court having competent jurisdiction.

Judgment for plaintiff in certain cases

Sec. 9. In any suit to be brought as provided in the preceding section, by the person so losing any such money or goods, against the person winning the same, when it shall appear from the complaint that the said money or goods came to the hands of the defendant by gaming, if the plaintiff when required by the court before whom the cause is tried, shall make oath that the said money or goods were lost by gaming with the defendant, as alleged in the complaint, judgment shall be rendered that the plaintiff recover damages to the amount of the said money or goods, unless the defendant will make oath that he did not obtain the same, or any part thereof by gaming; and if he shall so discharge himself on oath, he shall recover of the plaintiff his costs: *Provided*, that the plaintiff may, at his election, maintain and prosecute his action according to the usual course of proceedings in civil actions.

Note, &c., for money won

Sec. 10. All notes, bills, bonds, mortgages or other securities or conveyances whatever, in which the whole or any part of the consideration shall be for any money or goods won by gaming or playing at cards, dice, or any other game whatever, or by betting on the sides or hands of any persons gaming, or for reimbursing or repaying any money knowingly lent or advanced

at the time and place of such gaming or betting, or lent and advanced for any gaming or betting to any person so gaming or betting, shall be void and of no effect, as between the parties to the same, and as to all persons except such as shall hold or claim under them in good faith, and without notice of the illegality of the consideration of such contract or conveyance; and whenever any mortgage or other conveyance of lands shall be adjudged void under the provisions of this section, such lands enure to the sole use and benefit of such person as would be then entitled thereto if the mortgagor or grantor were dead; and all grants or conveyances for preventing such lands from coming to and devolving upon the person to whose use and benefit the said lands would so enure, shall be deemed fraudulent and of no effect.

CHAPTER 10.

OFFENSES AGAINST CHASTITY, MORALITY, AND DECENCY.

Adultery how punished.

Section 1. Every person who shall commit the crime of adultery, shall be punished by imprisonment in the territorial prison, not more than two years, or by fine not exceeding three hundred dollars, nor less than seventy dollars; and when the crime is committed between a married woman and a man who is married, the man shall be deemed guilty of adultery, and be liable to the same punishment. But no prosecution for adultery shall be commenced, except on the complaint of the husband or the wife, and no such prosecution shall be commenced after one year from the time of committing the offense.

Polygamy how punished.

Sec. 2. If any person who has a former husband or wife living, shall marry another person, or shall continue to cohabit with such second husband or wife, he or she shall, except in the cases mentioned in the third section, be deemed guilty of the crime of polygamy, and shall be punished by imprisonment in the territorial prison, not more than four years, nor less than

two years, or by fine not exceeding five hundred dollars, nor less than three hundred dollars.

Excepted cases.

Sec. 3. The provisions of the preceding section shall not extend to any person, whose husband or wife shall have been continually remaining beyond sea, or shall have voluntarily withdrawn from the other, and remained absent for the space of seven years together, the party marrying again, not knowing the other to be living within that time; nor to any person who has been legally divorced from the bonds of matrimony, and was not the guilty cause of such divorce.

Persons guilty of lascivious conduct, how punished.

Sec. 4. If any man and woman not being married to each other, shall lewdly and lasciviously cohabit and associate together, or if any man or woman, married or unmarried, shall be guilty of open and gross lewdness or lascivious behaviour, every such person shall be punished, by fine not exceeding three hundred dollars, or by imprisonment in a county jail not exceeding three months.

Fornication how punished.

Sec. 5. If any man shall commit fornication with any single woman, each of them shall be punished by imprisonment in the [county] jail, not more than thirty days, or by fine not exceeding thirty dollars.

Punishment of seduction.

Sec. 6. Any unmarried man who, under promise of marriage, or any married man, who shall seduce and have illicit connexion with any unmarried female of previous chaste character, shall be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in the territorial prison, not exceeding five years, or by imprisonment in a county jail, not exceeding one year; but no conviction shall be had under the provisions of this section, on testimony of the female seduced, unsupported by other evidence, nor unless indictment shall be found within two years after the commission of the offense; *Provided*, that the subsequent intermarriage of the parties may be plead in bar of conviction.

Mother not concealing death of bastard.

Sec. 7. If any woman shall conceal the death of any issue of her body, which, if born alive, would be a bastard, so that it may not be known whether such issue was born alive or not, or whether it was not murdered, she shall be punished by imprisonment in the territorial prison, not more than one year, nor less than six months, or by fine not exceeding three hundred dollars, nor less than one hundred dollars.

Conviction of murder of bastard child, &c.

Sec. 8. Any woman who shall be indicted for the murder of her infant bastard child, may also be charged in the same indictment with the offense described in the last preceding section; and if on the trial, the jury shall acquit her of the charge of murder, and find her guilty of the other offense, judgment and sentence may be awarded against her for the same.

Keeping house of ill fame, &c.

Sec. 9. Every person who shall keep a house of ill fame, resorted to for the purpose of prostitution or lewdness, shall be punished by imprisonment in the territorial prison, not more than one year, nor less than six months, or by fine not exceeding three hundred dollars, nor less than one hundred dollars.

Lessee of such house may void lease.

Sec. 10. Whenever the lessee of any dwelling house, shall be convicted of the offense mentioned in the next preceding section, the lease or contract for letting such house, shall, at the option of the lessor, become void; and such lessor shall thereupon have the like remedy to recover the possession, as against a tenant for holding over after the expiration of his term.

Selling obscene books, &c.

Sec. 11. If any person shall import, print, publish, sell, or distribute any book, or any pamphlet, ballad, printed paper, or other thing containing obscene language or obscene prints, pictures, figures, or other descriptions manifestly tending to the corruption of the morals of youth, or shall introduce into any family, school, or place of education, or shall buy, procure, receive, or have in his possession any such book, pamphlet, ballad, printed paper, or other thing, either for the purpose of loan, sale, exhibition, or circulation, or with intent to introduce the same into any family, school, or place of education, he shall be punished by imprisonment in the county jail, not more than six months, or by a fine not exceeding two hundred dollars.

Persons within degrees of consanguinity, &c.

Sec. 12. All persons being within the degrees of consanguinity, within which marriages are prohibited, or declared by law to be incestious and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, shall be punished by imprisonment in the territorial prison not more than two years, nor less than six months.

Sodomy, &c. punished.

Sec. 13. Every person who shall commit sodomy, or the crime against nature, either with mankind or any beast, shall

be punished by imprisonment in the territorial prison, not more than five years, nor less than one year.

Penalty for disturbing public worship.

Sec. 14. Every person who on the Lord's day, or at any other time, shall willfully interrupt or disturb any assembly of people, met for worship, within the place of such meeting or out of it, shall be punished by fine not exceeding twenty dollars, nor less than five dollars, or imprisonment in the county jail not exceeding thirty days.

Violation of sepulchres.

Sec. 15. If any person not being lawfully authorized, shall willfully dig up, disinter, remove, or convey any human body, or the remains thereof, or shall knowingly aid in such disinterment, removal, or conveying away, every such offender and every accessory thereto, either before or after the fact, shall be punished by imprisonment in the territorial prison, not more than two years, nor less than six months, or by fine not exceeding two hundred dollars.

Injuring or defacing tombs, &c.

Sec. 16. If any person shall willfully, or with evil intent, destroy, mutilate, deface, or remove any tomb, monument, gravestone, or other structure or thing placed or designed for a memorial of the dead, or any fence, railing, curb, or other thing intended for the protection, or for the ornament of any tomb, monument, gravestone, or other structure before mentioned, or of any inclosure for the burial of the dead, or shall willfully, and with evil intent, destroy, mutilate, remove, cut, break, or injure any tree, shrub, or plant, placed or being within any such inclosure, the person so offending shall be punished by a fine not exceeding one thousand dollars, nor less than twenty-five dollars.

Making roads, &c., through burial grounds.

Sec. 17. If any person shall open or make any highway or town way, or shall construct any railroad, turnpike, or canal, or any other thing in the nature of a public easement, over, through, in, or upon such part of any enclosure, being the property of a town, village, or religious society, or of private proprietors, as may be used for the burial of the dead, unless an authority for that purpose shall be specially granted by law, or unless the consent of such town, village, or religious society, or private proprietors respectively, shall be first obtained, he shall be punished by fine not exceeding three hundred dollars, nor less than sixty dollars, or by imprisonment

in the territorial prison not more than one year nor less than six months.

Cruelty to animals.

Sec. 18. Every person who shall cruelly beat or torture any horse, ox, or other animal, whether belonging to himself or another, shall be punished by imprisonment in the county jail not more than thirty days, or by fine not exceeding fifty dollars, nor less than five dollars.

Labor prohibited on Sunday.

Sec. 19. No person shall keep open his shop, warehouse, or work house, or shall do any manner of labor, business, or work, except only works of necesssity and charity, be present at any dancing, or any public diversion, show or entertainment, or take part in any sport, game or play, on the Lord's day, commonly called Sunday; and every person so offending shall be punished by a fine not exceeding two dollars for each offense.

Sunday what time to include.

Sec. 20. For the purposes of the provisions of the nineteenth section, the Lord's day shall be understood to include the time between the midnight preceding, and the midnight following the ~~same~~ day.

Civil process not to be served on Sunday.

Sec. 21. No person shall serve or execute any civil process from midnight preceding, to midnight following the said Lord's day, but such service shall be void, and the person serving or executing such process shall be liable in damages to the party aggrieved, in like manner as if he had not had any such process.

Powers of justices of the peace under this chapter.

Sec. 22. Justices of the peace shall have jurisdiction of the offenses mentioned in the fifth, fourteenth, eighteenth, and nineteenth sections of this chapter.

Houses of public worship to be exempt from disturbance.

Sec. 23. No person shall on the first day of the week, commonly called the Lord's day, within the walls of any house of public worship or near the same, behave rudely or indecently, whether in the time of public service, or between the forenoon or afternoon services, or if any person or persons shall disturb any religious meeting by speaking in the same, or in any other manner conduct himself or themselves, so as to prevent the stated and orderly proceedings and exercises of such meeting, or shall make such disturbance while the people are assembling at or leaving their place of worship, and shall not desist therefrom when requested, he may be removed from such meeting or place of worship by any individual.

Penalties for offending.

Sec. 24. Any person offending against any provision of the foregoing section of this act, shall forfeit a sum not exceeding twenty-five dollars, nor less than two dollars, which shall be recovered by complaint of any person before any justice of the peace of the town, or adjoining town to that in which the offense was committed.

Prohibits sale of liquors or goods within two miles of camp meeting.

Sec. 25. No person shall keep any shop, tent, booth, wagon, carriage, for the sale of, or shall sell, give, or expose to sale, any spirituous or intoxicating liquors, goods or merchandise of any kind, within two miles of any public assembly, camp, or grove meeting, convened for the purpose of religious worship; but this shall not be construed to prevent any person from selling merchandize at the shop or store where he usually transacts business, nor from selling liquors in any place where he shall have received a license therefor before the appointment of such religious meeting; nor to prevent any pedler from selling his goods to any person at the usual place of business or residence of such person.

Penalty for offending.

Sec. 26. If any person shall be guilty of a breach of the preceding section, upon conviction thereof before any justice of the peace, he shall be fined not exceeding thirty dollars, or imprisoned in the county jail for any term not exceeding thirty days, or may be sentenced to both said punishments.

Prohibits horse racing, gambling, &c.; penalty.

Sec. 27. If any person shall be guilty of noisy, rude, or indecent behavior, of exhibiting shows or plays, or promoting or engaging in horse racing or gambling, at or near any such religious meeting, so as to interrupt or disturb the same, or shall at any religious meeting of the citizens of this territory, maliciously cut or otherwise injure or destroy any harness, or tents, or other property belonging to any tent holder or other person, upon conviction thereof before any justice of the peace, he shall be fined not exceeding fifty dollars, or if the offense be of an aggravated nature, he may be held to recognize with sufficient sureties to appear at the district court next to be holden in the same county, and upon conviction before such court, he shall be fined in any sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding ninety days, or by both such fine and imprisonment.

Parents and guardians liable for offenses of children.

Sec. 28. Parents and guardians shall be respectively liable for all forfeitures incurred by children and wards under their care.

Trial by district court.

Sec. 29. If any person shall be guilty of a breach of the preceding sections of this act, he may be required to recognize with such sureties in a sum not less than one hundred dollars, to appear at the district court next to be holden in the same county, and to abide the order of said court, and in the mean time to be of good behavior.

Forfeiture of recognizance; procedure.

Sec. 30. If such recognizance is forfeited, said court may require such offender to recognize with such sufficient sureties, in a sum not exceeding three hundred dollars, to appear at the next term of said court, and to abide the order thereof, and in the meantime to be of good behavior, and so from term to term as may be ordered by said court, as long as such forfeiture may be incurred.

Complaints how made.

Sec. 31. Any person may, upon view or knowledge of any offense described in this act, go before some justice of the peace of the town or adjoining town to that in which the offense was committed, who shall upon complaint under oath issue his warrant, cause such offender to be arrested, and proceed to a hearing of such complaint.

Fines and penalties to go to school fund.

Sec. 32. All fines and forfeitures that may be collected under this act, shall be paid by the justice of the peace or court collecting the same, into the county treasury, to the credit of the common school fund of the county, within ninety days after collecting the same.

Prosecutions to be commenced within sixty days.

Sec. 33. No prosecution for the violation of the provisions of this act shall be sustained, unless commenced within sixty days after the commission of such offense.

CHAPTER 11.

OFFENSES AGAINST THE PUBLIC HEALTH.

Penalty for selling unwholesome provisions, &c.

Section 1. If any person shall knowingly sell any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished by imprisonment in the county jail, not more than six months, or by fine not exceeding five hundred dollars.

Penalty for adulterating food, liquors, &c.

Sec. 2. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirits, malt liquor, or other liquor intended for drinking, with any substance injurious to health, he shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding two hundred dollars, and the articles so adulterated, shall be forfeited and destroyed.

Penalty for adulterating drugs and medicines.

Sec. 3. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, or sell any drug or medicine knowing it to be adulterated, or offer the same for sale, he shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding three hundred dollars, and such adulterated drugs and medicines shall be forfeited and destroyed by order of the court.

For inoculating with small pox.

Sec. 4. If any person shall inoculate himself, or any other person, or shall suffer himself to be inoculated with the small pox, within this territory, with intent to cause the prevalence or spread of this infectious disease, he shall be punished by imprisonment in the territorial prison, not more than three years, nor less than one year.

Physician prescribing when intoxicated.

Sec. 5. If any physician or other person, while in a state of intoxication, shall prescribe any poison, drug, or medicine, to another person, he shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding five hundred dollars.

Apothecary selling arsenic without labeling

Sec. 6. Every apothecary, druggist, or other person who shall sell and deliver any arsenic, corrosive sublimate, prussic acid, or any other active poison, without having the word "poison"

and the true name thereof, in English, written or printed upon a label attached to the vial, box, or parcel containing the same, shall be punished by a fine not exceeding one hundred dollars.

CHAPTER 12.

GENERAL PROVISIONS CONCERNING CRIMES AND PUNISHMENTS.

Accessory to felony before the fact how punished.

Section 1. Every person who shall be aiding in the commission of any offense which shall be a felony, or who shall be accessory thereto before the fact, by counseling, hiring, or otherwise procuring such felony to be committed, shall be punished in the same manner as is, or shall be prescribed for the punishment of the principal felon.

Accessory to felony before the fact how punished.

Sec. 2. Every person who shall counsel, hire, or otherwise procure any offense to be committed which shall be a felony, may be indicted and committed as an accessory before the fact, either with the principal felon, or after the conviction of the principal felon; or he may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been convicted, or shall or shall not be amenable to justice, and in the last mentioned case may be punished in the same manner as if convicted of being an accessory before the fact.

Persons where tried.

Sec. 3. Any person guilty of the offense in the preceding section, may be indicted, tried and punished in the same court and in the same county where the principal felon might be indicted and tried, although the offense of counseling, hiring, abetting, or procuring the commission of such felony, may have been committed elsewhere, either within or without the limits of this territory.

Accessory after the fact how punished.

Sec. 4. Every person not standing in the relation of husband or wife, parent or child, by consanguinity or affinity to the offender, who after the commission of any felony, shall harbor, conceal, maintain or assist any principal felon or acces-

sory before the fact, or shall give such offender any other aid, knowing that he has committed a felony, or has been accessory thereto before the fact, with intent that he shall avoid or escape from detection, arrest, trial, or punishment, shall be deemed an accessory after the fact, and shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding two hundred dollars, or both.

Accessory after the fact how tried.

Sec. 5. Every person who shall become an accessory after the fact to any felony, either at common law or by any statute made, or which shall hereafter be made, may be indicted, convicted, and punished, whether the principal felon shall or shall not have been convicted previously, or shall or shall not be amenable to justice by any court having jurisdiction to try the principal felon, and either in the county where such person shall have become an accessory, or in the county where such principal felon shall have been committed.

On indictments for libel, truth may be given in evidence, &c.

Sec. 6. In all criminal prosecutions or indictments for libel, the truth may be given in evidence; and if it shall appear to the jury that the matter charged as libelous be true, and was published with good motives and justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Offenses committed near boundary of county.

Sec. 7. Offenses committed on the boundary lines of two counties, or within one hundred rods of the dividing line between them, may be alleged in the indictment to have been committed in either of them, and may be prosecuted and punished in either county.

Mortal wound in one county and death in another

Sec. 8. If any mortal wound shall be given, or other violence or injury shall be inflicted, or any poison shall be administered in one county, by means whereof death shall ensue in another county, the offense may be prosecuted in either county.

