

**GENERAL LAWS,**  
**AND**  
**MEMORIALS AND RESOLUTIONS**  
**OF THE**  
**TERRITORY OF DAKOTA,**  
**PASSED AT THE SECOND SESSION**  
**OF THE**  
**LEGISLATIVE ASSEMBLY,**

**COMMENCED AT THE TOWN OF YANKTON DECEMBER 1, 1862, AND CONCLUDED**  
**JANUARY 9, 1863.**

**TO WHICH ARE PREFIXED**

**THE CONSTITUTION OF THE UNITED STATES, THE**  
**DECLARATION OF INDEPENDENCE, AND THE**  
**ACT ORGANIZING THE TERRITORY.**

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**PUBLISHED BY AUTHORITY.**

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**YANKTON, DAKOTA TERRITORY.**  
**KINGSBURY & ZIEBACH, PUBLIC PRINTERS,**  
**DAKOTIAN OFFICE**  
**1862-3.**

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## AUTHENTICATION.

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

I HEREBY certify that the laws contained in this volume are true and correct copies of the original enrolled bills, passed by the Legislative Assembly, at the second session thereof, begun at Yankton December 1st, 1862, and now on file in my office. I also certify that the acts contained in chapters 38, 42, and 46, of the General Laws, and chapter 8, of the Private Laws, were not signed by the Governor, but were approved, as shown in his messages on pages 276, and 277.

WITNESS my hand and the Great Seal of the Territory.



Done at Yankton, this first day of April, in  
the year of our Lord, one thousand eight hun-  
dred and sixty-three.

JOHN HUTCHINSON,  
*Secretary.*

# GENERAL LAWS.



# CONSTITUTION

## OF

# THE UNITED STATES.

---

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

### ARTICLE I.

#### SECTION I.

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

#### SECTION II.

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

2. No person shall be a representative who shall not have A representa-

Attained to the age of twenty-five years, and been seven years a citizen of the United States; and an inhabitant of that state when elected.

Representatives and taxes to be apportioned according to numbers.

Actual enumeration every ten years.

Limitation of the ratio of representation &c.

First apportionment of representatives.

Writs of election for filling vacancies.

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

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative: and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

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

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

### SECTION III.

Senators, how chosen: each to have a vote.

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

Executives of

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

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year; so that one third may be chosen every second year; and if vacancies hap-

pen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

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

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

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

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

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

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

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

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

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

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

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

#### SECTION IV.

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

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

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

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

## SECTION V.

Each house  
judge of the  
election and  
qualification of  
its own mem-  
bers.  
Quorum.

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

Each house to  
form its own  
rules and pun-  
ish its mem-  
bers.

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

Journals of  
each house.

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

Yeas and nays,  
how taken.

Adjournment  
of both houses.

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

## SECTION VI.

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

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

Concerning  
the holding of  
office by sena-  
tors and repres-  
entatives.

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

## SECTION VII.

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

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

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

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

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

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

## SECTION VIII

The congress shall have power,—

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and ex-

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

cises shall be uniform throughout the United States :

1. **Bor. money.** 2. To borrow money on the credit of the United States :
3. **Regulate commerce.** 3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes :
4. **Establish the rule of naturalization and bankrupt laws.** 4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States :
5. **Coin money, &c., and fix weights and measures.** 5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures :
6. **Provide for punishing counterfeiters.** 6. To provide for the punishment of counterfeiting the securities and current coin of the United States :
7. **Establish post-offices, &c.** 7. To establish post-offices and post-roads :
8. **Patent rights.** 8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries :
9. **To constitute inferior tribunals, &c.** 9. To constitute tribunals inferior to the supreme court :
10. **To declare war, &c.** 10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations :
11. **Raise armies, &c.** 11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water :
12. **Provide a navy.** 12. To raise and support armies ; but no appropriation of money to that use shall be for a longer term than two years :
13. **Make rules for army and navy.** 13. To provide and maintain a navy :
14. **Provide for calling forth the militia.** 14. To make rules for the government and regulation of the land and naval forces :
15. **Provide for organizing the militia, &c.** 15. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions :
16. **Exercise exclusive jurisdiction over a district, and places for forts, &c.** 16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by congress :
17. **Exercise exclusive jurisdiction over a district, and places for forts, &c.** 17. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exer-

cise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: And,

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

18. Make all laws necessary to the execution of their powers.

SECTION IX.

1. The migration or importation of such persons as any of the states, now existing, shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Importation of certain persons not to be prohibited until after 1808.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Habeas corpus.

3. No bill of attainder, or *ex post facto* law, shall be passed.

No bill of attainder or "ex post facto" law.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

Direct taxes according to census.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

No export duty, nor preference of one State to another in commerce.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public moneys shall be published from time to time.

Public moneys, how drawn, &c.

7. No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them shall, without the consent of congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

No titles of nobility. No presents, &c.

## SECTION X.

Restrictions  
on the power of  
the states indi-  
vidually.

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility.

Powers which  
the states can  
exercise only  
under the sanc-  
tion of con-  
gress.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit of delay.

## ARTICLE II.

## SECTION I.

Executive  
power vested in  
a president, &c.

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

Electors of  
president and  
vice-president.

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

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

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

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



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

*Qualifications of president.*

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

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

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

*Compensation to the president.*

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

*The president to take an oath.*

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

*Form of the oath.*

## SECTION II.

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

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

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint and remove officers and other persons in his service; he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

*He may, by advice of the senate, make treaties, appoint ambassadors and other officers; but congress may*

vest certain appointments otherwise.

ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments.

President may fill vacancies in recess.

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

### SECTION III.

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

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

### SECTION IV.

President and other officers removable by impeachment.

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

## ARTICLE III.

### SECTION I.

Judicial power vested in a supreme court, &c.; judges to hold their offices during good behaviour.

The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for

their services a compensation which shall not be diminished during their continuance in office.

## SECTION II.

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

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

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

## SECTION III.

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

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

## ARTICLE IV.

## SECTION I.

Credit to be  
given in one  
State to the  
public acts, &c.  
of another.

Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

## SECTION II.

Reciprocity of  
citizenship  
throughout the  
states.

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

Criminals fly-  
ing from one  
state to another  
to be delivered  
up.

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

Runaway  
slaves, &c. to  
be delivered up.

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

## SECTION III.

New States  
may be admitted  
into the union,  
&c.

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

Congress to  
have power of  
territory, &c.

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

## SECTION IV.

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

Republican  
form of govern-  
ment guaran-  
teed to each  
State, &c.

## ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

Mode of a-  
mending the  
constitution.

## ARTICLE VI.

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

Assumption  
of debts incor-  
red under the  
confederation.

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

This consti-  
tution, acts of  
congress and  
treaties, the su-  
preme law—the  
state judges  
bound thereby.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive

Members of  
congress and of  
the state legis-

atures, &c.  
bound by oath  
to support this  
constitution.

and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution ; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

## ARTICLE VII.

Ratification  
of nine states,  
sufficient, &c.

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

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

GEORGE WASHINGTON,

President and Deputy from Virginia.

### NEW HAMPSHIRE.

JOHN LANGDON,  
NICHOLAS GILMAN.

### CONNECTICUT.

WM. SAMUEL JOHNSON,  
ROGER SHERMAN.

### MASSACHUSETTS.

NATHANIEL GORHAM,  
RUFUS KING:

### NEW YORK.

ALEXANDER HAMILTON.

### NEW JERSEY.

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

### MARYLAND.

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

### PENNSYLVANIA.

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

### VIRGINIA.

JOHN BLAIR,  
JAMES MADISON, JR.

### NORTH CAROLINA.

WILLIAM BLOUNT,  
RICH. DOBBS SPAIGHT,  
HUGH WILLIAMSON.

### GEORGIA.

WILLIAM FEW,  
ABRAHAM BALDWIN.

DELAWARE.

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

Attest,

SOUTH CAROLINA.

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

WILLIAM JACKSON, *Secretary*.

# AMENDMENTS TO THE CONSTITUTION.

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## ARTICLE I.

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

## ARTICLE II.

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

## ARTICLE III.

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

## ARTICLE IV.

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

## ARTICLE V.

No person to be held to answer for a crime, unless on presentment, &c., except in No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces,



or in the militia when in actual service, in time of war or public danger ; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb ; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law ; nor shall private property be taken for public use without just compensation.

the land or naval forces, nor to answer for the same offence twice, &c.

## ARTICLE VI.

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

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

## ARTICLE VII.

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

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

## ARTICLE VIII.

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

Excessive bail, and unjust and cruel punishments prohibited.

## ARTICLE IX.

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

Rights enumerated not to disparage those retained.

## ARTICLE X.

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

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

## ARTICLE XI.

Restriction of  
judicial powers.

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

## ARTICLE XII.

Mode of elect-  
ing the presi-  
dent and vice-  
president of the  
United States.

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

2. The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a

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

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

### ARTICLE XIII.

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

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

# DECLARATION OF INDEPENDENCE.

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IN CONGRESS, July 4, 1776.

By the representatives of the United States in Congress assembled.

## A DECLARATION.

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

We hold these truths to be self-evident:—that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a

long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former system of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

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

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

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

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

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

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

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

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

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

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

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

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

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

For quartering large bodies of armed troops among us :

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

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

For imposing taxes on us without our consent :

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

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

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

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

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

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

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

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

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

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

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

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

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are of right, and ought to be, free and independent

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

Signed by order and in behalf of the congress.

JOHN HANCOCK, *President.*

Attested:—CHARLES THOMPSON, *Secretary.*

NEW HAMPSHIRE.

JOSIAH BARTLETT,  
WILLIAM WHIPPLE,  
MATTHEW THORNTON.

MASSACHUSETTS BAY.

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

RHODE ISLAND, &c.

STEPHEN HOPKINS,  
WILLIAM ELLERY.

CONNECTICUT.

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

NEW YORK.

WILLIAM FLOYD,  
PHILIP LIVINGSTON,

FRANCIS LEWIS,  
LEWIS MORRIS.

NEW JERSEY.

RICHARD STOCKTON,  
JOHN WITHERSPOON,  
FRANCIS HOPKINS,  
JOHN HART,  
ABRAHAM CLARK.

PENNSYLVANIA.

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

DELAWARE.

CÆSAR RODNEY,  
GEORGE READ,  
THOMAS M'KEAN.



## MARYLAND.

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

## NORTH CAROLINA.

WILLIAM HOOPER,  
JOSEPH HEWES,  
JOHN PENN.

## SOUTH CAROLINA.

## VIRGINIA.

GEORGE WYTHE,  
RICHARD HENRY LEE,  
THOMAS JEFFERSON,  
BENJAMIN HARRISON,  
THOMAS NELSON, JR.,  
FRANCIS LIGHTFOOT LEE,  
CARTER BRAXTON.

EDWARD RUTLEDGE,  
THOMAS HEYWARD, JR.,  
THOMAS LYNCH, JR.,  
ARTHUR MIDDLETON,

## GEORGIA.

BUTTON GWINNETT,  
LYMAN HALL,  
GEORGE WALTON.

# AN ACT

TO PROVIDE A TEMPORARY GOVERNMENT FOR

## THE TERRITORY OF DAKOTA,

AND

TO CREATE THE OFFICE OF SURVEYOR-GENERAL THEREIN.

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*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all* <sup>Territory of Dakota.</sup> that part of the territory of the United States included within the following limits, namely: commencing at a point in the main channel of the Red River of the North, where the forty-ninth degree of north latitude crosses the same; thence up the main channel of the same, and along the boundary of the State of Minnesota, to Big Stone Lake; thence along the boundary line of the said State of Minnesota to the Iowa line; thence along the boundary line of the State of Iowa to the point of intersection between the Big Sioux and Missouri rivers; thence up the Missouri river, and along the boundary line of the Territory of Nebraska, to the mouth of the Niobrara or Running Water river; thence following up the same, in the middle of the main channel thereof, to the mouth of the Kcha Paha or Turtle Hill river; thence up said river to the forty-third parallel of north latitude; thence due west to the present boundary of the Territory of Washington; thence along the boundary line of Washington Territory, to the forty-ninth degree of north latitude; thence east, along said forty-ninth degree of north latitude, to the place of beginning, be, and the same is hereby organized into a temporary government, by the name of the

<sup>Boundaries.</sup>

Rights of the  
Indians not im-  
paired.

Indian terri-  
tory excepted  
out of said  
boundaries.

Territory may  
be divided.

Executive.

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

Secretary—  
term, powers,  
and duties.

**Territory of Dakota:** *Provided*, That nothing in this act con-  
tained shall be construed to impair the rights of person or  
property now pertaining to the Indians in said territory, so  
long as such rights shall remain unextinguished by treaty be-  
tween the United States and such Indians, or to include any  
territory which, by treaty with any Indian tribe, is not, without  
the consent of said tribe, to be included within the territorial  
limits or jurisdiction of any state or territory; but all such  
territory shall be excepted out of the boundaries, and consti-  
tute no part of the Territory of Dakota, until said tribe shall  
signify their assent to the president of the United States to be  
included within the said territory, or to affect the authority of  
the government of the United States to make any regulations  
respecting such Indians, their lands, property, or other rights,  
by treaty, law, or otherwise, which it would have been compe-  
tent for the government to make if this act had never passed:  
*Provided, further*, That nothing in this act contained shall be  
construed to inhibit the government of the United States from  
dividing said territory into two or more territories, in such  
manner and at such times as congress shall deem convenient  
and proper, or from attaching any portion thereof to any other  
territory or state.

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

**SECT. 3.** *And be it further enacted*, That there shall be a  
secretary of said territory, who shall reside therein, and hold

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

SECT. 4. *And be it further enacted*, That the legislative power and authority of said territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of nine members, which may be increased to thirteen, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall consist of thirteen members, which may be increased to twenty-six, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts for the election of the council and house of representatives, giving to each section of the territory representation in the ratio of its population (Indians excepted) as nearly as may be; and the members of the council and of the house of representatives, shall reside in, and be inhabitants of, the district for which they may be elected, respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants of the several counties and districts of the territory to be taken; and the first election shall be held at such time and places, and be conducted in such manner as the governor shall appoint and direct; and he shall, at the same time, declare the number of the members

Legislative power.

Assembly.

Council.

House of representatives.

Apportionment.

First election.

of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The number of persons authorized to be elected, having the highest number of votes in each of said council districts, for members of the council, shall be declared by the governor to be duly elected to the council; and the person or persons authorized to be elected having the greatest number of votes for the house of representatives, equal to the number to which each county or district shall be entitled, shall be declared by the governor to be elected members of the house of representatives: *Provided*, That in case of a tie between two or more persons voted for, the governor shall order a new election, to supply the vacancy made by such tie. And the persons thus elected to the legislative assembly shall meet at such place and on such day as the Governor shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the population, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly: *Provided*, That no one session shall exceed the term of forty days, except the first, which may be extended to sixty days, but no longer.

PROVISO.

Subsequent elections.

Length of sessions.

Voters at first election, and eligibility to office.

At subsequent elections.

PROVISO.

Extent and limits of legislative power.

SECT. 5. *And be it further enacted*, That every free white male inhabitant of the United States above the age of twenty-one years; who shall have been a resident of said territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters and of holding office at all subsequent elections shall be such as shall be prescribed by the legislative assembly: *Provided*, That the right of suffrage and of holding office shall be exercised only by citizens of the United States and those who shall have declared on oath their intention to become such, and shall have taken an oath to support the constitution of the United States.

SECT. 6. *And be it further enacted*, That the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be

imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents; nor shall any law be passed impairing the rights of private property; nor shall any discrimination be made in taxing different kinds of property; but all property subject to taxation shall be in proportion to the value of the property taxed.

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

Township,  
district, and  
county officers.

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

Persons disqualified to hold office.

SECT. 9. *And be it further enacted*, That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices during the period of four years. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such time and place as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in

Judicial power.

Supreme court.

District courts.

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

Jurisdiction.

Of justices of the peace.

Of Supreme and district courts.

Clerk of district court, and register in chancery.

Writs of error, &amp;c.

Clerk of supreme court.

Writs of error, &amp;c.

Habeas Corpus.

writs of error and appeals in all such cases shall be made to the supreme court of said territory the same as in other cases. The said clerk shall receive, in all such cases, the same fees which the clerks of the district courts of Nebraska Territory now receive for similar services.

Fees of Clerk.

SECT. 10. *And be it further enacted,* That there shall be appointed an attorney for said territory, who shall continue in office for four years unless sooner removed by the president, and who shall receive the same fees and salary as the attorney of the United States for the present Territory of Nebraska. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees as the marshal of the district court of the United States for the present Territory of Nebraska, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

Attorney, &c.

Marshal, &c.

SECT. 11. *And be it further enacted,* That the governor, secretary, chief justice and associate justices, attorney, and marshal, shall be nominated and, by and with the advice and consent of the senate, appointed by the president of the United States. The governor and secretary to be appointed as aforesaid shall, before they act as such, respectively taken an oath or affirmation before the district judge, or some justice of the peace in the limits of said territory duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge

Appointment of governor, &c.

How qualified.



or justice of the peace of the territory who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified, and recorded in such man[n]er and form as may be prescribed by law. The governor shall receive an annual salary of fifteen hundred dollars as governor, and one thousand dollars as superintendent of Indian affairs; the chief justice and associate justices shall each receive an annual salary of eighteen hundred dollars; the secretary shall receive an annual salary of eighteen hundred dollars. The said salaries shall be paid quarter-yearly at the treasury of the United States. The members of the legislative assembly shall be entitled to receive three dollars each per day during their attendance at the session thereof, and three dollars for every twenty miles' travel in going to and returning from the said sessions, estimated according to the nearest usually travelled route. There shall be appropriated annually the sum of one thousand dollars, to be expended by the governor, to defray the contingent expenses of the territory. There shall also be appropriated annually a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses; and the secretary of the territory shall annually account to the secretary of the treasury of the United States for the manner in which the aforesaid sum shall have been expended.

Time and place of first session of legislature.

Seat of government.

Delegate to congress.

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

SECT. 13. *And be it further enacted*, That a delegate to the

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

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

SECT. 15. *And be it further enacted*, That temporarily, and <sup>Judicial districts.</sup> until otherwise provided by law, the governor of said territory may define the judicial districts of said territory and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

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

SECT. 17. *And be it further enacted*, That the president of <sup>Surveyor-General.</sup> the United States, by and with the advice and consent of the senate, shall be, and he is hereby, authorized to appoint a surveyor-general for Dakota, who shall locate his office at such place

as the Secretary of the Interior shall from time to time direct, and whose duties, powers, obligations, responsibilities, compensation, and allowances for clerk hire, office rent, fuel, and incidental expenses, shall be the same as those of the surveyor-general of Nebraska and Kansas, under the direction of the Secretary of the Interior, and such instructions as he may from time to time deem it advisable to give him.

Land district.

Name and location.

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

Register and receiver.

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

Dakota river.

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

Portions of Utah and Washington added to Nebraska.

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

Approved March 2, 1861.

**GENERAL LAWS**  
**OF**  
**THE TERRITORY OF DAKOTA.**

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**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 :

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 :

1. Felonies ; and
2. Misdemeanors.

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

Crime or public  
offense defined.

Division of  
crimes and pub-  
lic offenses.

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.

- Person 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.

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.

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

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.

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.

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.

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.

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

Manslaughter in the first degree.

Manslaughter in the first degree.

Manslaughter in the first degree.

Manslaughter in the second degree.

Manslaughter, how defined.

Manslaughter in the second degree, how defined.

Manslaughter in the second degree defined.

Manslaughter in third degree defined.



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 upset, 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.

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.

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.

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.

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.

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.

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.

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 chal-  
lenge, &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.

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.

Assault with  
intent to rob,  
&c., 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.

Robbing 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.

Assault to rob,  
not being  
armed.

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.

Attempt to ex-  
tort money by  
threats, &c.

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.

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.

Rape and abuse  
of a child.

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 imprison-  
ment, how pun-  
ished.

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.

territorial 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.

Sec. 7. The preceding sections shall severally extend to a <sup>Married women liable.</sup> 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.

Sec. 8. Every person who shall willfully burn any goods, <sup>Burning property to injure insurer.</sup> 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.

Sec. 9. Every person who shall break and enter any dwelling house in the night time, with intent to commit the crime of <sup>Burglary, being armed or making assault.</sup> 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.

Sec. 10. •Every person who shall break and enter any <sup>Burglary, not being armed or making assault.</sup> 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.

Sec. 11. Every person who shall break and enter in the <sup>Breaking into office, &c., at night.</sup> 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.

Sec. 12. Every person who shall enter in the night time, <sup>Burglary, how punished.</sup> 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 ju-  
risdiction 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 be-  
fore 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 prop-  
erty, is answer-  
able 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.

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.

Embezzlement  
or fraudulent  
selling by ware-  
housemen, &c.

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.

Persons con-  
verting to their  
own use public  
moneys ; how  
punished.

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

Punishment  
therefor.

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.

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. Falsely personating another.

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. Obtaining property by false pretences.

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. Gross fraud, how punished.

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

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

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.

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.

Selling lands  
without title.

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 in-  
jury to dams,  
&c.

Sec. 42. Every person who shall willfully or maliciously break down, injure, remove or destroy any public ~~toll~~ <sup>or</sup> 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 in-  
jury to bridges,  
roads, &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 in-  
jury to fruit  
and ornamental  
trees, &c.



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.

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.

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.

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.

Jurisdiction of  
Justices of the  
peace.

Firing woods  
and prairies,  
&c.

Setting on fire  
of prairies pro-  
hibited except  
by notice: pen-  
alty.

Penalty; man-  
ner 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 know-  
ing 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 re-  
cords, 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.

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 notes,  
&c., issued by  
officer.

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.

Forging bank  
notes, &c.

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.

Having counter-  
feit bills, &c.,  
with intent to  
pass them.

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.

Passing coun-  
terfeit bills, &c.

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

Making or hav-  
ing tools, &c.,  
for counterfeit-

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 certifi-  
 cate 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.

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.

Fraudulent connecting parts of instruments.

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.

Affixing fictitious signatures.

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.

Intent to defraud statement and proof.

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.

Counterfeiting coin or having 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

Having less than ten pieces in possession.

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.

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## CHAPTER 6.

### OFFENSES AGAINST PUBLIC JUSTICE.

Perjury, pun-  
ishment 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.

Sec. 2. If any person of whom an oath shall be required by What deemed perjury. 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.

Sec. 3. Every person who shall be guilty of a subornation Subornation of perjury. 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.

Sec. 4. If any person shall endeavor to procure or incite Inciting person to commit perjury. 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.

Sec. 5. Whenever it shall appear to any court of record, Proceeding when perjury suspected by the court. 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.

Sec. 6. If in any proceeding in a court of justice, in which Copies of papers, &c., may be taken. 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.

Sec. 7. Every person who shall corruptly give, offer, or Giving or offering bribes to officers. 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  
bribe by  
officer.

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  
juror, &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  
bribe 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.

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.

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.

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.

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.

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, <sup>Persons com-  
pounding offen-  
ses; how pun-  
ished.</sup> 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.

Sec. 21. If any sheriff, constable, or other officer authorized <sup>Officers taking  
reward for  
omitting duty.</sup> 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.

Section 1. If any persons, to the number of twelve or more, <sup>Unlawful as-  
semblies how  
suppressed</sup> 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.

Refusal to obey  
command

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 officer  
to suppress  
riot

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.

Refusal to obey  
command of  
magistrate or  
officer

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.

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.

Armed force  
called out  
to suppress  
riots or  
tumults  
shall obey  
orders of  
governor

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.

Officers  
shall  
be  
held  
guiltless  
and  
fully  
justified  
in  
law

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.

Persons  
so  
unlawfully  
assembled  
shall  
be  
punished  
by  
imprisonment

## CHAPTER 8.

## OFFENSES AGAINST PUBLIC POLICY.

Setting up or  
promoting ille-  
gal 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 aid-  
ing 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 lot-  
tery 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.

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.

Making or selling tickets in fictitious lottery.

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.

Defendant to prove genuineness of tickets, &c.

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

Prizes forfeited to the territory.



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.

Gaming tables prohibited.

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 setting up gaming tables.

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.

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.

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. Jurisdiction of justice under this chapter

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. Duties of district attorney

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. Money lost by gaming may be recovered in a civil action

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. Judgment not rendered if plaintiff swears

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 Note, Sec. 10, money won by gaming

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.

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## 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.

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. Excepted cases.

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. Persons guilty of lascivious conduct, 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. Fornication how punished.

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. Punishment of seduction.

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. Mother concealing death of bastard.

Murder of  
infant.

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.

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.

Lease of such  
house void.

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.

Incest law  
enforced.

Sec. 12. All persons being within the degrees of consanguinity, within which marriages are prohibited, or declared by law to be incestuous 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  
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.

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.

Penalty for disturbing public worship.

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.

Violation of sepulchre.

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.

Injuring or defacing tombs, &c.

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

Making roads, &c., through burial grounds.

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 prohibi-  
ted 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 necessity 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 jus-  
tices 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 pub-  
lic 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.

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. Penalties for offending.

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

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. Penalty for offending.

Sec. 27. If any person shall be guilty of lewd, 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. Prohibits horse racing, gambling, &c.; penalty.



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.

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 selling unwholesome provisions, &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 food, liquors, &c.

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.

Penalty for adulterating drugs and medicines.

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.

For inoculating with small pox.

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.

Physician prescribing when intoxicated.

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"

Apothecary selling arsenic without labeling

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.

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## 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.

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.

Accessory after the fact how tried.

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.

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

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.

Offenses committed near boundary of county.

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 in one county and death in another

Sec. 9. If any such mortal wound shall be inflicted, or other violence or injury done, or poison administered, either with 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.

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

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

Allegation in indictment for embezzlement and evidence.

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 owner-  
ship of prop-  
erty 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 viola-  
tion of duty,  
where prose-  
cuted.

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 prosecu-  
ted before jus-  
tice 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.

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. Plea of benefit of clergy and petit treason abolished.

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. Constructive misdemeanor.

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: Punishment for attempt to commit an offense prohibited by law.

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. Where imprisoned.

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. Term of imprisonment.

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 imprisoned in county jail.

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 fined; when.

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.