Mortal wound without the territory and death in the territory, trial where to be had.

Sec. 9. If any such mortal wound shall be inflicted, or other violence or injury done, or poison administered, either within or without the limits of this territory, by means whereof death shall ensue in any county thereof, such offense may be prosecuted and punished in the county where such death may happen.

Allegation in indictment for embezzlement and evidence.

Sec. 10. In any prosecution for the offense of embezzling the money, bank notes, checks, drafts, bills of exchange, or

other security for money, of any person, by a clerk, agent, or servant of such person, it shall be sufficient to allege generally in the indictment, an embezzlement of money to a certain amount without specifying any particulars of such embezzlement, and on the trial evidence may be given of any such embezzlement committed within six months next after the time stated in the indictment, and it shall be sufficient to maintain the charge in the indictment, and shall not be deemed a variance if it shall be proved that any money, bank note, check, draft, bill of exchange, or other security for money of such person, of whatever amount, was fraudulently embezzled by such clerk, agent, or servant, within the said period of six months.

What deemed proof of ownership of property stolen, &c.

Sec. 11. In the prosecution of any such offense committed upon or in relation to, or in any way affecting any real estate, or any offense committed in stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it be proved on trial that at the time when such offense was committed, either the actual or constructive possession, or the general or special property, in the whole or any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation, to be the owner thereof.

Fines for violation of duty, where prosecuted.

Sec. 12. All fines and forfeitures imposed as a punishment for any offense, or for the violation or neglect of any duty imposed by statute, may be prosecuted for and recovered by indictment in the district court; or when the amount or value thereof does not exceed one hundred dollars, the same may be prosecuted for by complaint before a justice of the peace, who shall have jurisdiction thereof concurrently with the district court, except in cases of felony; and in all cases of the imposition of a fine pursuant to statute, as punishment for any offense, the offender may be committed till the same is paid, or he is otherwise discharged according to law.

May be prosecuted before justice of the peace.

Fines, &c., when recovered before justice.

Sec. 13. When any fine shall be imposed upon any person upon conviction upon an indictment or presentment of a grand jury, or when such fine has been imposed by a justice of the peace, in cases where justices of the peace have jurisdiction, such fine when the same shall be collected, shall in all cases be paid in-

to the county treasury of the county where the conviction was had, unless otherwise provided by law.

Plea of benefit of clergy and petit treason abolished.

Sec. 14. The plea of benefit of clergy, and the distinction between murder and petit treason, are abolished, and the last named offense shall be prosecuted and punished as murder in the second degree.

Constructive misdemeanor.

Sec. 15. Where any duty is or shall be enjoined by law, upon any public officer, or upon any person holding any public trust or employment, every willful neglect to perform such duty, and every misbehavior in office where no special provisions shall have been made for the punishment of such delinquency or malfeasance, shall be a misdemeanor punishable by fine and imprisonment.

Punishment for attempt to commit an offense prohibited by law.

Sec. 16. Every person who shall attempt to commit an offense prohibited by law, and in such attempt shall do any act towards the commission of such offense, but shall fail in the perpetration thereof, or shall be prevented or intercepted in executing the same, upon conviction thereof shall, in cases where no provision is made by law for the punishment of such attempt, be punished as follows:

Where imprisoned.

1. If the offense attempted to be committed, be such as is punishable by death of the offender, the person convicted of such attempt shall be punished by imprisonment in the territorial prison not exceeding ten years.

Term of imprisonment.

2. If the offense so attempted, be punishable by imprisonment in the territorial prison for four years or more, or by imprisonment in the county jail, the person convicted of such attempt shall be punished by imprisonment in the territorial prison, or in a county jail, as the case may be, for a term not exceeding half the longest term of imprisonment prescribed, upon a conviction for the offense so attempted.

May be imprisoned in county jail.

3. If the offense so attempted, be punishable by imprisonment in the territorial prison for any term less than four years, the person convicted of such attempt shall be punished by imprisonment in a county jail, not more than one year.

May be fined; when.

4. If the offense so attempted be punishable by fine, the offender convicted of such attempt shall be liable to a fine not exceeding one half of the largest amount which may be imposed upon a conviction for the offense so attempted.

May be punished by both fine and imprisonment.

5. If the offense so attempted, be punishable by imprisonment and by fine, the offender convicted of such attempt, may be punished by both imprisonment and fine not exceeding one half of the longest time of imprisonment, and one half of the greatest fine, which may be imposed upon a conviction for the offense so attempted.

Penalty for second offense.

Sec. 17. If any person convicted of any offense punishable by fine or imprisonment, or both, shall be discharged on payment of such fine, or expiration of such imprisonment, or both; or on being pardoned and shall subsequently be convicted of a like offense; or if the first offense were a felony, shall subsequently be convicted of any other felony, such person may for such second or subsequent offense, on conviction, be punished by fine or imprisonment, or both, not exceeding double the amount, or extent of that which might have been inflicted or imposed for the first offense according to law.

The term "felonious" defined.

"Infamous crime" defined.

"Personal property" defined.

"Property" defined.

"Person" defined.

Sec. 18. The term "felonious" in any statute, means "criminal." The term "feloniously" means "criminally." The term "infamous crime" in any statute, includes every offense punishable with death or imprisonment in the territorial prison. The term "personal property" when used in any part of this act relating to crimes and punishments, or criminal proceedings, includes goods, chattels, effects, moneys, evidences of rights in action, and all written instruments by which any pecuniary obligation, or any right or title to property, real or personal, shall be created, acknowledged, transferred, increased, defeated, discharged or diminished; and the term "property," when so used, includes personal property as thus defined, and also every estate, interest and right in lands, tenements and hereditaments. The term "person," as used in this act, to designate the party whose rights or property may be the subject of any offense, shall be construed to include in the United States, this territory, or any county, town, state, government, or country, which may lawfully own any property within this territory, and all public and private corporations, as well as individuals.

CHAPTER 13.

PROCEEDINGS IN CRIMINAL CASES.

Search warrants when and by whom issued.

Section 1. When complaint shall be made, on oath, to any magistrate authorized to issue warrants in criminal cases, that personal property has been stolen or embezzled, or obtained by false tokens or pretenses, and that the complainant believes that it is concealed in any particular house or place, the magistrate, if he be satisfied that there is reasonable cause for such belief, shall issue his warrant to search for such property.

Magistrate when to issue warrant.

Sec. 2. Any such magistrate when satisfied that there is reasonable cause, may also upon like complaint made on oath issue search warrants in the following cases, to wit:

1. To search for, and seize any counterfeit or spurious coin, forged bank notes, and other forged instruments, or tools, machines, or materials, prepared or provided for making either of them.

2. To search for and seize any books, pamphlets, ballads, printed papers, or other things containing obscene language, or obscene prints, pictures, figures, or descriptions, manifestly tending to corrupt the morals of youth, and intended to be sold, loaned, circulated, distributed, or introduced into any family, school or place of education.

3. To search for and seize any gaming apparatus or implements, used or kept, and to be used in unlawful gaming, in any gaming house, or in any building, apartment, or place, resorted to for the purpose of unlawful gaming.

Warrants to whom issued and what to contain.

Sec. 3. All such warrants shall be directed to the sheriff of the county, or his deputy, or to any constable of the county, commanding such officer to search the house or place where the stolen property or other things for which he is required to search, are believed to be concealed, which place and property or things to be searched for, shall be designated and described in the warrant, and to bring such stolen property, or other things, when found, and the person in whose possession the same shall be found, before the magistrate who issued the war-

rant, or before some other magistrate, or court, having cognizance of the case.

Property seized how kept and disposed of.

Sec. 4. When any officer, in the execution of a search warrant, shall find any stolen or embezzled property, or shall seize any other things, for which a search is allowed by this chapter, all the property and things so seized, shall be safely kept by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced as evidence on any trial, and as soon as may be afterwards all such stolen and embezzled property shall be restored to the owner thereof, and all other things seized by virtue of such warrant shall be destroyed, under the direction of the court or magistrate.

CHAPTER 14.

DEMANDING FUGITIVES FROM JUSTICE, &c.

Governor may appoint agents to demand fugitives from justice.

Section 1. The governor of this territory may, in any case authorized by the constitution and laws of the United States, appoint agents to demand of the executive authority of any state or territory, any fugitive from justice, or any person charged with felony or any other crime in this territory, and whenever an application shall be made to the governor for that purpose, the district attorney or any other prosecuting officer of the territory, when required by the governor, shall forthwith investigate the grounds of such application, and report to the governor all material circumstances which may come to his knowledge, with an abstract of the evidence, and his opinion as to the expediency of the demand; but the governor may, in any case, appoint such agents without requiring the opinion of, or any report from the district attorney; and the accounts of the agents appointed for such purpose, shall in all cases be audited by the governor and paid from the territorial treasury.

Proceedings on demand of executive of other states, &c., for fugitives from justice.

Sec. 2. When a demand shall be made upon the governor of this territory, by the executive of any state or territory, in any case authorized by the constitution and laws of the United States, for the delivery over of any person charged in such state or territory, with treason, felony, or any other crime, the district attorney, or any other prosecuting officer of the territory, when required by the governor, shall forthwith investigate the ground of such demand, and report to the governor all material facts which may come to his knowledge, as to the situation and circumstances of the person so demanded, especially whether he is held in custody, or is under recognizance to answer for any offense against the laws of this territory, or of the United States, or by force of any civil process, and also whether such demand is made according to law, so that such person ought to be delivered up; and if the governor is satisfied that such demand is made conformable to law, and ought to be complied with, he shall issue his warrant, under the seal of the territory, authorizing the agents who make such demand, either forthwith, or at such time as shall be designated by the warrant, to take and transport such person to the line of the territory, at the expense of such agents, and shall also, by such warrant, require the civil officers, within this territory, to afford all needful assistance in the execution thereof.

When and how magistrate to issue warrant and what to contain.

Sec. 3. Whenever any person shall be found within this territory, charged with any offense committed in any state or territory, and liable by the constitution and laws of the United States, to be delivered over upon the demand of the executive of such state or territory, any court or magistrate authorized to issue warrants in criminal cases, may, upon complaint under oath, setting forth the offense and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same, or some other court or magistrate within the territory, to answer such complaint as in other cases.

When person charged to give recognizance.

Sec. 4. If, upon examination of the person charged, it shall appear to the court or magistrate that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the governor, he shall, if not charged with a capital crime, be required to recognize with sufficient

sureties, in a reasonable sum, to appear before such court, or magistrate at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court or magistrate; and if such person shall not so recognize he shall be committed to prison, and be there detained until such day, in like manner as if the offense charged had been committed within this territory; and if the person so recognizing shall fail to appear according to the condition of his recognizance, he shall be defaulted, and the like proceedings shall be had, as in the case of other recognizances entered into before such court or magistrate; but if such person be charged with a capital crime, he shall be committed to prison, and there detained until the day so appointed for his appearance before the court or magistrate.

When to be committed.

Forfeiture of recognizance.

When discharged.

Sec. 5. If the person so recognized or committed shall appear before the court or magistrate upon the day ordered, he shall be discharged, unless he be demanded by some persons authorized by the warrant of the executive to receive him, or unless the court or magistrate shall see cause to commit him, or to require him to recognize anew, for his appearance at some other day, and if, when ordered, he shall not so recognize, he shall be committed and detained as before provided; whether the person so discharged shall be recognized, committed, or discharged, any person authorized by the warrant of the executive, may at all times, take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an ascape.

May be delivered on warrant of executive, &c.

Complainant liable for costs, &c.

Sec. 6. The complainant in such case shall be answerable for the actual costs and charges, and for the support in prison, of any person so committed, and shall advance to the jailor one week's board, at the time of commitment, and so from week to week, so long as such person shall remain in jail, and if he fail so to do, the jailor may forthwith discharge such person from his custody.

CHAPTER 15.

PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

What officer to cause public peace to be kept

Section 1. The judges of the several courts of record, in vacation as well as in open court, and all justices of the peace, shall have power to cause all laws made for the preservation of the public peace to be kept, and in the execution of that power, may require persons to give security to keep the peace, or for their good behavior, or both, in the manner provided in this chapter.

Proceedings when complaint is made to magistrate.

Sec. 2 Whenever complaint shall be made to any such magistrate that any person has threatened to commit an offense against the person or property of another, the magistrate shall examine the complainant, and any witness who may be produced, on oath, and to reduce such complaint to writing, and cause the same to be subscribed by the complainant.

Magistrate when to issue warrant.

Sec. 3. If upon examination, it shall appear that there is just cause to fear that any such offense may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate, or some other magistrate, or court, having jurisdiction of the cause.

Proceedings upon examination before magistrate.

Sec. 4. The magistrate before whom any person is brought upon charge of having made threats as aforesaid, shall as soon as may be, examine the complainant and the witnesses to support the prosecution, on oath, in the presence of the party charged, in relation to any matters connected with such charge, which may be deemed pertinent.

Defendant may have counsel.

Sec. 5. After the testimony to support the prosecution, the witnesses for the prisoner, if he have any, shall be sworn and examined, and he may be assisted by counsel in such examination, and also in the cross-examination of the witnesses in support of the prosecution.

Defendant when to enter into recognizance.

Sec. 6. If upon examination, it shall appear that there is just cause to fear that any such offense will be committed by

the party complained of, he shall be required to enter into a recognizance, and with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace toward all the people of this territory, and especially toward the persons requiring such security, for such term as the magistrate shall order, not exceeding six months; but he shall not be ordered to recognize for his appearance at the district court, unless he is charged with some offense for which he ought to be held to answer at said court.

Defendant when to be discharged

Sec. 7. Upon complying with the order of the magistrate, the party complained of shall be discharged.

Defendant when to be committed

Sec. 8. If the person so ordered to recognize shall refuse or neglect to comply with such order, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he shall so recognize, stating in the warrant the cause of commitment, with the sum and time for which security was required.

Defendant when to be discharged

Sec. 9. If, upon examination, it shall not appear that there is just cause to fear that any such offense will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous, or malicious, he shall order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees as for his own debt.

Costs by whom paid.

Sec. 10. When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security for the peace or for his good behavior, the magistrate may further order the costs of prosecution or any part thereof to be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged.

Appeal when allowed.

Sec. 11. Any person aggrieved by the order of any justice of the peace requiring him to recognize as aforesaid, may, on giving the security required, appeal to the district court next to be holden in the same county, or that county to which said county is attached for judicial purposes.

When magistrate may require witnesses to recognize.

Sec. 12. The magistrate from whose order an appeal is so taken, shall require such witnesses as he may think necesary to

support the complaint, to recognize for their appearance at the court to which appeal is made.

District court how to proceed upon such appeal.

Sec. 13. The court before which such appeal is prosecuted, may affirm the order of the justice or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of the prosecution as he may deem just and reasonable.

When appellant fails to prosecute appeal, recognizance to be in force.

Sec. 14. If any party appealing shall fail to prosecute his appeal, his recognizance shall remain in full force and effect as to any breach of the condition, without an affirmation of the judgment or order of the magistrate, and shall also stand as a security for any costs which shall be ordered by the court appealed to, to be paid by the appellant.

After commitment how defendant may be discharged.

Sec. 15. Any person committed for not finding sureties or refusing to recognize as required by the court or magistrate, may be discharged by any judge or justice of the peace, on giving such security as was required.

Recognizance to be transmitted to district court

Sec. 16. Every recognizance taken in pursuance of the foregoing provision shall be transmitted by the magistrate to the district court for the county, on or before the first day of the next term, and shall be there filed or recorded by the clerk.

When person may be ordered to recognize without warrant.

Sec. 17. Any person who shall in the presence of any magistrate mentioned in the first section of this chapter, or before any court of record make an affray, or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person, who, in the presence of such court or magistrate, shall contend with hot and angry words, to the disturbance of the peace, may be ordered without process or any other proof, to recognize for keeping the peace, and being of good behavior, for a term not exceeding six months, and in case of a refusal, may be committed as before directed.

Person carrying offensive weapons, how punished.

Sec. 18. If any person shall go armed with a dirk, dagger, sword, pistol or pistols, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury or violence to his person, or to his family or property, he may, on complaint of any other person having reasonable cause to

fear an injury or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing as before provided.

Suit brought on recognizance.

Sec. 19. Whenever upon a suit brought on any such recognizances, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty, on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

Surety may take and surrender principal in recognizance.

Sec. 20. Any surety in a recognizance to keep the peace, or for good behavior, or both, shall have the same authority and right to take and surrender his principal, as if he had been bail for him in a civil case, and upon such surrender, shall be discharged and exempt from all liability for any act of the principal, subsequent to such surrender, which would be a breach of the condition of the recognizance: and the person so surrendered may recognize anew, with sufficient sureties, before any justice of the peace for the residue of the term, and thereupon shall be discharged.

CHAPTER 16.

ARRESTS.

Arrest defined.

Section 1. Arrest is the taking of a person into custody, that he may be held to answer for public offense.

Arrest how and by whom made.

Sec. 2. An arrest may be either:

1. By a peace officer under a warrant;
2. By a peace officer without a warrant;
3. By a private person.

Every person must aid officer in making arrest.

Sec. 3. Every person must aid an officer in the execution of a warrant, if the officer require his aid, and be present and acting in its execution.

Arrest for felony or misdemeanor, how made.

Sec. 4. If the offense charged be a felony, the arrest may be made on any day and at any time of the day or night; if it be a misdemeanor, the arrest cannot be made on Sunday, or at

night, unless upon the direction of the magistrate indorsed upon the warrant.

Arrest for felony or misdemeanor, how made.

Sec. 5. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.

Defendant how to be restrained.

Sec. 6. The defendant is not to be subjected to any more restraint than is necessary for his arrest and detention.

Officer must inform defendant that he acts under authority.

Sec. 7. The officer must inform the defendant that he acts under the authority of the warrant, and must also show the warrant if required.

Officer may use necessary force.

Sec. 8. If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

Officer may break outer door to make arrest.

Sec. 9. The officer may break open an inner or outer door, or window of a dwelling house, to execute the warrant, if after notice of his authority and purpose he be refused admittance.

Officer may break outer door to make arrest.

Sec. 10. An officer may break open an inner or outer door, or window of a dwelling house, for the purpose of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

When officer may arrest person without warrant.

Sec. 11. A peace officer may, without a warrant, arrest a person :

1. For a public offense committed or attempted in his presence.

2. When a person arrested has committed a felony, although not in his presence.

3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have commited it.

4. On a charge made upon reasonable cause of the commission of a felony by the party arrested.

Officer may break open door.

Sec. 12. To make an arrest as provided in the last section, the officer may break open an outer or inner door or window of a dwelling house, if after notice of his office and purpose, he be refused admittance.

Arrests may be made at night.

Sec. 13. He may also at night, without a warrant, arrest any person whom he has reasonable cause for believing to

have committed a felony, and is justified in making the arrest, though it afterwards appear that a felony has not been committed.

Officer must inform person of the cause of arrest.

Sec. 14. When arresting a person without a warrant, the officer must inform him of his authority, and the cause of the arrest, except when he is in the actual commission of a public offense, or is pursued immediately after an escape.

Person breaking peace to be taken before justice.

Sec. 15. He may take before a magistrate, a person who being engaged in a breach of the peace, is arrested by a bystander, and delivered to him.

Offenses in presence of magistrate.

Sec. 16. When a public offense is committed in the presence of a magistrate, he may by a verbal or written order, command any person to arrest the offender, and may thereupon proceed as if the offender had been before him on a warrant of arrest.

When private person may arrest person.

Sec. 17. A private person may arrest another:

1. For a public offense committed or attempted in his presence.

2. When the person arrested has committed a felony, although not in his presence.

3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

Must inform person the cause of arrest.

Sec. 18. He must, before making the arrest, inform the person to be arrested, of the cause thereof, and require him to submit, except when he is in the actual commission of the offense, or when he is arrested on pursuit immediately after its commission.

Person making such arrest may break open door.

Sec. 19. If the person to be arrested had committed a felony, and a private person, after notice of his intention to make the arrest, be refused admittance, he may break open an outer or inner door or window of a dwelling house, for the purpose of making the same.

Person arrested must be taken before magistrate.

Sec. 20. A private person who has arrested another for the commission of a public offense, must, without unnecessary delay, take him before a magistrate, or deliver him to a peace officer.

Defendant may be retaken if he escape.

Sec. 21. If a person arrested, escape or be rescued, the person from whose custody he escaped or was rescued, may imme-

diately pursue and retake him, at any time and in any place in the territory.

When pursuer may break window or door.

Sec. 22. To retake the person escaping or rescued, the person pursuing may, after notice of his intention, and refusal of admittance, break open an outer or inner door or window of a dwelling house.

CHAPTER 17.

EXAMINATION OF OFFENDERS, COMMITMENT FOR TRIAL, AND TAKING BAIL.

What officers authorized to issue process under this chapter.

Section 1. For the apprehension of persons charged with offenses, the judges of the several courts of record, in vacation as well as in term time, and all justices of the peace, are authorized to issue process to carry into effect the provisions of this chapter.

Proceedings upon complaint being made.

Sec. 2. Upon complaint being made to any such magistrate that a criminal offense has been committed, he shall examine on oath the complainant and any witness provided by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant; and if it shall appear that any such offense has been committed, the court or justice shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed, forthwith to take the person accused and bring him before the said court or justice, or before some other court or magistrate of the county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

Justice to issue warrant.

Officer having process may apprehend defendant in any county.

Sec. 3. If any person against whom a warrant may be issued for an alleged offense committed in any county, shall either before or after the issuing of such warrant, escape from or be out of the county, the sheriff or other officer to whom such warrant may be directed may pursue and apprehend the

party charged, in any county in this territory, and for that purpose may command aid and exercise the same authority as in his own county.

Defendant may enter into recognizance without examination.

Sec. 4. In all cases where the offense charged in the warrant is not punishable by death or imprisonment in the territorial prison, if the person arrested request that he may be brought before a magistrate of the county in which the arrest was made, for the purpose of entering into a recognizance without a trial or examination, the officer making the arrest shall carry him before a magistrate of that county, who may take from the person arrested a recognizance, with sufficient sureties, for his appearance at the court having cognizance of the offense, and next holden in the county where it shall be alleged to have been committed; and the party arrested shall thereupon be liberated.

Duty of magistrate taking the recognizance.

Sec. 5. The magistrate who shall so let the person arrested to bail, shall certify that fact upon the warrant, and shall deliver the same, with the recognizances by him taken, to the person who made the arrest, who shall cause the same to be delivered without unnecessary delay to the clerk of the court before which the accused was recognized to appear; and on application of the complainant, the magistrate who issued the warrant, or the district attorney, shall cause such witnesses to be summoned to the same court as he shall think necessary.

Proceedings when magistrate refuses to take bail.

Sec. 6. If the magistrate in the county where the arrest was made shall refuse to bail the person so arrested and brought before him, or if no sufficient bail shall be offered, the person having him in charge shall take him before the magistrate who issued the warrant, or in his absence, before some other magistrate of the county in which the warrant was issued, to be proceeded with as hereinafter directed.

Proceedings in case of felonies.

Sec. 7. When the offense charged in any warrant is punishable with death, or by imprisonment in the territorial prison, the officer making the arrest in some other county shall convey the prisoner to the county where the warrant issued, and he shall be proceeded with in the manner directed in the following section.

Before whom prisoner to be brought on arrest.

Sec. 8. Every person arrested by warrant, for any offense where no other provision is made for his examination thereon,

shall be brought before the magistrate who issued the warrant, or if he be absent or unable to attend, before some other magistrate of the same county, and the warrant with the proper return thereon, signed by the person who made the arrest, shall be delivered to the magistrate.

Justice may adjourn hearing for ten days.

Sec. 9. Any magistrate may adjourn an examination or trial pending before himself from time to time as occasion shall require, not exceeding ten days at one time, without the consent of the defendant or person charged, and at the same or a different place in the county as he shall think proper, and in such case, if the party is charged with a capital offense, he shall be committed in the mean time; otherwise he may be recognized in a sum, and with sureties, to the satisfaction of the magistrates, for his appearance for such further examination, and for want of such recognizance, he shall be committed to prison.

Proceeding when defendant does not appear on adjourn day.

Sec. 10. If the person so recognized shall not appear before the magistrate at the time appointed for such further examination, according to the condition of such recognizance, the magistrate shall record the default, and shall certify the recognizance, with the record of such default to the district court, and like proceedings shall be had thereon as upon the breach of the condition of a recognizance for appearance before that court.

If person fail to recognize must be committed.

Sec. 11. When such person shall fail to recognize, he shall be committed to prison by an order under the hand of the magistrate stating concisely that he is committed for further examination on a future day, to be named in the order; and on the day appointed he may be brought before the magistrate by his verbal order to the same officer by whom he was committed, or by an order in writing to a different person.

Examination how conducted.

Sec. 12. The magistrate before whom any person is brought upon a charge of having committed an offense, shall, as soon as may be, examine the complainant and the witnesses to support the prosecution, on oath, in the presence of the party charged, in relation to any matter connected with such charge, which may be deemed pertinent.

Examination how conducted

Sec. 13. After the testimony to support the prosecution, the witnesses for the prisoner, if he have any, shall be sworn and

examined, and he may be assisted by counsel in such examination, and also in the cross-examination of the witnesses in support of the prosecution.

Examination how conducted.

Sec. 14. The magistrate while examining any witness, may in his discretion exclude from the place of examination all the other witnesses; he may also, if requested, or if he see cause, direct the witnesses for or against the prisoner, to be kept separate, so that they cannot converse with each other, until they shall have been examined.

Testimony to be reduced to writing.

Sec. 15. The testimony of the witnesses examined shall be reduced to writing by the magistrate, or under his direction, when he shall think it necessary, and shall be signed by the witnesses, if required by the magistrate.

Defendant when to be discharged.

Sec. 16. If it shall appear to the magistrate upon the whole examination that no offense has been committed, or that there is not probable cause for charging the prisoner with the offense, he shall be discharged.

When bail to be taken, and when not.

Sec. 17. Persons charged with an offense punishable with death shall not be admitted to bail when the proof is evident or the presumption great; nor any person charged with an offense punishable with death or imprisonment in the territorial prison for a term exceeding seven years, be admitted to bail by a justice of the peace; in all other cases, bail may be taken in such sum as in the opinion of the judge or magistrate will secure the appearance of the person charged with the offense at the court where such person is to be tried.

When defendant to be discharged

Sec. 18. If it shall appear that an offense has been committed, and that there is probable cause to believe the prisoner guilty, and if the offense be bailable by the magistrate, and the prisoner offer sufficient bail, or the amount of money in lieu thereof, it shall be taken and the prisoner discharged; but if no sufficient bail be offered, or the offense be not bailable by the magistrate, the prisoner shall be committed for trial.

When witness may be held to bail.

Sec. 19. When the prisoner is admitted to bail, or committed by the magistrate, he shall also bind by recognizance such witnesses against the prisoner as he shall deem material, to appear and testify at the next court having cognizance of the offense, and in which the prisoner shall be held to answer.

When justice may require other security of witness.

Sec. 20. If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance, unless other security be given, such magistrate may order the witness to enter into a recognizance with such sureties as may be deemed necessary for his appearance at court.

When married woman or minor is witness.

Sec. 21. When any married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may in his discretion take the recognizance of such married woman or minor in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of coverture or minority.

When witness may be committed.

Sec. 22. All witnesses required to recognize either with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order, or be otherwise discharged according to law.

When prisoner may be released.

Sec. 23. Any judge of a court of record on application of any prisoner committed for a bailable offense, may inquire into the case and admit such prisoner to bail; and any person committed for not finding sufficient sureties to recognize for him, may be admitted to bail by either of said judges.

Justice may associate with himself another justice.

Sec. 24. Any magistrate to whom complaint is made, or before whom any prisoner is brought, may associate with himself one or more magistrates of the same county, and they may together execute the powers and duties before mentioned, but no fees shall be taxed for such associates.

Examination and recognizance how returned.

Sec. 25. All examinations and recognizances, taken by any magistrate in pursuance of the provisions of this chapter shall be certified and returned by him to the district attorney or the clerk of the court before which the party charged is bound to appear, on or before the first day of the sitting thereof, and if such magistrate shall neglect or refuse to return the same, he may be compelled forthwith by rule of court, and in case of disobedience, may be proceeded against by attachment as for contempt.

Magistrate may discharge recognizance in certain cases.

Sec. 26. When any person shall be committed to prison, or shall be under recognizance, to any charge of assault and battery or other misdemeanor, for which the party injured may

have a remedy by civil action, except when the offense was committed by or upon any sheriff or other officer of justice, or riotously or with intent to commit a felony, if the party injured shall appear before the magistrate who made the commitment or took the recognizance, and acknowledge in writing that he has received satisfaction for the injury, the magistrate may in his discretion, on payment of all the costs which have accrued, discharge the recognizance or supersede the commitment by an order under his hand; and may also discharge all recognizances and supersede the commitment of all witnesses in the case.

Order discharging recognizance when filed.

Sec. 27. Every such order of the magistrate discharging the recognizance of the party or witnesses, shall be filed in the office of the clerk, before the sitting of the court before which they are bound to appear; and every order superseding the commitment of the party charged, or any witnesses, shall be delivered to the keeper of the jail in which he is confined, who shall forthwith discharge him; and every such order, if so filed and delivered, and not otherwise, shall forever bar all remedy by civil action for such injury.

Proceeding in case of forfeiture of recognizance.

Sec. 28. When any person under recognizance in any criminal prosecution, either to appear and answer or to prosecute an appeal, or to testify in any court, shall fail to perform the condition of such recognizance, his default shall be recorded, and process shall be issue against the persons bound by the recognizance, or such of them as the prosecuting officer shall direct.

Security in recognizance may pay amount to county.

Sec. 29. Any surety in such recognizance may by leave of the court, after default, and either before or after the process has been issued against him, pay to the county treasurer or to the clerk of the court, the amount for which he was bound as surety, with such costs as the court shall direct, and be thereupon forever discharged.

Action on recognizance.

Sec. 30. When any action is brought in the name of the territory of Dakota against a principal or surety in any recognizance entered into, either by a party or a witness in any criminal prosecution, and the penalty of such recognizance shall be adjudged forfeited, the court may, on application of any party defendant, remit any part of the whole of such penalty, and

may render judgment thereon for the territory, according to the circumstances of the case, and the situation of the party, and upon such terms and conditions as to such court shall seem just and reasonable.

Such action when barred or defeated.

Sec. 31. No such action brought on a recognizance as mentioned in the preceding section shall be barred or defeated nor shall judgment thereon be arrested by reason of any neglect or omission to note or record the default of any principal or surety, at the term when such default shall happen, nor by reason of any such defect in the form of the recognizance; if it sufficiently appear from the tenor thereof at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken was authorized by law to require and take such recognizance.

CHAPTER 18.

GRAND JURORS.

Grand jury defined.

Section 1. A grand jury is a body of men not less than sixteen, nor more than twenty-three in number, returned at stated periods from the citizens of the county, before a court of competent jurisdiction, chosen by lot, and sworn to inquire of public offenses, committed or triable in the county.

Grand jury how drawn.

Sec. 2. A grand jury must be drawn for one term of the district court in each of the organized counties in this territory, in which a term of the district court is held.

Who liable to be drawn as grand jurors.

Sec. 3. All persons who are qualified electors of this territory shall be liable to be drawn as grand jurors, except as hereinafter provided.

Who exempt from serving on juries.

Sec. 4. The following persons shall be exempt from serving as grand jurors: All United States officers, all judges of courts of record, commissioners of public buildings, auditor and treasurer of the territory, territorial librarian, clerks of courts, reg-

isters of deeds, sheriffs and their deputies, coroners, constables, attorneys and counsellors at law, and solicitors in chancery, ministers of the gospel, preceptors and teachers of incorporated academies, one teacher in each common school, practising physicians and surgeons, one miller to each grist mill, one ferryman to each licensed ferry, all members of companies of firemen organized according to law, all persons more than sixty years of age, and all persons not of sound mind or discretion, and persons subject to any bodily infirmity amounting to any disability; and all persons shall be disqualified from serving as grand jurors who have been convicted of any infamous crime.

Grand jury how drawn.

Sec. 5. On receiving the list of grand jurors from the register of deeds, as selected by the board of county commissioners, the clerk of the district court shall write names of the persons contained therein, on separate pieces of paper, and shall fold up such pieces of paper each in the same manner as near as possible, so that the name written thereon shall not be visible, and shall deposit the same in a box to be drawn as hereinafter provided.

Duties of clerk.

Jurors to be drawn fifteen days before court.

Sec. 6. At least fifteen days before the sitting of any district court, the clerk thereof, in the presence of the sheriff, or his deputy, and a justice of the peace, shall proceed to draw the names of twenty-three persons from the box, to serve as grand jurors at such court.

Clerk to issue venire.

Sec. 7. The clerk of the district court shall, twelve days at least before the first day of the court, issue and deliver to the sheriff or his deputy, a venire under the seal of the court, commanding him to summon the persons so drawn, to appear before the said court, at or before the hour of eleven o'clock, A. M., on the first day of the term thereof, to serve as grand jurors.

Grand jury how summoned.

Sec. 8. The sheriff or his deputy, shall summon the persons so named in the venire, to attend such court as grand jurors, at least six days before the sitting of such court, by giving personal notice to each person, or by leaving a written notice at his place of residence, with some person of proper age. He shall return such venire to the court at the opening thereof,

specifying those who were summoned, and the manner in which each person was notified.

Penalty for refusal to attend.

Sec. 9. If any person duly drawn and summoned to attend as a grand juror in any court, shall neglect to attend, without any sufficient excuse, he shall pay a fine not exceeding thirty dollars, which shall be imposed by the court to which the juror was summoned, and shall be paid into the county treasury.

Proceeding where a deficiency of jurors exists.

Sec. 10. In case of a deficiency of grand jurors in any court, writs of venire facias may be issued to the proper officer, to return forthwith such further number of grand jurors as may be required.

Proceeding where a deficiency of jurors exists.

Sec. 11. The proper officer shall summon such persons accordingly, who shall be bound forthwith to attend and serve, unless excused by the court, in the same manner and subject to the same penalties for neglect, as persons duly drawn by the clerk of the district court, and summoned as herein provided.

How many grand jurors to be sworn.

Sec. 12. No more than twenty-three, nor less than sixteen persons can be sworn on a grand jury, nor can a grand jury proceed to any business unless sixteen members at least be present.

Persons held to answer charges for public offenses, may challenge the panel.

Sec. 13. A person held to answer a charge for a public offense, may challenge the pannel of the grand jury, or any individual grand juror, before they retire, after being sworn and charged by the court.

Challenge to grand jury for what reason interposed.

Sec. 14. A challenge to the pannel may be interposed for one or more of the following causes only:

1. That the requisite number of ballots was not drawn from the grand jury box of the county.

2. That the drawing was not had in the presence of the officer designated in section six of this chapter.

3. That the drawing was not had at least fifteen days before the court.

Challenge to individual juror for what cause interposed.