May be punished  
by both fine and  
imprisonment.

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.

Penalty for sec-  
ond offense.

Sec. 18. The term "felonious" in any statute, means "criminal." The term "feloniously" means "criminally."

The term "felo-  
nious" defined.

The term "infamous crime" in any statute, includes every offense punishable with death or imprisonment in the territorial

"Infamous  
crime" defined.

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, evi-

"Personal prop-  
erty" defined.

dences 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

"Property"  
defined.

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.

"Person" de-  
fined.

## CHAPTER 13.

## PROCEEDINGS IN CRIMINAL CASES.

Section 1. When complaint shall be made, on oath, to any Search warrants when and by whom issued. 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.

Sec. 2. Any such magistrate when satisfied that there is Magistrate when to issue warrant. 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.

Sec. 3. All such warrants shall be directed to the sheriff of Warrants to whom issued and what to contain. 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 fugi-  
tives 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.

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.

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

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 and how magistrate to issue warrant and what to contain.

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

When person charged to give recognizance.

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.

May be delivered on warrant of executive, &c.

Complainant liable for costs, &c.

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 escape.

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.

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.

What officer to  
cause public  
peace to be kept

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.

Proceedings  
when complaint  
is made to mag-  
istrate.

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.

Magistrate  
when to issue  
warrant.

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.

Proceedings  
upon examina-  
tion before  
magistrate.

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 may  
have counsel.

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

Defendant when  
to enter into  
recognizance.

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 magis-  
trate may re-  
quire witnesses  
to recognize.

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

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

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.

District court  
how to proceed  
upon such  
appeal.

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.

When appellant  
fails to prosecute  
appeal, re-  
cognizance to  
be in force.

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.

After commit-  
ment how de-  
fendant may be  
discharged.

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.

Recognizance to  
be transmitted  
to district court

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.

When person  
may be ordered  
to recognize  
without war-  
rant.

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

Person carrying  
offensive weap-  
ons, how pun-  
ished.

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.

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## 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.

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. Arrest for felony or misdemeanor, how made.

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

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 must inform defendant that he acts under authority.

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 use necessary force.

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. Officer may break outer door to make arrest.

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

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 committed it.

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

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. Officer may break open door.

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



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.

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.

When pursuer may break window or door.

## CHAPTER 17.

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

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.

What officers authorized to issue process under this chapter.

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.

Proceedings upon complaint being made.

Justice to issue warrant.

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

Officer having process may apprehend defendant in any county.

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.

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.

Justice may adjourn hearing for ten days.

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.

Proceeding when defendant does not appear on adjourn day.

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.

If person fail to recognize must be committed.

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

Examination how conducted.

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  
bail.

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.

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 justice may require other security of 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 married woman or minor is witness.

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 witness may be committed.

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.

When prisoner may be released.

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.

Justice may associate with himself another justice.

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.

Examination and recognizance how returned.

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

Magistrate may discharge recognizance in certain cases.

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 issued against the persons bound by the recognizance, or such of them as the prosecuting officer shall direct.

Surety 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.

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.

Such action  
when barred or  
defeated.

## CHAPTER 18.

### GRAND JURORS.

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 de-  
fined.

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.

Grand jury how  
drawn.

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 liable to be  
drawn as grand  
jurors.

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-

Who exempt  
from serving on  
juries.



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.

Duties of clerk.

Jurors to be drawn fifteen days before court.

Clerk to issue venire.

Grand jury how summoned.

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.

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.

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.

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.

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.

Penalty for refusal to attend.

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.

Proceeding where a deficiency of jurors exists.

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.

How many grand jurors to be sworn.

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.

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

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

Challenge to grand jury for what reason interposed.

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.

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

Challenge to individual juror for what cause interposed.

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.

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.

Oath to be administered to grand jury.

Sec. 25. The grand jury being impaneled 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.

Court must charge jury.

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

Grand jury must then retire to their room.

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 must appoint clerk.

Duties of clerk.

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.

Grand jury when to be discharged

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.

Powers and duties of grand juries.

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 admissible 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.

Sec. 39. If a member of the grand jury knows, or has Grand jury when to make complaint. 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.

Sec. 40. The grand jury must inquire :

Grand jury into what to 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.

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. Grand jury to have access to prison.

Sec. 42. The grand jury may at all reasonable times ask May ask advice of court. 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.

Sec. 43. Every member of the grand jury must keep secret Grand juror must keep certain matters 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.

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. What grand juror may be required to disclose.

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

When present-  
ment 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 present-  
ment.

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 dis-  
close 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.*

(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.

Indictment or  
murder.

No. 3.

*In an 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,

Indictment for  
arson.

No. 4.

Willfully set fire to (or burned) an inhabited dwelling house 1b.  
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.

Willfully set fire to (or burned) the steamboat named the <sup>1b.</sup>  
 , which was at the time insured by the Hartford in-  
 surance 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 de-  
gree.

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.

1b.

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 upset) 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 <sup>Indictment for rape.</sup> or upwards; or,

## No. 12.

Unlawfully and carnally knew and abused C. H., a female <sup>1b.</sup> child under the age of ten years.

## No. 13.

*In an indictment for robbery.*

Feloniously took a gold watch (or any other property as the <sup>Indictment for robbery.</sup> 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,

## No. 14.

Feloniously took a gold watch, (or as the case may be,) the <sup>1b.</sup> property of C. D., in his presence and against his will, by violence to his person.

## No. 15.

*In an indictment for larceny.*

Feloniously took and carried away, one gold watch and one <sup>Indictment for larceny.</sup> 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,

## No. 16.

Feloniously took and carried away in the night time, from <sup>1b.</sup> 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.

## No 17.

*In an indictment for burglary.*

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

the said C. D., (or whose name is unknown to the grand jury,) with intent to commit murder (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 allega-  
tion immate-  
rial.

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 in-  
dictment 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 statu-  
te 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.

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. Defects in matters of form how regarded.

Sec. 14. Neither presumptions of law nor matter of which judicial notice is taken need be stated in an indictment. Presumptions of law need not be stated.

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. Judgments 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. Private statute how pleaded.

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

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



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 be-  
tween 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.

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.

Indictment may be found: when.

## CHAPTER 20.

### ARRAIGNMENT OF DEFENDANT.

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 how arraigned.

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.

Defendant must be present in case of felony.

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.

Court may direct officer to arraign defendant.

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.

When defendant do not appear, bench warrant may issue.

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 respect thereto in the same manner as if

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

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.

Magistrate must certify on the warrant.

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.

Court may order defendant 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.

If defendant present must be committed.

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.

Court must inform defendant of his right to counsel.

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.

Arraignment by whom made.

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.

Defendant must be asked to give his true name.

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

If he give no other name court must 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

If the defendant give another name court how to proceed.

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. Demurrer 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.

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

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

Sec. 3. The plea must be entered in substantially the follow- Pleas how to be entered by the clerk. ing 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 \_\_\_\_\_."

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

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. When plea of guilty may be withdrawn.



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.

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.

Proceedings when venue is changed.

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, defendant 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.

When venue is changed, witnesses must recognize to appear.

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.

District attorney may apply for change of venue.

## 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 heretofore 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.

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.

When less than thirty-six may be summoned.

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.

Ballots of jurors drawn to be put in a box.

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.

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

Sec. 8. Before the name of any juror is drawn, the box must be closed, and shaken so as to intermingle 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.

Drawing the jury.

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 jurors drawn 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.

Ballots of absent jurors how disposed of.

When court may  
order by-stand-  
ers to be sum-  
moned.

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 re-  
turned 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 sum-  
moned.

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 impaneled 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 :

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.

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

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

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.

Issues on the calendar how disposed of.

After plea, defendant entitled to four days for trial.

Clerk to keep a register.

Register what to contain.

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 denied.** 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.

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.

Who may be examined on trial of challenge.

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.

If challenge allowed, jury to be discharged.

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.

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

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

Kinds of challenge to individual juror.

1. Peremptory ; or,
2. For cause.

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.

Challenge when 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.

Peremptory challenge how taken.

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.

Number of peremptory challenge to which defendant is entitled.

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

Challenge for cause by whom taken.

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

Definition of challenge for cause.

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.

Sec. 21. General causes of challenge are :

General causes of challenge.

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.

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. Grounds of challenge for actual bias.

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

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. Causes of challenge how stated.

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. Exception to challenge and denial thereof.

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

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

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 how appointed, majority may decide.

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 evidence. Triers must take an oath.

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. Juror challenged may be examined.

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."

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."

Jurors may affirm.

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.

Person on trial for felony must be present.

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

Court may order a view by the jury.

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.

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

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.

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

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,

Verdict in case of insanity.

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 ap-  
peal 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.

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.

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

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.

Proceedings upon suit brought upon recognizance.

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.

New trial of indictment when granted.

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

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

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

Clerk to file copy of record in supreme court.

Judgment of supreme court.

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.

## CHAPTER 30.

## JUDGMENTS IN CRIMINAL CASES, AND THE EXECUTION THEREOF.

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 unusual, nor repugnant to the constitutional rights of the party.

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

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.

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

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.

Proceedings in case of breach of such recognizance.

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.

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

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.

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



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 in-  
flicted.

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 pres-  
ent 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 par-  
don or commu-  
tation, 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 pre-  
sumed 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 defend-  
ants may have  
separate hear-  
ing 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-defend-  
ant is discharg-  
ed may be wit-  
ness 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.

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.

Testimony of accomplice not sufficient without corroboration

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.

When juror must be sworn as witness.

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

Court must decide questions of law.

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.

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

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.

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

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.

Jury may retire or decide in court.

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

When appearing for trial may be committed.

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.

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. Jury may find defendant guilty, &c.

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. On indictment against several, jury may convict those guilty.

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. Jury may be polled.

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. Clerk may record 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. If defendant be acquitted on grounds of insanity the jury must state that fact in the verdict.

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. Court may hear circumstances in aggravation or mitigation of sentence.

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. Such circumstances how introduced.

Sec. 28. No affidavit or testimony or representation of any kind, verbal or written, can be offered to or received by the court, No other testimony can be received.

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 subpoenas 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 subpoenas 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.

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.

When court may  
dismiss action  
after indictment

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.

Nolle prosequi  
is abolished.

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.

When order for  
dismissal is a  
bar to another  
action.

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.

Property stolen  
or embezzled  
how disposed of.

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.

Such property  
when to be re-  
turned to the  
owner.

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.

Owner entitled  
to possession of  
property on  
payment of  
costs.

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 :

Judgment roll  
how made and  
what to contain.



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 certi-  
fied, 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.

Assignment of  
errors, &c. pro-  
ceedings 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 executed 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.

Sec. 48. Nothing in this act contained, shall invalidate any Effect of above sections. 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.

Section 1. The common jails now erected, or which shall Common jails to be used as prisons. 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.

Sec. 2. Whenever there is no jail erected in any county, When no jail in county prisons how disposed of 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 garri- sons 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 com-  
missioners 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 li-  
quor 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.

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 giving liquor to prisoners or putting different sexes in one room.

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.

Penalty for other persons to furnish liquor, &c.

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.

Prisons to be kept cleanly.

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.

Bible to be furnished each prisoner.

Sec. 10. The sheriffs of the respective counties shall keep a true and exact calendar, or register of all prisoners committed

Sheriff shall keep calendar of all persons committed to prison.

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 when 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.

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.

When keeper may order prisoner to solitary confinement, &c.

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.

Necessary bedding, &c., to be furnished prisoners

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 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.

Penalty for person not convicted breaking prison.

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.

Person committed for trial for capital offense.

Penalty for breaking prison.

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

Prisoners how disposed of in case of fire.

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.

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.

Prisons to be established in every county.

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.

Grand juries to examine prisoners and report.

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.

Sheriffs or their deputies required to keep jail

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.

Keeping of criminals to be paid by county.

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.

Sheriff's evidence to retain prisoner.

Sec. 30. All instruments of every kind, or attested copies thereof, by which a prisoner is committed or liberated, shall be

Commitments, &c., to be filed by sheriff



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.

## JUSTICES' CODE.

## CHAPTER 34.

AN ACT DEFINING THE COURTS AND JURISDICTION  
OF JUSTICES OF THE PEACE.

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

Section 1. The jurisdiction of all justices of the peace shall be co-extensive with the limits of the county in which they are elected, and no other or greater. Jurisdiction of  
Justices of the  
Peace.

Sec. 2. Every justice of the peace shall keep his office in the precinct for which he may be elected, and not elsewhere; but he may issue process in any place in the county. Justice where  
to keep his  
office.

Sec. 3. No justice of the peace shall hold his office in the same room with a practicing attorney, unless such attorney shall be his law partner; and in that case, such partner shall not be permitted to appear or practice as an attorney, in any case tried before such justice. Justice not to  
hold his office  
with practicing  
attorney.

Sec. 4. Every justice of the peace elected in any precinct in this territory is hereby authorized to hold a court for the trial of all actions in the next section enumerated, and to hear, try, and determine the same according to law; and for that purpose, where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of record in this territory; and all laws of a general nature are to apply to such justices' court, so far as the same may be applicable, "and not inconsistent with the provisions of this act." Powers and ju-  
risdiction of  
Justice of the  
peace.

Sec. 5. Every such justice shall have jurisdiction over and cognizance of the following actions and proceedings: Powers and ju-  
risdiction of  
Justice of the  
peace.

1. Of an action arising on contract for the recovery of

money only, if the sum claimed does not exceed one hundred dollars.

2. Of an action for damages for an injury to the person or to the real property, or for taking, detaining, or injuring personal property, if the damages claimed do not exceed one hundred dollars.

3. Of an action for a penalty not exceeding one hundred dollars, given by the statutes.

4. Of an action upon a bond, conditioned for the payment of money not exceeding one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. When the payments are to be made by installments, an action may be brought for such installment as it becomes due.

5. Of an action upon a surety bond or undertaking taken by them, if the penalty do not exceed one hundred dollars.

6. To take and enter judgment on the confession of a defendant when the amount does not exceed one hundred dollars.

7. In all civil actions to be brought against constable or the sureties to his official undertakings, or against both, for the failure of any constable to pay over any money by him collected, to the party thereto entitled, or for any neglect of duty by such constable in his official capacity, when the sum sought to be recovered by the plaintiff in such action, shall not exceed one hundred dollars.

Jurisdiction not to extend to civil actions in certain cases.

Sec. 6. The jurisdiction conferred by the last section does not extend, however, to a civil action :

1. In which the title to the real property shall come in question.

2. Nor for false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, or upon a promise to marry.

3. Nor of an action against an executor or administrator as such.

#### COMMENCEMENT OF SUITS—SERVICE AND RETURN OF PROCESS.

Justices to keep a docket and what to contain

Sec. 7. Every justice of the peace shall keep a docket in which he shall enter :

1. The title of all causes commenced before him.
2. The time when the process was issued, against the defendant, and the particular nature thereof.
3. The time when the parties appeared before him either without, or upon the return of process.
4. A brief statement of the nature of the plaintiff's demand, and the amount claimed, and if any set-off was pleaded, a similar statement of the set-off, and the amount estimated.
5. Every judgment, stating at whose request, and for what time.
6. The time when the trial was had, stating whether the same was by the jury or by the justice.
7. The verdict of the jury, and when rendered.
8. The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt, damages and costs, and the fees due to each person separately.
9. The fact of an appeal having been made and allowed, and when made and allowed.
10. Satisfaction of judgment when made.
11. And such other entries as may be material.

Sec. 8. Suits may be instituted before a justice of the peace, either by the voluntary appearance and agreement of the parties, or by the usual process; also when the name of the defendant is not known to the plaintiff, a suit may be commenced against him by a fictitious name, and it shall not be abated for that cause, but may be amended on such terms as the justice shall think reasonable.

Suits how commenced before Justice.

Sec. 9. Any justice of the peace in this territory, may in all actions hereafter instituted either before or after the process shall issue, at his direction, require of the plaintiff in such action to give security for the costs; and the person giving such security shall sign a memorandum in writing to that effect, which such justice shall keep as a part of the record in the case, and if the plaintiff refuse to give such security, the justice shall dismiss the suit.

Justice may require security for costs of plaintiff.

Sec. 10. All processes issued by justices of the peace shall run in the name of the United States, be dated on the day it issued, and shall be signed by the justice granting the same,

Process to be in the name of the United States.

and be directed to the sheriff or any constable of the proper county.

Summons the first process; what to contain.

Sec. 11. In all cases not otherwise especially provided for, the first process shall be by summons, commanding the officer to summon the defendant, to appear before such justice at the time and place to be expressed in such summons, not less than six nor more than twenty days from the date thereof, to answer to the plaintiff in a civil action, which summons shall be served at least six days before the time of appearance therein mentioned, by reading the same to the defendant, and delivering a copy thereof to him, if requested by such defendant, if such defendant shall be found, and if not found, by leaving a copy thereof at his or her last usual place of abode.

Officer serving process how to make return.

Sec. 12. Every constable or sheriff, serving any process authorized by this act, shall return thereon in writing the time and manner of service, and shall sign his name to ~~each~~ return.

When justice may issue warrant in civil action.

Sec. 13. A justice of the peace shall issue a warrant in every case where he is satisfied from the affidavit of the person demanding the same, or from any other person, that the plaintiff has a subsisting and unsatisfied cause of action against the defendant, and that the defendant is a nonresident of the county, or is about to remove from the county, with an intent not to return thereto.

Warrant what to contain.

Sec. 14. A warrant shall command the sheriff or constable to take the body of the defendant, and bring him forthwith before such justice, to answer the plaintiff in a civil action, and shall further require the sheriff or constable, after he shall have arrested the defendant, to notify the plaintiff of such arrest.

Warrant how served.

Sec. 15. A warrant shall be served by arresting the defendant, and taking him before the justice who issued the same; but if such justice be, on the return thereof, absent or unable to try the cause, or if it be made to appear to the justice, by the affidavit of the defendant, that said justice is a material witness for the defendant in the case, or is near of kin to the plaintiff in the suit, stating therein the degree, the officer shall forthwith take the defendant to the nearest justice of the same county, who shall take cognizance of the cause, and proceed therein as if the warrant had been issued by himself.

Sec. 16. When a defendant is brought before a justice on a warrant, he shall be detained in the custody of the officer, until the justice shall direct his release; but in no case shall the defendant be detained longer than twelve hours from the time he shall be brought before the justice, unless within that time the trial of the cause has commenced, or unless it has been delayed at the instance of the defendant.

Proceedings when persons brought before justice on warrant.

Sec. 17. Every justice issuing any process authorized by this act, upon being satisfied that such process will not be executed, for want of an officer to be had in time to execute the same, may empower any suitable person, not being a party to the suit, to execute the same, by an indorsement on the process, to the following effect: "At the request and risk of the plaintiff, I authorized A. B. to execute and return this writ, E. F., justice of the peace;" and the person so empowered shall thereupon possess all the authority of a constable in relation to the execution of such process, and shall be subject to the same obligations, and shall receive the same fees for his services.

Justice may empower person to serve process in certain cases.

Sec. 18. If any officer, without showing good cause therefor, fail to execute any process to him delivered, and make due return thereof, or make false return, such officer, for every such offense, shall pay to the party injured ten dollars, and all damages such party may have sustained by reason thereof, to be recovered in a civil action founded upon this statute.

Officers failing to execute process, &c., how liable.

Sec. 19. Parties in justices' courts may prosecute or defend in person, or by attorney, and any person may act as attorney in justices' courts, except that the constable by whom the summons or jury process was served, cannot appear or act on the trial, in behalf of either party. The authority of a person to act as attorney for another, may be oral or written; but unless admitted by the adverse party, must be proved by the oath of the attorney or otherwise.

Parties may prosecute or defend in person or by attorney.

Sec. 20. No suit shall be instituted by an infant plaintiff until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his next friend in such suit, who shall be responsible for the costs therein.

When infant plaintiff's next friend to be appointed.

Who may not  
appear in per-  
son or by attor-  
ney.

Sec. 21. Every defendant in a suit may appear and defend the same, either in person or by agent, except persons under twenty-one years of age.

Suit not to be  
prosecuted  
against infant  
defendant until  
guardian is ap-  
pointed.

Sec. 22. After the service and return of process against an infant defendant, the suit shall not be further prosecuted until a guardian for such defendant shall have been appointed. Upon the request of such defendant, the justice shall appoint some person, who shall consent thereto in writing, to be guardian of the defendant in defense of the suit; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian; and the consent of such guardian or next friend shall be filed with the justice, and the guardian of the defendant shall not be liable for any cost in the suit.

Parties entitled  
to one hour af-  
ter time men-  
tioned for ap-  
pearance.

Sec. 23. The parties are entitled to one hour in which to make their appearance after the time mentioned in the summons for appearance; but are not bound to remain longer than that time, unless both parties appear, and the justice being present, is actually engaged in the trial of another action, or of a special proceeding; in such case, he may postpone the time of appearance until the close of the trial.

## PLEADINGS AND TRIAL.

Pleadings when  
to take place.

Sec. 24. The pleadings in justices' courts must take place at the time mentioned in the summons for the appearance of the parties, or at such time thereafter, not exceeding one week, as the justice may appoint, for the convenience of the parties, and by their consent.

Pleading in jus-  
tices' courts  
enumerated and  
defined.

Sec. 25. The pleadings in justices' courts are:

1. The complaint by the plaintiff, stating the cause of action.
2. The answer by defendant, stating the grounds of defense.
3. When the answer sets up a counter claim by way of a set off, the reply by the plaintiff.

Pleadings may  
be oral or in  
writing.

Sec. 26. The pleadings may be oral, or they may be in writing; if oral, the substance of them must be entered by the justice in his docket; if in writing, they must be filed in his office, and a reference to them made in his docket; they are

not required to be in any particular form, but must be such as to enable a person of common understanding to know what is intended.

Sec. 27. The complaint must state in a plain and direct manner the facts constituting the cause of action. Complaint what to contain.

Sec. 28. The answer must contain a denial of all the material facts stated in the complaint which the defendant believes to be untrue, and also a statement in a plain and direct manner of any other facts constituting a defense or a counter claim, by way of set-off, upon which an action might be brought by the defendant against the plaintiff in a justice's court. Answer how made and what to contain.

Sec. 29. When the answer contains a counter claim, the plaintiff may reply, denying any of the material allegations relating thereto. Reply of plaintiff when allowed.

Sec. 30. A statement in an answer or reply that the party has not sufficient knowledge or information in respect to a particular allegation in the previous pleading of the adverse party to form a belief, is equivalent to a denial. Pleadings how construed in certain cases.

Sec. 31. When the cause of action or counter claim arises upon an account or instrument for the payment of money only, it is sufficient for the party to deliver the account or instrument to the court; and to state that there is due to him thereon from the adverse party, a specified sum which he claims to recover, or set off; the court may at any time of the pleading, require that such writing or account be exhibited to the inspection of the adverse party, with liberty to copy the same; or if not so exhibited, may prohibit its being afterwards given in evidence. Written instrument how pleaded.

Sec. 32. Every complaint, answer or reply must be verified by the oath of the party pleading; or if he be not present, by the oath of his agent or attorney, to the effect that he believes it to be true; the verification must be oral or in writing, in conformity with the pleadings verified. To be exhibited to party.

Sec. 33. Every material allegation in a complaint, or relating to a counter claim in an answer, not denied by the pleading of the adverse party must, on the trial, be taken to be true, except that when a defendant who has not been served with a copy of the complaint with the summons fails to appear and answer, the plaintiff cannot recover without proving his case. Pleadings must be verified by oath of party.

Sec. 34. Either party may object to a pleading of his adversary. Statements in pleadings not denied, to be taken as true.

Defective pleadings how objected to.



versary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defense, although it be taken as true. If the court deem the objection well founded, it must order the pleadings to be amended, and if the party refuse to amend, the defective pleading must be disregarded.

Variance between proof and pleadings to be disregarded.

Sec. 35. A variance between the proof on the trial and the allegations in the pleadings, must be disregarded as immaterial, unless the court be satisfied that the adverse party has been biased to his prejudice thereby.

Amendments of pleadings when allowed.

Sec. 36. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal to supply any deficiency or omission in the allegations or denial, necessary to support the action or defense, when, by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court that an adjournment is necessary to the adverse party, in consequence of such an amendment, an adjournment may be granted. The court may also, in its discretion, require as a condition for an amendment, the payment of costs to the adverse party, to be fixed by the court, not more than three dollars; but such payment cannot be required, unless an adjournment is made necessary by the amendment; nor can an amendment be allowed after a witness is sworn on a trial, when an adjournment will be made necessary.

Costs allowed when adjournment is necessary.

Adjournment when and on what terms allowed.

Sec. 37. When the pleadings of the parties shall have taken place, the justice shall, upon the application of either party, if sufficient cause be shown upon oath, adjourn the case for any time not exceeding thirty days; and upon an adjournment, all costs for the travel, attendance of witnesses, serving of subpoenas, &c., shall be taxed in the same manner as if no actual trial had been had, upon the day originally fixed for the trial of the case.

When the title of lands come in question, justices how to proceed.

Sec. 38. If it appear, on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other party, the justice shall immediately make an entry thereof, in his docket, and cease all further proceeding in the cause, and shall certify and return to the district court of

the county a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit, in the same manner, and within the same time as upon an appeal; and thereupon the district court shall proceed in the cause to find judgment and execution, the same as if the said suit had been originally commenced therein, and the costs shall abide the event of the suit.

Sec. 39. Every adjournment after the first, shall be for such Time of adjournment. reasonable time as will enable the party to procure such absent testimony or witness, as may be necessary and material, which the party applying for the adjournment shall not have been able to procure by the use of proper diligence; and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice.

Sec. 40. If a cause commenced by a warrant be adjourned Adjournment of cause commenced by warrant. by the consent of both parties, or on the application of the plaintiff, the defendant shall be discharged from custody.

Sec. 41. But if such cause be adjourned upon the application When cause adjourned on application of defendant to continue in custody of the defendant, he shall continue during the time of the adjournment in the custody of the officer, unless he shall enter into recognizance before the justice, with such security as the justice approves, in a penalty sufficient to secure the plaintiff's demand and costs, conditioned that if said judgment be given against him in the suit, and execution be issued against his person, he will render himself upon such execution before the return day thereof; or that he or his security will pay the judgment so recovered.