Sec. 15. A challenge to an individual grand juror may be interposed for one or more of the following causes only:

1. That he is a minor.

2. That he is an alien, and has not resided in the United States two years, and in this territory six months, and had not declared his intention to become a citizen according to the laws of this territory.

3. That he is insane.

4. That he is the prosecutor upon a charge against the defendant.

5. That he is a witness on the part of the prosecution, and has been served with process, or bound by an undertaking as such.

6. That a state of mind exists on his part in reference to the case, or to either party, which satisfies the court in the exercise of sound discretion, that he cannot act impartially and without prejudice to the substantive rights of the party challenging.

Challenge must be entered in minutes of the court.

Sec. 16. The challenges mentioned in the last three sections, may be had, and must be entered upon the minutes, and tried by the court.

Decision of court to be entered by the clerk in minutes

Sec. 17. The court must allow or disallow the challenge, and the clerk must enter its decision upon the minutes.

If challenge allowed, jury not to find indictment against defendant.

Sec. 18. If a challenge to the pannel be allowed, the grand jury are prohibited from inquiring into the charges against the defendant by whom the challenge was interposed; if they should notwithstanding do so, and find an indictment against him, the court must direct it to be set aside.

If a challenge to an individual juror be allowed he cannot take part in action of the jury.

Sec. 19. If a challenge to an individual grand juror be allowed, he cannot be present at, or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberation of the grand jury thereon.

Jury must inform court of a violation of last section.

Sec. 20. The grand jury must inform the court of a violation of the last section, and it is punishable by the court as a contempt.

Court must appoint foreman.

Sec. 21. From the persons summoned to serve as grand jurors and appearing, the court must appoint a foreman. The court must also appoint a foreman, when a person already appointed is discharged or excused, before the grand jury are dismissed.

Oath to be administered to foreman of grand jury.

Sec. 22. The following oath must be administered to the foreman of the grand jury:

You, as foreman of this grand jury, shall diligently inquire, and true presentment make of all public offenses against the people of the United States, of this territory, committed or triable within this county, of which you shall have or obtain legal evidence; you shall present no person through malice,

hatred, or ill will, nor leave any unpresented through fear, favor, or affection, or for any reward or the promise or hope thereof; but in all your presentments or indictments, you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God.

Oath to be administered to grand jury.

Sec. 23. The following oath must immediately thereupon be administered to the other grand jurors present: The same oath which your foreman has now taken before you on his part, you, and each of you, shall well and truly observe on your part, so help you God.

Oath to be administered to grand jury.

Sec. 24. If, after the foreman is sworn, any grand juror appear and be admitted as such, the oath as prescribed in section twenty-two must be administered to him, commencing: "you, as one of this grand jury," and so on to the end.

Court must charge jury.

Sec. 25. The grand jury being impanneled and sworn, must be charged by the court; in doing so, the court must read to them such portions of this code, as more particularly appertain to their duties as grand jurors, and must give them such information as it may deem proper, as to the nature of their duties, and any charges for public offenses returned to the court, or likely to come before the grand jury, the court need not however charge them respecting the violation of a particular statute, unless made expressly its duty to do so by the provisions of such statute.

Grand jury must then retire to their room.

Sec. 26. The grand jury then must retire to a private room and inquire into the offenses cognizable by them.

Grand jury must appoint clerk.

Duties of clerk.

Sec. 27. The grand jury must appoint one of their number as clerk, who must preserve the minutes of their proceedings, except of the votes of the individual members on a presentment or indictment, and of the evidence given before them.

Grand jury when to be discharged

Sec. 28. The grand jury on the completion of the business before them, must be discharged by the court, but whether the business be completed or not, they are discharged by the final adjournment of the court.

Powers and duties of grand juries.

Sec. 29. The grand jury has power and it is their duty to inquire into all public offenses committed or triable in the county, and to present them to the court, either by presentment or indictment, as provided in the next two sections.

Duty of grand jury.

Sec. 30. Upon such inquiry, if from the evidence, the grand jury believe any person charged with a public offense to be guilty of the same or any other public offense, they shall find an indictment against such person.

Presentment.

Sec. 31. In all cases, if upon investigation, the grand jury believe that a person is probably guilty of such offense, the grand jury shall proceed by presentment only.

Indictment defined.

Sec. 32. An indictment is an accusation in writing presented by a grand jury, to a competent court, charging a person with a public offense.

Presentment defined.

Sec. 33. A presentment is an informal statement in writing, by the grand jury, representing to the court that a public offense has been committed which is triable in the county, and that there is reasonable ground for believing that a particular individual, named or described, has committed it.

Foreman may administer oath.

Sec. 34. The foreman may administer an oath to any witness appearing before the grand jury.

What evidence can be received.

Sec. 35. In the investigation of a charge for the purpose of either presentment or indictment, the grand jury can receive no other evidence than:

Legal and documentary evidence.

1. Such as is given by witnesses, produced and sworn before them; or,

2. By legal, documentary or written evidence.

Grand jury to receive none but legal evidence, &c.

Sec. 36. The grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay, or secondary evidence, except when such evidence would be admissable on the trial of the accused, for the offense charged.

Must weigh the evidence.

Sec. 37. The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them and when they have reason to believe that other evidence within their reach, will explain away the charge, they shall order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

Grand jury when to find indictment.

Sec. 38. The grand jury ought to find an indictment when all the evidence taken together is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury.

Grand jury when to make complaint.

Sec. 39. If a member of the grand jury knows, or has reason to believe, that a public offense has been committed which is triable in the county, he must declare the same to his fellow jurors, who must thereupon investigate the same.

Grand jury into what to inquire.

Sec. 40. The grand jury must inquire:

1. Into the condition of every person imprisoned on a criminal charge triable in the county, and not indicted.

2. Into the condition and management of the public prisons in the county; and,

3. Into the willful and corrupt misconduct in office, of public officers of every description in the county.

Grand jury to have access to prison.

Sec. 41. They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination without charge of all public records in the county.

May ask advice of court.

Sec. 42. The grand jury may at all reasonable times ask the advice of the court, or of the district attorney of the county; and whenever required by the grand jury, it shall be the duty of the district attorney of the county to attend them for the purpose of framing indictments, or of examining witnesses in their presence, but no district attorney, sheriff or other person, except the grand jurors, shall be permitted to be present during the expression of their opinions or the giving of their votes upon any matter before them.

Grand juror must keep certain matters secret.

Sec. 43. Every member of the grand jury must keep secret whatever he himself, or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them.

What grand juror may be required to disclose.

Sec. 44. A member of the grand jury may however, be required by any court to disclose the testimony of any witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witnesses before the court, or to disclose the testimony given before them by any other person upon a charge against him for perjury, in giving his testimony, or upon his trial therefor.

Grand juror not liable for his proceedings before the grand jury.

Sec. 45. A grand juror cannot be questioned for anything he may say, or any vote he may give in the grand jury, relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty in making an accusation, or giving testimony to his fellow jurors.

When presentment may be made.

Sec. 46. A presentment cannot be found without the concurrence of at least twelve grand jurors. When so found, it must be signed by the foreman.

When found, to be presented by foreman.

Sec. 47. The presentment, when found, must be presented by the foreman, in the presence of the grand jury, to the court, and must be filed with the clerk.

Testimony must be returned with presentment.

Sec. 48. When the grand jury make a presentment, they must return to the court therewith, the depositions of the witnesses examined before them, or the minutes, or a copy thereof, of the testimony on which the presentment is made.

Deposition must be filed and kept secret.

Sec. 49. When the depositions are returned, as provided in the last section, they must be filed with the clerk of the court, and cannot be inspected by any person except the court, the district attorney, the clerk and his deputies or assistants, and the district attorney, until after the arrest of the defendant.

Violation of last section a misdemeanor.

Sec. 50. A violation of the provisions of the last section is punishable as a contempt, and misdemeanor.

When clerk to furnish copies of depositions.

Sec. 51. After the arrest of the defendant, the clerk must, on payment of his fees, at the rate of twenty-five cents for every hundred words, within two days after the demand, furnish a copy of the depositions to the defendant, or his counsel.

Grand juror, &c., not to disclose the fact of a presentment.

Sec. 52. No grand juror, district attorney, clerk, judge, or other officer, can disclose the fact of a presentment having been made, or indictment found, for a felony or other crime, until the defendant has been arrested, but this prohibition does not extend to a disclosure by the issuing or in the execution of a warrant to arrest the defendant.

Violation of last section, misdemeanor.

Sec. 53. A violation of the provisions of the last section is punishable as a contempt, and as a misdemeanor.

When court to direct clerk to issue bench warrant.

Sec. 54. If the court deem that the facts stated in the presentment constitute a public offense, triable in the county, it must direct the clerk to issue a bench warrant for the arrest of the defendant.

When clerk to issue bench warrant.

Sec. 55. The clerk, on the application of the district attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant under his signature, and the seal of the court, into one or more counties,

Sec. 56. The bench warrant upon a presentment, must be substantially in the following form: Form of bench warrant.

Territory of Dakota, }
County of , }

To any sheriff or constable in the said territory greeting:

A presentment having been made on the day of , A. D. 18 , to the district court for the county of , in the territory aforesaid, charging C. D. with the crime of (here designate the charge generally.) Therefore in the name of the United States, you are commanded forthwith to arrest the above named C. D., and take him before E. F., a magistrate of this county, or in case of his absence or inability to act, before the nearest or most accessible magistrate in this county, there to be dealt with according to law.

Dated at , the day of , A. D. 18 .

By order of the court.

C. H., Clerk.

Sec. 57. The bench warrant may be served in any county in the territory, and the officer, serving it must proceed thereon in all respects, as upon a warrant of arrest on an information or complaint; and when served in another county, the warrant need not be indorsed by a magistrate of that county. Bench warrant where and how served.

Sec. 58. The magistrate, when the defendant is brought before him, must proceed upon the charge contained in the presentment, in the same manner in all respects, as upon a warrant of arrest on an information or complaint. Magistrate how to proceed when defendant brought before him.

Sec. 59. Upon the arrest of the defendant, the clerk with whom the presentment and depositions are filed, must, without delay, furnish to the magistrate before whom the defendant is taken, a certified copy of the presentment and depositions. Clerk must furnish copies of presentment and depositions.

Sec. 60. An indictment cannot be found without the concurrence of at least twelve grand jurors. When so found, it must be indorsed "a true bill," and the indorsement must be signed by the foreman of the grand jury. Twelve jurors necessary to find true bill.

Sec. 61. If twelve grand jurors do not concur in finding an indictment or presentment, the charge must be dismissed. When charge must be dismissed.

Sec. 62. The dismissal of the charge does not, however, pre- After dismissed charge may

again be brought before grand jury.

vent its being again submitted to a grand jury as often as the court may direct.

Names of witnesses must be inserted on indictment.

Sec. 63. When an indictment is found, the names of the witnesses examined before the grand jury, must in all cases be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court.

Indictment must be presented by the foreman to the court.

Sec. 64. When an indictment is found by the grand jury, it must be immediately presented by their foreman in their presence to the court, and must be filed with the clerk and remain in his office as a public record.

CHAPTER 19.

INDICTMENTS.

Indictment.

Section 1. The first pleading on the part of the United States is the indictment.

Indictment what to contain.

Sec. 2. The indictment must contain:

1. The title of an action specifying the name of the court to which the indictment is presented, and the name of the parties;

2. A statement of the acts constituting the offense, in ordinary and concise language without repetition, and in such manner as to enable a person of common understanding to know what is intended.

Forms of indictment.

Sec. 3. It may be substantially in the following form:

No. 1.

The district court for the county of , and territory of Dakota:

The United States,
vs.
A. B.

A. B. is accused by the grand jury of the county of , by this indictment, of the crime of (here insert the name of the offense, if it have one,) such as treason,

murder, arson, manslaughter, or the like, or if it be a misdemeanor, having no general name, such as libel, assault and battery, or the like, insert a brief description of it, as it is given by law, committed as follows:

The said A. B., on the day of , A. D. 18 , at the town, (city, or village, as the case may be,) of , in this county, (here set forth the act charged as an offense according to the form adapted to the case, as provided in the following forms, or similar ones.)

Dated at , in the county of , the day of , A. D. 18 .

(Signed) G. H., foreman of the grand jury.

No. 2.

In an indictment for murder.

Indictment for murder.

(Commencement the same as No. 1.)

Without the authority of law, and with malice aforethought, killed C. D., by shooting him with a gun or pistol, or by administering to him poison, or by pushing him into the water, whereby he was drowned, or by throwing him from the roof of a building, or by means unknown to the grand jury, as the case may be.

No. 3.

In an indictment for arson.

Indictment for arson.

Willfully set fire to (or burned) in the night time, a dwelling house in which there was at the time a human being, namely C. D. (or whose name is unknown to the grand jury,) or,

No. 4.

Ib.

Willfully set fire to (or burned) an inhabited dwelling house in the day time, in which there was at the time a human being, namely C. D., (or whose name is unknown to the grand jury,) or,

No. 5.

Ib.

Willfully set fire to (or burned) the steamboat named the , which was at the time insured by the Hartford insurance company of the State of Connecticut, against loss or damage by the fire, with intent to prejudice such insurer.

No. 6.

Manslaughter in the first degree.

Indictment for manslaughter.

Was engaged in the perpetration of the following (stating it as in an enactment therefor) and the said A. B., while engaged in the perpetration of such misdemeanor, without a design to effect death by his act (or procurement or culpable negligence) by his act killed C. D. by striking him with a club, or by other means, to be stated in No. 2, or,

No. 7.

Indictment for assisting to commit murder.

Deliberately assisted one C. D. in the commission of self-murder, which crime the said C. D. then and there committed by hanging himself by the neck until he was dead; (or by shooting himself with a pistol, or as the case may be.)

No. 8.

Manslaughter in the second degree.

Indictment for manslaughter in the second degree.

Killed C. D. in the heat of passion, but in a cruel and unusual manner, and not under such circumstances as to constitute excusable or justifiable homicide, by striking him with a club (or stating the means according to the fact.)

No. 9.

Manslaughter in the third degree.

Indictment for manslaughter in third degree.

Was the owner of a bull (or other mischievous animal, describing it,) and knowing its propensities, willfully suffered such bull to run at large (or kept it without ordinary care,) and the said bull, while so at large, (or not confined,) killed one C. D., who took all the precautions which the circumstances would permit, to avoid such bull; or,

No 10.

Ib.

Was managing a steamboat called the for gain, and willfully (or negligently) received on board so many passengers (or such a quantity of lading) that the said boat sunk (or was overset) whereby C. D., who was on the said boat, was drowned, (or otherwise killed, according to the fact.)

No. 11.

In an indictment for rape.

Forcibly ravished C. T., a woman of the age of ten years or upwards; or, Indictment for rape.

No. 12.

Unlawfully and carnally knew and abused C. H., a female child under the age of ten years. Ib.

No. 13.

In an indictment for robbery.

Feloniously took a gold watch (or any other property as the case may be) the property of C. D., from his person, and against his will, by violence to his person, (or by putting him in the fear of some immediate injury to his person; or, Indictment for robbery.

No. 14.

Feloniously took a gold watch, (or as the case may be,) the property of C. D., in his presence and against his will, by violence to his person. Ib.

No. 15.

In an indictment for larceny.

Feloniously took and carried away, one gold watch and one silver chain, (or as the case may be,) the personal property of J. D., (or of a person whose name is unknown to the grand jury,) of the value of more than twenty dollars; or, Indictment for larceny.

No. 16.

Feloniously took and carried away in the night time, from the person of C. D., one silver watch, (or as the case may be,) the personal property of E. F., (or of a person whose name is unknown to the grand jury,) of the value of more than twenty dollars. Ib.

No 17.

In an indictment for burglary.

Broke into and entered in the night time, the dwelling house of C. D., in which there was at the time a human being, namely Indictment for burglary.

the said C. D., (or whose name is unknown to the grand jury,) with intent to commit murdur (or rape, robbery, or larceny, or other public offense, describing it generally,) therein, by forcibly bursting or breaking the wall, or an outer door, or a window of such house, (or as the case may be,) or,

No. 18.

Indictment for burglary.

Broke into and entered in the night time, the dwelling house of C D., in which there was at the time a human being, name. the said C. D., (or whose name is unknown to the grand jury,) with intent to commit a rape, (or larceny, or any other public offense, describing it generally,) therein, by unlocking an outer door, by means of false keys, or by picking or forcing the lock of the outer door, or as the case may be.

No. 19.

In an indictment for forgery and counterfeiting.

Indictment for forgery.

Forged, or counterfeited, or falsely altered, by erasing a material part thereof, (or as the case may be,) an instrument purporting to be (or being) the last will and testament of C. D., devising certain real and personal property, with intent to defraud; or,

No. 20.

Indictment for forgery.

Forged a certificate purporting to have been issued by J. C., an officer duly authorized to make such certificate of the acknowledgment of C. D., of the execution by him, of a conveyance to E. F., of certain real property in the town of , with the intent to defraud the said C. D.; or,

No. 21.

Indictment for counterfeiting.

Falsely made an impression, purporting to be the impression of the great seal of the territory, on an instrument in writing, being (or purporting to be) a , (stating generally the purport of the instrument, with the intent to defraud; or,

No. 22.

Indictment for counterfeiting.

Counterfeited a gold (or silver) coin of the republic of Mexico, called a dollar, which was at that time current, by custom or usage, within this territory; or,

No. 23.

Had in his possession, a counterfeit of a gold (or silver) coin of the republic of Mexico, called a dollar, which was at that time current in this territory, knowing the same to be counterfeited, with intent to defraud, (or injure) by uttering the same as true (or false.) Indictment for having counterfeited coin in his possession.

No. 24.

In an indictment for perjury.

On his examination as a witness, duly sworn to testify the truth, on the trial of a civil action in the court of , between C. D., plaintiff, and E. F., defendant, which court had authority to administer such oath, he testified falsely, that, (stating the facts to be alleged to be false,) the matters so testified being material, and the testimony being willfully and corruptly false. Indictment for perjury.

No. 25.

In an indictment for bigamy.

Having a wife then living, unlawfully married one G. A. Indictment for bigamy.

No. 26.

In an indictment for libel.

Published in a newspaper called the the following libel concerning C. D., (here insert the article charged as being a libel.) Indictment for libel.

Sec. 4. The manner of stating the act constituting the offense as set forth in the preceding forms, is sufficient in all cases where the forms there given are applicable. In all other cases, forms may be used as nearly similar as the nature of the case may permit. Above forms sufficient.

Sec. 5. The indictment must be direct and certain as it regards: Indictment must be direct.

1. The party charged.
2. The offense charged.
3. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

Proceedings when defendant is indicted by fictitious name.

Sec. 6. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

Indictment may contain different counts.

Sec. 7. When, by law, an offense comprises different degrees, an indictment may contain counts for the different degrees, of the same offense, or for any of such degrees. The same indictment may contain counts for murder, and also for manslaughter or different degrees of manslaughter. Where the offense may be committed by the use of different means, the indictment may allege the means of offense in the alternative. Where it is doubtful to what class an offense belongs, the indictment may contain several counts describing it as of different classes or kinds.

Time of offense how stated.

Sec. 8. The precise time at which the offense was committed need not be stated in the indictment, but may be alleged to have been committed any time before the finding thereof, except where the time is a material ingredient in the offense.

Certain allegation immaterial.

Sec. 9. When the offense involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation, as to the person injured, or intended to be injured, is not material.

Words in an indictment how construed.

Sec. 10. The words used in an indictment, must be construed in their usual acceptations in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

Words of statute need not be strictly pursued

Sec. 11. Words used in the statutes to define a public offense need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

Indictment when sufficient.

Sec. 12. The indictment is sufficient, if it can be understood therefrom :

1. That it is entitled in a court having authority to receive it, though the name of the court is not accurately stated.

2. That it was found by a grand jury of the county in which the court was held.

3. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that he has refused to discover his real name.

4. That the offense was committed at some place within the jurisdiction of the court, except where, as provided by law, the act, though done without the local jurisdiction of the county, is triable therein.

5. That the offense was committed at some time prior to the time of finding the indictment.

6. That the act or omission, charged as the offense, is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

7. That the act or omission charged as the offense is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction, according to the right of the case.

Defects in matters of form how regarded.

Sec. 13. No indictment is insufficient nor can the trial, judgment or other proceedings thereon be affected by reason of a defect or imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant, upon the merits.

Presumptions of law need not be stated.

Sec. 14. Neither presumptions of law nor matter of which judicial notice is taken need be stated in an indictment.

Judgments how pleaded.

Sec. 15. In pleading a judgment or other determination of, or proceeding before a court, or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction, however must be established on trial.

Private statute how pleaded.

Sec. 16. In pleading a private statute or right derived therefrom it is sufficient to refer to the statute, by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

Indictment for libel need not state extrinsic facts, &c.

Sec. 17. An indictment for libel need not set forth any extrinsic facts, for the purpose of showing the application to the party libeled, of the defamatory matter on which the indictment is founded, but it is sufficient to state generally that the same was published concerning him; and the fact that it was so published must be established on the trial.

Misdescription in forgery when immaterial.

Sec. 18. When an instrument which is the subject of an indictment for forgery has been destroyed or withdrawn by the

act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument is immaterial.

What sufficient in perjury.

Sec. 19. In an indictment for perjury or subornation of perjury it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken, had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected nor the commission or authority of the court or person before whom the perjury was committed.

Indictment against several, any or all may be convicted.

Sec. 20. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

Distinction between principal and accessory abolished.

Sec. 21. The distinction between an accessory before the fact and a principal, and between principals in the first and second degree in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, must hereafter be indicted, tried and punished as principals, as in the case of a misdemeanor.

Accessory after the fact, how indicted.

Sec. 22. An accessory after the fact, to the commission of a felony, may be indicted, tried and punished, though the principal felon be neither indicted nor tried.

Compounding offense how indicted.

Sec. 23. A person may be indicted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity, or reward, or an engagement or promise therefor, upon an agreement or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense has not been indicted or tried.

Indictment for murder may be found after death, &c.

Sec. 24. Indictments for murder may be found at any time after the death of the person killed; in all other cases, indictments shall be found and filed in the proper court, within three years after the commission of the offense; but the time during

which the defendant shall not have been an inhabitant of, or usually resident within this territory, shall not constitute any part of the said limitation of three years.

Indictment: may be found: when.

Sec. 25. When any offense shall have been committed within this territory, on board of any vessel navigating any river or lake, an indictment for the same may be found in any county through which, or any part of which such vessel shall be navigated during, or in the course of the same voyage or trip, or in the county where such voyage or trip shall terminate; and such indictment may be tried, and a conviction thereon had, in any such county in the same manner, and with the like effect, as in the county where the offense was committed.

CHAPTER 20.

ARRAIGNMENT OF DEFENDANT.

Defendant how arraigned.

Section 1. When the indictment is filed, the defendant must be arraigned thereon, before the court in which it is found if it be triable therein, or if not, before the court to which it is sent or removed.

Defendant must be present in case of felony.

Sec. 2. If the indictment be for a felony, the defendant must be personally present; but if for a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel.

Court may direct officer to arraign defendant.

Sec. 3. When his personal appearance is necessary, if he be in custody, the court may direct the officer in whose custody he is, to bring him before it to be arraigned; and the officer must do so accordingly.

When defendant do not appear, bench warrant may issue.

Sec. 4. If the defendant has been discharged on bail, or has deposited money instead thereof, and do not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or the money deposited, may direct the clerk to issue a bench warrant for his arrest.

Clerk may issue bench warrant.

Sec. 5. The clerk on the application of the district attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant, into one or more counties.

Form of bench warrant in certain cases.

Sec. 6. The bench warrant, upon the indictment must if the offense be a felony, be substantially in the following form:

Form of bench warrant in certain cases.

The district court for the county of and territory of Dakota: in the name of the United States, to any sheriff, (or other proper officer), in the territory of Dakota. An indictment having been found on the day of , A. D. 18 , in the district court for the county of , charging C. D. with the crime of (designating it generally), you are therefore commanded forthwith to arrest the above named C. D., and bring him before this court, (or if the venue has been changed take him before that court, as the case may be), to answer the indictment, or if the court have adjourned for the term, that you deliver him into the custody of the jailor of the county (or city), of , the day of , A. D.

By order of the court. E. F. Clerk.

Bench warrant in case of misdemeanor.

Sec 7. If the offense be a misdemeanor, the bench warrant must be in a similar form, adding to the body thereof, a direction to the following effect, "or if he require it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer the indictment.

Court must fix amount of bail.

Sec. 8. If the offense charged be bailable, the court upon directing the bench warrant to issue, must fix the amount of bail, and an indorsement must be made upon the bench warrant, and signed by the clerk, to the following effect, "the defendant is to be admitted to bail in the sum of dollars."

Bench warrant how served.

Sec. 9. The bench warrant may be served in any county in the same manner as a warrant of arrest, except when served in another county, it need not be indorsed by a magistrate of that county.

Magistrate of another county how to proceed.

Sec. 10. If the defendant be brought before a magistrate of another county, for the purpose of giving bail, the magistrate must proceed in rsspect thereto in the same manner as if

the defendant had been brought before him upon a warrant of arrest.

Magistrate must certify on the warrant.

Sec. 11. On taking bail, the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant; the officer must then discharge the defendant from arrest, and must without delay deliver the warrant and undertaking to the clerk of the court, at which the defendant is required to appear.

Court may order defendant committed.

Sec. 12. When the indictment is for a felony, and the defendant before the finding thereof has given bail for his appearance to answer the charge, the court to which the indictment is presented, or sent, or removed for trial, may order the defendant to be committed to actual custody, either without bail, or unless he give bail in the increased amount to be specified in the order.

If defendant present must be committed.

Sec. 13. If the defendant be present when the order is made, he must be forthwith committed accordingly, if he be not present a bench warrant must be issued and proceeded upon in the manner provided in this chapter.

Court must inform defendant of his right to counsel.

Sec. 14. If the defendant appear for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desire the aid of counsel.

Arraignment by whom made.

Sec. 15. The arraignment must be made by the court, or by the clerk or district attorney, under its direction, and consists in reading the indictment to the defendant, and delivering to him a copy thereof, and of the indorsements thereon, including the list of witnesses indorsed on it or appended thereto, as provided in section sixty-three, and asking him whether he pleads guilty or not guilty to the indictment.

Defendant must be asked to give his true name.

Sec. 16. When the defendant is arraigned, he must be informed that if the name by which he is indicted be not his true name, he must then declare his true name, or be proceeded against by the name in the indictment.

If he give no other name court must proceed.

Sec. 17. If he give no other name, the court may proceed accordingly.

If the defendant give another name court how to proceed.

Sec. 18. If he allege that another name is his true name, the court must direct an entry thereof in the minutes of the

arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

Defendant allowed one day to answer.

Sec. 19. If on the arraignment, the defendant require it, he must be allowed until the next day, or such further time may be allowed him, as the court may deem reasonable, to answer the indictment.

Defendant may demur or plead to the indictment.

Sec. 20. If the defendant do not require time, as provided in the last section, or if he do, then on the next day, or at such further day as the court may have allowed him, he may in answer to the arraignment either move the court to set aside the indictment, or may demur, or plead thereto.

CHAPTER 21.

SETTING ASIDE INDICTMENT.

Indictment when set aside on motion.

Section 1. The indictment must be set aside by the court in which the defendant is arraigned, and upon his motion in either of the following cases:

1. When it is not found, indorsed, and presented as prescribed in chapter thirty-two;

2. When the names of the witnesses examined before the grand jury are not inserted at the foot of the indictment, or indorsed thereon.

3. When a person is permitted to be present during the session of the grand jury, while the charge embraced in the indictment was under consideration, except as provided in section forty-two.

Defendant when precluded from objecting to indictment in any other manner.

Sec. 2. If the motion to set aside the indictment be not made, the defendant is precluded from afterwards taking the objections mentioned in the last section.

Motion when heard.

Sec. 3. The motion must be heard at the time of the arraignment, unless for good cause the court postpone the hearing to another time.

Sec. 4. If the motion be denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto. If denied, defendant must demur or plead.

Sec. 5. If the motion be granted, the court must order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money be refunded to him; unless it direct that the case be re-submitted to the same or another grand jury. If granted defendant discharged, when again to be submitted to grand jury.

Sec. 6. If the court direct that the case be re-submitted, the defendant, if already in custody, must so remain, unless he be admitted to bail, or if already admitted to bail, or money have been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment. Effect of order for a re-submission.

Sec. 7. Unless a new indictment be found before the next grand jury of the county is discharged, the court must, on the discharge of such grand jury, make the necessary order. If new indictment not found, court to make order of discharge.

Sec. 8. An order to set aside an indictment, as provided in the seven preceding sections, is no bar to a future prosecution for the same offense. Order to indictment no bar to future action.

CHAPTER 22.

DEMURRERS.

Section 1. The only pleading on the part of the defendant, is either a demurrer, or a plea. Pleadings on the part of the defendant.

Sec. 2. Both the demurrer and the plea must be put in, open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose. Demrurer and when filed.

Sec. 3. The defendant may demur to the indictment, when it appears from the face thereof, either— When defendant may demur to indictment.

1. That the grand jury by which it was found, had no legal authority to inquire into the offense charged, by reason of its not being within the local jurisdiction of the county.

2. That more than one offense is charged in the indictment.

3. That the facts stated do not constitute a public offense.

4. That the indictment contains any matter, which, if true, would constitute legal justification or excuse of the offense charged, or other legal bar to the prosecution.

Demurrer to be in writing, what to specify.

Sec. 4. The demurrer must be in writing, signed either by the defendant, or his counsel; it must distinctly specify the ground of objection to the indictment, or it may be disregarded.

Objection on demurrer, when heard.

Sec. 5. Upon the demurrer being filed, the objection presented thereby must be heard, either immediately, or at such time as the court may appoint.

Judgment on demurrer how given.

Sec. 6. Upon considering the demurrer, the court must give judgment, either allowing or disallowing it, and an order to that effect must be entered upon the minutes.

Effect of allowance of demurrer.

Sec. 7. If the demurrer be allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offense, unless the court allow an amendment where the defendant will not be unjustly prejudiced thereby, or being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, direct the case to be re-submitted to the same or another grand jury.

If cause not re-submitted, defendant discharged.

Sec. 8. If the court do not allow an amendment or direct the case to be re-submitted, the defendant, if in custody must be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money must be refunded to him.

Proceedings if the case be re-submitted.

Sec. 9. If the court direct that the case be submitted anew, the same proceedings must be had thereon, as are prescribed in sections six and seven of chapter twenty-one.

If demurrer disallowed, defendant may plead.

Sec. 10. If the demurrer be disallowed or the indictment amended, the court must permit the defendant at his election to plead, which he must do forthwith, or at such time as the court may allow. If he do not plead, judgment must be pronounced against him.

Certain objections to be taken advantage of by demurrer.

Sec. 11. When the objections mentioned in section three of this chapter, appear upon the face of the indictment, they can only be taken by demurrer, except that the objection to the

jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a public offense, may be taken, at the trial, under the plea of not guilty, and in arrest of judgment.

CHAPTER 23.

PLEAS.

Three kinds of pleas to indictment.

Section 1. There are three kinds of pleas to an indictment; a plea of

1. Guilty;

2. Not guilty;

3. A former judgment of conviction, or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty.

Plea how made.

Sec. 2. Every plea must be oral, and must be entered upon the minutes of the court.

Pleas how to be entered by the clerk.

Sec. 3. The plea must be entered in substantially the following form:

1. If the defendant plead guilty: "the defendant pleads that he is guilty of the offense charged in this indictment;"

2. If he plead not guilty: "the defendant pleads that he is not guilty of the offense charged in this indictment;"

3. If he plead a former conviction, or acquittal: "the defendant pleads that he has already been convicted (or acquitted as the case may be,) of the offense charged in this indictment, by the judgment of the court of , (naming it,) rendered at , (naming the place,) on the day of ."

Plea of guilty must be put in by defendant himself, except in case of corporation.

Sec 4. A plea of guilty can in no case be put in, except by the defendant himself, in open court, unless upon an indictment against a corporation, in which case it may be put in by counsel.

When plea of guilty may be withdrawn.

Sec. 5. The court may, at any time before judgment upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

Plea of not guilty what a denial of.

Sec. 6. The plea of not guilty is a denial of every material allegation in the indictment.

What matter of fact evidence under plea of not guilty.

Sec 7. All matters of fact tending to establish a defense other than that specified in the third sub-division of section one of this chapter may be given in evidence under the plea of not guilty.

When acquittal not a bar to another prosecution.

Sec. 8. If the defendant were formerly acquitted on the ground of a variance between the indictment and the proof, or the indictment were dismissed upon an objection to its form or substance, without a judgment of acquittal, it is not an acquittal of the same offense.

When acquittal is a bar to another prosecution.

Sec. 9. When, however, he was acquitted on the merits, he is deemed acquitted of the same offense, notwithstanding a defect in the form or substance in the indictment on which he was acquitted.

Sec. 10. When the defendant shall have been convicted or acquitted, upon an indictment for an offense consisting of different degrees, the conviction or acquittal is a bar to another indictment for the offense charged in the former, or for any inferior degree of that offense, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment.

Plea of not guilty when entered

Sec. 11. If the defendant refuse to answer the indictment, by demurrer or plea, a plea of not guilty must be entered.

CHAPTER 24.

CHANGE OF VENUE IN CRIMINAL CASES.

Criminal cases where tried, &c.

Section 1. All criminal causes shall be tried in the county where the offense was committed, except where otherwise provided by law, unless it shall appear to the satisfaction of the court, by affidavit, that a fair and impartial trial cannot be had in such county, in which case the court before whom the cause is pending, if the offense charged in the indictment be punish-

able with death or imprisonment in the territorial prison, may direct the person accused, to be tried in some adjoining county, where a fair and impartial trial can be had; but the party accused shall be entitled to a change of venue but once, and no more.

Proceedings when venue is changed.

Sec. 2. When the venue is changed to an adjoining county, in a criminal case, the trial shall be conducted in all respects as if the indictment had been found in the county to which the venue is changed: and the costs accruing from a change of venue shall be paid by the county in which the offense was committed.

When venue is changed, defendant must recognize to appear.

Sec. 3. When the court has ordered a change of venue, they shall require the accused, if the offense be bailable, to enter into a recognizance with good and sufficient sureties, to be approved by the court or judge, in such sum as the court or judge may direct, conditioned for his appearance in the court to which the venue is changed, at the first day of the next term thereof, and to abide the order of such court: and in default of such recognizance, a warrant shall be issued, directed to the sheriff, commanding him safely to convey the prisoner to the jail of the county where he or she is to be tried, there to be safely kept by the jailor thereof until discharged by due course of law.

When venue is changed, witnesses must recognize to appear.

Sec. 4. When a change of venue is allowed, the court shall recognize the witness on the part of the United States, to appear before the court in which the prisoner is to be tried.

District attorney may apply for change of venue.