Sec. 42. If any such recognizance shall have been given When recognizance given upon prior adjournment. upon any prior adjournment, it shall not be necessary to enter into any recognizance upon a subsequent adjournment, unless such recognizance be required by the justice, or the bail of the defendant, in such prior recognizance.

Sec. 43. In any suit brought upon such recognizance, the plaintiff shall not be entitled to recover, unless he shows an execution, or a duly certified copy thereof upon the judgment, obtained in the suit in which such adjournment was had, duly issued within six days after the time, when the same could have been issued against the person of the defendant, and a return thereon that such defendant could not be found. In suit brought upon recognizance, what plaintiff must prove.

## SET-OFFS.

When counter  
claims of de-  
fendant may be  
set off.

Sec. 44. Counter claims which the defendant may have against the plaintiff, may be set off in the following cases, and under the following circumstances :

1. It must be a demand arising upon a judgment, or upon a contract, express or implied, whether such contract be written or unwritten, sealed, or without a seal, and if it be founded upon a bond or other contract having a penalty, the sum equitably due by virtue of condition only shall be set off.

2. It must be due to him in his own right, either as being the original creditor or payee, or as being the assignee and owner of the demand.

3. It must be for real estate sold, or for personal property sold, or for money paid, or services done ; or if it be not such a demand, the amount must be liquidated, or be capable of being liquidated by calculation.

4. It must have existed at the time of the commencement of the suit, and must then have belonged to the defendant.

5. It can only be allowed in actions founded upon demands which could themselves be the subject of set-off according to law.

6. If there be several defendants, the demands set off must be due to all of them jointly.

7. It must be a demand existing against the plaintiff in the action, unless the suit be brought in the name of a plaintiff who has no real interest in the contract upon which the suit is founded, in which case no set-off of a demand against the plaintiff shall be allowed, unless as hereinafter specified.

8. If the action be founded upon a contract, other than a negotiable promissory note, or bill of exchange, which has been assigned by the plaintiff, a demand against such plaintiff, or any assignee of such contract at the time of assignment thereof, and belonging to the defendant in good faith, before notice of such assignment, may be set off to the amount of the plaintiff's debt, if the demands be such as might have been set off against such plaintiff or assignee, while the contract belonged to him.

Claim against  
the assignor of  
note, when may  
be set off.

Sec. 45. If the action be upon a negotiable promissory note, or bill of exchange which has been assigned to the plaintiff, after it becomes due, a set-off to the amount of the plaintiff's

debt may be made of a demand existing against any person or persons, who shall have assigned or transferred such note or bill after it became due, if the demand be such as might have been set off against the assignor, while the note or bill belonged to him.

Sec. 46. If the plaintiff be a trustee for any other, or if the suit be in the name of the plaintiff who has no real interest in the contract upon which the suit is founded, so much of a demand existing against those whom the plaintiff represents, or for whose benefit the action is brought may be set off as will satisfy the plaintiff's debt, if the same might have been set off in an action brought by those beneficially interested.

Set-off when suit brought by trustee, when allowed.

Sec. 47. To entitle a defendant to a set-off of any counter claim he may have against the plaintiff, he must specifically and clearly allege the same in his answer, stating the particular items of such counter claim; but no set-off shall be allowed by a justice's court, unless the same shall be alleged in the defendant's answer as required in this section.

To entitle defendant to set-off, he must allege the same in answer.

Sec. 48. If the amount of the set-off duly established be equal to the plaintiff's debt or demand, judgment shall be entered that plaintiff take nothing by his action, if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only.

Judgment where set-off is proved

Sec. 49. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered for the defendant for the amount thereof; but no such judgment shall be rendered against the plaintiff where the contract which is the subject of the suit shall have been assigned before the commencement of such suit, nor for any balance due from any other person than the plaintiff in the action.

Judgment where there is a balance due defendant.

#### WITNESSES AND DEPOSITIONS.

Sec. 50. A subpoena may be served by any person by reading it to the witness, or by delivering a copy thereof to him.

Subpena how and by whom served

Sec. 51. Whenever it shall appear to the satisfaction of the justice by proof made before him, that any person duly subpoenaed to appear before him in a suit, shall have failed without a just cause to attend as a witness in conformity to such subpoena, and the party in whose behalf such subpoena was issued,

Attachment when to issue against witness.

or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness: *Provided however*, That no attachment shall issue against a witness unless his mileage and one day's attendance has been tendered or paid in advance.

Such attachment how executed.

Sec. 52. Every such attachment shall be executed in the same manner as a warrant, and the fees of the officer for issuing and serving the same, shall be paid by the person against whom the same was issued, unless he show reasonable cause to the satisfaction of the justice, for his omission to attend, in which case the party requiring such attachment, shall pay all costs of such attachment.

Witness not appearing how liable.

Sec. 53. Every person subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpoenaed, for damages which such party may have sustained by his non-appearance: *Provided*, that said witness had one day's attendance and his mileage tendered or paid him in advance.

Deposition of witness how taken.

Sec. 54. Either party in any civil suit depending before a justice, may, upon notice, cause the deposition of any witness therein, to be taken by any judge or justice of the peace, of any county in this territory where the said witness may be.

How such deposition to be certified, &c.

Sec. 55. The deposition shall be taken, certified, and returned according to the law of the territory concerning depositions.

Depositions when to be read in evidence.

Sec. 56. The justice shall allow every deposition taken, certified, and returned according to the provisions of this act, to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally in court, could have been received; but no such deposition shall be read on the trial unless it appears to the justice that the witness whose deposition is offered:

1. Is dead or resides out of the county; or,
2. Is unable, or cannot easily attend before the justice, on account of sickness, age, or other bodily infirmity.
3. Has gone out of the county, without the consent or collusion of the party offering the deposition.

# ISSUING OF COMMISSIONS TO TAKE TESTIMONY BY JUSTICES OF THE PEACE.

Sec. 57. Whenever an issue of fact shall have been joined, in any action or suit, before a justice of the peace, and it shall appear on the application of either party, that any witness not residing within the county where such suit is pending, is material in the prosecution or defense of such action or suit, the said justice may award a commission to one or more competent persons authorizing them or any of them to examine such witness on oath upon the interrogation settled by the said justice, and certified by his approbation, entered or endorsed thereon, or by the written agreement or assent of the parties annexed to such commission, to take and certify the depositions of such witness, and to return the same according to the directions given, with such commission, in which commission both parties may unite.

Commissioners to be appointed to take depositions.

Assent of parties thereto.

Sec. 58. Such commission may be granted at the instance of either party by such justice of the peace, at any time, upon proof that due notice of such application for such commission has been served on the adverse party at least two days before the time of making such application; and whenever the defendant shall neglect to appear or plead in such action or suit, and the plaintiff shall make application for a commission to take the deposition of a material witness for the prosecution of such action or suit, the justice may award a commission without notice to one or more competent persons, to examine such witness on oath upon interrogations proposed by the plaintiff to be settled by the justice, and certify the depositions, and return the same according to the directions given in such commission.

Commissioners may be granted on notice to adverse party.

Failure to appear on notice.

Sec. 59. The commission shall be executed and returned as is prescribed by statute when a commission issues out of a court of record, and the deposition and testimony taken in pursuance thereof, shall be received on the trial, as testimony in the case, with the like effect, as if such witness were personally examined at such trial.

Deposition to be evidence same as personal examination.

Sec. 60. When the commission is executed in this territory, the commissioner or commissioners, shall have the same power

Commissioners may issue subpoenas, &c.

to issue subpoenas, swear witnesses, and compel their attendance as justices of the peace have.

Adjournment of  
suit.

Sec. 61. Whenever such commission shall be issued by any justice of the peace, the action or suit shall not be adjourned for more than ninety days, unless by consent and agreement of the parties of such action or suit.

Fees for issuing  
commissions.

Sec. 62. The justice of the peace shall be entitled to fifty cents for every commission issued and approved by him, in addition to the fees now allowed by law.

### TRIAL BY JURY.

Party failing to  
appear, what  
proceedings to  
be had.

Sec. 63. If either party shall fail to appear within one hour after the time specified for the return of the process, or after the hour of adjournment, the justice shall dismiss the suit, or proceed to hear the proof of the party present, and render judgment thereon accordingly, as the case may require.

Either party  
may demand  
trial by jury.

Sec. 64. In every action to be brought by virtue of this act, it shall be lawful for either of the parties to the suit, or for the attorney of either of them, after issue be joined, before the court shall proceed to inquire into the merits of the cause, to demand of said court that the said action be tried by a jury of six persons, on first paying to the justice the jury fees in advance, which shall be taxed against the party losing, and upon such demand the justice shall direct the sheriff or any constable of the county, who may be present, or if no officer be present, the justice may appoint a suitable person to perform the duties required by this section, to whom he shall administer the following oath or affirmation: "You do solemnly swear (or affirm, as the case may be,) that you will perform the duties required of you, according to the best of your abilities, without partiality to either party;" and if in the opinion of the justice the jurors above required cannot appear forthwith, for the trial of the cause, the justice shall adjourn the cause, for such reasonable time as he may think proper, to enable the officer to summon the said jurors, and for them to appear, which time shall be specified in the venire facias; the person so sworn shall write down the names of eighteen persons, being inhabitants of the county, and possessing the qualifications necessary to constitute jurors in a court of record, from which list each party may strike out alternately six names, and in case of the absence

Oath of officer  
summoning jury

Jury how select-  
ed.

of either party, or of his refusal to strike out, the justice shall strike out of the said list six names, and shall thereupon issue a venire facias, requiring the officer to summon the six persons whose names remain upon the above mentioned list, to appear at the time and place therein mentioned, to serve as jurors for the trial of the cause named in said venire facias: *Provided*, That if any of said jurors shall not attend, at the time so summoned to appear, or in case there should be legal objections raised to any of those who shall appear, it shall be the duty of the officer to summon a sufficient number of talesmen to supply the deficiency. The jury so selected shall take the following oath or affirmation; "You and each of you do solemnly swear (or affirm) that you will well and truly try the matter of difference between \_\_\_\_\_, plaintiff, and \_\_\_\_\_, defendant, and true verdict give according to law and the evidence given to you in court, so help you God;" and after having been sworn they shall sit together and hear the several proofs and allegations, of the parties, which shall be delivered in public in their presence. And to each witness on any trial, the justice shall administer the following oath (or affirmation,) to wit: "You do swear in the presence of Almighty God (or affirm,) that the evidence you shall give in this matter of difference between \_\_\_\_\_, plaintiff, and \_\_\_\_\_, defendant, shall be the truth, the whole truth, and nothing but the truth, so help you God;" and after hearing the proofs and allegations, the jury shall be kept together in some convenient place, until they all agree upon a verdict, or be discharged by the justice; and for which purpose a proper officer shall be sworn or affirmed, to whom the said justice shall administer the following oath, to wit: "You do swear in the presence of Almighty God, that you will, to the utmost of your ability, keep every person sworn in this inquest together, in some private convenient place, without drink, except water; you will not suffer any person to speak to them, nor speak to them yourself unless by order of the justice, except it be to ask them whether they have agreed on their verdict, or are discharged by the court, so help you God." And when the jurors have agreed on their verdict, they shall deliver the same to the justice, in the same court, who is hereby required to give judg-

Oath of jurors.

Oath of witness.

Oath of officer  
having charge of  
jury.



ment thereupon, and to award execution in manner hereinafter directed.

If jury cannot agree, justice may discharge them.

Sec. 65. Whenever a justice shall be satisfied that a jury sworn in any civil cause before him, after having been out any reasonable time, cannot agree on their verdict, he may discharge them and issue a new venire, unless the parties consent that the justice may render judgment.

Penalty if juror does not appear.

Sec. 66. Every person who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars.

#### JUDGMENT, AND THE FILING TRANSCRIPTS THEREOF, AND THE STAY OF EXECUTIONS.

One judgment may be set off against another by justice.

Sec. 67. If there be mutual justices' judgments between the same parties, upon which the time for appealing has elapsed, on which there is no existing execution, one judgment on the application of either party, and reasonable notice given to the adverse party, may be set off against the other, by the justice before whom the judgment against which the set-off is proposed may be.

When justice to set off judgment rendered by another justice.

Sec. 68. If the judgment proposed as a set-off, was rendered before another justice, the party proposing such set-off must produce before the justice, a transcript of such judgment, upon which there is a certificate of the justice rendering the judgment, that it is unsatisfied in whole or in part, and that there is no appeal or existing execution thereon, and such transcript was obtained for the purpose of being a set-off against the judgment to which it was offered as a set-off. The justice granting such transcript, shall make an entry thereof in his docket, and all further proceedings on such judgment shall be stayed, unless such transcript shall be returned with the proper justices' certificate therein, that it has not been allowed in set-off.

When judgment set off, justice make entry thereof.

Sec. 69. If any justice shall set off one judgment against another, he shall make an entry thereof in his docket, and execution shall issue only for the balance which may be due after such set-off. If a justice shall allow a transcript of a judgment rendered by another justice to be set-off, he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off; if he shall refuse such transcript as a

set-off, he shall so certify on the transcript, and return the same to the party who offered it.

### JUSTICES OF THE PEACE TO ENTER JUDGMENT UPON CONFESSION.

Sec. 70. That any justice of the peace in this territory Judgment by confession. may enter a judgment by confession, if the defendant or defendants in any case when the debts or damages shall not exceed one hundred dollars, with such stay of execution as may be agreed on by the parties interested in such judgment.

Sec. 71. No confession shall be taken, or judgment rendered To be in writing and verified. thereon, unless the following requisites be complied with:

1. The defendant must personally appear before the justice.
2. The confession shall be in writing, signed by the defendant, and verified by his oath, and filed with the justice.

3. If it be for money due, or to become due, the confession Statement of facts. must state concisely the facts out of which it arose, and must show that the sum confessed therefor is honestly due, or to become due. If it be for the purpose of securing a contingent liability, it must state concisely the facts constituting the liability, and must show that the sum confessed therefor does not exceed the same.

Sec. 72. The statement and affidavit may be filed with the Duties of justice of peace. justice of the peace, who must endorse upon it the time of filing, and must enter upon his judgment-book a judgment for the amount confessed, with one dollar costs. The statement and affidavit, with the judgment endorsed thereupon, become the judgment roll.

Sec. 73. Every justice, on demand of any person in whose Transcripts. favor a judgment has been confessed, as hereinbefore provided, shall give a certified transcript of such judgment, and the clerk of the district court of the same county in which judgment was rendered, shall, upon the production of any such transcript, Filing in district court. file the same in his office, and forthwith enter such judgment in his docket of the district court judgment and degrees, and shall note the time of filing such transcript.

Sec. 74. Every such judgment from the time of filing the Lien on real estate. transcript thereof, shall have the same lien on the real estate of the defendant or defendants in the county, as may be allowed

by law to a judgment of the district court of the same county, shall be equally under the control of the district court, and shall be carried with the execution in the same manner and with like effect as the judgment of such district courts, but no execution shall be in force thereon out of the district court, until an execution shall have been in force by a justice, and returned, that the defendant or defendants have no goods or chattels whereon to levy the same.

Execution.

Affidavit being made, justice to transfer suit to another justice.

Causes to be removed but once.

When justice to render judgment forthwith.

Execution how stayed.

Sec. 75. If, on the return of the process, or at any time before trial shall have commenced in any cause or proceeding, civil or criminal, either party, his agent or attorney, shall make affidavit that the justice before whom the same is pending is a material witness for said defendant, without whose testimony he cannot safely proceed to a trial thereof; or that from prejudice, bias, or other cause, he believes such justice will not decide impartially in the matter; or if it shall be proven that the justice is near of kin to the plaintiff, then, in such case, the said justice shall transfer said suit and all other papers appertaining to the same, to some other justice of the same or adjoining precinct, who may thereupon proceed to hear and determine the same in the same manner as it would have been lawful for the justice before whom the said cause or proceeding was commenced to have done: *Provided*, that no cause or proceeding shall be removed more than once.

Sec. 76. In cases where the plaintiff shall be non-suited, or withdraw his action, or where judgment shall have been confessed, and in all cases where a verdict shall be rendered, or the defendant shall be in custody at the time of hearing the cause, the justice shall forthwith render judgment, and shall enter the same in his docket. In all other cases, he shall render judgment, and enter the same in his docket within three days after the cause shall have been submitted to him for his decision.

Sec. 77. The execution upon a judgment by a justice of the peace may be stayed in the manner hereinafter provided, upon reasonable notice to the opposite party; and for the following periods of time, to be calculated from the date of the judgment:

1. If the judgment be for any sum not exceeding ten dollars, exclusive of costs, one month.

2. If it be for any sum above ten dollars, and not exceeding thirty dollars, two months.

3. If it be for any sum above thirty dollars, and not exceeding fifty dollars, three months.

4. If it be for any sum above fifty dollars, and not exceeding seventy-five dollars, four months.

5. If it be for a sum above seventy-five dollars, exclusive of cost, six months; but if all the parties to the judgment agree upon any other time, the stay shall be for the time so agreed upon.

Sec. 78. To entitle any person to such stay of execution, some responsible person, to be approved by the justice, and not being a party to the judgment, must, within five days after rendering the judgment, enter into a recognizance before the justice, to the adverse party, in a sum sufficient to secure the payment of the judgment and costs, conditioned to be void upon such payment at the expiration of the stay.

Party staying execution must enter into recognizance.

Sec. 79. Such recognizance must be signed by the person entering the same, and may be in the following form:

Form of recognizance.

"I, \_\_\_\_\_, acknowledge myself indebted to \_\_\_\_\_, in the sum of \_\_\_\_\_, to be void upon this condition: whereas, \_\_\_\_\_ obtained a judgment before, \_\_\_\_\_, a justice of the peace of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, against \_\_\_\_\_. Now, if such judgment shall be paid at the expiration of \_\_\_\_\_ months from the time it was rendered, this recognizance shall be void."

Sec. 80. If at the expiration of such stay, the judgment be not paid, the execution shall issue against the principal and bail; if the principal do not satisfy the execution, and the officer cannot find sufficient property, not exempt by law, belonging to him upon which to levy, he shall levy upon the property, not exempt by law, of the bail, and in his return shall state what amount of the money collected by him on the execution, was collected by him from the bail, and the time when the same was received.

Execution may issue against principal and bail.

Sec. 81. After the return of such execution, the bail shall be entitled, on motion, to a judgment before a justice for the amount collected from him in satisfaction of such execution, with interest thereon at twelve per cent. per annum; and such

Bail entitled to judgment principal on motion.

return of the officer, upon motion, shall be evidence of the facts therein stated. No motion shall be made after three months from the return of the execution.

Judgment stayed after execution the same as on appeal.

Sec. 82. If a judgment be stayed in the manner above prescribed, after an execution has been issued thereon, the justice shall revoke such execution, in the same manner and with the like effect, as he is hereinafter directed to revoke an execution after an appeal has been allowed; and if the defendant has been committed, shall order him to be discharged from custody.

When transcript of judgment to be filed with clerk of district court.

Sec. 83. Every justice, on demand of any person in whose favor he shall have rendered judgment for more than ten dollars exclusive of costs, shall give to such person a certified transcript of such judgment; and the clerk of the district court of the said county in which the judgment was rendered, shall, upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in the docket of the district court judgments and decrees, and shall note therein the time of filing such transcript.

Transcript so filed, lien on real estate.

Sec. 84. No person, being a resident of this territory, shall in any case be imprisoned for debt by virtue of any provision of this act.

### EXECUTIONS, AND PROCEEDINGS THEREON.

Execution to be issued on demand.

Sec. 85. Upon every judgment rendered by a justice, execution shall be issued by such justice, in the manner hereinafter prescribed, at any time on demand.

Execution what to contain.

Sec. 86. The execution shall command the officer to levy the debt or damages, together with the interest thereon and the costs, upon the goods and chattels of the person against whom the execution shall be granted, (his arms and accoutrements excepted, and also such other articles as are exempt by law, from execution,) and to pay the money within thirty days from date, to the justice who issued the execution, to render to the party who recovered the same.

Duty of justice before issuing execution.

Sec. 87. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of his execution, the amount of the debt or damages and costs separately, and the officer receiving such execution, shall indorse thereon the time of the reception of the same.

Sec. 88. If any execution be not satisfied, it may, at the request of the plaintiff, be removed from time to time, by the justice issuing the same, by an indorsement thereon to that effect, signed by him, and dated when the same shall be made; if any part of such execution has been satisfied, the indorsement of renewal shall express the sum due on the execution; every such indorsement shall renew the execution in full force, in all respects for thirty days, and no longer. An entry of such renewal shall be made in the docket of the justice.

Execution when  
and how renew-  
ed.

Sec. 89. The officer after taking goods and chattels into his custody by virtue of an execution, shall, without delay, give public notice, by at least three advertisements, put up at three public places in the township or precinct where the property is to be sold, of the time and place when and where the same shall be exposed for sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

Notice of sale  
how to be given  
and what to  
contain.

Sec. 90. At the time so appointed, the officer shall expose the goods and chattels to sale at public vendue to the highest bidder. The officer shall, in all cases, return the execution, and have the money before the justice at the time of making such return.

Sale of goods  
and return of  
execution how  
made.

Sec. 91. No officer shall, directly or indirectly, purchase any goods and chattels at any sale made by him upon execution; but every such sale shall be absolutely void.

Officer not to  
buy goods sold  
by him.

Sec. 92. If there be no property found, or if the goods and chattels levied on are not sufficient to satisfy such execution, the officer shall, upon the demand of the plaintiff, summon in writing as garnishees, such persons as may be named to him by the plaintiff or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees; and like proceedings shall be had thereon before the justice to final judgment and execution, as in suits instituted by attachment in justices' court.

Garnishees may  
be summoned  
when no prop-  
erty found.

Sec. 93. The officer who shall hold an execution, shall receive all money tendered to him in payment thereof, and shall indorse the same on the execution, and give the person paying

Officer holding  
execution to  
give receipt for  
money paid on  
same.

the same a receipt therefor, in which shall be specified on what account the same was paid, if demanded.

### REPLEVIN.

Affidavit to be made in case of replevin.

Sec. 94. When the object of the action is to recover the possession of personal property, the plaintiff or some other person, shall in all cases before any writ shall be issued, take and subscribe an affidavit, and file the same with the justice.

Such affidavit what to contain.

Sec. 95. Such affidavit must state that the property (describing it) is wrongfully detained by the defendant, that the plaintiff is entitled to the immediate possession thereof, that it was not taken from him by any process legally and properly issued against him, or if so taken, that it was exempt from seizure in such process; it must also state the value of the property, according to the best knowledge and belief of the affiant.

Plaintiff to give bond to defendant.

Sec. 96. The plaintiff shall also execute a bond to the defendant with sureties, to be approved by the justice, in a penalty at least double the value of the property sought, conditioned that he will appear at the return day thereof and prosecute his action to judgment, and return the property to the defendant, if a return thereof be ordered by the court, and also pay all costs and damages that may be adjudged against him; the bond shall be filed with the justice, and shall be for the use of any person injured by the proceeding.

Justice to issue writ.

Sec. 97. The justice shall thereupon issue a writ, directed to the sheriff or any constable of the county, commanding him to take the property therein described and deliver the same to the plaintiff, and summon the defendant to appear and answer the same on the return day mentioned in the writ.

Officer forthwith to take possession of the property.

Sec. 98. In obedience to such writ, the officer must forthwith take possession of the property mentioned in the writ, if the same be in the possession of the defendant or his agent, for which purpose he may break open any dwelling house or other inclosure, having first demanded entrance, and exhibit his authority if required.

Third party when made co-defendant.

Sec. 99. If a third person claim the property, he must be made a co-defendant.

When property not obtained plaintiff may re-

Sec. 100. If the property sought be not obtained, the plaintiff, if he establishes his right thereto, shall recover the value

of that right, whether obtained or not, he shall recover the damages he has sustained in consequence of the illegal detention thereof. cover value thereof.

Sec. 101. If the plaintiff fail to establish his right to the property, the defendant shall recover such damages, as under the circumstances he shows himself entitled to; and in addition thereto may have judgment for the return of the property, or the value thereof, if the same has been taken out of his possession, or delivered to the plaintiff. Plaintiff failing to establish his right.

### PROCEEDINGS BY ATTACHMENT.

Sec. 102. Any creditor shall be entitled to proceed by attachment in a justices' court, against the property of his debtor, in the cases, upon the conditions, and in the manner provided in this act. Creditor entitled to attachment in certain cases.

Sec. 103. Before any such writ of attachment shall be issued, the plaintiff, or some person in his behalf, shall make and file with the justice, an affidavit stating that the defendant therein is indebted to the plaintiff, in a sum exceeding five dollars; and specifying the amount of such indebtedness, as near as may be, over and above all legal set-offs, and that the same is due upon contract, expressed or implied, or upon judgment or decree of some court, and containing a further statement that the deponent has good reason to believe either: Affidavit to be made before attachment issues

1. That the defendant is a non-resident corporation; or
2. That the defendant is not a resident of this territory, and has not resided therein for three months immediately preceding the time of making such affidavit;
3. That the defendant has absconded, or is about to abscond from this territory;
4. That the defendant has removed, or is about to remove any of his property out of this territory, with intent to defraud his creditors;
5. That the defendant resides in any other county, and more than one hundred miles from the residence of the justice;
6. That the defendant contracted the debt under fraudulent representations;
7. That the defendant so conceals himself that the process of summons cannot be served upon him; or,



8. That the defendant has fraudulently conveyed or disposed of, or is about fraudulently to convey or dispose of any of his property or effects, so as to hinder or delay his creditors.

In certain cases attachment returnable in three days.

Sec. 104. In the five first cases mentioned in the preceding section, the writ of attachment shall be returnable in three days; but in all other cases, it shall be returnable as an ordinary summons.

Form of writ of attachment.

Sec. 105. The writ of attachment shall be in the following form :

Territory of Dakota, } ss.  
county of

To the sheriff or any constable of said county :

In the name of the United States you are commanded to attach the goods and chattels, moneys, effects, and credits of  
, or so much thereof, as shall be sufficient to satisfy the sum of  
, with interest and costs of suit, in whosoever hands or possession the same may be found in your county, and so provide that the goods and chattels so attached, may be subject to further proceedings thereon, as the law requires; and also to summon the said  
, if to be found, to be and appear at any office in said county, on the  
day of  
, A. D. 18  
, at  
o'clock in the  
noon, to answer to  
, in a civil action to his damage one hundred dollars or under.