Sec. 5. The attorney on behalf of the United States, may also apply for a change of venue, and the court being satisfied that it will promote the ends of justice, may award a change of venue upon the same terms, and to the same extent, that are provided in this chapter, and the proceedings on such change of venue, shall be in all respect as above provided.

CHAPTER 25.

MODE OF TRIAL—ISSUES.

Issues of fact defined.

Section 1. An issue of fact arises:

1. Upon a plea of not guilty; or,

2. Upon a plea of a former conviction or acquittal of the same offense.

Issues of fact how tried.

Sec. 2. An issue of fact must be tried by a jury of the county in which the indictment was found, unless the action be removed, by order of the court, as provided in the preceding chapter.

When defendant be present on the trial.

Sec. 3. If the indictment be for a misdemeanor, the trial may be had in the absence of the defendant, if he appear by counsel; but if for a felony he must be personally present.

CHAPTER 26.

PETIT OR TRIAL JURIES.

Petit or trial jury defined.

Section 1. A petit or trial jury is a body of men not less than twenty-four, nor more than thirty-six in number, returned at stated periods from the citizens of the county, before the district court of each of the organized counties of this territory, chosen by the county commissioners in the several organized counties, as hereinbefore provided by law, to try all issues of fact, either civil or criminal before said court.

Trial jury how drawn.

Sec. 2. A petit or trial jury must be drawn for every term of the district court, in each of the organized counties of this territory.

Qualifications of petit jury.

Sec. 3. The qualifications and disabilities of petit or trial jurors are the same as those by law prescribed for grand jurors.

Petit jury how elected and chosen.

Sec. 4. The petit or trial jury, shall be chosen, elected, drawn and summoned at the same time, and in the same man-

ner as is by law provided for the choosing, election, drawing and summoning of the grand jury.

When less than thirty-six may be summoned.

Sec. 5. It shall and may be lawful for the judge of the district court, in any of the organized counties of this territory to order a less number of petit or trial jurors than thirty-six to be summoned to attend the sessions of said court, and such order made and filed in the clerk's office of the proper county, shall be deemed sufficient authority to the clerk to issue a venire for the number mentioned in such order: *Provided*, that the number shall not be less than twenty-four; *and provided further*, that if no order shall have been made at least fifteen days before the sitting of such court, the clerk shall proceed to draw thirty-six in number.

Ballots of jurors drawn to be put in a box.

Sec. 6. At the opening of the court, the clerk must prepare separate ballots, containing the names of the persons returned as jurors, which must be folded as nearly alike as possible, and so that the name cannot be seen, and must deposit them in a sufficient box.

When names of all the jurors of be called attachment may issue.

Sec. 7. When the indictment is called for trial, and before drawing the jury, either party may require the names of all the jurors in the panel to be called, and that an attachment issue against those who are absent; but the court may, in its discretion, wait or not, for the return of the attachment.

Drawing the jury.

Sec. 8. Before the name of any juror is drawn, the box must be closed, and shaken so as to interningle the ballots therein, the clerk must then, without looking at the ballots, draw them from the box, through a hole in the lid, so large only as conveniently to admit the hand.

Ballots of jurors drawn how disposed of.

Sec. 9. When the jury is completed, the ballots containing the names of the jurors sworn, must be laid aside, and kept apart from the ballots containing the names of the other jurors, until the jury so sworn is discharged.

Ballots of jurors drawn how disposed of.

Sec. 10. After the jury are so discharged, the ballots, containing their names, must be again folded and returned to the box; and so on, as often as a trial is had.

Ballots of absent jurors how disposed of.

Sec. 11. If a juror be absent, when his name is drawn, or be set aside, or excused from serving on the trial, the ballot containing his name must be folded, and returned to the box, as soon as the jury is sworn.

When court may order by-standers to be summoned.

Sec. 12. When by reason of challenge, or otherwise, a sufficient number of jurors duly drawn and summoned, cannot be obtained for the trial of any cause, civil or criminal, the court shall cause jurors to be returned from the by-standers, or from the county at large to complete the panel.

Jurors when summoned how returned.

Sec. 13. The jurors so returned from the by-standers, shall be returned by the sheriff or his deputy, or by a coroner, or by any disinterested person appointed therefor by the court.

Jurors so returned to be qualified jurors.

Sec. 14. The persons so returned shall be such as are qualified and liable to be drawn as jurors, according to the provisions of law.

Jury to consist of twelve men.

Sec. 15. The jury consists of twelve men, chosen by lot, as prescribed in this chapter, and sworn to try and determine the issue by an unanimous verdict.

When court may order additional jurors summoned.

Sec. 16. If a sufficient number cannot be obtained from the box to form a jury, the court may, as often as is necessary, order the sheriff to summon so many persons, qualified to serve as jurors, as it deems sufficient to form a jury, the jurors so summoned must be called from the list returned by the sheriff, and so many of them, not excused or discharged, as may be necessary to complete the jury, must be impanneled and sworn.

CHAPTER 27.

CRIMINAL CALENDAR.

Clerk to prepare calendar.

Section 1. The clerk must prepare a calendar of the indictments pending to be tried at the term, enumerating them according to the date of the filing of the indictment, and specifying opposite to the title of each section, whether it be for a felony, or a misdemeanor, and whether the defendant be in custody or on bail, and must in like manner enter therein all indictments found during the term, and on which issues of fact are joined.

Sec. 2. The issues on the calendar must be disposed of in the following order, unless upon the application of either party, for good cause, the court direct an indictment to be tried out of its order: Issues on the calendar how disposed of.

1. Indictments for felony, where the defendant is in custody.

2. Indictments for misdemeanor, where the defendant is in custody.

3. Indictments for felony, where the defendant is on bail; and,

4. Indictments for misdemeanor, where the defendant is on bail.

Sec. 3. After his plea the defendant is entitled to at least four days to prepare for his trial, if he requires it. After plea, defendant entitled to four days for trial.

Sec. 4. The clerk must keep a register of all the criminal actions in the court, in which he must enter: Clerk to keep a register.

1. All cases returned to the court by a magistrate, whether the defendant be discharged or held to answer. Register what to contain.

2. All indictments found in the court, or sent or removed thereto for trial, with the time of finding the indictment, or when it was sent or removed; and,

3. The time of arraignment of the demurrer, or plea, and of the trial, conviction or acquittal of the defendant, together with a brief note of all the other proceedings in the action.

Sec. 5. The register must be submitted to court at its opening at every term. Register to be submitted to the court at the commencement of term.

CHAPTER 28.

CHALLENGING JURORS.

Section 1. When an indictment is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by either party, direct the trial to be postponed to another day in the same term, or to another term; the affidavits read upon both sides upon the application must at the same time be filed with the clerk. When cause may be postponed. Affidavits must be filed.

When defendant discharged if prosecuting attorney not ready.

Sec. 2. If, when the indictment is called for a trial, the prosecuting attorney be not ready, and the defendant appear, and be ready for trial, the court must order the indictment to be discharged, unless being of opinion that the public interests require the indictment to be retained for trial, it direct it to be so retained.

Order not a bar to another prosecution.

Sec. 3. If the court order the indictment to be discharged, the order is not a bar to another prosecution for the same offense, unless the court so direct; if the court so direct, judgment of acquittal must be entered.

Challenge defined

Sec. 4. A challenge is an objection made to the trial jury, and is of two kinds:

1. To the panel.

2. To an individual juror.

Defendants must join in challenge.

Sec. 5. When several defendants are tried together, they cannot sever the challenges, but must join therein.

Challenge to the panel defined.

Sec. 6. A challenge to the panel is an objection made to all the petit or trial jurors returned, and may be taken by either party.

Challenge to the panel on what founded.

Sec. 7. A challenge to the panel can be founded only on a material departure from the forms prescribed by law, in respect to the drawing and return of the jury.

When and how taken.

Sec. 8. A challenge to the panel must be taken before a jury is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the ground of challenge.

If sufficiency of the facts be denied adverse party may except.

Sec. 9. If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge; the exception need not be in writing, but must be entered upon the minutes of the court; and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

On such challenge court how to proceed.

Sec. 10. If, on the exception, the court deem the challenge sufficient, it may, if justice require it, permit the party excepting, to withdraw his exception, and to deny the facts alleged in the challenge; if the exception be allowed, the court may in like manner, permit an amendment of the challenge.

Denial of challenge how made and trial thereof

Sec. 11. If the challenge be denied, the denial may, in like manner, be oral, and must be entered upon the minutes of the court, and the court must proceed to try the question of fact.

Who may be examined on trial of challenge.

Sec. 12. Upon the trial of the challenge, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

If challenge allowed, jury to be discharged.

Sec. 13. If either upon an exception to the challenge, or a denial of the facts, the challenge be allowed, the court must discharge the jury so far as the trial of the indictment in question is concerned, and no other jury for the trial thereof can be summoned for the same term. If it be disallowed, the court must direct the jury to be impanneled.

Defendant to be informed of his right to challenge individual juror.

Sec. 14. Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intend to challenge an individual juror, he must do so when the juror appears, and before he is sworn.

Kinds of challenge to individual juror.

Sec. 15. A challenge to an individual juror, is either:

1. Peremptory; or,

2. For cause.

Challenge when taken.

Sec. 16. It must be taken when the juror appears, and before he is sworn; but the court may, for good cause, permit it to be taken after the juror is sworn, and before the jury is completed.

Peremptory challenge how taken.

Sec. 17. A peremptory challenge can be taken by the defendant only, and may be oral; it is an objection to a juror for which no reason need be given, but upon which the court must exclude him.

Number of peremptory challenge to which defendant is entitled.

Sec. 18. If the offense charged be punishable with death, or with imprisonment in the territorial prison for life, the defendant is entitled to twenty peremptory challenges: on a trial for any other offense, he is entitled to five peremptory challenges.

Challenge for cause by whom taken.

Sec. 19. A challenge for cause may be taken either by the United States, or by the defendant.

Definition of challenge for cause.

Sec. 20. It is an objection to a particular juror, and is either:

1. General, that the juror is disqualified from serving in any case; or,

2. Particular, that he is disqualified from serving in the case on trial.

General causes of challenge.

Sec. 21. General causes of challenge are:

1. A conviction for a felony;

2. A want of any of the qualifications prescribed by the laws to render a person a competent juror;

3. Unsoundness of mind, or such defect in the faculties of the mind, or organs of the body, as render him incapable of performing the duties of a juror.

Particular causes of challenge.

Sec. 22. Particular causes of challenge are of two kinds:

1. For such a bias, as when the existence of the facts is ascertained in judgment of law, disqualifies the juror, and which is known in this statute as implied bias;

2. For the existence of a state of mind on the part of a juror, in reference to the case, or to either party, which satisfies the triers, in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this statute, as actual bias.

Grounds of challenge for implied bias.

Sec. 23. A challenge for implied bias, may be taken for all or any of the following causes, and for no other:

1. Consanguinity, or affinity within the ninth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant;

2. Standing in relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense, or on whose complaint the prosecution was instituted, or in his employment on wages;

3. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution;

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person, whose death is the subject of the indictment;

5. Having served on a trial jury, which has tried another person for the offense charged in the indictment;

6. Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it;

7. Having served as a juror, in a civil action, brought against the defendant, for the act charged as an offense;

8. If the offense charged, be punishable with death, the entertaining of such conscientious opinions, as would preclude his finding the defendant guilty, in which case he shall neither be permitted nor compelled to serve as a juror.

Grounds of challenge for actual bias.

Sec. 24. A challenge for actual bias, may be taken for the cause mentioned in the second subdivision of section twenty-two in chapter twenty-eight, and for no other cause.

Exemption not a ground of challenge.

Sec. 25. An exemption from service on a jury, is not a cause of challenge, but the privilege of the person exempted.

Causes of challenge how stated

Sec. 26. In a challenge for implied bias, one or more of the causes stated in section twenty-three in chapter twenty-eight, must be alleged; in a challenge for actual bias, the cause stated in the second subdivision of section twenty-two in chapter twenty-eight, must be alleged; in either case the challenge may be oral, but must be entered upon the minutes of the court.

Exception to challenge and denial thereof.

Sec. 27. The adverse party may except to the challenge, in the same manner as to a challenge to a panel, and the same proceedings must be had thereon, as prescribed in sections eight, nine and ten, in chapter twenty-five, except that if the exception be allowed, the juror must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

Challenge how tried if denied.

Sec. 28. If the facts be denied, the challenge must be tried as follows:

1. If it be for implied bias, by the court;

2. If it be for actual bias, by triers.

Triers how appointed, majority may decide.

Sec. 29. The triers must be three impartial persons not on the jury panel, appointed by the court. All challenges for actual bias must be tried by the triers thus appointed, a majority of whom may decide.

Triers must take an oath.

Sec. 30. The triers must be sworn generally to inquire whether or not the several persons who may be challenged, and in respect to whom the challenges shall be given to them in charge, are true, and to decide the same according to evdidence.

Juror challenged may be examined.

Sec. 31. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness, to prove or disprove the challenge, and is bound to answer every question pertinent to the inquiry therein.

Rules of evidence on trial of challenge.

Sec. 32. Other witnesses may also be examined on either side; and the rules of evidence applicable to the trial of other issues must govern the admission or exclusion of testimony on the trial of the challenge.

Challenge for implied bias how determined

Sec. 33. On the trial of a challenge for implied bias, the court must determine the law and the fact, and must either allow or disallow the challenge, and direct an entry accordingly upon the minutes.

Trial of challenge for actual bias.

Sec. 34. On the trial of a challenge for an actual bias, when the evidence is concluded, the court must instruct the triers that it is their duty to find the challenge true, if the evidence establishes the existence of a state of mind on the part of the juror in reference to the case, or to either party, which satisfies them, in the exercise of a sound discretion, that he cannot try the issue impartially, and without prejudice to the substantial rights of the party challenging; and that, if otherwise, they must find the challenge not true. The court can give them no other instruction.

Verdict of triers and its effect.

Sec. 35. The triers must thereupon find the challenge either true or not true; and their decision is final. If they find it true, the juror must be excluded.

Challenges must be first by the defendant, then by the United States.

Sec. 36. All challenges to an individual juror, except peremptory, must be taken first by the defendant, and then by the United States; and either party must exhaust all their challenges before the other begins.

Order of challenges.

Sec. 37. The challenges of either party need not all be taken at once; but they may be taken separately, in the following order, including in each challenge, all the causes of challenge, belonging to the same class:

1. To the panel;
2. To an individual juror, for a general disqualification;
3. To an individual juror for implied bias;
4. To an individual juror for actual bias.

Peremptory when may be taken.

Sec. 38. If all the challenges on both sides be disallowed, the defendant may still take a peremptory challenge, unless the peremptory challenges be exhausted.

Form of oath to be administered to jurors.

Sec. 39. The following oath shall be administered to all jurors for the trial of criminal cases not capital, "You shall well and truly try the issue between the United States and the de-

fendant (or defendants, as the case may be) according to evidence, so help you God." In capital cases, the following oath shall be administered to the jurors, "You shall well and truly try, and true deliverance make, between the United States and the prisoner at the bar, whom you shall have in charge, according to evidence, so help you God."

Jurors may affirm.

Sec. 40. Any juror who is conscientiously scrupulous of taking either of the oaths above described, shall be allowed to make affirmation, substituting the words, "This you do under the pains and penalties of perjury," instead of the words, "so help you God."

Person on trial for felony must be present.

Sec. 41. No person indicted for a felony shall be tried unless personally present during the trial; persons indicted for smaller offenses, may, at their own request, by leave of the court, be put on trial in their absence, and may appear by an attorney duly authorized for that purpose.

Court may order a view by the jury.

Sec. 42. The court may order a view by any jury impanneled to try a criminal case.

Proceedings when defendant is acquitted of a part of the offense charged.

Sec. 43. Whenever any person indicted for a felony, shall on trial be acquitted, by verdict, of part of the offense charged in the indictment, and convicted of the residue thereof, such verdict may be received and recorded by the court, and thereupon the person charged, shall be adjudged guilty of the offense, if any, which shall appear to the court to be substantially charged by the residue of such indictment, and shall be sentenced and punished accordingly.

When defendant charged with assault with intent to commit felony may be convicted of assault.

Sec. 44. In all cases of indictment in the district court, for assault with intent to commit any felony, it may be lawful for the jury, in case they do not find the felonious intent charged, to convict of the assault; and the court shall have power to sentence the person so convicted, to be punished by imprisonment in the jail of the county, for a term not exceeding one year, or by fine not exceeding five hundred dollars.

Verdict in case of insanity.

Sec. 45. When any person indicted for an offense, shall on trial be acquitted by the jury by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge, or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the community,

the court may order him to be committed to prison, or may give him into the care of his friends, if they shall give bonds with surety to the satisfaction of the court, conditioned that he shall be well and securely kept, otherwise he shall be discharged.

Defendant when not liable to costs.

Sec 46. No prisoner or person under recognizance, who shall be acquitted by verdict, or discharged because no indictment has been found against him, or for want of prosecution shall be liable for any cost or fees of officers, or for any charge for subsistence while he was in custody.

CHAPTER 29.

APPEALS, NEW TRIALS, AND EXCEPTIONS IN CRIMINAL CASES.

Person convicted by justice may appeal to district court.

Section 1. Every person convicted before a justice of the peace of any offense, may appeal from the sentence to the district court, then next to be held in the same county, and such appellant shall be committed to abide the sentence of said justice, until he shall recognize to the United States in such reasonable sum, with such sureties as said justice shall require, with condition to appear at the court appealed to, and there to prosecute his appeal, and to abide the sentence of the court thereon, and in the mean time to keep the peace, and to be of good behavior.

Justice to make copy of conviction, &c., and file the same with the clerk.

Sec. 2. The justice, on such appeal, shall make a copy of the conviction and other proceedings in the case, and transmit the same, together with their recognizance, if any shall be taken to the clerk of the court appealed to; and the fees of the justice therefor shall be paid from the county treasury, in like manner as other costs in criminal prosecutions are paid.

Appellant not required to pay costs before appeal is taken.

Sec. 3. The appellant shall not be required to advance any fees in claiming his appeal, nor in prosecuting the same; but if convicted in the district court, or if sentenced for failing to prosecute his appeal, he may be required, as a part of his

sentence, to pay the whole or any part of the costs of prosecution.

If defendant fail to prosecute appeal, his recognizance to be forfeited.

Sec. 4. If the appellant shall fail to enter and prosecute his appeal, he shall be defaulted on his recognizance, if any was taken, and the district court may award sentence against him for the offense whereof he was convicted, in like manner as if he had been convicted thereof in that court, and if he is not then in custody, process may be issued to bring him into court to receive sentence.

Proceedings upon suit brought upon recognizance.

Sec. 5. Whenever suit brought upon any recognizance to prosecute an appeal, the penalty thereof shall be adjudged to be forfeited, or when by leave of the court, such penalty shall have been paid to the county treasurer or to the clerk of the court, without a suit or before judgment shall be given in a manner by law provided, if by law any forfeiture shall accrue to any person by reason of the offense of which the appellant was convicted, the court may award to him such sum as he may be entitled to out of such forfeiture.

New trial of indictment when granted.

Sec. 6. The district court may, at any term in which the trial of any indictment may be had, or within one year thereafter, or the supreme court within one year thereafter, on the petition or motion in writing of the defendant, grant a new trial for any cause for which by law a new trial may be granted, or when it shall appear to the court that justice has not been done, and on such terms or conditions as the court may direct.

Exceptions may be taken to judgment or decision of the district court.

Sec. 7. Any person who shall be convicted of an offense before the district court, being aggrieved by any opinion, direction or judgment of the court, in any matter of law, may allege exceptions to such opinion, direction, or judgment; which exceptions being reduced to writing in a summary mode, and presented to the court any time before the end of the term, and found conformable to the truth of the case, shall be allowed and signed by the judge, and thereupon all further proceedings in that court shall be stayed, unless it shall clearly appear to the judge, that such exceptions are frivolous, immaterial, or intended only for delay; and in that case judgment may be entered and sentence awarded in such manner as the

Effect of exception.

judge may deem reasonable, notwithstanding the allowance of such exceptions.

When question of law arising on the trial, may be prosecuted to the supreme court.

Sec. 8. If upon the trial of any person who shall be convicted in said district court, any question of law shall arise, which in the opinion of the judge shall be so important or so doubtful as to require the decision of the supreme court, he shall, if the defendant desire it, or consent thereto, report the case so far as may be necessary to present the question of law arising therein, and thereupon all proceedings in that court shall be stayed.

When defendant may recognize.

Sec. 9. Any person not being accused of an offense punishable with death, or imprisonment in the territorial prison for a term exceeding three years, who shall file exceptions, or for whose benefit a report shall be made by the judge, and proceedings stayed, as is provided in the two preceding sections, may recognize to the United States in such sum as the judge shall order, with sufficient sureties for his personal appearance at the supreme court of the then next term thereof, and to enter and prosecute his exceptions with effect, and abide the sentence thereon, and in the meantime keep the peace, and be of good behavior; and the judge may in his discretion allow any person so to recognize, charged with an offense not punishable with death.

When in such case defendant to be committed

Sec. 10. If any person, so filing exceptions, or desiring a report to be made by the judge, shall not so recognize, he shall be committed to prison to await the decision of the supreme court, and in that case, the clerk of the court in which the conviction was had, shall file a certified copy of the record and proceedings in the case in the supreme court, and the court shall have cognizance thereof and consider and decide the questions of law, and shall render judgment, and award such sentence, or make such order thereon as law and justice shall require; and if a new trial is ordered, the cause shall be remanded to the said district court for such new trial, but the proceedings here prescribed shall not deprive any party of his writ of error for an error or defect appearing of record.

Clerk to file copy of record in supreme court.

Judgment of supreme court.

CHAPTER 30.

JUDGMENTS IN CRIMINAL CASES, AND THE EXECUTION THEREOF.

Where no punishment is provided by statute court may award sentence.

Section 1. In any case of legal conviction where no punishment is provided by statute, the court shall award such sentence as is according to the degree and aggravation of the offense not cruel or unusal, nor repugnant to the constitutional rights of the party.

When in addition to other sentence may be required to recognize to keep the peace.

Sec. 2. Every court before whom any person shall be convicted upon an indictment for any offense not punishable with death, or by imprisonment in the territorial prison or county jail, may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum, to keep the peace or to be of good behavior, or both, for any term not exceeding two years, and to stand committed until he shall so recognize.

Proceedings in case of breach of such recognizance.

Sec. 3. In case of the breach of the conditions of such recognizance, the same proceedings shall be had, that are by law prescribed in relation to recognizances to keep the peace.

Upon conviction and sentence, clerk shall deliver transcript of conviction to the sheriff.

Sec. 4. Whenever any person convicted of an offense shall be sentenced to pay a fine, or costs, or to be imprisoned in the county jail, or territorial prison, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court, of such conviction and sentence, duly certified by such clerk, which shall be a sufficient authority for such sheriff to execute such sentence; and he shall execute the same accordingly.

In case of punishment in territorial prison, sentence how made.

Sec. 5. In every case in which the punishment in the territorial prison is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor; and he shall also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at one time; and in the execution of such punishment, the solitary imprisonment shall precede the punishment by hard labor, unless the court shall otherwise order.

Sentence how made when there is no jail in the county.

Sec. 6. Whenever it shall appear to the court, at the time of passing sentence upon any convict, who is to be punished by confinement in the territorial prison, or county jail, that there is no jail in the county in which the offense was committed, suitable for the confinement of such convict, the court may order the sentence to be executed in any county in this territory, in which there may be a jail suited to that purpose; and the expenses of supporting such convict shall be borne, if such convict was sentenced to imprisonment in the county jail, by the county in which the offense was committed.

Sentence of death not to be executed except on the warrant of the governor.

Sec. 7. When any person shall be convicted of any crime, for which sentence of death shall be awarded against him, the clerk of the court as soon as may be, shall make out and deliver to the sheriff of the county, a certified copy of the whole record of the conviction and sentence, and the sheriff shall forthwith transmit the same to the governor, and the sentence of death shall not be executed upon such convict, until a warrant shall be issued by the governor, under the seal of the territory, with a copy of the record thereto annexed, commanding the sheriff to cause execution to be done, and the sheriff shall thereupon cause to be executed the judgment and sentence of law upon such convict.

Governor how to proceed where convict is insane or a female is quick with child.

Sec. 8. If it shall appear to the satisfaction of the governor, that any convict who is under sentence of death, has become insane, the warrant for his execution may be delayed; or if such warrant has been issued, the execution thereof may be respited from time to time, so long as the governor shall think proper; and if any female convict, who is under sentence of death, shall be quick with child, the governor shall forbear to issue a warrant for the execution; or if such warrant has been issued, the execution thereof shall be respited, until it shall appear to the satisfaction of the governor, that such female is no longer quick with child.

Punishment of death how inflicted.

Sec. 9. The punishment of death shall in all cases be inflicted by hanging the convict by the neck, until he be dead; and the sentence shall at the time directed by the warrant, be executed at such place within the county as the sheriff shall select.

Who to be present at execu-

Sec. 10. Whenever the punishment of death shall be inflicted

upon any convict, in obedience to a warrant from the governor, the sheriff of the county shall be present at the execution, unless he shall be prevented by sickness, or other casualty; and he may have such military guard as he may think proper. He shall return the warrant with a statement, under his hand of his doings thereon, as soon as may be, after the said execution, to the governor, and shall also file in the clerk's office of the court where the conviction was had, an attested copy of the warrant and statement aforesaid, and the clerk shall subjoin a brief abstract of such statement to the record of conviction and sentence.

tion of sentence on convict.

Warrant how to be returned.

CHAPTER 31.

PARDONS.

Section 1. In all cases in which the governor is authorized to grant pardons, he may upon the petition of the person convicted, grant a pardon, upon such conditions, and with such restrictions, and under such limitations, as he may think proper, and he may issue his warrant to all proper officers to carry into effect such constitutional pardon; which warrant shall be obeyed and executed instead of the sentence, if any, which was originally awarded.

Governor may grant pardons on petition.

Sec. 2. Whenever any convict is pardoned by the governor, or his punishment is commuted, the officer to whom the warrant for that purpose is issued, after executing the same, shall make return thereof, under his hand with his doings thereon, to the governor, as soon as may be, and he shall also file with the clerk of the court in which the offender was convicted, an attested copy of the warrant and return, a brief abstract of which the clerk shall subjoin to the record of his conviction and sentence.

In case of pardon or commutation, officer to make return of warrant to the governor, and also file copy of same with the clerk.

CHAPTER 32.

MISCELLANEOUS PROVISION RELATING TO CRIMES AND PUNISHMENTS.

Defendant presumed innocent until proved guilty.

Section 1. A defendant in a criminal action, is presumed to be innocent, until the contrary be proved; and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to be acquitted.

In case of doubt as to the degree of guilt, may be convicted of the lowest degree.

Sec. 2. When it appears that the defendant has committed a public offense, and there is reasonable ground of doubt, in which of two or more degrees he is guilty, he can be convicted of the lowest of these degrees only.

Joint defendants may have separate hearing in felonies, &c.

Sec. 3. When two or more defendants are jointly indicted for a felony, any defendant requiring it, must be tried separately; in other cases defendants jointly indicted, may be tried separately, or jointly in the discretion of the court.

When the court may discharge one of several defendants to be a witness for the United States.

Sec. 4. When two or more persons are included in the same indictment, the court may at any time before the defendant has gone into his defense, on the application of the district attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the United States.

When co-defendant is discharged may be witness for co-defendant.

Sec. 5. When two or more persons are included in the same indictment, and the court is of opinion, that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged from the indictment, before the evidence is closed, that he may be a witness for his co-defendant; the order is an acquittal of the defendant discharged, and a bar to another prosecution for the same offense.

Confession not to be evidence if extorted by threats.

Sec. 6. A confession of a defendant, whether made in the course of judicial proceedings, or to a private person, cannot be given in evidence against him, when made under the influence of fear, produced by threats, nor is it sufficient to warrant his conviction, without proof that the offense charged has been committed.

Penetration sufficient to sustain charge for rape.

Sec. 7. Proof of actual penetration into the body is sufficient to sustain an indictment for rape, or for the crime against nature.

Testimony of accomplice not sufficient without corroboration

Sec. 8. A conviction cannot be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to convict the defendant of the commission of the offense, and the corroboration is not sufficient if it merely show the commission of the offense, or the circumstances thereof.

When juror must be sworn as witness.

Sec. 9. If a juror have any personal knowledge respecting a fact in controversy in a cause, he must, declare it in open court, during the trial; if during the retirement of a jury, a juror declare a fact which could be evidence in the cause, as of his own knowledge, the jury must return into court; in either of these cases the juror making the statement must be sworn as a witness, and examined in the presence of the parties.

Court must decide questions of law.

Sec. 10. The court must decide all questions of the law, which arise in the course of the trial.

Defendant may except questions of fact to be decided by jury.

Sec. 11. On the trial of an indictment for any offense, questions of law are to be decided by the court, except in case of libel, saving the right of the defendant to except. Questions of fact, by the jury; and although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless to receive as law what is laid down as such by the court.

Court must inform the jury that they are the exclusive judges of the facts.

Sec. 12. In charging the jury, the court must state to them all matters of laws, which it thinks necessary for their information in giving their verdict; and if it present the facts of the case, must, in addition to what it may deem its duty to say, inform the jury that they are the exclusive judges of all questions of fact.

Jury may retire or decide in court.

Sec. 13. After hearing the charge, the jury may either decide in court, or may retire for deliberations; if they do not agree without retiring, one or more officers must be sworn to keep them together, in some private and convenient place, without food or drink, except bread and water, unless otherwise ordered by the court, and not to permit any person to speak to or communicate with them, nor do so themselves, unless it be by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

When appearing for trial may be committed.

Sec. 14. When a defendant, who has given bail, appears for trial, the court may in its discretion, at any time after his ap-

pearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court; and he must be committed and held in custody accordingly.

Jury may take with them papers received in evidence.

Sec. 15. Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the cause, or copies of such parts of public records, or private documents given in evidence, as ought not, in the opinion of the court, to be taken from the person having them in possession.

Jury may take with them notes of the testimony.

Sec. 16. The jury may also take with them notes of the testimony, or other proceedings on the trial taken by themselves, or any of them, but none taken by any other person.

When jury disagree as to testimony, may inquire of the court.

Sec. 17. After the jury has retired for deliberation, if there be a disagreement between them, as to any part of the testimony, or if they desire to be informed of a point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of, or after notice to the district attorney and the defendant or his counsel.

If juror be taken sick, jury may be discharged by the court.

Sec. 18. If after the retirement of the jury, one of them become so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept together for deliberation, the jury may be discharged by the court.

When jury thus discharged, defendant may be again tried.

Sec. 19. In all cases where a jury are discharged or prevented from giving a verdict by reason of an accident, or other cause, except when the defendant is discharged from the indictment during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term.

Jury may find guilty of degree lower than charged; or of attempt to commit.

Sec. 20. Upon an indictment for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto; upon an indictment for any offense, the jury may find the defendant not guilty of the commission thereof, and guilty of an attempt to commit the same; upon an indictment for murder, if the jury find the defendant not guilty thereof, they may, upon the same indictment, find the defendant guilty of manslaughter in any degree.

Jury may find defendant guilty, &c.

Sec. 21. In all other cases, the defendant may be found guilty of any offense, the commission of which is necessarily included in that which he is charged in the indictment.

On indictment against several, jury may convict those guilty

Sec. 22. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

Jury may be polled.

Sec. 23. When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party, in which case they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.

Clerk may record the verdict.

Sec. 24. When a verdict is given, as is such as the court may receive, the clerk must immediately record it in full on the minutes, and must read it to the jury, and inquire of them whether it is their verdict; and if any juror disagree, the fact must be entered upon the minutes, and the jury again sent out; but if no disagreement be expressed, the verdict is complete, and the jury must be discharged from the case.

If defendant be acquitted on grounds of insanity the jury must state that fact in the verdict.

Sec. 25. If the defense to an indictment be the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state that fact with their verdict.

Court may hear circumstances in aggravation or mitigation of sentence.

Sec. 26. After a plea or verdict of guilty, in a case where a discretion is conferred upon the court, as to the extent of the punishment, the court, upon the suggestion of either party that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment, may, in his discretion, hear the same summarily at a specified time, and upon such notice to the adverse party, as it may direct.

Such circumstances how introduced.

Sec. 27. The circumstances must be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition must be taken by a magistrate of the county, out of court, at a specified time and place, upon such notice to the adverse party as the court may direct.

No other testimony can be received.

Sec. 28. No affidavit or testimony or representation of any kind, verbal or written, can be offered to or received by the court,

or a member thereof, in aggravation or mitigation of the punishment, except as provided in the last two sections.

On conviction requiring sentence of death, judge to send statement thereof to governor.

Sec. 29. The judge of the court, at which a conviction requiring judgment of death is had, must immediately, after conviction, transmit to the governor, by mail, a statement of the conviction and judgment and of the testimony given at the trial.

Bail when requested by either party must justify.

Sec. 30. Bail must, when requested by either party, or ordered by the court, judge, or magistrate, justify by affidavit before the court, judge, or magistrate, as the case may be.

Clerk must issue blank subpœnas for defendant.

Sec. 31. The clerk of the court at which any indictment is to be tried, must, at all times, upon the application of the defendant, and without charge, issue as many blank subpœnas under the seal of the court, and subscribed by him as clerk, for witnesses within the territory, as may be required by the defendant.

When person held to answer if indictment be not found at next term prosecution to be dismissed.

Sec. 32. When a person has been held to answer for a public offense, if an indictment be not found against him at the next term of the court at which he is held to answer, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

If defendant on indictment be not tried, when prosecution to be dismissed.

Sec. 33. If a defendant, indicted for a public offense, whose trial has not been postponed upon his application, be not brought to trial at the next term of the court in which the indictment is triable, after it is found, the court must order the indictment to be dismissed, unless good cause to the contrary be shown.

When court may order the action to be continued.

Sec. 34. If the defendant be not indicted, or tried, as provided in the last sections, and sufficient reason therefor be shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody, on his own undertaking, or on the undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

If the court dismiss the action defendant must be discharged.

Sec. 35. If the court direct the action to be dismissed, the defendant must, if in custody, be discharged therefrom; or if admitted to bail, his bail is exonerated, or money deposited instead of bail, must be refunded to him.

When court may dismiss action after indictment

Sec. 36. The court may, either of his own motion, or upon the application of the district attorney, and in furtherance of justice, order an action after indictment, to be dismissed; but in that case, the reasons of the dismissal must be set forth in the order, which must be entered upon the minutes.

Nolle prosequi is abolished.

Sec. 37. The entry of a nolle prosequi is abolished, and the district attorney cannot discontinue, or abandon a prosecution for a public offense, except as provided in the last section.

When order for dismissal is a bar to another action.

Sec. 38. An order for the dismissal of the action, as provided in this chapter, is a bar to another prosecution for the same offense, if it be a misdemeanor; but it is not a bar, if the offense charged be a felony.