Given under my hand at  
day of  
, A. D. 18  
.

J. P., Justice of the peace.

Attachment how executed.

Sec. 106. The officer shall execute a writ of attachment, by summoning the defendant as in case of a summons if to be found within the county, and by attaching the goods and chattels, moneys and credits, of the defendant, not exempt by law.

When defendant to obtain possession of property.

Sec. 107. When property of the defendant shall be actually seized on attachment, the defendant, or any other person for him, may obtain possession thereof, by giving bond and security to the satisfaction of the officers executing the writ, in double the value of the property so attached, conditioned that the same shall be forthcoming, when and where the justice shall direct, and shall abide the judgment of the justice.

Justice may order perishable property to be sold.

Sec. 108. When property shall be seized on attachment, which is likely to perish or depreciate in value before the

probable end of the suit, or the keeping of which would be attended with much loss or expense, the justice may order the same to be sold by the officer, in the same manner and on the same notice, as goods are required to be sold on an execution; and the proceeds of such sale shall remain in the hands of the officer, subject to be disposed of as the property would have been if seized upon in specie.

Sec. 109. When property is seized on attachment, the justice may allow to the officer having charge thereof, such compensation for his trouble and expense in keeping and maintaining the same, as shall be reasonable and just.

Compensation of officer having charge of property.

Sec. 110. When the defendant cannot be summoned, and his property or effects shall be attached, if he do not appear to the action at the return of the writ, the justice shall enter an order in his docket, requiring the plaintiff to give notice to the defendant, by publishing in a newspaper, if there be one printed in the county, or by three written or printed advertisements, set up at three of the most public places in the county, that a writ has been issued against him, and his property attached to satisfy the demand of the plaintiff; and that unless he appear before the justice at some time and place to be mentioned in said notice, not less than twenty nor more than ninety days from the date thereof, judgment will be rendered against him, and his property sold to pay the debt.

When defendant summoned, cause continued and notice given.

Sec. 111. The notice may be in the following form:

Form of notice.

Territory of Dakota, } ss.  
county of

To

You are hereby notified that a writ of attachment has been issued against you, and your property attached, to satisfy the demand of \_\_\_\_\_, amounting to \_\_\_\_\_: Now, unless you shall appear before J. P., a justice of the peace in and for said county, at his office in said town, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, judgment will be rendered against you, and your property sold to pay the debt.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

Plaintiff.

Sec. 112. Such notice shall be set up, or published at least fifteen days before the expiration of the time at which the

Notice how posted or published.

party is required to appear, and the setting up may be proved, either by the return of the officer upon a copy of the notice, or by the affidavit of any person who would be a competent witness in the case.

If defendant does not appear judgment to be entered against him.

Sec. 113. When the defendant shall be notified as aforesaid, and shall not appear and answer to the action, his default shall be entered by the justice in his docket, and the plaintiff may proceed thereon to final judgment as in actions commenced by summons; but no execution shall be issued on such judgment, either against the defendant, or money paid to the justice thereon, until the plaintiff, or some person in his behalf, shall execute a bond in double the amount of such judgment, to the defendant with security, to be approved by the justice, conditioned that if the defendant shall, within one year from the rendition of such judgment, appear and disprove the debt or damages adjudged against him, or any part thereof; the plaintiff will refund the whole, or such part thereof as may be found not justly due him in a review of the case.

Execution not to issue until bond is given.

Pleadings same as in other cases.

Sec. 114. Like pleadings of the parties and like proceedings shall be had, as far as practicable, in suits commenced by attachment, and suits founded on contracts and commenced by summons.

Attachment how dissolved.

Sec. 115. Attachments may be dissolved, on motion made in behalf of the defendant, at any time before final judgment, if the defendant shall appear and plead to the action and give bond to the plaintiff, with good and sufficient surety to be approved by the justice, in double the amount of property, effects, and credits attached, conditioned that if judgment be rendered against him in such suit, he will pay the amount thereof, with costs and interest thereon.

When attachment dissolved, property to be released.

Sec. 116. When any attachment shall be dissolved, the property and effects attached shall be released, and the garnishees shall be discharged, and the suit proceed as if it had been commenced by a summons only.

When third person may retain property.

Sec. 117. When property of the defendant, found in the hands or possession of any other person than the defendant shall be attached, such person may retain the possession thereof, by giving bond and security to the satisfaction of the officer executing the writ, in double the value of the property so

attached, conditioned that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice.

Sec. 118. When judgment shall be rendered in any attachment case, execution may issue thereupon, and the property attached may be sold in the same manner as in other cases, except as otherwise provided by this act.

Execution to issue and property to be sold as in other cases.

#### THE REMOVAL OF CAUSES, BY CERTIORARI AND PROCEEDINGS THEREON.

Sec. 119. If any person shall conceive himself injured by error in any process, proceeding, judgment, or order given by any justice of the peace, within this territory, it shall be lawful for such person, to remove such judgment to the district court, as hereinafter provided.

Cause when removed to district court by certiorari.

Sec. 120. The party applying for such certiorari, his agent or attorney, shall, within twenty days after the rendition of such judgment, present to a judge of a court of record, an affidavit, stating that in his belief there is reasonable cause for granting such certiorari for error in such judgment, (setting forth the ground of error alleged) and that the application is made in good faith, and not for the purpose of delay; and shall together with one or more sureties, to be approved by the judge, enter into a recognizance before a judge or some justice of the peace, to the adverse party, in double the amount of the judgment, and costs rendered before the justice.

Application for certiorari to whom and when made.

Sec. 121. Such recognizance must be signed by the persons entering into the same, and attested by the judge or justice, and shall be in the following form:

Form of recognizance.

We,                      and                      acknowledge ourselves to owe and be indebted unto                      , in the sum of                      dollars, to be levied of our several goods and chattels, lands and tenements, to the use of                      , or his assigns, if default be made in the condition following, to wit:

Whereas, the said                      , has applied for a certiorari from the judgment of                      , a justice of the peace of the county of                      , rendered                      day of                      , A. D. 18                      , in an action between                      , plaintiff, and                      defendant; now if the writ of certiorari be allowed, and the said

, shall prosecute the same with all due diligence to a judgment in the district court, or before the judge thereof, and abide the order the court or judge may make therein then this recognizance to be void, otherwise of force.

Taken and acknowledged before me, this day  
of , A. D. 18 .

C. D.

E. F.

G. H.

Judge, or (Justice.)

Judge when to  
allow the cer-  
tiorari.

Sec. 122. If such judge shall be satisfied that any error affecting the merits of the controversy has been committed by the justice or jury in the proceeding, verdict or judgment, he shall allow a writ of certiorari, by indorsing on the affidavit his allowance thereof.

Affidavit and re-  
cognizance to be  
filed with clerk.

Sec. 123. The affidavit and recognizance, so given, shall be filed with the clerk of the district court for the county, who shall thereupon issue a writ of certiorari, commanding the justice, rendering such judgment, to make return as to all facts contained in such affidavit, and of all the testimony and proceedings in the case.

Certiorari when  
to be served.

Sec. 124. The certiorari so allowed shall be served within ten days after its allowance, upon the justice by whom the judgment was rendered.

After service  
proceedings  
stayd.

Sec. 125. Upon the service of a writ of certiorari upon the justice as aforesaid, all further proceedings at law in such case shall cease, and if the execution shall have issued on such judgment upon which the certiorari is allowed, the justice shall immediately recall the same.

Copy of affidavit  
to be served  
with writ.

Sec. 126. Upon the service of a writ of certiorari to reverse a judgment as aforesaid, it shall be the duty of the party serving the same, to deliver at the same time to the justice a copy of the affidavit on which the certiorari was procured, and the justice shall make a special return as to all the facts contained in such affidavit, and of the testimony and proceedings in the case, and annex a copy thereof to the writ, and shall file the same with the clerk of the district court, within ten days after the service of the writ, together with all the papers in the suit; and he shall also certify the time when the writ was served upon him.

Sec. 127. The district court shall have power to compel such justice to make or amend such return by rule, attachment, or mandamus, as the case may require.

District court has power to compel justice to amend return

Sec. 128. When such certiorari and return shall be so filed with the clerk, the cause may be brought on to argument before the judge of said court at any time thereafter, according to the statutes relating thereto.

When cause brought on to argument.

Sec. 129. The judge of the district court shall proceed and give judgment in the cause as the right of the matter may appear, without regarding technical omissions, imperfections, or defects in the proceedings before the justice, which did not affect the merits, and may affirm or reverse the judgment in whole or in part; and may make any such final order or judgment as he shall deem proper, in furtherance of justice, and may award costs to the successful party, not exceeding fifteen dollars exclusive of charges and disbursements.

Judge may affirm or reverse the judgment.

Costs may be awarded to the successful party.

Sec. 130. If a judgment rendered before a justice be collected, and afterwards be reversed by the court above, the court shall award restitution of the amount collected, with interest from the time of collection, and execution may issue thereon.

When restitution to be awarded.

Sec. 131. No justice of the peace shall be required to make return to any writ of certiorari, unless all the costs of the suit to which such return relates, as the same are entered on his docket, are paid, and also one dollar for the justice's return, at the time of the service of said writ upon him as aforesaid.

Costs to be paid justice before returns made.

Sec. 132. Any person aggrieved by any judgment rendered by any justice of the peace under this act, when the judgment shall exceed fifteen dollars, or in action of replevin, when the value of the property as sworn to in the affidavit for a writ of replevin shall exceed fifteen dollars, or when the amount claimed in the complaint shall exceed thirty dollars, may appeal by himself or agent to the district court of the county where the same was rendered: *Provided however*, That when the claim of either party, as proven in the cause at the trial shall exceed one hundred dollars, or the claims of both parties, as proven on the trial, shall exceed two hundred dollars, then either party may appeal from such judgment, although the recovery before the justice be less than fifteen dollars, in which case the fact of sum or sums having been proven on the trial,

Aggrieved party may appeal from justices' court in certain cases.

shall be set forth and certified by the justice in his return: *Provided*, This law shall not interfere with any action in case of forcible entry and detainer. *And provided further*, That no appeal shall be allowed in any case unless the following requisitions are complied with within ten days after judgment rendered, viz :

Affidavit and  
recognizance on  
appeal, when  
and how made.

1. An affidavit shall be filed with the justice before whom the cause was tried, stating that the appeal is made in good faith and not for the purpose of delay.

2. A recognizance entered into by the party appealing, his agent or attorney, to the adverse party, in a sum sufficient to secure such judgment and cost of appeal, must be entered into with one or more sureties, to be approved by the justice.

Justice when to  
allow appeal.

Sec. 133. Upon an appeal being made, according to the foregoing provisions, the justice shall allow the same, and make an entry of such allowance in his docket; and all further proceedings on the judgment before the justice shall be suspended by the allowance of the appeal; and if in the mean time execution shall have been issued, the justice shall give to the applicant a certificate that such appeal has been allowed.

Officer when to  
release body or  
property of de-  
fendant.

Sec. 134. On such certificate being presented to the officer holding the execution, he shall forthwith release the property of the defendant that may have been taken on execution.

Justice to file  
transcript of  
entries.

Sec. 135. On or before the first day of the term of the district court next after the appeal shall have been allowed, the justice shall file in the office of the clerk of said court, a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit, and filed with the justice; and upon the filing of his return the district court shall become possessed of the cause, and shall proceed therein in the same manner, as near as may be, as in actions originally commenced in that court, except as herein otherwise provided.

Proceedings on  
filing justice's  
return.

The issue before  
the justice to be  
the issue above.

Sec. 136. The issue before the justice shall be tried before the court above without other or further new declaration or pleading, except in such cases as shall be otherwise directed by the court.

The person ap-  
pealing shall  
cause an entry  
to be made with  
clerk.

Sec. 137. The person or persons appealing shall cause an entry of the appeal to be made by the clerk of the court on or

before the second day of the term, unless otherwise ordered by the court, and the plaintiff in the court below shall be the plaintiff in the court above: *Provided*, That if the appellant shall fail or neglect to enter the appeal as aforesaid, the appellee may have the same entered at any time during that or some succeeding term, and the judgment of the court below shall be entered against the appellant for the same, with interest and twelve per centum damages, and the costs of both courts.

Sec. 128. Upon an appeal being made and allowed, the district court may by rule and attachment compel a return by the justice, of the proceedings in the suit, and of the papers required to be by him returned.

When district court may compel return by rule.

Sec. 129. If a justice fail to allow an appeal in a cause, when the same ought to have been allowed, the district court, on such fact satisfactorily appearing, may by rule and attachment compel the justice to allow the same, and to return his proceedings in the suit, together with all papers required to be returned by him.

When district court may compel justice to allow appeal.

Sec. 140. Whenever the court is satisfied that the return of the justice is substantially erroneous or defective, the court may by rule and attachment compel him to amend the same.

Court to compel justice to amend return.

Sec. 141. No appeal allowed by a justice shall be dismissed on account of there being no recognizance, or that the recognizance given is defective, if the appellant will before the motion to dismiss is determined enter before the district court into such recognizance as he ought to have entered into before the allowance of the appeal, and pay all costs that shall be incurred by reason of such default or omission.

When appeal shall not be dismissed

Sec. 142. All appeals allowed, ten days before the first day of the term of the district court next after the appeal allowed, shall be determined at such term, unless continued for cause.

Appeals when to be determined.

Sec. 143. In all cases of appeal from a justices' court, if the judgment of the justice be affirmed, or if on trial anew in the district court, the judgment be against the appellant, such judgment shall be rendered against him and his sureties in the recognizance for the appeal.

When judgment rendered against appellant to be against his sureties.

Sec. 144. If upon an execution being issued upon such judgment, the principal shall not pay such execution, and the officer

Execution may be collected from surety.



cannot find sufficient property of said principal to satisfy the same, such execution shall be enforced against the sureties, and the officer shall specify on his return, by whom the money was paid, and the time thereof.

Security when  
entitled to judg-  
ment against  
principal.

Sec. 145. After the return of an execution satisfied in whole or in part out of the security, such security shall be entitled to a judgment on motion against the principal for the amount so paid by him, together with interest at twelve per cent. per annum from the time of payment; such motion must be made within one year after the return day of the execution, and the return of the officer shall be evidence upon the hearing of such motion of the facts therein stated.

No appeal shall  
be allowed until  
costs are paid.

Sec. 146. No appeal shall be allowed by any justice of the peace, until the appellant, in addition to the requirements of section one hundred and twenty-three of this act, shall pay all costs which may have accrued in the justices' court, and one dollar for the return of the justice.

#### PROCEEDINGS FOR CONTEMPTS BEFORE JUSTICES OF THE PEACE.

In what cases  
justices may pun-  
ish for con-  
tempt.

Sec. 147. In the following cases and no others, a justice of the peace may punish for contempt:

1. Persons guilty of disorderly, contemptuous and insolent behavior towards such justice, whilst engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which tends to interrupt such proceedings, or to impair the respect due to his authority;
2. Persons guilty of any breach of the peace, noise, or disturbance, tending to interrupt the official proceedings of such justice;
3. Persons guilty of resistance, or disobedience to any lawful order or process made or issued by him.

Punishment for  
contempt may be  
by fine and im-  
prisonment.

Sec. 148. Punishment for contempt may be by fine not exceeding twenty dollars, or by imprisonment in the county jail, not exceeding two days, unless otherwise provided, at the discretion of the justice.

Persons entitled  
to be heard be-  
fore being pun-  
ished for con-  
tempt.

Sec. 149. No person shall be punished for contempt before a justice of the peace, until an opportunity shall have been given him to be heard in his defense; and for that purpose the

justice may issue his warrant to bring the offender before him.

Sec. 150. If the offender be present he may be summarily arraigned by the justice, and proceeded against in the same manner as if a warrant had been previously issued, and the offender arrested thereon.

When offender may be summarily arraigned.

Sec. 151. The warrant for contempt may be in the following form :

Form of warrant for contempt.

Territory of Dakota, } ss.  
county of }

To the sheriff or any constable of said county.

In the name of the United States, you are hereby commanded to apprehend A. B., and bring him before J. P., one of the justices of the peace of said county at his office in said county, to show cause why he, the said A. B., should not be convicted of a criminal contempt, alleged to have been committed on the day of , A. D. 18 , before the said justice while engaged as a justice of the peace in judicial proceedings.

Dated this day of , A. D. 18 .  
J. P., Justice of the peace.

Sec. 152. Upon the conviction of any person for contempt, the justice shall make up a record of the proceedings on the conviction, stating the particular circumstances of the offense, and the judgment rendered thereon, and shall file the same in the office of the clerk of the district court, and shall enter the same in his docket as in civil cases.

Justice to make a record of conviction and file same.

Sec. 153. The warrant of commitment for any constable, shall set forth the particular circumstances of the offense, or it shall be void.

Warrant of commitment what to set forth.

Sec. 154. The record of conviction may be in the following form :

Form of record of conviction.

Territory of Dakota, } ss.  
county of }

Whereas, on the day of , A. D. 18 , while we, the undersigned, one of the justices of the peace of the said county, was engaged in the trial of a cause between C. D., plaintiff, and E. F., defendant, in said county, according to the statute in such case made and provided, A. B., of the said county did interrupt the said proceedings, and impair the

respect due to the authority of the undersigned, by (here describe the cause particularly) and whereas, the said A. B., was thereupon required, by the undersigned, to answer for the said contempt, and show cause why he should not be convicted thereof; and whereas, the said A. B. did not show any cause against the said charge: Be it therefore remembered, that the said A. B. is adjudged to be guilty, and is convicted of the criminal contempt aforesaid, before the undersigned, and is adjudged by the undersigned to pay a fine of                      dollars, or to be imprisoned in the common jail of said county for the term of two days, or until he be discharged from imprisonment according to law.

Dated this                      day of                      , A. D. 18   .

J. P., Justice of the peace.

When witness  
refuses to be  
sworn, may be  
committed.

Sec. 155. When any witness attending before a justice of the peace, in any cause, shall refuse to be sworn in some form prescribed by law, or to answer any pertinent or proper question, such justice may, by order, commit such witness to the jail of the county.

Order of com-  
mitment want  
to contain.

Sec. 156. Such order shall specify the cause for which the same is issued; and if it be refusing to answer any question, such question shall be specified therein; and such witness shall be closely confined pursuant to such order, until he submit to be sworn, or to answer, as the case may be.

Justice to ad-  
journ the cause,  
&c.

Sec. 157. The justice shall thereupon adjourn such case, at the request of the party, for such time as shall be reasonable, or until such witness shall testify in the case.

Witness failing  
to appear, pun-  
ty of contempt.

Sec. 158. If any person duly subpoenaed, and obliged to attend as a witness, shall fail to do so, he shall be considered guilty of a contempt, and shall be fined all the costs for his apprehension, unless he shall show reasonable cause to the satisfaction of the justice, for his omission to attend; in which case the party requiring such appearance, shall pay the costs thereof.

#### GENERAL PROVISIONS CONCERNING JUSTICES OF THE PEACE.

Process issued  
must be signed  
by justice.

Sec. 159. All process issued by any justice of the peace, shall be signed by him, and may be under seal, or without a seal.

Sec. 160. Every summons or process, issued by a justice of the peace, shall be entirely filled up, and shall have no blank either in date, or otherwise, at the time of its delivery to an officer to be executed; every such process which shall be issued and delivered to an officer to be executed, contrary to the foregoing provisions, shall be void.

Process shall be filled up by justice.

Sec. 161. When, from any cause, a vacancy shall occur in the office of justice of the peace, in any of the organized counties of this territory, the clerk of the board of county commissioners, upon being notified that any such vacancy exists, may issue a notice to the electors of the precinct where such vacancy exists, stating in such notice, that a vacancy has occurred in the said office, and that an election will be held in the said precinct, to fill said vacancy; which notice shall be given in the same manner, and under the same regulations that other notices of elections are required by law to be given.

Vacancy in office of justice how filled.

Sec. 162. Whenever one or more justices of the peace shall be elected in any precinct of this territory, to supply a vacancy or vacancies at the time existing, such justice or justices may take the oath and file their official bond, and forthwith enter upon the duties of their office.

Persons elected to fill vacancy, to qualify forthwith.

Sec. 163. Whenever, by reason of a dismissal, nonsuit, or for any other cause, a judgment shall be rendered against either party, for costs only, by a justice of the peace, execution may issue to enforce such judgment, in the same manner and with the same effect as in every other case.

Execution may issue for costs only.

Sec. 164. All persons elected justice of the peace in this territory, shall enter upon the duties of their respective offices on the first day of January next succeeding their election, unless otherwise provided for in this act.

Justices to enter upon duties of office on first of January.

Sec. 165. No justice of the peace, being a member of the council or house of representatives, shall be obliged to take cognizance of any action, or to entertain any proceedings under the provisions of this act; but he may act therein or not, at his discretion.

If justice elected to legislature need not act as justice.

Sec. 166. In case any justice of the peace shall die, or his office shall in anywise become vacant, and any books or papers belonging to such justice in his official capacity, shall come into the hands of any person, the nearest justice may demand

When office of justice vacant, books and papers how disposed of.

and receive such books and papers from the person having the same in his possession.

If books withheld here show the same may be recovered.

Sec. 167. If any books or papers required to be delivered to the nearest justice by the preceding section, be withheld, or if any justice shall refuse to deliver over to his successor any books or papers, in either case person entitled to receive the said books or papers, may make complaint to the district judge of the United States district court of the proper county, and if such judge be satisfied by the oath of the complainant, or any other person, that any such books or papers are withheld, he may grant an order directing the person so refusing, to show cause before him on a day to be mentioned in said order, why he should not be compelled to deliver the same.

Justice to inquire into the merits of the case, and may commit the person withholding books.

Sec. 168. At the time so appointed, or at any other time to which the matter may be adjourned, upon due proof being made of the service of such order, such judge shall proceed to inquire into the circumstances; and if it shall appear that the said books and papers are withheld, the officer before whom the proceedings are had, shall by warrant commit the person so withholding, to the jail of the proper county, there to remain until he shall deliver the books and papers, or be otherwise discharged according to law.

Justice failing to pay over money, guilty of misdemeanor.

Sec. 169. If any money shall be collected for any party by a justice of the peace in his official capacity, and he shall have neglected or refused, within a reasonable time after demand, to pay over the same, such neglect or refusal shall be deemed a misdemeanor, and on conviction thereof, such justice shall forfeit his office.

When justice may make return to appeal after his office expires.

Sec. 170. Whenever a certiorari, or appeal shall be duly brought and served upon a justice after he shall have gone out of office, upon a judgment rendered by him whilst in office, such person shall make return to each certiorari or appeal, in like manner and with like effect as if such certiorari or appeal had been served whilst he was in office.

Justice's courts to be public.

Sec. 171. The courts of justices of the peace shall be public, and every person may freely attend the same.

Justice shall not have law partner appear before him.

Sec. 172. No justice of the peace shall have a law partner appear as attorney in any case before such justice.

## FORMS IN CIVIL ACTIONS IN JUSTICES' COURTS.

**Sec. 173.** The following, or equivalent forms, shall be used <sup>Forms in civil</sup> by justices of the peace, in proceedings, to be had under this <sup>actions.</sup> act, to wit:

*Form of warrant.*

Form of war-  
rant

Territory of Dakota, }  
county of } 88.

To the sheriff or any constable of said county:

In the name of the United States you are hereby commanded to take the body of \_\_\_\_\_, if he be found within your county, and bring \_\_\_\_\_, forthwith before the undersigned, one of the justices of the peace, in and for said county, at \_\_\_\_\_, to answer to \_\_\_\_\_, in a civil action; and you are hereby commanded to give due notice thereof to the said plaintiff; and have you then and there this writ.

Given under my hand, this                  day of                  A. D. 18 .  
J. P., justice of the peace.

*Form of summons.*

**Form of sign-  
ment.**

Territory of Dakota, }  
county of } ss.

To the sheriff or any constable of said county:

In the name of the United States, you are hereby com-  
manded to summon \_\_\_\_\_, if he shall be found in your  
county, to be and appear before the undersigned, one of the  
justices of the peace in and for said county, on the \_\_\_\_\_ day  
of \_\_\_\_\_, 18\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon  
at \_\_\_\_\_, in said county, to answer to \_\_\_\_\_ in  
a civil action; and have you then and there this writ.

Given under my hand, this                      day of                      , A. D. 18                      .  
J. P., justice of the peace.

*Form of execution.*

**Form of execution.**

Territory of Dakota, }  
county of } 88.

To the sheriff or any constable of said county:

Whereas, judgment against \_\_\_\_\_, for the sum of \_\_\_\_\_, lawful money of the United States, and for \_\_\_\_\_, cost of suit, was recovered the \_\_\_\_\_

day of \_\_\_\_\_ before me at the suit of \_\_\_\_\_  
 ; these are therefore in the name of the United States  
 to command you to levy distress on the goods and chattels of the said \_\_\_\_\_, (excepting such as the law exempts,) and make sale thereof, according to law in such case made and provided, to the amount of the said sum, together with twenty-five cents for this execution, and the same return to me within thirty days, to be rendered to the said \_\_\_\_\_ for \_\_\_\_\_ said \_\_\_\_\_ and cost. Hereof fail not under penalty of the law.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18 \_\_\_\_ .  
 J. P., Justice of the peace.

*Form of replevin.*  
 12.

*Form of a writ of replevin.*

Territory of Dakota, }  
 county of \_\_\_\_\_ } ss

To the sheriff or any constable of said county:

Whereas, A. B. complains that C. D. has taken and does unjustly detain (or does unjustly detain, as the case may be, particularly describing the goods and chattels to be replevied, and the value thereof,) therefore, in the name of the United States, you are commanded that you cause the same goods and chattels to be replevied without delay; and if the said A. B. shall give security as required by law, that you cause the said goods and chattels to be delivered to the said A. B., and also that you summon the said C. D. to be and appear before me, one of the justices of the peace in and for said county, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, at \_\_\_\_\_, in said county, to answer complaint of \_\_\_\_\_.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_ .  
 J. P., Justice of the peace.

*Form of subpoena.*  
 12.

*Form of subpoena.*

Territory of Dakota, }  
 county of \_\_\_\_\_ } ss.

In the name of the United States, you are hereby required to appear before the undersigned, one of the justices of the peace in and for the said county, at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock, in the \_\_\_\_\_ noon of said day, to give evidence in a certain cause then and there to

be tried between \_\_\_\_\_, plaintiff, and \_\_\_\_\_, defendant, on the part of the \_\_\_\_\_.

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

J. P., justice of the peace.

*Form of a venire for a jury.*

**Form of venire  
for jury.**

Territory of Dakota, } ss.  
county of }

To the sheriff or any constable of said county:

In the name of the United States, you are hereby com-  
manded to summon \_\_\_\_\_ to be and appear before the  
undersigned, one of the justices of the peace in and for said  
county, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock  
in the \_\_\_\_\_ noon of said day, in the town of \_\_\_\_\_, to  
make a jury for the trial of a civil action between \_\_\_\_\_,  
plaintiff, and \_\_\_\_\_, defendant, and have you then and  
there this writ.

Given under my hand, this                      day of                      A. D. 18                      .  
J. P. justice of the peace.

**JURISDICTION OF JUSTICES IN CRIMINAL CASES, AND  
THE PROCEEDINGS THEREIN.**

Sec. 174. Justices of the peace shall have power and jurisdiction throughout their respective counties, as follows : Jurisdiction of Justices in criminal cases.

1. To cause to be kept all laws made for the preservation of the peace.
2. To cause to come before them, or any of them, persons who shall break the peace, and commit them to jail, or bail them, as the case may require.
3. To arrest and cause to come before them, persons who attempt to break the peace, persons who keep houses of ill fame, or frequenters of the same, or common prostitutes, and compel them to give security for their good behavior, and to keep the peace.
4. To cause to come before them, persons who are charged with committing any criminal offense, and commit them to jail, or bail them, as the case may require.

**Sec. 175.** Justices of the peace shall have power to hold a court subject to the provisions hereinafter contained, to hear, Justices may hold court to try offenses.



try, and determine the charges for offenses arising within their respective counties, where jurisdiction is conferred upon by any law of this territory.

Complaint being made to justice, warrant to issue.

Sec. 176. Upon complaint made to any justice of the peace by any constable or other person, that any such offense has been committed within the county, he shall examine the complainant on oath, and the witnesses produced by him, and shall reduce the complaint to writing, and cause the same to be subscribed by the complainant: and if it shall appear that such offense has been committed, the said justice shall issue his warrant, reciting the substance of the complaint, and requiring the officer to whom it is directed, forthwith to arrest the accused, and to bring him before such justice or some other justice of the same county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be named therein, to appear and give evidence at the trial.

When justice to enter suit in his docket.

Sec. 177. The justice shall enter a suit in his docket, in which the United States shall be plaintiff, and the accused defendant, and he shall keep all such other entries as are required in civil causes.

On return of warrant justice how to proceed.

Sec. 178. On the return of the warrant with the accused, the said justice shall proceed to hear, try, and determine the cause within one day, unless continued for cause.

Accused may give bail.

Sec. 179. From the time of the return of the warrant, until the time of the trial, the accused may give bail, with one or more sufficient sureties for his appearance at the time fixed for the trial; or in the event of failure so to do, may be committed to jail for safe keeping, by order of said justice, or left in the custody of the arresting officer.

Warrant to be read to accused and he required to plead.

Sec. 180. The charge made against the accused, as stated in the warrant of arrest, shall be distinctly read to him, and he shall be required to plead thereto, which plea the court shall enter in their minutes; if the accused refuse to plead, the court shall enter the fact with a plea of not guilty, in behalf of such accused, in its minutes.

When court to try issue.

Sec. 181. If the plea of the accused be not guilty, and no jury be demanded by him, the said court shall proceed to try such issue, and to determine the same according to the evi-

dence which may be produced against, and in behalf of such accused.

Sec. 182. If the accused shall plead guilty to such charge, the court shall thereupon convict him of the offense charged, and render judgment thereon.

Proceedings when defendant pleads guilty.

Sec. 183. After the joining of issue and before the court shall proceed to an investigation of the merits of the cause, unless the accused shall expressly waive his right to a trial by jury, the court shall direct the sheriff or any constable of the county, to make a list in writing of the names of eighteen inhabitants of the county, qualified to serve as jurors in the courts of record of this territory, from which list the complainant and accused may each strike out six names.

Justice to direct officer to make list of jury, unless waived by defendant.

Sec. 184. In case the complainant or the accused shall neglect to strike out such names, the court shall direct some suitable disinterested person to strike out the names for either or both of the parties so neglecting; and upon such names being struck out, the court shall issue a venire, directed to the sheriff or any constable of the county, requiring him to summon the six persons whose names shall remain upon such list, to appear before such court, at the time and place to be named herein, to make a jury for the trial of such offense.

When justice to direct person to strike out jurors

Sec. 185. The officer to whom such venire shall be delivered, shall summon such jury personally, and shall make a list of the persons summoned, which he shall certify and annex to the venire, and return the same with such venire to the court, within the time therein specified.

Duty of officer to whom is directed venire.

Sec. 186. If any of the jurors named in such venire shall fail to attend in pursuance thereof, or if there shall be any legal objection to any that shall appear, the court shall supply the deficiency by directing the sheriff, or any constable who may be present and disinterested, to summon any of the bystanders or others who may be competent, and against whom no cause of challenge shall appear, to act as jurors in the cause.

Justice may direct officer to summon bystanders in case of deficiency.

Sec. 187. If the officer to whom the venire shall have been delivered, shall fail to return the same, as thereby required, or if the jury shall fail to agree, and shall be discharged by the court, a new jury shall be selected and summoned in the same manner, and the same proceedings shall thereupon be had as herein

When and in what cases new jury may be summoned.

prescribed, in respect to the first jury, unless the accused shall consent to be tried by the court; in which case the court shall proceed to the trial of the issue, as if no jury had been demanded.

Either party  
may challenge  
jury as in civil  
actions.

Sec. 188. In all trials for criminal offenses before a justice of the peace, either party may challenge any juror for cause, as in civil cases.

Form of oath to  
be administered  
to jury.

Sec. 189. To each juror, such justice shall administer the following oath or affirmation: "You do solemnly swear, (or you do solemnly and sincerely declare and affirm, as the case may be,) that you will well and truly try this cause between the United States, and \_\_\_\_\_, the accused, and a true verdict give according to law, and the evidence given you in court, unless discharged by the court."

After jury  
sworn how to  
proceed.

Sec. 190. After the jury shall have been sworn, they shall sit together and hear the proofs and allegations in the case, which shall be delivered in public, and in the presence of the accused; and after hearing such proofs and allegations, the jury shall be kept together in some convenient place, until they agree on a verdict or are discharged by the court; and a sheriff or constable shall be sworn to take charge of the jury in like manner as upon trial in justices' courts in civil proceedings.

Jury to deliver  
verdict publicly.

Sec. 191. When the jurors have agreed on their verdict, they shall deliver the same to the court publicly, who shall enter it in his docket.

When accused  
found guilty,  
court to render  
judgment.

Sec. 192. Whenever the accused shall be tried under the preceding provisions of this act, and found guilty either by the court or by a jury, or shall be convicted of the charge made against him on a plea of guilty, the court shall render judgment thereon, and inflict such punishment, either by fine or imprisonment, or both, as the nature of the case may require; but such punishment shall in no case exceed the limit fixed by law for the offense charged.

When accused  
to be discharged  
court may give  
judgment for  
costs against  
complainant.

Sec. 193. Whenever the accused, tried under the preceding provisions of this act, either by the court or by a jury, shall be acquitted, he shall be immediately discharged; and if the court before whom the trial is had, shall certify in his docket that the complaint was willful and malicious, and without probable cause, it shall enter a judgment against the complainant, to

pay all the costs that shall have accrued to the court and sheriff, or constable and jury, in the proceedings had upon such complaint; and unless he give satisfactory security by bond to this territory, with one or more sureties, to pay the same in thirty days after the said trial, execution shall issue therefor.

Sec. 194. The person charged with and convicted by any such justice of the peace of any such offense, may appeal from the judgment of such justice of the peace to the district court:

Person convicted may appeal to district court

*Provided*, such person shall, within twenty-four hours, enter into

Proviso.

a recognizance, with one or more sufficient sureties, conditioned to appear before said court and abide the judgment of the court therein; and the justice from whose judgment an appeal is taken, shall make a special return of the proceedings with the recognizance or recognizances, to be filed in said district court, on or before the first day of the term of the district court next to be holden for said county; and the complainant and witnesses may also be required to enter recognizances, with or without sureties, in the discretion of the court, to appear at said district court at the time last aforesaid, and to abide the order of the court therein.

Sec. 195. If the complainant shall refuse or neglect to pay such costs, or to give such security, the court may forthwith enter judgment against him for the amount of such costs, and forthwith issue execution thereon in the same manner and with the like effect, as in the case of an execution issued by a justice of the peace, on a judgment in an action for a trespass or other wrong, and such moneys, when collected, shall be paid over to such court.

Justice when to render judgment against complainant for costs.

Sec. 196. The judgment of every such court shall be executed by the sheriff or any constable of the county where the conviction shall be had, by virtue of a warrant under the hand of the justice who held the court, to be directed to such officers, and specifying the particulars of such judgment.

Judgment of court by whom executed.

Sec. 197. In case any person summoned to appear before any court held by a justice of the peace, pursuant to the provisions of this act, as a juror or witness, shall fail to appear, or if any witness appearing shall refuse to be sworn or to testify, he shall be liable to the same penalties, and may be pro-

Juror and witnesses liable for contempt, as in civil actions.

ceeded against in the same manner as provided by law in respect to jurors and witnesses in justices' courts in civil proceedings.

Justice to make  
certificate of  
conviction.

Sec. 198. Whenever any conviction shall be had before a court held by a justice of the peace, the justice by whom such court shall have been held, shall make a certificate of such conviction under his hand, in which it shall be sufficient, briefly to state the offense charged, and the conviction and judgment thereon, and if any fine has been collected, the amount thereof.

Justice to cause  
such certificate  
to be filed in  
twenty days.

Sec. 199. Within twenty days after such conviction, the said magistrate shall cause such certificate to be filed in the office of the clerk of the district court in which the conviction shall have been had.

Such certificate  
to be evidence  
in courts.

Sec. 200. Every certificate of conviction made and filed under the foregoing provisions or a duly certified copy thereof, shall be evidence in all courts and places, of the facts therein contained.

#### MISCELLANEOUS PROVISIONS IN CRIMINAL CASES.

What offenses  
to be tried be-  
fore justice of  
the peace.

Sec. 201. No assault, battery or affray shall be indictable, but all such offenses shall be prosecuted and determined in a summary manner, by complaint made before a justice of the peace, and on conviction thereof, the offender may be punished by fine not less than five dollars, nor more than one hundred dollars, according to the nature of the offense.

When justice to  
issue warrant  
on his own  
knowledge.

Sec. 202. If any justice of the peace shall have any knowledge that any of the offenses mentioned in the last section, are about to be committed, he shall issue his warrant and proceed as is directed, when complaint has been made; and if any such offense is committed, threatened or attempted in his presence, he shall immediately arrest the offender, or cause it to be done, and for this purpose no warrant or process shall be necessary; but the justice may summon to his assistance any sheriff, coroner or constable, and all other persons there present, whose duty it shall be to aid the justice in preserving the peace, arresting and securing the offenders and all such as obstruct or prevent the justice, or any of his assistants in the performance of their duty; and any person who shall, when summoned to

aid in arresting and securing an offender, refuse to give such assistance, shall pay five dollars to the use of the county.

Sec. 203. In case of the breach of any recognizance entered into in a criminal case, the same shall be certified and returned to the district court, to be proceeded in according to law.

Breach of recognizance to be certified to district court.

Sec. 204. If, in the progress of any trial before a justice of the peace, under the provisions of this act, it shall appear to the justice that he has not final jurisdiction in the case before him, and the accused ought to be put upon his trial for an offense cognizable before the district court, the justice shall immediately stop all further proceedings before him and proceed as in other criminal cases cognizable before the district court.

Justice how to proceed when he has not final jurisdiction.

Sec. 205. In all cases arising under this act, it shall be the duty of the justice of the peace acting, to summon the injured party, and all others whose testimony may be deemed material, as witnesses at the trial, and to enforce their attendance by attachment, if necessary.

Justice to summon the injured party.

Sec. 206. In all cases of conviction under the provisions of this act, the justice shall enter judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution on the judgment to the use of the county.

In case of conviction, justice to enter judgment for fine and costs.

Sec. 207. If the judgment of the justice shall be affirmed or upon any trial in the district court, the defendant shall be convicted, and any fine assessed, judgment shall be rendered for such fine and costs in both courts against the defendant and his sureties.

When judgment affirmed, judgment shall be rendered for fine and costs.

Sec. 208. When a trial under the provisions of this act shall be continued by the justice it shall not be necessary for the justice to summon any witness who may be present at the continuance, but said justice shall verbally notify such witnesses, as either party may require, to attend before him to testify in the cause on the day set for trial, which verbal notice shall be as valid as a summons.

When cause continued witnesses present may be verbally notified to appear.

Sec. 209. The justice may require of the complainant to give security for costs, as in civil cases security may be required of the plaintiff, and if he refuse, the justice may dismiss the complaint.

Justice may require security for costs, as in civil actions.

All fines collected by justice to be paid to county treasurer.

Sec. 210. All fines imposed by any such court, if paid before the accused is committed, shall be received by the magistrate who constituted the court, before which the accused was convicted, and by such magistrate paid over to the county treasurer, within thirty days after the receipt thereof, to be distributed according to law.

If party committed, fines to be paid to sheriff.

Sec. 211. If the accused be committed, payment of any fine imposed upon him shall be made to the sheriff of the county, who shall, within thirty days after the receipt thereof, pay over the same to the county treasurer, for the purposes aforesaid.

Penalty for refusing to pay over money collected for fines.

Sec. 212. If any person who shall have received any such fine or any part thereof, shall neglect to pay over the same pursuant to the foregoing provisions, it shall be the duty of the district attorney immediately to commence suit therefor, and to prosecute the same diligently to effect.

#### FORMS OF WRITS, &c., IN CRIMINAL PROCEEDINGS.

Form of warrant.

Sec. 213. The following forms may be used under this act :

##### *Form of warrant.*

Territory of Dakota, } ss.  
county of }

To the sheriff or any constable of said county :

Whereas, \_\_\_\_\_, has this day complained in writing to me, on oath, that \_\_\_\_\_ did on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18\_\_\_\_, at \_\_\_\_\_, and prayed that the said \_\_\_\_\_ might be arrested and dealt with according to law; now therefore in the name of the United States, you are commanded forthwith to apprehend the said \_\_\_\_\_ and bring him before me, to be dealt with according to law.

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18\_\_\_\_.  
J. P., Justice of the peace.

##### *Form of certificate of conviction.*

Form of certificate of conviction.

Territory of Dakota, } ss.  
county of }

At a justices' court held at my office in said county, before me \_\_\_\_\_, a justice of the peace in and for said county,

for the trial of \_\_\_\_\_ for the offense hereinafter stated,  
 the said \_\_\_\_\_ of, &c., was convicted of having on the  
 \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_, at \_\_\_\_\_, in said  
 county (here state the offense as in the warrant), and upon such  
 conviction, the said court did adjudge and determine that the  
 said \_\_\_\_\_ should pay a fine of \_\_\_\_\_ dollars, (and if im-  
 prisonment be allowed, add) and be imprisoned in the common  
 jail of the county \_\_\_\_\_ days, (if the fine be paid, add)  
 and the said fine has been paid to me.

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.  
 J. P., Justice of the peace.

*Form of execution.*

Form of execu-  
 tion.

Territory of Dakota, }  
 county of \_\_\_\_\_ } ss.

To the sheriff or any constable of said county:

Whereas, at a justice's court held at my office in said county,  
 for the trial of \_\_\_\_\_, for the offense hereinafter stated,  
 the said \_\_\_\_\_ of, &c., was convicted of having, on the  
 \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_, in said county,  
 (here state the offense as in the warrant), and upon conviction  
 the said court did adjudge and determine that the said  
 \_\_\_\_\_ should pay a fine of \_\_\_\_\_ dollars; and whereas, the  
 said fine has not been paid by the said \_\_\_\_\_, these are  
 therefore, in the name of the United States, to command you to  
 levy distress on the goods and chattels, (&c., as in execution  
 against the goods or body in civil cases.)

*Form of order to bring up prisoner.*

Form of order  
 to bring up pris-  
 oner.

Territory of Dakota, }  
 county of \_\_\_\_\_ } ss.

To the keeper of common jail of said county:

The undersigned, one of the justices of the peace in and for  
 said county, sitting at a court for the trial of \_\_\_\_\_ now in  
 your custody in the common jail of said county, in the name of  
 the United States, do hereby order and direct you to bring the  
 said \_\_\_\_\_ forthwith before me, at my office in said county,  
 together with the warrant by which he was committed to your  
 custody, in order that he may be tried.



Given under my hand, this       day of       , A. D. 18   .  
J. P., Justice of the peace.

*Form of commitment upon sentence.*

Form of com-  
mitment upon  
sentence.

Territory of Dakota, }  
county of       } ss.

To any constable and the keeper of any common jail of said  
county :

Whereas, a justice's court held at my office in said county,  
for the trial of       , for the offense hereinafter stated, the  
said       , of &c., was convicted of having, on the  
day of       , A. D. 18   , in the said county; (here  
state the offense, as in the warrant), and upon conviction the  
said court did adjudge and determine, that the said       ,  
should be imprisoned in the common county jail of said county  
for       days; therefore, you the said constable, are com-  
manded in the name of the United States, forthwith to convey  
and deliver the said       to the said keeper; and you  
the said keeper, are hereby commanded to receive the said  
into your custody, in the said jail, and him there safely  
keep until the expiration of said       days, or until he  
shall be thence discharged by due course of law.

Given under my hand, this       day of       , A. D. 18   .  
J. P., justice of the peace.

*Form of commitment after arrest, and before trial.*

Form of com-  
mitment after  
arrest and be-  
fore trial.

Territory of Dakota, }  
county of       } ss.

To the sheriff or any constable, and to the keeper of the com-  
mon jail of said county :

Whereas,       has been this day brought before the  
undersigned, one of the justices of the peace in and for said  
county, charged on the       day of       , A. D.  
18   ,       , in said county (here state the offense, as in the  
warrant), and the said       not having given bail to ap-  
pear and answer for the said offense, therefore you the said  
constable, are commanded in the name of the United States,  
forthwith to convey, and deliver into the custody of the said  
keeper, the body of the said       ; and you, the said  
keeper are hereby commanded to receive the said       into  
your custody in the said jail, and him there safely keep, until

he shall be required to be brought before the court to be tried, or shall be otherwise discharged by due course of law.

Given under my hand, this                      day of                      ,  
A. D. 18                      .

J. P., justice of the peace.

*Form of commitment where justice on the trial shall find that he has not jurisdiction of the case.*

Territory of Dakota, }  
                                  } ss.  
                                  } county of

*Form of commitment where justice on the trial shall find that he has not jurisdiction of the case.*

To the sheriff or any constable of said county:

Whereas,                      of, &c., has been brought this day before the undersigned, one of the justices of the peace of said county, charged on the oath of                      , with having, on the                      day of                      , A. D. 18                      , in said county committed the offense of                      , (here state the offense charged in the warrant,) and in the progress of the trial on said charge, it appearing to the said justice that the said                      had been guilty of the offense of                      , (here state the new offense found on the trial,) committed at the time and place aforesaid, of which offense the said justice has not final jurisdiction; and whereas, after examination had in due form of law, touching the said charge and offense last aforesaid, the said justice did adjudge that the said offense had been committed, and that there was probable cause to believe the said                      to be guilty thereof; and whereas, the said                      has not offered sufficient bail for his appearance to answer for said offense, you are therefore commanded, forthwith to take the said                      , and him convey to the common jail of said county, the keeper whereof is hereby required to detain him in custody, in said jail, until he shall be thence discharged according to law.

Given under my hand, this                      day of                      , A. D. 18                      .

J. P., justice of the peace.

Sec. 214. All acts and parts of acts conflicting with this act, are hereby repealed. Repeal of conflicting acts.

Sec. 215. This act shall take effect and be in force from and after its passage. Take effect when

APPROVED January 7, 1863.

## ADOPTION OF CHILDREN.

### CHAPTER 35.

#### AN ACT TO AUTHORIZE AND REGULATE THE ADOPTION OF CHILDREN.

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

Any person may adopt children.

Section 1. Any person competent to make a will is authorized in the manner hereinafter set forth, to adopt, as his own, the minor child of another, conferring thereby upon such child all the rights, privileges, and responsibilities which would pertain to the child if born to the person adopting in lawful wedlock.

The consent of the parent, or of the mayor, or of the county judge must be obtained in writing.

Sec. 2. In order thereto, the consent of both parents, if living and not divorced and separated, and if divorced and separated, or if unmarried, the consent of the parent lawfully having the care and providing for the wants of the child, or if either parent is dead, then the consent of the survivor, or if both parents be dead, or if the child shall have been and remain abandoned by them, the consent of the mayor of the city, where the child is living, or if not in a city, then of the county judge of the county where the child is living, shall be given to such adoption, by an instrument in writing, signed by the party or parties consenting, and stating the name of the parent, if known; the name of the child, if known; the name of the person adopting such child, and the residence of all, if known, and declaring the name by which such child is hereafter to be called and known, and stating also, that such child is given to the person adopting, for the purpose of adopting as his own child.

Instrument of adoption acknowledged and recorded in the same manner as deeds.

Sec. 3. Such instrument in writing shall be also signed by the person adopting, and shall be acknowledged by all the parties thereto, in the same manner as deeds affecting real estate are required to be acknowledged: *Provided*, that when

both parents of the child execute the same, the mother shall be examined apart from her husband, by the officer taking the same, and he shall certify whether or not she executed the same freely and without compulsion, or undue influence of her husband, and if not, the instrument shall not be valid; and when duly acknowledged, the same shall be recorded in the county where the person adopting resides, in the office and with the record of deeds of real estate; and shall be indexed, with the name of the parent by adoption as grantor, and the child as grantee, in its original name, if stated in the instrument.

Sec. 4. Upon the execution, acknowledgment, and record of such instrument, the rights, duties, and relations between the parent and child, by adoption, shall, thereafter, in all respects, including the right of inheritance, be the same that exist by law between parent and child by lawful birth. The relations of child changed.

Sec. 5. In case of maltreatment committed or allowed by the adopted parent, or palpable neglect of duty on his or her part, toward such child, the custody thereof may be taken from him and entrusted to another at his or her expense, if so ordered by the court; and the same proceedings may be had therefor, so far as are applicable, as are authorized by law in such a case, in the relation of master and apprentice; or the court may, on showing of the facts, require from the adopted parent, bond, with security in a sum to be fixed by him, the county being the obligee, and for the benefit of the child, conditioned for the proper treatment and performance of duty toward the child, on the part of the parent: *Provided*, that no action of the court or judge in the premises shall affect or diminish the acquired right of inheritance, on the part of the child, to the extent of such right in a natural child of lawful birth. Maltreatment of subjects. Adopted parent to be deprived of the child.

Sec. 6. This act shall take effect and be in force from and after its passage and approval. Take effect when.

APPROVED January 6, 1863.

# AMENDMENT

## CHAPTER 36.

### AN ACT TO AMEND SECTION SIX OF CHAPTER TWENTY-THREE OF THE CODE.

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

Time of annual meeting of board of county commissioners.

Register of deeds to give notice; how.

County commissioners authorized to fill vacancies in office of register of deeds.

In case of vacancy in board of county commissioners; how filled.

Conflicting acts repealed.

Section 1. The annual meeting of the board of county commissioners shall be held on the first Monday of June, and as often thereafter as may be deemed expedient, not to exceed four times in any one year, and no one session shall continue for a longer period than six days. And they shall require the register of deeds to give public notice, by posting notices in three of the most public places in the county, designating the time and place of the meeting of the board of county commissioners, at least ten days previous to the meeting of said board of county commissioners. Whenever a vacancy shall occur in the office of register of deeds by death, resignation, or otherwise, the board of county commissioners are hereby empowered to appoint a register of deeds, who shall hold his office until his successor is elected and qualified. When a vacancy occurs in the office of county commissioners, the register of deeds shall forthwith call a special election to fill such vacancy, giving at least eight days' notice previous to said election, by posting notices in three of the most public places in the county, one of which shall be posted at the place where said election is called; and all acts and parts of acts, contrary to the provisions of this act, are hereby repealed.

APPROVED January 7, 1863.

# A P P E A L .

## CHAPTER 37.

AN ACT GRANTING THE RIGHT OF APPEAL TO THE DISTRICT COURT FROM THE DECISIONS OF JUDGES OF PROBATE.

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

Section 1. That any person aggrieved by any decision of any judge of probate, within this territory, shall have the same right to appeal to the district court as is allowed in cases before justices of the peace.

Right of appeal from decision of probate judge.

Sec. 2. This act shall apply to all cases pending, or that may hereafter arise.

This act to apply to what cases.

Sec. 3. This act shall take effect from and after its passage.

Take effect when.

APPROVED January 9, 1863.

# A P P O R T I O N M E N T .

## CHAPTER 38.

AN ACT DIVIDING THE TERRITORY OF DAKOTA INTO COUNCIL AND REPRESENTATIVE DISTRICTS, AND APPORTIONING THE COUNCILMEN AND REPRESENTATIVES THEREIN.

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

Section 1. That the legislative assembly of the territory of Dakota shall, until otherwise directed by law, consist of thir-

Number of members of council and

house of representatives.      teen councilmen and twenty-four members of the house of representatives.

First council and representative district.      Sec. 2. *Be it further enacted*, That the county of Cole shall constitute the first council and representative district, and shall be entitled to a representation of three members of the council, and five members of the house of representatives.