Property stolen or embezzled how disposed of.

Sec. 39. When property alleged to have been stolen, or embezzled, comes into the custody of a peace officer, he must hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

Such property when to be returned to the owner.

Sec. 40. On satisfactory proof of the title of the owner of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing, or embezzling the property, may order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

Owner entitled to possession of property on payment of costs.

Sec. 41. If property stolen, or embezzled, come into the custody of a magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

Owner entitled to possession of property on payment of costs.

Sec. 42. If property stolen, or embezzled, have not been delivered to the owner, the court before which trial is had for stealing, or embezzling it, may, on proof of his title, order it to be restored to the owner.

Judgment roll how made and what to contain.

Sec. 43. When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the offense for which the conviction has been had, and must immediately annex together, and file the following papers, which constitute the judgment roll:

1. A copy of the minutes of challenge interposed by the defendant to the panel of the grand jury, or to an individual grand juror, and the proceedings and decisions thereon.

2. The indictment and a copy of the minutes of the plea, or demurrer.

3. A copy of the minutes of a challenge, which may have been interposed to the panel of the trial jury to an individual juror, and the proceedings and decisions thereon.

4. A copy of the minutes of the trial.

5. A copy of the minutes of the judgment.

6. The bill of exceptions, if there be one.

Copy of minutes when duly certified, to be evidence.

Sec. 44. A copy of the minutes of any conviction and judgment, duly certified by the clerk in whose custody such minutes shall be, under his official seal, together with a copy of the indictment on which the conviction shall have been had, certified in the same manner, shall be evidence in all courts and places of such conviction and judgment, without the production of the judgment roll.

Writ of error to stay execution; when.

Sec. 45. No writ of error shall stay or delay the execution of a judgment or execution thereon, in any criminal case, unless the same shall be allowed by a judge of the district court of the district in which the trial was had, or indictment found, with an express direction therein that the same is to operate as a stay of proceedings on the judgment upon which such writ shall be brought. And upon such direction being given, during the pendency of the writ of error, the defendant shall remain in custody, or be let to bail as in cases of appeal.

Assignmnent of errors, &c. proceedings instead of.

Sec. 46. No assignment of errors or joinder in error, shall be necessary upon any writ of error, issued in a criminal case; but the court shall proceed on the return thereto, and render judgment upon the record before them. If the court shall affirm the judgment, it shall direct the sentence pronounced to be executed, and the same shall be exeeuted accordingly. If it shall reverse the judgment rendered, it shall either direct a new trial, or that the defendant be absolutely discharged, as the case may require. If a new trial be ordered, the same shall be had in the court in which the indictment was first tried.

Defendant may be arrested after indictment &c.

Sec. 47. If a defendant in any indictment shall have been let to bail, after verdict or trial, and shall neglect to appear before any court or officer, at any time or place at which he

is bound to appear, and submit to the jurisdiction of the proper court, or officer, the court or officer before which he shall have been bound to appear, may cause such defendant to be arrested in the same manner as upon the finding of an indictment, and may forfeit his recognizance, and direct the same to be prosecuted.

Effect of above sections.

Sec. 48. Nothing in this act contained, shall invalidate any action, suit, prosecution, process, pleading or proceeding commenced, issued, had or taken before, or pending when it goes into effect.

CHAPTER 33.

PRISONS, AND IMPRISONMENT FOR OFFENSES.

Common jails to be used as prisons.

Section 1. The common jails now erected, or which shall hereafter be erected, in the several counties in the charge of the respective sheriffs, shall be used as prisons:

1. For the detention of persons charged with offenses, and duly committed for trial.

2. For the detention of persons who may be duly committed to secure their attendance as witnesses on the trial of any criminal cause.

3. For the confinement of persons pursuant to a sentence, upon a conviction for an offense, and of all other persons duly committed for any cause authorized by law.

4. For the confinement of persons who may be sentenced to imprisonment in the territorial prison, until a suitable prison shall be provided.

When no jail in county prisons how disposed of

Sec. 2. Whenever there is no jail erected in any county, every judicial or executive officer of such county, who shall have power to order, sentence, or deliver any person to the county jail, may order, sentence, or deliver such person to the jail of any adjoining county; and if there is no jail erected in any adjoining county, then to either of the forts or garrisons in the territory, with the consent of the commanding

officer of the same; and the jailor of any such adjoining county shall receive and keep such prisoner in the same manner as if he had been ordered, sentenced, or delivered to him by any officer or court of his own county. The county from which such prisoner was taken, shall pay all the expenses of keeping and maintaining him in said jail.

Expenses of convict how paid.

Sec. 3. All charges and expenses for safe keeping and maintaining convicts who have been sentenced to confinement in the territorial prison, shall be paid out of the treasury of the territory yearly; the accounts of the keeper being first allowed by the board of county commissioners of the county where the convict shall be confined; and the expenses of safe keeping and maintaining persons charged with offenses, and duly committed for trial, and of those who are sentenced to confinement in the county jail, or who may be committed for the non-payment of any fine, shall be paid out of the treasury of the county; the account of the keeper being in like manner allowed by the board of county commissioners: *Provided*, That the territory, nor any county, shall ever pay more than two and a half dollars a week for the support of any person as aforesaid.

Expenses of prisoners when paid by county.

County commissioners to be inspectors of prisons.

Sec. 4. The county commissioners in the several counties shall be inspectors of the prisons in their respective counties, and shall visit them at least once in each year, and shall examine fully into the condition of such prison, as to health, cleanliness and discipline; and the keeper thereof shall lay before them a calendar setting forth the name, age and cause of committal of each prisoner; and if it shall appear to the said inspectors that any of the provisions of law have been violated or neglected, they shall forthwith give notice to the district attorney of the county.

Sheriff or jailor not to give liquor to persons confined in jail.

Sec. 5. No sheriff, jailor, or keeper of any prison, shall, under any pretense, give, sell or deliver to any person committed to any prison, for any cause whatever, any spirituous liquor, or any mixed liquor, part of which is spirituous, or any wine, cider, or strong beer, unless a physician shall certify in writing, that the health of such prisoner requires it, in which case he may be allowed the quantity prescribed, and no more. And no sheriff, jailor, or keeper, as aforesaid, shall put up, or keep in the same room, male and female prisoners together.

Penalty for giving liquor to prisoners or putting different sexes in one room.

Sec. 6. If any sheriff, jailor, or keeper of any prison, shall sell or deliver to any prisoner in his custody, or shall willingly or negligently suffer any such prisoner to have any liquor, prohibited in the fifth section of this chapter, or shall place or keep together, prisoners of different sexes, contrary to the provisions of the said fifth section, he shall in each case, forfeit and pay for the first offense, the sum of twenty-five dollars; and such officer shall, on a second conviction, be further sentenced to be incapable of holding the office of sheriff, deputy sheriff, jailor or keeper of any prison, for the term of five years.

Penalty for other persons to furnish liquor, &c.

Sec. 7. If any person, other than is mentioned in the preceding section, shall sell or deliver to any person committed for any cause whatever, any liquor, prohibited in this chapter, or shall have in his possession, in the precincts of any prison, any such liquor, with intent to carry or deliver the same to any prisoner confined therein, he shall be punished by fine not exceeding fifteen dollars.

Prisons to be kept cleanly.

Sec. 8. The keeper of such prison shall see that the same is constantly kept in a cleanly and healthful condition, and shall see that strict attention is constantly paid in the personal cleanliness of all the prisoners in his custody, as far as may be, and shall cause the shirt of each prisoner to be washed at least once in each week; each prisoner shall be furnished daily with as much clean water as he shall have occasion for, either for drink or for the purpose of personal cleanliness, and with a clean towel, once a week, and shall be served three times each day with wholesome food, which shall be well cooked, and in sufficient quantity.

Bible to be furnished each prisoner.

Sec. 9. The keeper of each prison shall provide, at the expense of the county, for each prisoner under his charge, who may be able and desirous to read, a copy of the Bible, or New Testament, to be used by such prisoner at proper seasons during his confinement; and any minister of the gospel, disposed to aid in reforming the prisoners, and instructing them in their moral and religious duties, shall have access to them at seasonable and proper times.

Sheriff shall keep calendar of all persons committed to prison.

Sec. 10. The sheriffs of the respective counties shall keep a true and exact calendar, or register of all prisoners committed

to any prison under their care, and the same shall be kept in a book, to be provided by the county for that purpose; said calendar shall contain the names of all persons who shall be committed to prison, the places of abode, the time of their commitment, shall state the cause of their commitment, and the authority that committed them, and if they are committed for criminal offenses, shall contain a description of their persons, and when any prisoner shall be liberated, said calendar shall state the time when, and the authority by which such liberation took place, and if any prisoner escapes, shall also state particularly the time and manner of said escape.

Calendar what to contain.

Sheriff to furnish court with copy of calendar.

Sec. 11. At the opening of each session of the district court, within his county, the sheriff shall return a copy of said calendar under his hand, to the judge holding said court, and if any sheriff shall neglect or refuse so to do, he shall be punished by fine, not exceeding three hundred dollars.

Jails how to be constructed.

Sec. 12. In the jails erected, or which shall be hereafter erected in this territory, there shall be provided sufficient and convenient apartments for confining prisoners not criminal, separate from felons and other criminals, and also for confining persons of different sexes, separate and apart from each other.

Persons sentenced to solitary imprisonment where to be confined.

Sec. 13. Whenever any person shall be duly sentenced to solitary imprisonment and confinement at hard labor, in the territorial prison, or either of them, the sheriff of the proper county is required to execute such sentence of solitary imprisonment until a suitable territorial prison shall be provided, by confining such convict in one of the cells of the jail, or if there be no such cell, then in the most retired and solitary part of the jail; and during the time of such solitary imprisonment the convict shall be fed with bread and water only, unless other food shall be necessary for the preservation of his health; and no intercourse shall be allowed with such convict during such confinement, except for the conveyance of food and other necessary purposes.

Sentence to imprisonment at hard labor how executed.

Sec. 14. Whenever any person shall be confined in any jail pursuant to the sentence of any court, if such sentence or any part thereof shall be that he be confined at hard labor, the sheriff of the county in which such person shall be confined,

shall furnish such convict with suitable tools and materials to work with, if in the opinion of the said sheriff, the said convict can be profitably employed either in the jail or yard thereof, and the expense of said tools and materials shall be defrayed by the county in which said convict shall be confined; and said county shall be entitled to his earnings.

When keeper may order prisoner to solitary confinement, &c.

Sec. 15. Whenever any person committed to prison for any cause whatever, shall be unruly, or shall disobey any of the regulations, established for the management of prisons, the sheriff or keeper may order such prisoner to be kept in solitary confinement and fed on bread and water only, as is provided in the thirteenth section of this chapter, for a period not exceeding twenty days for each offense.

Necessary bedding, &c., to be furnished prisoners

Sec. 16. The keeper of each prison shall furnish necessary bedding, clothing and fuel, and medical aid for all prisoners who shall be in his custody, and shall be paid therefor according to the provisions of the third section of this chapter; and such payment shall not be deducted from the sum he is entitled to receive for the weekly support of the prisoner, according to the provisions of said third section.

Penalty for breaking prison.

Sec. 17. If any person who may be in any prison, under sentence of imprisonment in the territorial prison, shall break the prison and escape, he shall be punished by imprisonment in the territorial prison, for the term of one year, in addition to the unexpired term for which he was originally sentenced.

Penalty for person not convicted breaking prison.

Sec. 18. If any person who may be imprisoned pursuant to a sentence of imprisonment in the county jail, or any person who shall be committed for the purpose of detaining him for trial, for any offense not capital, shall break prison and escape, he shall be imprisoned in the county jail for the term of six months.

Person committed for trial for capital offense.

Sec. 19. If any person who shall be committed to prison, for the purpose of detaining him for trial, for a capital offense, shall break prison and escape, he shall be imprisoned in the territorial prison, for the term of two years.

Penalty for breaking prison.

Prisoners how disposed of in case of fire.

Sec. 20. If any prison, or any building thereto, shall be on fire, and the prisoners shall be exposed to danger by such fire, the keeper may remove such prisoners to a place of safety, and there confine them, so long as may be necessary to avoid

such danger, and such removal and confinement shall not be deemed an escape of such prisoners.

Persons imprisoned for non-payment of dues and costs how released.

Sec. 21. When any poor convict shall have been confined in any prison for the space of six months, for the non-payment of fine and costs only, or either of them, the sheriff of the county in which such person shall be imprisoned shall make a report thereof to any two justices of the peace for such county; if required by such justices, the said keeper shall bring such verdict before them, either at the prison, or at such other convenient place thereto as they shall direct, the said justices shall proceed to inquire into the truth of said report, and if they shall be satisfied that such report is true, and the convict has not had since his conviction any estate, real or personal, with which he could have paid the sum, for the non-payment of which he was committed, they shall make a certificate thereof to the sheriff of the county and direct him to discharge such convict from prison, and the sheriff shall forthwith discharge him.

Sheriffs, deputies, &c., to receive prisoners into custody.

Sec. 22. All sheriffs, jailors, prison keepers, and their, and each, and every, of all their deputies, within this territory, to whom any person or persons shall be sent or committed, by virtue of legal process, issued by, or under the authority of the United States, shall be, and they are hereby enjoined and required to receive such persons into custody, and to keep them safely until they be discharged by due course of the laws of the United States; and all such sheriffs, jailors, prison keepers, and their deputies, offending in the premises, shall be liable to the same pains and penalties, and the parties aggrieved shall be entitled to the same remedies against them, or any of them, as if such prisoners had been committed to their custody by virtue of legal process issued under the authority of this territory.

United States to pay for keeping such prisoners.

Sec. 23. The United States shall be liable to pay for the support and keeping of said prisoners, the same charges and allowances, as are allowed for the support and keeping of prisoners committed under the authority of this territory.

Calendar of prisoner to be made out before court.

Sec. 24. Before every stated term of the United States court, to be held within this territory, the said sheriffs, jailors, and prison keepers shall make out, under oath, a calendar of

prisoners in their custody, under the authority of the United States, with the date of their commitment, by whom committed, and for what offense, and transmit the same to the judge of the district court of the United States, for this district, and at the end of every six months they shall transmit to the United States marshal of this territory, for allowance and payment of their account, if any, against the United States, for the support and keeping of such prisoners as aforesaid.

Prisons to be established in every county.

Sec. 25. That there shall be established and kept in every county, by authority of the board of county commissioners and at the expense of the county, a prison for the safe keeping of prisoners lawfully committed.

Grand juries to examine prisoners and report.

Sec. 26. That the grand jury at each term of the district court, shall make personal inspection of the condition of the county prison, as to the sufficiency of the same for the safe keeping of prisoners, their convenient accommodation and health, and shall inquire into the manner in which the same has been kept since the last term; and the court shall give this duty in special charge to such grand jury, and it shall be imperative upon the board of county commissioners to issue the necessary orders, or cause to be made the necessary repairs, in accordance with the complaint or recommendation of the grand jury.

Sheriffs or their deputies required to keep jail

Sec. 27. The sheriff of the county, by himself or deputy, shall keep the jail, and shall be responsible for the manner in which the same is kept; he shall keep separate rooms for the sexes, except where they are lawfully married; he shall provide proper meat, drink and fuel for prisoners.

Keeping of criminals to be paid by county.

Sec. 28. Whenever a prisoner is committed for crime or in any suit in behalf of the territory, the county board shall allow the sheriff his reasonable charge for supplying such prisoner.

Sheriff's evidence to retain prisoner.

Sec. 29. When a prisoner is confined by virtue of any process directed to the sheriff, and which shall require to be returned to the court, whence it issued, such sheriff shall keep a copy of the same, together with his returns made thereon, which copy, duly certified by such sheriff, shall be prima facie evidence of his right to retain such prisoner in custody.

Commitments, &c., to be filed by sheriff

Sec. 30. All instruments of every kind, or attested copies thereof, by which a prisoner is committed or liberated, shall be

regularly indorsed and filed, and safely kept in a suitable box by such sheriff, or by his deputy, acting as a jailor.

Box to pass to successor.

Sec. 31. Such box, with its contents, shall be delivered to the successor of the officer having charge of the prison.

Confinement of persons from one county in jail of another county.

Sec 32. When there is no sufficient prison in any county wherein any criminal offense shall have been committed, any judge of the district court of such county, upon application of the sheriff, may order any person charged with a criminal offense, and ordered to be committed to prison, to be sent to the jail of the county nearest having a sufficient jail; and the sheriff of such nearest county shall, on exhibit of such judge's order, receive and keep in custody, in the jail of his county, the prisoner ordered to be committed as aforesaid, at the expense of the county from which said prisoner was sent; and the said sheriff shall, upon the order of the district court, or a judge thereof, re-deliver such prisoner when demanded.

Fugitives from justice may be confined in any county jail.

Sec. 33. Any county jail may be used for the safe keeping of any fugitive from justice or labor in this territory, in accordance with the provisions of any act of Congress, and the jailor shall, in this case, be entitled to reasonable compensation for the support and custody of such fugitive from the officer having him in custody.

Juvenile prisoners, their treatment.

Sec. 34. Juvenile prisoners shall be treated with humanity, and in a manner calculated to promote their reformation; they shall be kept, if the jail will admit of it, in apartments separate from those containing more experienced and hardened criminals; the visits of parents, guardians and friends who desire to exert a moral influence over them, shall at all reasonable times, be permitted.

Conflicting acts repealed.

Sec. 35. All acts or parts of acts inconsistent with this act, are hereby repealed.

Take effect when

Sec. 36. This act shall take effect from and after its passage and approval.

Approved, January 9, 1863.