Second council and representative district.      Sec. 3. *Be it further enacted*, That the counties of Clay, Lincoln, Deuel, Minnehaha and Brookings shall constitute the second council and representative district, and shall be entitled to a representation of three members of the council and six members of the house of representatives.

Third council and representative district.      Sec. 4. *Be it further enacted*, That the counties of Yankton and Jayne shall constitute the third council and representative district, and shall be entitled to a representation of three members of the council, and five members of the house of representatives.

Fourth council and representative district.      Sec. 5. *Be it further enacted*, That the counties of Bon Homme and Hutchinson shall constitute the fourth council and representative district, and shall be entitled to a representation of one member of the council, and two members of the house of representatives.

Fifth council and representative district.      Sec. 6. *Be it further enacted*, That the counties of Charles Mix and Bruguier shall constitute the fifth council and representative district, and shall be entitled to a representation of one member of the council, and two members of the house of representatives.

Sixth council and representative district.      Sec. 7. *Be it further enacted*, That the counties of Todd and Gregory shall constitute the sixth council and representative district, and shall be entitled to a representation of one member of the council, and two members of the house of representatives.

Seventh council and representative district.      Sec. 8. *Be it further enacted*, That the counties of Kittson, Chippewa, Stephens and Cheyenne shall constitute the seventh council and representative district, and shall be entitled to a representation of one member of the council, and two members of the house of representatives.

Take effect when.      Sec. 9. This act to take effect and be in force from and after the fifteenth day of August, A. D. 1863.

\* See Governor's message No. 1, published at conclusion of general laws.

## COUNTIES AND COUNTY SEATS.

## CHAPTER 39.

AN ACT FOR THE ESTABLISHMENT OF CLAY COUNTY,  
IN THE TERRITORY OF DAKOTA.

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

Section 1. That the district of country embraced within the following described townships of land shall be, and is hereby declared to be Clay county, to wit: Townships No. 91, north of ranges 51 and 52; also, townships No. 92, north of ranges 51, 52, and 53; also, townships No. 93, north of ranges 51, 52, and 53; also, townships No. 94, north of ranges 51, 52, and 53; also, townships No. 95, north of ranges 51, 52, and 53, west. Clay county; boundaries defined.

Sec. 2. All acts and parts of acts conflicting with the provisions of this act are hereby repealed. Conflicting acts repealed.

Sec. 3. This act shall take effect from and after its passage and approval by the Governor. Take effect when.

APPROVED January 3, 1863.

## CHAPTER 40.

AN ACT LOCATING THE COUNTY SEAT OF CLAY  
COUNTY.

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

Section 1. That the county seat of Clay county be, and the same is hereby located on the north east quarter ( $\frac{1}{4}$ ), of the north east fractional quarter ( $\frac{1}{4}$ ), of section twenty-four (24), County seat of Clay county, where located.



township ninety-two (92), north, range fifty-two (52), west, and the north west fractional quarter ( $\frac{1}{4}$ ), of the north west fractional quarter ( $\frac{1}{4}$ ), of section (19), township ninety-two (92), north of range fifty-one (51), west of the 5th principal meridian, in the territory of Dakota.

Take effect  
when.

Sec. 2. This act shall take effect from and after its passage and approval by the governor.

APPROVED January 6, 1863.

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## C O R P O R A T I O N S

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### CHAPTER 41.

#### AN ACT TO AUTHORIZE THE FORMATION OF THE MINING, MANUFACTURING AND BANKING COMPANY OF NORTH AMERICA.

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

Name of incor-  
porator.

Section 1. That Lyman W. Gilbert and his associates are hereby constituted a body politic and corporate, under the name and style of "The Mining, Manufacturing and Banking company of North America," to be located at some convenient point in the territory of Dakota, for the purpose of carrying on the mining, manufacturing and banking business, and to continue in existence for a period of fifty years, with power to make and use a common seal, and to alter and change the same at pleasure, and to make and adopt such by-laws, not inconsistent with the laws of this territory and of the United States, as they may deem useful and necessary; to sue and be sued, to plead and be impleaded, to hold by purchase or in any other lawful manner, and to dispose of the same in any way, all real estate and personal property which may be deemed necessary or useful for carrying on their operations, which they may become possessed of, in payment of debts due to said corporation.

Powers of in-  
corporation.

Sec. 2. *Be it enacted*, That the capital stock of said corporation shall not be less than one hundred thousand dollars, nor more than ten hundred thousand dollars, to be divided into shares of fifty dollars each. The amount of capital stock to be fixed by the associates at their first meeting; but if not fixed at the maximum amount of ten hundred thousand dollars, the stockholders may increase the same to the amount of ten hundred thousand dollars, or to any sum less than that, and above the amount of one hundred thousand dollars, at any regular meeting of the stockholders, properly notified beforehand of the intention to increase the said capital stock.

Sec. 3. *Be it enacted*, That the said Lyman W. Gilbert, and his associates, shall have the right to invest such portion of the capital stock of the said corporation in mining and manufacturing property as they shall deem for the best interests of the company, and such property may be received by them in payment for subscriptions to the said capital stock. The subscriptions to the capital stock to be obtained by opening books for subscriptions in the territory of Dakota, or elsewhere, for general subscriptions, or by private and personal subscriptions, as the said Gilbert and his associates may deem most desirable. The first meetings of the associates to be held at such time and place as they may deem most convenient and desirable.

Sec. 4. *Be it enacted*, That the said corporation shall, at all proper times, between the hours of ten o'clock A. M., and three o'clock P. M. of each business day, redeem, on demand, any and all notes they may have issued for circulation, at the counter of their banking house, in gold or silver, or in the current bank or federal notes, circulating in the territory; and upon a failure so to do, they shall be liable to protest and prosecution by the holder or holders of such note or notes, and shall also be prohibited from issuing more notes for circulation, until the same same shall have been redeemed and paid, together with all costs thereon. And in the event of such failure to redeem their notes, the legislative assembly of this territory reserve the right to repeal this act, thereby annulling the banking power given herein to said corporation.

Sec. 5. *Be it enacted*, That all subscribers to the capital stock who shall not have paid their subscriptions according to

Capital stock,  
how divided.

Capital stock,  
how to be in-  
vested.

Shall redeem  
notes, when and  
how.

Penalty for fail-  
ure to redeem  
notes.

Subscribers who  
have not paid  
subscriptions  
shall be liable.  
&c.

the terms agreed upon, shall be liable to the creditors of the said corporation, for all amounts remaining unpaid on their said subscriptions, and may be proceeded against in the usual way and manner for the collection of the same.

How stock shall be transferred.

Sec. 6. *Be it enacted*, That no subscriber to the said capital stock of said corporation, shall be allowed to transfer the share or shares subscribed for by him or her, until his or her subscription is fully paid, without a vote of the directors of the said corporation granting permission so to do.

Notes issued for circulation to be signed by president and cashier.

Sec. 7. *Be it enacted*, That all notes of the said corporation, issued for circulation, which shall not exceed in amount the capital stock paid in, shall be registered and signed by the president, and countersigned by the cashier of the company; and no notes shall be issued of a less denomination than one dollar.

Business to be managed by board of directors.

Sec. 8. *Be it enacted*, That the business of the said corporation shall be managed by a board of directors, consisting of not less than three, no more than nine persons, one of whom shall be elected president. The directors shall be elected annually, but a failure to elect shall not work a forfeiture of this charter, but the directors of the previous year shall continue in office until others are elected in their stead.

Directors, how elected.

Place of meeting of stockholders.

Sec. 9. *Be it enacted*, That the meetings of the stockholders may be held at such times and places as the directors may appoint, giving due notice of such meetings in some newspaper published in this territory. The first meeting of the corporators to be held at such time and place as may be most convenient for them.

President and cashier must make statement of capital stock, &c., and file the same in the office of territorial auditor.

Sec. 10. *And be it enacted*, That when said associates shall have fully organized under this act, which shall be within three years from and after the date of this act, and before they shall proceed in the transaction of their general business, they shall cause a statement signed and sworn to by the president and cashier of said company, before some officer authorized by law to administer an oath, to be filed in the office of the auditor of the territory of Dakota; said statement shall show the amount subscribed to the capital stock of said company, by whom subscribed, the place of residence of each subscriber, and the amount of each such subscription paid in. And this statement

shall be made thereafter at least once each year. And after the organization of said company, a statement each year shall be made, signed, and sworn to as stated in this section, showing the amount of capital stock paid in, the amount of specie and current funds on hand, the value of real estate and personal property owned by the company, the amount of money owing to the corporation, and the amount of the issue in circulation, and other liabilities of the company, which statement shall be filed in the office of the territorial auditor, and a copy of the same published in a newspaper in said territory. And said company failing in any or either of the provisions or requirements specified in this section, shall thereby forfeit their charter.

Sec. 11. *And be it further enacted*, That the said company, before issuing any bills for circulation in this territory, shall deposit with the auditor of this territory, government or state stocks, equal in amount to the amount of bills which said company may desire to issue for general circulation, and said auditor shall issue to said company his certificate for the amount so deposited, and said company shall not issue for general circulation a larger amount of the bills of said company than the amount specified in the said auditor's certificate, but said company shall be allowed from time to time to add to the amount so deposited, and to increase the amount of their issue in like proportion, and said amount so deposited shall be considered a security for the redemption of the bills of said company, as provided in this charter: *Provided*, that said territorial auditor shall, before receiving said deposits, give a bond in addition to his official bond in the penal sum of double the amount of stocks to be deposited with him by said company, with ample sureties, to be approved by the secretary of this territory, which bond shall be filed in the office of said secretary, and the conditions thereof shall be, that said auditor shall safely keep and account for the whole amount of the stock so deposited with him in trust for the holders of the bills of said company; to dispose of the same or a portion thereof, for the redemption of such protested bills, upon the order of a court of competent jurisdiction; to return said stocks to said company upon the redemption of the bills in circulation, or upon the withdrawal or reduction

Before issuing notes for circulation shall deposit securities with the territorial auditor.

Territorial auditor shall give bond.

of the amount of such bills in circulation, and to hand over to his successor in office all such stocks remaining in his hands, so soon as his said successor shall have given the bond required in this section; and said company or any person or persons may bring suit on said bond before any court of competent jurisdiction in this territory, and if said auditor should refuse or fail to give the bond herein required, after being notified by the secretary of the territory so to do, any other territorial officer upon giving the bond herein required, shall have all the powers, and shall perform all the duties as are by this section conferred upon the auditor, and required of him to do, but until the bond herein required be given by the auditor or other territorial officer, the provisions of this section shall not be binding upon said company. Said company shall pay said auditor, or other officer the sum of two mills per cent. per annum upon the amount deposited, as herein provided.

Compensation  
to territorial  
auditor.

Take effect  
when.

Sec. 12. This act shall take effect from and after its passage and approval by the governor.

APPROVED January 3, 1863.

## CHAPTER 42.\*

### AN ACT TO INCORPORATE THE UNIVERSITY OF DAKOTA.

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

University of  
Dakota.

Section 1. That there shall be established in this territory an institution under the name and style of the University of Dakota.

Interest on cer-  
tain lands ap-  
plied to support  
of University.

Sec. 2. That the proceeds of all lands that may hereafter be granted by the United States to the territory for the support of a university shall be and remain a perpetual fund to be called the "University Fund," the interest of which shall be appropriated to the support of the University of Dakota.

Sec. 3. That the government of the university shall be vested in a board of eighteen regents, who shall be elected by the legislature as hereinafter provided.

University to be governed by board of regents.

Sec. 4. That the first board of regents shall consist of Wm. E. Gleeson, John R. Wood, A. J. Harlan, J. L. Paine, F. D. Pease, B. E. Wood, J. W. Boyle, W. W. Brookings, John Hutchinson, James McFetridge, A. W. Puett, J. H. Shober, M. K. Armstrong, Philemon Bliss, L. B. Bothun, M. Hoyt, Geo. M. Pinney, and Enos Stutsman, who shall be divided into classes as follows: The six first named shall constitute the first class, and shall hold their office for two years; the six next in order shall constitute the second class, and shall hold their office for four years; the remaining six shall constitute the third class, and shall hold their office for six years from the fourth day of March, A. D. one thousand eight hundred and sixty-three; and biennially hereafter there shall be elected in joint convention of both houses of the legislature, six members to supply the vacancies made to occur by the provisions of this section, and who shall hold their offices for six years respectively.

First board of regents.

Sec. 5. That vacancies in the board of regents, other than regular vacancies, shall be filled by appointment by the governor, and the person or persons so appointed shall continue in office until the close of the session of the legislature next thereafter and until others are elected in their stead.

Vacancies in boards of regents, how filled.

Sec. 6. That the regents of the university and their successors in office shall constitute a body corporate, with the name and style of the "Regents of the University of Dakota," with the right, as such, of suing and being sued, of contracting and being contracted with, of making and using a common seal and altering the same at pleasure.

Power of regents.

Sec. 7. That the board of regents shall appoint a secretary, treasurer, and such other officers as they may see fit, who shall hold their office during the pleasure of the board. They shall have power to define the duties of said officers; to require them to give suitable bonds for the faithful performance of the same, and to pass such by-laws and rules of order for their own government as they may see proper.

Regents shall appoint secretary, &c.

Sec. 8. That the regents, as soon as they may deem it expedient, shall procure site for

Regents shall procure site for

erection of  
buildings.

dient, shall procure a suitable site for the erection of university buildings, and they may proceed to the erection of the same as soon as funds may be provided for that purpose, after such plan or plans as shall be approved by a majority of said board.

Shall enact laws  
for the govern-  
ment of Univer-  
sity, &c.

Sec. 9. That all the regents shall have power and it shall be their duty to enact laws for the government of the university; to elect a chancellor, who shall be *ex officio* president of the board of regents, but in his absence, or previous to his election, they may appoint one of their own number president *pro tem*. They may also appoint the requisite number of professors and tutors, and such other officers as they may deem expedient; also, to determine the amount of their respective salaries: *Provided*, that the salaries so determined shall be submitted to the legislature for their approval or dissent.

University shall  
consist of five  
departments.

Sec. 10. That the university shall consist of five departments; the department of science, literature and art; the department of law; the department of medicine; the department of the theory and practice of elementary instruction, or the normal department, and the department of agriculture. The immediate government of the several departments shall be intrusted to their respective faculties; but the regents shall have power to regulate the course of instruction, and prescribe, under the advice of the professors, the books and authorities to be used in the several departments: and also to confer such degrees and grant such diplomas as are usually conferred and granted by other universities.

Regents have  
power to re-  
move officer.

Sec. 11. That the regents shall have power to remove any officer connected with the institution whenever, in their judgment, the interests of the university require it.

Charges and  
tuition fee reg-  
ulated by re-  
gents.

Sec. 12. That the admission fee to the university and the charges for tuition in the several departments thereof, shall be regulated and prescribed by the board of regents; and as soon as in their opinion the income of the university fund will admit, tuition in all the departments shall be without charge to all students of the same, who are residents of the territory.

Certain powers  
conferred on  
regents.

Sec. 13. That the regents are authorized to expend such portions of the fund which by the provisions of this chapter may come under their control as they may deem expedient for

the purchase of apparatus, a library and a cabinet of natural history, but not in the erection of buildings; and the selection, management and control of all lands which may hereafter be granted by congress for the endowment of said university is hereby vested in the board of regents.

Sec. 14. That the regents shall have power and it shall be their duty, as soon as the requisite funds shall have been secured for that purpose to establish a preparatory department of said university and employ a principal and other teachers for the same, whose salaries may be paid from the interest of the university fund in the same manner as are those of the chancellor and professors, which preparatory department may be discontinued whenever the regents may think proper after the other departments of said university shall have been established.

When regents shall establish preparatory department, and when may discontinue same.

Sec. 15. That the regents shall make a report annually to the legislature at its regular session exhibiting the state and progress of the university in its several departments, the course of study, the number of professors and students, the amount of expenditures and such other information as they may deem proper, or as may from time to time be required of them.

Regents shall make annual report to legislature.

Sec. 16. That meetings of the board may be called by the chancellor and any six members or by any ten members thereof, and a majority of said board shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time.

By whom meetings of board shall be called.

Sec. 17. That the regents, if they shall deem it expedient, may receive into connection with the university any college within the territory upon application of the board of trustees; and such college, so received, shall become a branch of the university, and be subject to the visitation of the regents.

Other colleges may become branches of university.

Sec. 18. That no religious tenets or opinions shall be required to entitle any person to be admitted as a student in said university; and no such tenets or opinions shall be required as a qualification for any professor, tutor or officer of said university, nor shall any sectarian instruction be allowed therein.

Sectarianism prohibited.

Sec. 19. That the legislative assembly may, at any time, alter, amend, modify, or repeal this act.

Legislature may alter, &c., this act.



Sec. 20. That this act shall take effect from and after its  
To take effect, when. passage and approval by the governor.

\* See Governor's message No. 2, printed at conclusion of general laws.

## CHAPTER 43.

### AN ACT INCORPORATING THE RACINE AMENI TRANSPORTATION AND MINING COMPANY.

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

Names of members of incorporation.

Section 1. That Joseph LaBarge, jr., John B. LaBarge, Charles E. Galpin, Samuel Gaty, Ralph Tellew, Eugene Jaccard, and Darius Kunkins and their associates be and they are hereby constituted and made a body politic, and corporate with succession, by the name of the Racine Ameni Transportation and Mining Company, and by that name may contract and be contracted with, sue and be sued, plead and be impleaded within all courts of law and equity and elsewhere, may have a corporate seal, and are hereby vested with all the power and privilege necessary to carry into effect the object and purpose of this corporation.

Amount of capital stock.

Sec. 2. The capital stock of said company shall not be less than seventy-five thousand dollars, (\$75,000) nor to exceed two hundred thousand dollars, (\$200,000) to be divided into shares of one hundred dollars each, which shall be taken and held as personal property, and transferable in the manner pointed out by the by-laws of said company. Each share shall entitle the holder to one vote, which may be cast in person or by proxy.

Company to be managed by board of directors.

Sec. 3. The said Company shall be managed by a board of directors, one of whom shall be president, to be elected by the board, which board shall consist of seven members, to be elected by the stockholders. The corporators named in the first section of this act shall be the first board of directors, and shall

hold their offices until their successors are elected and qualified. The said board shall have power to pass all needful by-laws, rules and regulations for their government, not inconsistent with this charter, or in contravention of the laws and constitution of the United States.

Sec. 4. The object of said company shall be for the purpose of building for their own use, equipping, furnishing, fitting, purchasing, chartering or owning steamboats or other vessels or property, and to do all other acts and things necessary to be used in lawful business, commerce, trade or navigation upon [the] Missouri or its tributaries, or either of them, and for the carriage, transportation, or storing of lading, freight, property, mails, or passengers on said river or its tributaries, or either of them; and to carry on the business of mining for gold, silver, and all other minerals in the Territory of the United States known as Dakota, with power to buy and sell land, to erect quartz, grist and saw mills, smelting furnaces, canals, and all other works necessary to carry on said mining and milling; and to own, have, hold, buy and sell all property, real, personal or mixed, that may be necessary or proper for carrying on the business of said corporation.

Object of company.

Sec. 5. The officers of said company shall be a president and secretary, and such others as may be prescribed or established by the by-laws of said company.

Officers of company.

Sec. 6. The directors shall have power to appoint and employ all such officers, agents, superintendents and laborers as they may deem necessary to carry on the business.

Powers of directors.

Sec. 7. Books for the subscription of stock shall be opened at the office of the company in Yankton city, and also at such other places as may be directed by the corporators, or board of directors, and shall be kept open for such a length of time, and subscription shall be made under such rules as the said corporators, or board may prescribe.

Books of subscription shall be opened, in Yankton.

Sec. 8. The said company shall make their principal depot for the transfer of property, the payment of men, the chartering or purchasing of boats, packing of furs, purchasing of gold dust, &c., and the transaction of all the business pertaining thereto, at Yankton, in the territory of Dakota; and this point shall be deemed head quarters for said company, and all other

Principal place of business of company, where established.

points or places of business established by said incorporation shall be deemed and considered as agencies, and all such agencies shall make return of property, and reports of the business of their respective agencies at Yankton, at which place the business of said incorporation shall be consolidated.

Take effect  
when.

Sec. 9. This act shall take effect and be in force from and after its passage, and the legislative assembly hereby reserve the right to alter, amend, or repeal this act or any part thereof at pleasure.

APPROVED January 3, 1863.

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## H A B E A S C O R P U S .

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### CHAPTER 44.

#### AN ACT REGULATING THE PROCEEDINGS ON HABEAS CORPUS.

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

Application for  
writ of habeas  
corpus.

Section 1. If any person shall be committed or detained for any criminal or supposed criminal matter, it shall and may be lawful for him to apply to the supreme or district court, in term time, or any judge thereof in vacation, for a writ of habeas corpus, which application shall be in writing, and signed by the prisoner or some person on his behalf, setting forth the facts concerning his imprisonment, and in whose custody he is detained, and shall be accompanied by a copy of the warrant or warrants of commitment, or an affidavit that the said copy has been demanded of the person in whose custody the prisoner is detained, and by him refused or neglected to be given. The said court or judge to whom the said application shall be made, shall forthwith award the said writ of habeas corpus, unless it shall

appear from the petition itself, or from the document annexed, that the party can neither be discharged nor admitted to bail, nor in any other manner relieved; which said writ, if issued by the court, shall be under the seal of the court, if by a judge, under the hand of a judge, and shall be directed to the person in whose custody the prisoner is detained, and made returnable forthwith, to the intent that no officer, sheriff, jailer, keeper, or other person, to whom such writ shall be directed, may pretend ignorance thereof. Every such writ shall be indorsed with these words, "by the habeas corpus act;" and whenever the said writ shall, by any person, be served upon the sheriff, jailer, or keeper, or other person whatsoever, to whom the same shall be directed, or being brought to him, or being left with any of his under officers or deputies, at the jail or place where the prisoner is detained, he, or some of his under officers or deputies, shall, upon payment or tender of the charges of bringing said prisoner, to be ascertained by the court or judge awarding the said writ, and indorsed thereon, not exceeding fifteen cents per mile, and upon sufficient security given to pay the charges carrying him back, if he shall be remanded, make return of such writ, and bring or cause to be brought, the body of the prisoner, before the court or judge who granted the writ, or in case of the adjournment of the said court, or absence of the judge, then before any of the judges aforesaid, and certify the true cause of his imprisonment, within three days thereafter, unless the commitment of such person be in a place beyond the distance of twenty miles from the place where the writ is returnable; if beyond the distance of twenty miles, and not above one hundred miles, then within ten days; and if beyond the distance of one hundred miles, then within twenty days after the delivery of the writ as aforesaid, and not longer.

Service of writ.

Payment of charges.

Body brought before the judge who granted the writ

Sec. 2. When any person, not being committed or detained for any criminal or supposed criminal matter, shall be confined or restrained of his or her liberty, under any color or pretence whatever, he or she may apply for a writ of habeas corpus as aforesaid. Application shall be in writing, signed by the party or some person on his behalf, setting forth the facts concerning his or her imprisonment, and wherein the illegality of such imprisonment consists, and in whose custody he or she

Person not committed on criminal matters restrained of his liberty.

is detained, which application or petition shall be verified by the oath or affirmation of the party applying, or some other person on his or her behalf. If the confinement or restraint is by virtue of any judicial writ, or process, or order, a copy thereof shall be annexed thereto, or an affidavit made that the same has been demanded and refused; the same proceedings shall thereupon be had in all respects as are directed in the preceding section.

Return of the writ; day fixed for the hearing.

Amendment of the return.

Sec. 3. Upon the return of the writ of habeas corpus, a day shall be set for the hearing of the cause of imprisonment or detainer, not exceeding five days thereafter, unless the prisoner shall request a longer time. The said prisoner may deny any of the material facts set forth in the return, or may allege any fact to show, either that the imprisonment or detention is unlawful, or that he is then entitled to his discharge, which allegations or denials shall be made on oath. The said return may be amended by leave of the court or judge before or after the same is filed, as also may all suggestions made against it, that thereby material facts may be ascertained. The said court or judge shall proceed in a summary way to settle the said facts by hearing the testimony and arguments, as well of all parties interested civilly, if any there be, as of the prisoner and the person who holds him in custody, and shall dispose of the prisoner as the case may require; if it appears that the prisoner is in custody by virtue of process from any court legally constituted, he can be discharged only for some of the following causes :

Causes of discharge of prisoner from custody.

First: When the court has exceeded the limit of its jurisdiction, either as to the matter, place, sum, or person.

Second: Where, though the original imprisonment was lawful, yet, by some act, omission, or event, which has subsequently taken place, the party has become entitled to his discharge.

Third: Where the process is defective in some substantial form required by law.

Fourth: Where the process, though in proper form, has been issued in a case or under circumstances where the laws do not allow process or orders for imprisonment or arrest to issue.

Fifth: When, although in proper form, the process has been issued or executed by a person either unauthorized to issue or

execute the same, or where the person having the custody of the prisoner under such process, is not the person empowered by law to detain him.

Sixth: Where the process appears to have obtained by false pretence or bribery.

Seventh: Where there is no general law, nor any judgment, order, or decree of a court, to authorize the process, if in a civil suit, nor any conviction, if in a criminal proceeding.

No court or judge, on the return of a habeas corpus, shall, in any other manner inquire into the legality or justice of a judgment or decree of a court legally constituted; in all cases where the imprisonment is a criminal, or supposed criminal matter, if it shall appear to the said court or judge that there is sufficient legal cause for the commitment of the prisoner, although such commitment may have been informally made, or without due authority, or the process may have been informally made, or without due authority, or the process may have been executed by a person not authorized, the court or judge shall make a new commitment in proper form, and directed to the proper officer, or admit the party to bail, if the case be bailable.

Judge shall not in any other manner enquire into the justice of judgment.

Sec. 4. When any person shall be admitted to bail on habeas corpus, he shall enter into recognizance, with one or more securities, in such sum as the court or judge shall direct, having regard to the circumstances of the prisoner, and the nature of the offense, conditioned for his or her appearance at the next district court, to be holden in and for the county where the offense was committed, or where the same is to be tried; where any court or judge shall admit to bail or remand any prisoner brought before him or them on any writ of habeas corpus, it shall be the duty of the said court or judge, to bind all such persons as do declare anything material to prove the offense with which the prisoner is charged by recognizance, to appear at the proper court having cognizance of the offense, on the first day of the next term thereof, to give evidence touching the said offense, and not to depart the said court without leave: which recognizance so taken, together with the recognizance entered into by the prisoner when he is admitted to bail, shall be certified and returned to the proper court, on the first day

Persons to give recognizance with security.

of the next succeeding term thereof; if any such witness shall neglect or refuse to enter into a recognizance, as aforesaid, when thereunto required, it shall be lawful for the court or judge to commit him to jail until he shall enter into such recognizance, or he be otherwise discharged by due course of law; if any judge shall refuse or neglect to bind any such witness or prisoner by recognizance, when taken as aforesaid, he shall be deemed guilty of a misdemeanor in office, and be proceeded against accordingly.

Judge neglecting to bind witnesses guilty of misdemeanor.

Sec. 5. When any prisoner, brought up on a habeas corpus, shall be remanded to prison, it shall be the duty of the court or judge remanding him; if such prisoner shall obtain a second writ of habeas corpus, it shall be the duty of such sheriff, or other person to whom the same shall be directed, to return therewith the order aforesaid, and if it shall appear that the said prisoner was remanded for any offense adjudged not bailable, it shall be taken and received as conclusive, and the prisoner shall be remanded without further proceedings.

Remanding prisoner shall be by order of court; proceedings in case of second writ.

Sec. 6. It shall not be lawful for any court or judge, on a second writ of habeas corpus obtained by such prisoner, to discharge the said prisoner, if he is clearly and specifically charged in the warrant of commitment with a criminal offense, but the said court or judge shall, on the return of such second writ, have power only to admit such prisoner to bail, where the offense is bailable by law, or remand him to prison; where the offense is not bailable, or where such prisoner shall fail to give the bail required.

Power of judge under second writ.

Sec. 7. No person who has been discharged by order of a court or judge on a habeas corpus, shall be again imprisoned, restrained, or kept in custody for the same cause; unless he be afterwards indicted for the same offense; nor unless by the legal order or process of the court wherein he is bound by recognizance to appear. The following shall not be deemed to be the same cause:

Persons once discharged, not to be again committed, unless again indicted, &c.

First, if after a discharge for a defect of proof, or on any material defect in the commitment, in a criminal case, the prisoner should be again arrested on sufficient proof, and committed by legal process for the same offense.

Second, if, in a civil suit, the party has been discharged for

any illegality in the judgment, or process, and is afterwards imprisoned by legal process for the same cause of action.

Third, generally, whenever the discharge has been ordered on account of the non-observance of any of the forms required by law, the party may be a second time imprisoned, if the cause be legal, and the forms required by law observed.

Sec. 8. If any person shall be committed for a criminal, or supposed criminal matter, and not admitted to bail, and shall not be tried on or before the second term of the court having jurisdiction of the offense, the prisoner shall be let at liberty by the court, unless the delay shall happen on the application of the prisoner, if such court at the second term shall be satisfied that the due exertions have been made to procure the evidence for and on behalf of the people, and that there are reasonable grounds to believe that such evidence may be procured at the third term, they shall have power to continue such case till the third term, if any such prisoner shall have been admitted to bail for a crime other than a capital offense, the court may continue the trial of said cause to a third term, if it shall appear by oath or affirmation that the witnesses for the people of the territory are absent, such witnesses being mentioned by name, and the court shown wherein their testimony is material.

When prisoner may be discharged from want of prosecution; continuance of cause where witnesses cannot be had.

Sec. 9. To prevent any person from avoiding or delaying his trial, it shall not be lawful to remove any prisoner on habeas corpus under this act out of the county in which he or she is confined, within fifteen days next preceding the term of the court at which such person ought to be tried, except it be to convey him or her into the county where the offense with which he or she stands charged, is properly cognizable.

Writ shall not be granted so as to delay trial, in certain cases.

Sec. 10. Any person being committed to any prison, or in custody of any officer, sheriff, jailer, keeper, or other person, or his under officer or deputy, for any criminal or supposed criminal matter, shall not be removed from the said prison, or custody, into any other prison or custody, unless it be by habeas corpus, or some other legal writ; or where the prisoner shall be delivered to the constable, or other inferior officer, to be carried to some common jail; or shall be removed from one place to another, within the county, in order to his discharge

Provisions as to removal of prisoner from one place or jail to another; penalty for improper removal.



or trial in due course of law; or in case of sudden fire, infection, or other necessity; or where the sheriff shall commit such prisoner to the jail of an adjoining county for the want of a sufficient jail in his own county, as is provided in the act concerning jails and jailors; or where the prisoner, in pursuance of a law of the United States, may be claimed or demanded by the executive of the United States, or territories; if any person shall, after such commitment as aforesaid, make out, sign, or countersign any warrant or warrants for such removal, except as before excepted, then, he or they shall forfeit to the prisoner or aggrieved party, a sum not exceeding three hundred dollars, to be received by the prisoner or party aggrieved, in the manner hereinafter mentioned.

Penalty if judge fail or delay to issue writ

Sec. 11. Any judge empowered by this act to issue writs of habeas corpus, who shall corruptly refuse to issue such writ, when legally applied to, in a case where such writ may lawfully issue, or who shall for the purpose of oppression, unreasonably delay the issuing of such writ, shall, for every such offense, forfeit to the prisoner or party aggrieved, a sum not exceeding five hundred dollars.

Officer refusing to execute and return writ punished as for a contempt.

Sec. 12. If any officer, sheriff, jailer, keeper, or other person to whom any such writ shall be directed, shall neglect or refuse to make the returns as aforesaid, or to bring the body of the prisoner according to the command of said writ, within the time required by this act, all and every such officer, sheriff, jailer, keeper, or other person, shall be deemed guilty of contempt of the court or judge who issued said writ; whereupon, the said court or judge may and shall issue an attachment against such officer, sheriff, jailer, keeper, or other person, and cause him or them to be committed to the jail of the county, there to remain without bail or mainprize, until he or they shall obey the said writ, such officer, sheriff, jailer, keeper, or other person, shall also forfeit to the prisoner or aggrieved party, a sum not exceeding five hundred dollars, and shall be incapable of holding or executing his said office.

Officer having custody, removing or concealing him to evade service of writ, how punished,

Sec. 13. Any one having a person in his custody or under his restraint, power, or control, for whose relief a writ of habeas corpus is issued, who with intent to avoid the effect of such writ, shall transfer such person to the custody, or place

him or her under the control of another, or shall conceal him or her, or change the place of his or her confinement, with intent to avoid the operation of such writ, or with intent to remove him or her out of this territory, shall forfeit for every such offense, one thousand dollars, and be imprisoned not less than one year, nor more than five years; if any prosecution for the penalty incurred under this section, it shall not be necessary to show that the writ [of] habeas corpus had issued at the time of the removal, transfer, or concealment therein mentioned, if it be proven that the acts therein forbidden were done with the intent to avoid the operation of such writ.

Sec. 14. Any sheriff, or his deputy, any jailer or coroner, having custody of any prisoner committed on a civil or criminal process of any court or magistrate, who shall neglect to give such prisoner a copy of the process, order or commitment by virtue of which he is imprisoned, within six hours after the demand made by said prisoner, or any one on his behalf, shall forfeit five hundred dollars.

Officer keeping prisoner refusing to give him a copy of commitment, how punished.

Sec. 15. Any person who, knowing that another has been discharged by order of a competent judge or tribunal, on a habeas corpus, shall, contrary to the provisions of this act, arrest or detain him again for the same cause which was shown on the return of such writ, shall forfeit five hundred dollars for the first offense, and one thousand dollars for every subsequent offense.

Penalty for re-arresting prisoner for same cause, after discharge.

Sec. 16. All the pecuniary forfeitures under this act, shall enure to the use of the party for whose benefit the writ of habeas corpus issued, and shall be sued for and recovered, with costs, in the name of the territory, by every person aggrieved.

Pecuniary penalties herein imposed to go to person for whom writ was issued.

Sec. 17. In any action or suit for any offense against the provisions of this act, the defendant or defendants may plead the general issue, and give the special matter in evidence.

General issue may be pleaded.

Sec. 18. The recovery of the said penalties shall be no bar to a civil suit for damages.

Recovery of penalties not to bar civil action.

Sec. 19. The supreme and district courts within this territory, or the judges thereof in vacation, shall have power to issue writs of habeas corpus, for the purpose of bringing the body of any person confined in any jail within the same before them, to testify or be surrendered in discharge of bail. When a writ

Who may issue writ; for what purposes; writ may run into any county; return of prisoner to proper custody; compensation of officers.

of habeas corpus shall be issued for the purpose of bringing into court any person to testify, or the principal, to be surrendered in discharge of bail, and such principal or witness shall be confined in any jail in this territory out of the county in which such principal or witness is required to be surrendered, or to any county in this territory, and there be executed and returned by any officer to whom it shall be directed, and the principal, after being surrendered, or his bail discharged, or a person testifying as aforesaid shall by the officer executing such writ, be returned by virtue of an order of the court, for the purpose aforesaid, an attested copy of which, lodged with the jailer, shall exonerate such jailer from being liable for an escape. The party praying out such writ of habeas corpus shall pay to the officer executing the same, such reasonable sum for his services as shall be adjudged by the courts respectively.

Sec. 20. This act shall take effect and be in force from and after its passage.

APPROVED January 9, 1863.

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## HOLIDAYS.

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### CHAPTER 45.

#### AN ACT TO DESIGNATE THE HOLIDAYS TO BE OBSERVED IN THE ACCEPTANCE AND PAYMENT OF BILLS OF EXCHANGE AND PROMISSORY NOTES.

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

Certain holidays upon which demands for payment of notes, &c., cannot be made.

Section 1. The following days, namely : the first day of January ; Washington's birthday, or the twenty-second day of February ; the fourth day of July ; thanksgiving days on the proclamation of the Governor ; the twenty-fifth day of December, commonly called Christmas day, shall for all purposes what-

sover, as regards the presenting for payment or acceptance, and of the presenting and giving notice of the dishonor of bills of exchange, checks and promissory notes, made after the passage of this act, be treated and considered as is the first day of the week, usually called Sunday. Three days, commonly called days of grace, shall be allowed, except on sight bills or drafts; and any one of the holidays specified in this act, coming within the three days of grace, shall be counted as one of such days of grace.

Sec. 2. This act shall take effect and be in force from and To take effect when. after its passage.

APPROVED January 2, 1863.

## JUDICIAL DISTRICTS.

### CHAPTER 46.

AN ACT CONCERNING THE JUDICIAL DISTRICTS OF THE TERRITORY, AND FIXING THE TIME FOR HOLDING THE COURTS AND FOR OTHER PURPOSES.

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

Section 1. The counties of Clay, Cole, Lincoln, Minnehaha, First judicial district; when court shall be held. Brookings and Deuel shall constitute the first judicial district, and the district court shall be held at Vermilion in Clay county on the first Tuesday of May, and the first Tuesday of September in each year, and the counties of Kittson, Stephens, Chipewa and Cheyenne, shall be attached to and form part of said first judicial district for all judicial purposes.

Sec. 2. The counties of Yankton and Jayne shall constitute Second district; when court shall be held. the second judicial district, and the district court shall be held at Yankton on the third Tuesday of May, and the third Tuesday of September in each year, and all that portion of the ceded lands within the territory not embraced within any county or

counties in this territory, is hereby attached to said second judicial district for judicial purposes.

Third district;  
when court  
shall be held.

Sec. 3. The counties of Bon Homme, Hutchinson, Charles Mix, Bruguier, Todd and Gregory shall constitute the third judicial district, and the district court shall be held at Bon Homme, in Bon Homme county, on the first Tuesday in June, and first Tuesday of October in each year.

Supreme court  
shall be held an-  
nually—where.

Sec. 4. The supreme court shall be held at Yankton, annually on the first Tuesday of December in each year.

District clerk.

Sec. 5. There shall be one clerk in each district who shall reside in said district, and he shall appoint a deputy clerk in each of the organized counties in his district.

In case of sick-  
ness of judge,  
either of other  
judges may hold  
court.

Sec. 6. In case of the absence or sickness of any judge, or at his request, either of the other judges shall have power to hold his term of court.

Take effect  
when.

Sec. 7. This act shall take effect and be in force from and after its passage and approval by the governor.\*

\* See Governor's message No. 2, published at conclusion of general laws.

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## LOGS AND LUMBER.

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### CHAPTER 47.

#### AN ACT TO SECURE THE FREE PASSAGE OF LOGS AND LUMBER DOWN THE SEVERAL RIVERS OF THIS TERRITORY.

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

Rivers declared  
public highways  
for certain pur-  
poses.

Section 1. That all rivers within the territory of Dakota, of sufficient size for floating or driving logs, timber or lumber, and which may be used for that purpose, are hereby declared

to be public highways, so far as to prevent obstructions to the free passage of logs, timber or lumber down said streams, or either of them.

Sec. 2. That no dam or boom shall hereafter be constructed or permitted on any river, as specified in this act, unless said dam or boom shall have connected therewith a sluiceway, lock, or other fixture, sufficient and so arranged as to permit logs, timber and lumber to pass around, through, or over said dam or boom without unreasonable delay or hindrance.

Regulation in regard to dams and booms.

Sec. 3. Any boom or wear now in or on any river as aforesaid, that is so constructed as to prevent the free passage of logs or lumber, is hereby declared a public nuisance, which shall be abated unless a suitable sluiceway, lock or passage, as above provided, be made thereon as aforesaid within thirty days after written notice given by any person interested; and any person or persons so owning, holding or occupying said boom or wear, shall be liable to pay five dollars for every day the same shall be permitted to remain in or on said river, after having had thirty days' notice to remove said nuisance, which may be recovered before any justice of the peace having jurisdiction of the case, and the amount so recovered shall be collected by said justice, and paid into the county treasury of the proper county for the use of common schools therein; and shall furthermore be liable for any damages sustained by individuals by reason of said nuisance.

Certain booms declared nuisances.

Penalty.

Sec. 4. This act shall take effect and be in force from and after its passage.

To take effect when.

APPROVED January 2, 1863.

## CHAPTER 48.

### AN ACT FOR THE PROTECTION OF THE OWNERS OF SAW LOGS IN THIS TERRITORY.

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

Section 1. Any person who shall willfully, and without authority, take any saw logs that may be on any river on the

Persons guilty of destroying logs; penalty.

land adjoining or near a river, which may have floated down said river, or on to said land, and shall remove or attempt to remove the said logs, or who shall cut or split said logs, or otherwise destroy or injure them, shall be held guilty of a misdemeanor, and upon conviction of any of the said offenses, shall be punished by imprisonment in the county jail of the proper county, not more than one year nor less than three months, and shall pay a fine of not more than one hundred dollars, or less than ten dollars.

Justice of peace shall have jurisdiction of offenses against this act.

Sec. 2. 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 the logs taken or removed, 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 twenty nor more than eighty dollars; and if any person on conviction for such offense, shall refuse or neglect, for the space of three 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 one nor more than three months.

Power of officers to arrest persons charged, with taking or removing saw logs.

Sec. 3. It shall be lawful for any officer, in whose hand a writ shall have been placed, for the apprehension of any person or persons charged with taking or removing any saw logs, to arrest such person or persons on any part of a river or lake, or any island in a river or lake contiguous to his proper county, and to secure the logs so taken or removed, so that the owner thereof may be put in possession of the same.

Penalty for purchasing, &c., saw logs taken or removed.

Sec. 4. Any person who shall purchase, receive or secrete saw logs so taken or removed, or who shall cut or otherwise injure logs so taken or removed, shall be punished in the same manner and to the same extent, as is provided in this act for taking, removing or destroying saw logs, as herein provided.

Take effect when.

Sec. 5. This act shall take effect and be in force from and after its passage and approval by the governor.

APPROVED January 6, 1863.

# MANUAL LABOR.

## CHAPTER 49.

### AN ACT REGULATING THE HOURS OF MANUAL LABOR.

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

Section 1. That in all manufactories, work shops, and other places used for mechanical or manufacturing purpose in the territory of Dakota, where children under the age of eighteen years and women are employed, the time of labor of the persons aforesaid shall not exceed ten hours for each day; and any owner, stockholder, overseer, or employer, clerk, or foreman, who shall compel any woman or any child under eighteen years old, to labor in any day exceeding ten hours, or shall permit any child under the age of fourteen to labor in any factory, work shop, or other place used for mechanical or manufacturing purposes for more than ten hours in any one day, where such owner stockholder, overseer, employer, clerk, or foreman has control, such person so offending shall be liable to a prosecution in the name of the territory of Dakota, before any justice of the peace or court of competent jurisdiction of the county wherein the same shall occur, and upon conviction thereof be fined in any sum not less than ten nor more than one hundred dollars. Where women and children are employed, time of labor shall not exceed ten hours each day.

Sec. 2. That in all engagements to labor in any mechanical or manufacturing business, a day's work, when the contract of labor is silent upon the subject, or when there is no express contract, shall consist of ten hours; and all agreements, contracts or engagements in reference to such labor shall be so construed. Contracts, how to be construed.

Sec. 3. That whenever a fine shall be collected in accordance with the provisions of this act, the same shall be paid over to the county treasurer of the county wherein the trial may be had, and the same shall be by them disbursed for the benefit of common schools. Fines to be paid into county.

Sec. 4. This act shall take effect and be in force from and after its passage. Take effect when.

[APPROVED January 6, 1863.]



# MILITARY ACCOUNTS.

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## CHAPTER 50.

### AN ACT APPOINTING AND AUTHORIZING A COMMISSIONER TO AUDIT THE MILITARY ACCOUNTS AGAINST THE TERRITORY OF DAKOTA.

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

Commissioner  
to audit milita-  
ry accounts.

Section 1. That James Tufts is hereby appointed and constituted a commissioner to audit all of the military accounts outstanding against the Territory of Dakota.

Persons having  
accounts to pre-  
sent them to  
commissioner.

Sec 2. That all persons having military claims against the Territory, are hereby required to present them to the said James Tufts on or before the first day of March, 1863, and he, the said James Tufts, shall have the same audited and presented to the auditor by the 18th of March, A. D. 1863.

Auditor to issue  
warrants.

Sec. 3. When the claims audited and certified to by the said James Tufts, shall be presented by him to the auditor, the auditor shall forthwith issue territorial warrants to the persons entitled to the same as per amount designated by said commissioner, said warrants to be redeemable when the General Government appropriates and furnishes the funds for the redemption of the same.

Powers of audi-  
tor conferred on  
deputy auditor.

Sec. 4. That the deputy auditor is hereby empowered to perform all the duties herein given to the auditor.

Compensation  
paid to commis-  
sioner.

Sec. 5. All persons having claims audited by the commissioner herein designated shall pay the said commissioner one and a half per cent for auditing the same.

To take effect  
when.

Sec. 6. This act shall be in force from and after its passage.

APPROVED January 9, 1863.

## MILL DAMS AND MILLS.

## CHAPTER 51.

AN ACT TO ENCOURAGE THE ERECTION OF MILL  
DAMS, AND MILLS.

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

Section 1. When any person may be desirous of erecting and maintaining a mill dam upon his own land, across any water course not navigable, and shall deem it necessary to raise the water by means of such dam, or occupy ground for mill yard, so as to damage, by overflowing, or otherwise, real estate not owned by [him], nor damaged by consent, he may obtain right to erect and maintain said dam, by proceeding as in this act provided.

Right to erect  
dams, how ob-  
tained.

Sec. 2. He shall present to the judge of any court of record in which jury trials are had in the county, or if there be no such court in the county, then in the district in which said dam or any part thereof is to be located, a petition setting forth the place as near as may be, where said dam is to be located, the height to which it will be raised, the purposes to which the water power will be applied, and such other facts as may be necessary to show the objects of the petition.

Shall present  
petition to judge  
what to contain.

Sec. 3. Upon the presentation of such petition, the judge shall appoint three disinterested residents of the county, in which said dam or a part of it is to be erected, commissioners to meet at the place of its proposed erection, on a day specified by such judge, and to inquire touching the matters contained in said petition, and the judge shall fix the fees of said commissioners.

Judge shall ap-  
point commis-  
sioners; their  
duties.

Sec. 4. Before entering upon their duties, the commissioners shall severally take and subscribe an oath before some person

Commissioners  
shall take oath.

qualified to administer oaths, faithfully and impartially to discharge the duties of their appointment.

Notice of meeting to be given.

Sec. 5. At the request of the petitioner the commissioners shall give, or cause to be given, notice of the time, place and object of their meeting to every person named by said petitioner.

Five days' notice to be given, upon whom served.

Sec. 6. At least five days notice shall be given in all cases, and in cases of infants such notice shall be served on their guardians, or on the person with whom they reside; in case of idiots, lunatics or distracted persons, on their guardian, if they have any, and if not, then on the person under whose care or charge they may be found; in cases of *femes covert*, on the husband as well as the *femes covert*; but notices to non-residents of the county or counties where said dam or a part of it is to be located, shall be published in some newspaper in the county aforesaid, or the one nearest thereto, for three weeks in succession, previous to the meeting of said commissioners.

Duty of commissioners when convened.

Sec. 7. The commissioners shall meet at the time and place specified in the notice, and shall proceed to examine the point at which said dam is proposed to be erected, and the lands and real estate above and below, which will probably be injured by the erection of said dam; shall hear the allegation and testimony of all parties interested, and shall proceed to make a separate assessment of damages which will result to any person by the erection of said mill dam and its maintenance forever.

Shall file report of proceedings, &c., in office of clerk of court.

Sec. 8. Within thirty days after completing their examination, the commissioners shall file the petition, their appointments, jurats, and a report of their proceedings, in the office of the clerk of the court in the first section of this act mentioned, and shall give notice of the filing of said report as of their meeting.

Manner of payment of damages

Sec. 9. Upon the filing of said report the petitioners may make payment of the damages assessed to parties entitled to the same in the manner following, to wit:

First, to parties laboring under no disability;

Second, to guardians of infants, husbands or trustees of *femes covert*;

Third, to guardians or conservators of insane persons; and receipts for such payment filed in the office of the clerk afore-

said, shall stop the parties receipting from all further claim or proceeding in the premises. Payments to parties residing in the territory, but not in the county or counties where said dam or part of it is to be erected, as well as to the infants who have no guardian, and insane persons who have no guardians or conservators, and payments to parties residing out of the territory, and to persons whose names are unknown, and to persons who shall refuse to receive the payments when tendered, shall be made by depositing the money with the treasurer of the county or counties aforesaid, who shall pay out the same upon the order of the commissioner or court, take receipts for all payments, and file the same with the order, in the office of the clerk of the court aforesaid, and such deposit shall have the same effect as the first mentioned receipts unless an appeal be taken by the party entitled thereto.

Sec. 10. Appeals from the assessments made by the commissioners may be taken and prosecuted in the court aforesaid, by any party interested, (the petitioner excepted), not under legal disability by husbands or trustees of *femes covert*, guardians of infants, guardians or trustees of insane persons, and in cases where infants or insane persons have no guardians or conservators, appeals may be taken by the friend of such parties, and a written notice of such appeal be served upon the appellee, as a summons in ordinary civil actions: *Provided*, That no appeal shall be taken after the expiration of thirty days, from the time of the notification of the filing of the report aforesaid.

Appeals from decision of commissioners, how taken.

Sec. 11. The erection of said dam shall not be hindered, delayed or prevented, by the prosecution of any appeal: *Provided*, The petitioner shall execute and file with the clerk of the court in which the appeal is pending, a bond to be approved by said clerk with surety or sureties, conditioned that the person executing the same shall pay whatever amount is required by the judgment of the court, and abide any rule or order of the court in relation to the matter in controversy.

Erection of dam not to be hindered by prosecution of appeal  
Proviso.

Sec. 12. The appellant shall file with the clerk aforesaid a bond with security (to be approved by said clerk) in double the amount of the assessment appealed from, payable to the people of the territory, for the use of all persons interested, in the condition in which bond the proceeding appealed from shall be

Appellant to file bond.

recited, with condition for the due and speedy prosecution of the appeal, and that he or they will satisfy the judgment that may be rendered in the premises and pay the costs of the appeal, if adjudged to do so by the court in reference to the matter in controversy.

Proceedings upon appeal.

Sec. 13. Appeal shall bring before the court the propriety of the amount of damages reported by the commissioners in respect to the parties to the appeal, and unless the parties otherwise agree, the matter shall be submitted to and tried by a jury as other appeal cases, and the court or jury, as the case may be, shall assess the damages aforesaid, making the verdict conform to the question and facts in the case.

Exemplary damages not allowed.

Sec. 14. No exemplary or vindictive damages shall be allowed by the commissioners, court or jury.

Judgments shall declare what.

Sec. 15. Upon verdicts rendered by juries or an assessment by the court, judgment shall be entered, declaring that upon payment of the damages assessed by the court or jury, as the case may be, and costs, if any, the right to erect and maintain the mill dam aforesaid, according to the petition, shall, as against the parties interested in such verdict be, and remain in the petitioner, his heirs and assigns forever, subject to be lost as hereinafter provided, and payments of such judgments may be made as payments of assessments, by the commissioners, as hereinbefore provided.

Previous right not impaired.

Sec. 16. No mill dam shall be erected or maintained under the provisions of this act to the injury of any water power previously improved.

When action for damages shall not be sustained.

Sec. 17. No action for damages occasioned by the erection and maintenance of a mill dam, shall be hereafter sustained unless such action be brought within two years after the erection of said dam: *Provided*, That such limitation shall not run against or apply to persons living on and holding government land under the pre-emption laws, until a patent for the land damaged or overflowed shall have been issued.

Proviso.

Right to raise dam.

Sec. 18. Any person may obtain a right to maintain or raise a dam heretofore erected upon his own land, across any water course not navigable, by complying with the provisions of this act, adopting his petition to the nature of the case.

Sec. 19. Upon the evidence of the commencement of proceedings as provided in the second and eighteenth sections of this act, the court before which any suit for damages occasioned by such mill dam shall be instituted after the commencement aforesaid, shall have power to suspend any such suit until the result of said proceedings shall be known. Court has power to suspend proceedings.

Sec. 20. The costs of all proceedings under this act, except such as arise or grow out of appeals, shall be paid by the petitioner, and costs of appeal shall be paid as the court may direct. Costs, by whom paid.

Sec. 21. For the purpose of making surveys and examinations relating to any proceedings under the provisions of this act, it shall be lawful to enter upon any land, doing no unnecessary injury. For purpose of making survey. may enter upon land.

Sec. 22. Any person having obtained right to erect and maintain, or to maintain or raise any dam, under the provision of this chapter, who shall not within one year thereafter begin to build, (if he has not previously built) said dam and finish the same, and apply the water power thereby created to the purposes stated in his petition, within three years; or in case the said dam and mills connected therewith shall be destroyed, shall not begin to rebuild in one year after such destruction, and finish in three years, or having erected such mills shall fail to keep them in operation for one year at any one time, shall forfeit all rights acquired by virtue of the provision of this act unless at the time of such destruction, the owner be an infant or otherwise disabled in law, in which case the same time shall be allowed after the removal of such disability. Rights may be forfeited, how.

Sec. 23. This act shall take effect and be in force from and after its passage and approval by the governor. To take effect, when.

APPROVED January 7, 1863.

# TERRITORIAL OFFICERS.

## CHAPTER 52.

### AN ACT PRESCRIBING THE GENERAL DUTIES OF THE TERRITORIAL TREASURER.

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

Location of  
office.

Section 1. The treasurer of this territory shall keep his office at the seat of government of this territory, shall have charge of and safely keep all public moneys which shall be paid into [the] territorial treasury, and pay out the same as directed by law, and perform all such other duties as now are or may hereafter be required of him by the laws of this territory.

Treasurer shall  
give bond.

Sec. 2. The treasurer of the territory of Dakota shall, before entering upon the duties of his office, give such bond, with ample securities, as is provided by law.

Legislature may  
require additional  
bond.

Sec. 3. The legislative assembly may, at any time during the continuance in office of the treasurer, require him to give such additional security as they shall deem necessary for the complete security of the territory.

Duties of treasurer.

Sec. 4. The treasurer shall keep an accurate account of the receipts and disbursements of the treasury, in books provided for that purpose at the expense of the territory, in which he shall specify the names of persons from whom received, to whom paid, on what account the same is received, or to whom paid, on what account the same is received or paid out, and the time of such receipt or payment.

Territorial orders;  
redemption.

Sec. 5. The treasurer shall receive in payment for public dues, the bills drawn by the auditor of the territory, in conformity with the laws of the territory, or redeem the same, if there be money in the treasury appropriated for that purpose; and on redeeming such bill, or receiving the same in payment,

he shall cause the person presenting such bill to endorse the same; and the treasurer shall write on the face of such bill "redeemed," and shall enter in his book, in separate columns, the number of such bill, its date, amount, and the name of the person to whom payable, the date of payment, and the amount of interest, if any, paid thereon.

Sec. 6. That when any bill shall be presented to the treasurer for redemption, and there shall be no funds in the treasury appropriated for that purpose, the treasurer of the territory shall indorse thereon the date of its presentation, with his signature thereto, and whenever there shall be funds in the treasury for the redemption of bills so presented and indorsed, the treasurer shall give notice of the fact in some newspaper published at the seat of government, and at the expiration of thirty days after the date of such notice, the interest on such bill shall cease.

Endorsement on orders when there are no funds for redemption; interest.

Sec. 7. The treasurer shall, on the first Monday of March, June, September, and November, deposit in the office of the auditor of the territory, all bills by him redeemed or received in payment at the treasury, and take the auditor's receipt therefor.

Deposit of paid orders with auditor.

Sec. 8. The treasurer shall make an annual report to each branch of the legislative assembly, on the third day of their session, the state of the public accounts and the funds, exhibiting the amount by him received, the amount paid out during the preceding year, and the balance remaining in the treasury.

Annual report to legislature.

Sec. 9. The treasurer shall, as often as required, submit his books, accounts, vouchers, and the funds in the treasury, to the inspection of either branch of the legislative Assembly, or any committee thereof appointed for that purpose.

Books subject to inspection.

Sec. 10. The treasurer shall, in no case, purchase or receive any bill redeemable at the treasury, or any audited account, at a less value than is expressed therein, nor shall he receive any fee or reward, aside from his annual salary, for transacting any business connected with the duties of his office.

Prohibition to treasurer.

Sec. 11. If, in any instance, the treasurer shall neglect to call to account any delinquents, whereby the public revenue may suffer loss, he shall be held and deemed accountable for the sums due by such delinquents, to all intents and purposes, the same as if the funds had actually been paid into his office.

Delinquent officers, treasurer to call to account.



Defalcation of  
treasurer; pen-  
alty.

Sec. 12. If, at any time, it shall appear from the accounts of the treasurer, the auditor, or in any other way, that the treasurer has not accounted for and paid over the public moneys of the territory as directed by law, the territory may sue for and obtain judgment against the treasurer, and his sureties, in any court of record, first giving to the persons against whom such motion shall be made, five days' notice of the time and place where and when such motion will be made, and said treasurer shall be liable to a criminal action, and upon conviction shall be punished by imprisonment at hard labor for a term not less than three nor more than ten years.

Insolvency of  
parties indebted  
to territory.

Sec. 13. If any treasurer, or any other person, become indebted to the territory, shall be insolvent, the debt of the territory shall be paid first of all debts, notwithstanding any attachment against his effects, or any voluntary assignment thereof, to pay debts, or for any other purpose.

To take effect  
when.

Sec. 14. This act shall take effect and be in force from and after its passage and approval by the Governor.

APPROVED January 3, 1863.

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## CHAPTER 53.

### AN ACT PRESCRIBING THE GENERAL DUTIES OF THE TERRITORIAL AUDITOR.

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

Location of of-  
fice.

Section 1. The auditor of the territory of Dakota shall keep his office at the seat of government of this territory, and shall do and perform all the duties appertaining thereto, which are or may be required of him by law, or resolution of the legislature.

Auditor shall  
have seal.

Sec. 2. The auditor shall keep a seal, with the device, "the seal of the auditor of the territory of Dakota," and all official copies taken from the records or other documents in his office, shall be under said seal, and shall be certified and signed by the auditor.

Sec. 3. That all accounts and claims against the territory, Adjustment of claims. which shall be by law directed to be paid out of the treasury of the territory, shall be presented to the auditor, who shall examine and adjust the same, and shall issue bills or warrants, payable at the territorial treasury, for the sums which shall be found due from the territory, specifying in each bill the date of its issue, and the name of the person to whom payable.

Sec. 4. That the bills or warrants to be so issued, shall be Form and manner of issuing warrants. printed on separate sheets of paper, and each bill or warrant shall be entered and numbered, and the number corresponding therewith shall be on the part of the sheet from which such bill shall be cut; and all such parts of sheets containing the corresponding numbers, shall be carefully preserved by the auditor in his office.

Sec. 5. That when the amount due from the territory to any Division of claims into small warrants. person shall exceed twenty dollars, the auditor, if requested, shall divide the sum due into parcels of not less than ten dollars each, and shall issue bills or warrants for the several parcels into which the amount shall be so divided.

Sec. 6. That for the redemption of all bills and warrants Territorial credit pledged for redemption. issued in conformity with the provisions of this act, the credit of the territory is hereby pledged.

Sec. 7. The auditor shall enter, in progressive order, in a Register of warrants. book or books to be provided by him for that purpose, the number of each bill or warrant by him issued, the amount thereof, the date of its issue, and the name of the person to whom issued.

Sec. 8. The auditor shall make and preserve in his office, in Record of accounts, &c. suitable books, to be procured at the expense of the territory, fair and accurate records of all such public accounts and other documents as have been or may be by law made returnable to his office, and shall keep a file in progressive order of all receipts and other vouchers relative to the business in his office.

Sec. 9. The auditor shall keep a regular account with the Account with treasurer to be kept. treasurer of this territory, in suitable books, to be provided as aforesaid, in which he shall charge the treasurer with all moneys by him received, and credit him with all bills or

warrants by him redeemed and deposited in the office of the auditor.

Annual statement to legislature.

Sec. 10. The auditor shall annually make out an accurate statement of the receipts and disbursements of the treasury for the preceding year, ending on the last day of the month previous to the one during which the legislative assembly shall commence its annual sessions; also, of the unexpended balances (if any there be) of the several appropriations, the amount remaining in the treasury, the amount of bills or warrants issued and not redeemed, (if any there be,) and shall report the same to each branch of the legislative assembly, on the third day of its session, together with such remarks on the finances of the territory as he shall deem proper for the consideration of the legislative assembly.

Exhibit of books or requirement of the legislature.

Sec. 11. That whenever required, the auditor shall submit his books, accounts and vouchers to the inspection of the legislative assembly, or any committee thereof, appointed for that purpose.

Lands subject to taxation.

Sec. 12. That the auditor shall transmit to the register of deeds of each county, on or before the first day of March in each year, a list of lands within such county, which shall have become subject to taxation within the preceding year, agreeable to the information by him received from the land office or offices in the territory.

Forms and instructions for assessing and collecting tax.

Sec. 13. The auditor of the territory shall from time to time prepare and transmit to the register of deeds of each county such general forms and instructions, in conformity with the laws in force, as, in his opinion, may be necessary to secure uniformity in assessing, charging and collecting, and accounting for the public revenue; and assessors and treasurers shall observe such forms and instructions.

Remission of penalty for non-payment of taxes.

Sec. 14. The auditor of the territory is hereby authorized to remit any penalty for the non-payment of taxes, when satisfied that the same is improperly charged, or that such penalty occurred in consequence of the negligence or error of any officer required to do any duty relative to the levy and collection of such taxes; and may from time to time correct all errors which he shall discover in the duplicate of taxes assessed in any county.

Sec. 15. That the auditor of the territory shall annually make out, and transmit to the register of deeds of each county, on or before the first day of April in each year, a statement of the taxes paid into the territorial treasury during the preceding year, and belonging to such county; and the sums named in such statement, may, at any time thereafter, be drawn from the territorial treasury, by the treasurers of the respective counties.

County taxes  
paid into territorial  
treasury.

Sec. 16. That the expense of procuring books directed by this act to be procured, and the copies of entries, surveys, and other documents from the land offices, and all other contingent expenses of his office, shall be paid by the auditor out of the contingent fund appropriated for the use of said office.

Expenses of office  
to be paid  
out of contingent  
fund.

Sec. 17. That if any officer concerned in the collection of the territorial revenue, shall fail to collect, fail to make proper return, fail to make settlement, or fail to pay over all moneys by him received and belonging to the territory at the time and in the manner required by law, the auditor of the territory shall, after the expiration of fifteen days next after the expiration of the time within which such are by law required to be performed, transmit to the register of deeds of the proper county, a statement of the sum claimed by the territory from such delinquent officer, with directions for such register of deeds to proceed against such delinquent officer and his securities in the manner prescribed by law: *Provided*, That when the auditor of the territory shall be satisfied that such default results from some inevitable accident, and not from the negligence of such officer, he may, at his discretion, postpone the instructions for bringing suit for any time not exceeding sixty days.

Failure of county  
treasurer to  
report or pay a  
tax; duty of  
auditor.

Sec. 18. The auditor is authorized to administer an oath to accountants and witnesses, in support of the justice of such accounts as may be exhibited to him for liquidation, and to certify the same accordingly.

Authorized to  
administer  
oath.

Sec. 19. Any auditor of this territory, or other officer, who shall violate any of the provisions of this act, shall be liable, on conviction thereof before some competent court, to be punished by imprisonment for a period of not less than one year, or more than ten years, or be fined not exceeding five hundred

Violation of  
provisions of  
this chapter.

dollars, or both fine and imprisonment, at the discretion of the court.

To take effect  
when.

Sec. 20. This act to take effect and be in force from and after its passage and approval by the governor.

APPROVED January 3, 1863.

## TERRITORIAL ROADS.

### CHAPTER 54.

#### AN ACT TO LOCATE AND ESTABLISH A TERRITORIAL ROAD FROM YANKTON TO FORT LOOKOUT.

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

Names of commissioners.

Section 1. That D. P. Bradford, Collin Lamont, and J. R. Hamilton, be, and are hereby appointed commissioners to locate and establish a territorial road from Yankton to Fort Lookout by the most practicable route.

Duty of commissioners.

Sec. 2. It shall be the duty of said commissioners, or a majority of them, to meet at Yankton, on or before the first Monday in June next, and proceed to locate said road.

County to pay expenses

Sec. 3. Each county shall pay the expenses incurred in locating, surveying, marking and staking the same in said county.

To take effect when.

Sec. 4. This act shall take effect from and after its passage.  
APPROVED January 9, 1863.

## CHAPTER 55.

AN ACT TO LOCATE A TERRITORIAL ROAD FROM  
YANKTON TO THE BIG SIOUX RIVER.

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

Section 1. That the persons named in section second of this Commissioners appointed. act are hereby appointed commissioners to locate, mark and survey a territorial road from Yankton, by the way of Vermilion, Elk Point and Willow Postoffice, to Paul Pacquette's ferry, on the Big Sioux river, with a branch at some convenient point to John McBride's ferry.

Sec. 2. That John Stanage, J. B. Greenway, and J. M. Names of commissioners. Stone, are hereby appointed commissioners to locate so much of said road as leads through Yankton county, and Jacob Deuel, Miles Russell, and J. W. Boyle, are hereby appointed commissioners to locate so much of said road as passes through Clay county, and Charles Labrash, Christopher Malony, and Lay Mash, are hereby appointed commissioners to locate so much of said road as passes through the county of Cole. The Places of meeting of commissioners. road commissioners for Yankton county shall meet at the town of Yankton, on the first Monday of June, 1863, and proceed to locate that portion of the road leading through Yankton county. The road commissioners of Clay county shall meet at the town of Vermilion, and proceed to locate so much of said road as passes through Clay county, on the second Monday of June, 1863, and the road commissioners of Cole county shall meet at Paul Pacquette's ferry, on the third Monday of June, and proceed to locate so much of said road as passes through Cole county. Any of the commissioners herein named shall have the power to appoint substitutes, whose duties and powers shall be the same as herein given to the other commissioners.

Sec. 3. The expense incurred in the surveying, marking County to pay expenses. and establishing said road, shall be paid by the respective counties through which said road shall pass; each county paying the expense of locating so much of said road as shall pass through the same.

Compensation  
paid commis-  
sioners.

Sec. 4. The commissioners and surveyor of said road shall each receive two dollars per day for every day actually employed in surveying and locating said road.

Plat to be filed  
in office of reg-  
ister of deeds.

Sec. 5. After the said road shall be surveyed and located, it shall be the duty of the surveyor or surveyors of said road, on or before the 10th day of September, 1863, to file in the office of the register of deeds of each county through which said road may pass, a plat of so much of said road as passes through said county.

To take effect  
when.

Sec. 6. This act to take effect from and after its passage and approval by the governor.

APPROVED January 9, 1863.

## TERRITORIAL SEAL.

### CHAPTER 56.

#### AN ACT TO ESTABLISH A SEAL FOR THE TERRITORY OF DAKOTA.

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

Description of  
territorial seal.

Section 1. That the following described seal is hereby declared to be and is hereby constituted the great seal of Dakota Territory, to wit: A tree in the open field, the trunk of which is surrounded by a bundle of rods, bound with three bands; on the right, plow, anvil, sledge, rake and fork; on the left, bow crossed with three arrows, Indian on horseback pursuing a buffalo towards the setting sun, foliage of the tree arched by half circle of thirteen stars, surrounded by the motto, "Liberty and Union, one and inseparable, now and forever;" the

words "Great Seal" at the top, and at the bottom, "Dakota Territory;" on the left, "March 2;" on the right, "1861." Seal two inches and a half in diameter.

Sec. 2. This act to take effect from and after its passage To take effect when. and approval by the governor.

APPROVED January 3, 1863.

## WOLF SCALPS.

### CHAPTER 57.

#### AN ACT PROVIDING BOUNTIES FOR WOLF SCALPS.

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

Section 1. That the county treasurer of each county in this territory is hereby authorized to pay to the person or persons the sum of fifty cents for every wolf scalp taken from a wolf killed by said person or persons, within their proper county. Said scalp to embrace both ears and a portion of the scalp leading from one ear to the other. County treasurer shall pay bounty for wolf scalps.

Sec. 2. That all persons presenting scalps to the treasurer for bounties, shall be required to take an oath before said treasurer, or some other officer of the county, where the application is made, that he or they, as the case may be, killed said wolf within the limits of said county, and upon the filing of said oath with the scalp accompanying, the said treasurer shall forthwith pay to the said person or persons the amount designated in section one of this act, out of any money in the treasury not otherwise appropriated; and if there is no money in the treasury, then the treasurer is hereby authorized to give the person or persons making said application in due form, an order to the Persons presenting scalps shall take oath.



register of deeds of his proper county, who shall at the first meeting of the board of county commissioners issue a county order to the person or persons presenting the treasurer's order for the amount therein designated.

Affidavit to be  
filed.

Sec. 3. That all affidavits accompanying such scalps shall be safely kept by the treasurers of the respective counties, and shall be handed over to their successors in office at the expiration of their terms of office, and all such scalps shall be preserved by said treasurers, and be delivered to the board of county commissioners at their June term, which scalps when so delivered shall stand as vouchers in the settlement with said treasurers, and after said scalps have so been examined, and computed they shall be destroyed by fire in the presence of said board of county commissioners.

To take effect  
when.

Sec. 4. This act shall take effect from and after its passage and approval by the governor:

APPROVED January 3, 1863.

# RESOLUTIONS & MEMORIALS.

## COMMON SOLDIERS.

### CHAPTER 58.

#### A JOINT RESOLUTION MEMORIALIZING CONGRESS FOR AN INCREASE OF PAY OF COMMON SOLDIERS.

WHEREAS, The United States is engaged in putting down the most stupendous and evil rebellion the world ever saw; and whereas, at their country's call to put down said rebellion, many hundreds of thousands of our brave and patriotic sons have hastened to the battle field, there to defend our honor and protect our flag; and whereas, since the passage of the law fixing the pay of the common soldier, the necessary articles of food and clothing for the soldier and his family have increased in price fully seventy-five per cent., thereby making the present pay of thirteen dollars per month no better than was nine dollars per month at the date of the passage of the law in August, 1861; and whereas, we believe that above all who deserve to be first and most liberally paid are those who defend their country in the "day and hour of danger;" therefore be it

*Resolved, unanimously,* That our delegate in congress be, and he is hereby, requested to use his influence in getting a law of congress increasing the pay of the common soldier. Influence of delegate Requested.

*Resolved,* That the secretary of the territory is hereby respectfully requested to cause a copy of this joint resolution and memorial to be sent to Hon. J. B. S. Todd, at Washington City, also, one each to the President of the Senate and Speaker of the House of Representatives.

## DIRECT TAX.

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### CHAPTER 59.

MEMORIAL TO THE HON. SECRETARY OF THE TREASURY UNITED STATES, PRAYING THAT THE DIRECT TAX OF DAKOTA MAY BE TAKEN OUT OF THE APPROPRIATION FOR LEGISLATIVE EXPENSES FOR THE YEARS 1861 AND 1862.

Tax to be re-  
 turned from ap-  
 propriation.

Your memorialists, the legislative assembly of the territory of Dakota, would most respectfully represent, that you would be conferring a favor upon the citizens of this territory, who are now struggling to hold their homes against the Indians. Your memorialists would further state that there is plenty of funds left of the appropriation. Your early attention to this, our prayer, would be an advantage both to the citizens of the territory and to the United States. Trusting that this, our prayer, will receive your early attention, your memorialists will, as in duty bound, ever pray.

APPROVED January 9, 1863.

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## HOMESTEAD LAW

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### CHAPTER 60.

*To the Senate and House of Representatives of the United States in Congress assembled :*

Amendment to  
 homestead law  
 asked for.

Your memorialists, the legislative assembly of the territory of Dakota, would most respectfully request, that the act entitled "an act to secure homesteads to actual settlers on the public lands," be so amended as to permit those persons coming within the provisions of said act, who settled upon lands con-

templated within said act, any time within three years prior to the passage of said act, to have the benefit of such prior settlement, and to have the time which they lived on said land prior to the taking effect of said act, to form a part and portion of the five years which they are required by said act to live on their lands, to entitle them to receive a patent, and your memorialists will as in duty bound ever pray.

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## INDIAN AFFAIRS.

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### CHAPTER 61.

#### A MEMORIAL TO THE SECRETARY OF WAR ON THE SUBJECT OF INDIAN AFFAIRS IN DAKOTA TERRITORY.

*To the Hon. E. M. Stanton, Secretary of War :*

Your memorialists, the legislative assembly of the territory of Dakota, would represent, that the people of this territory have good reason for apprehending an attack early next spring from the Sioux Indians of the upper Missouri agency, combined with Little Crow's Sioux, of Minnesota, which are now encamped on the Missouri river, near Fort Pierre. For some time past the several bands of upper Missouri Sioux have been threatening war against the settlements in southern Dakota, and have only, thus far, been restrained from a general uprising by the few friendly Indians that still adhere to the stipulations of the Harney treaty. Those friendly disposed Indians have, on account of their fidelity to said amity treaty, been disowned by the majority of the bands to which they belong, and are forbidden the hunting ground of their nation, and are outcasts from their people. In said treaty, those friendly Indians were promised in consideration of their friendly disposition toward the government, that they should be protected against insult and injury from the hostile members of their

Asking the attention of government to the state of Indian affairs on the upper Missouri, and urging the necessity of military protection.

tribes. In compliance with their treaty stipulations, these friendly Indians have not only abstained from all acts of disobedience to the government and hostility to the whites, but have exerted a restraining influence upon their wilder and less tractable brethren, which loyal acts have lost them the confidence and friendship of their people, and the privileges of the chase. Repeatedly have they demanded and implored from government the promised protection, but thus far their prayers and the treaty stipulations have been utterly disregarded, and they are reduced to the alternative of war or starvation. Their choice, under the circumstances, no one doubts, and but few can blame. The hostile tribes of the upper Missouri have notified the annuity Yanktons that with the opening of spring they would move in force down the Missouri and carry extermination and devastation in their track on both sides of the river, as far down as Sioux City. They profess to have efficient arms and abundant ammunition, and bid the Yanktons to choose between their brethren and the whites. The newly discovered gold fields on our western border, and on the tributaries of the upper Missouri, are attracting general attention, and, with suitable protection, the June rise will find the Missouri covered with boats, freighted with hardy pioneers and gold adventurers. But unless the requisite protection be afforded by the government, the development of the mineral wealth of Dakota is a question of the future, and a general Indian war, with all its horrors, in immediate prospect. We would, therefore, most earnestly urge the adoption of the policy recommended by Major General Pope—that an expedition be at once fitted out, (of infantry and cavalry) to the number of at least five thousand men, and, with the appearance of grass, move up the Missouri river and penetrate the Indian country before the various hostile tribes and bands of savages have effected a formidable combination. After suitable chastisement shall have been inflicted upon the Indians, we would recommend, as a military necessity, the construction of fortifications and quarters for the establishment of permanent military posts at such points on the Missouri river and elsewhere, as would seem to afford the greatest protection to the settlements, and to the navigation of the Missouri river. Humbly trusting that the protection of our western frontier may

be promptly and efficiently attended to, and that government will, for once, resort to certain preventative, rather than trust to doubtful cure, and we, your memorialists, will ever pray, &c.

APPROVED January 7, 1863.

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## CHAPTER 62.

A MEMORIAL TO THE SECRETARY OF THE INTERIOR AND COMMISSIONER OF INDIAN AFFAIRS, ASKING FOR THE APPOINTMENT OF A SPECIAL AGENT TO ADJUST THE CLAIMS OF THE CITIZENS OF DAKOTA TERRITORY WHO HAVE SUSTAINED LOSSES BY INDIAN DEPREDACTIONS.

*To the Honorable the Secretary of the Interior and Commissioner of Indian Affairs :*

WE, the Legislative Assembly of the Territory of Dakota, Commissioner to adjust claims of citizens of Dakota. would most respectfully represent that many of the citizens of Dakota Territory, living in the valley of the Big Sioux and Missouri rivers, have sustained heavy losses from depredations committed by the Sioux Indians, by having their cattle killed, their horses stolen, and in some instances their houses burnt, and their entire property destroyed. And we would further represent, these settlers, like most persons who emigrate to new territories, were poor and needy, and could under no circumstances meet with such losses without seriously impairing their means to procure a livelihood, and in many instances being reduced to abject poverty. Your memorialists would further represent, that most of these depredations have been committed by Indians who have been and are now the recipients of extensive annuities from the General Government. Now, your memorialists would most respectfully yet urgently request, that a special agent be immediately appointed, to repair forthwith to this territory, to adjust these claims against the Indians, and would also ask that provisions be made for their immediate payment out of the annuities coming to said Indians, and your memorialists will, as in duty bound, ever pray.

## CHAPTER 63.

*To the Hon. W. P. Dole, Commissioner of Indian Affairs:*

Asking indemnity for losses sustained by Indian depredations.

Your memorialists, the legislative assembly of the territory of Dakota, would most respectfully represent, that during the past season a large amount of property has been stolen and destroyed by the Dakota and Sioux Indians of Minnesota, in different parts of this territory; that on the 25th day of August last, the town of Sioux Falls was attacked by a party of Sisseton Indians, two of the citizens were murdered, and the rest were driven from the place. Immediately after the escape of the settlers, the town was burned, and all the improvements, crops, and other property belonging to said settlers was burned and destroyed, leaving the settlers in an utterly destitute condition, saving only the few articles of clothing and necessities that they were able to take with them in their flight. And your memorialists would further represent, that the inhabitants of Clay creek, in Clay county in this territory, were by the same Indians plundered and robbed of a large amount of property. They therefore pray that such action may be taken by the department as shall insure to said settlers, out of the annuities of said Indians, full remuneration for all losses which they may prove to the department that they have suffered from said Indians.

## CHAPTER 64.

A MEMORIAL TO BRIGADIER GENERAL COOK, COMMANDING THE MILITARY DISTRICT OF DAKOTA TERRITORY.

Asking protection from Gen. Cook.

Your memorialists, the legislative assembly of the territory of Dakota, would respectfully represent that the territory of Dakota is in urgent need of military protection; that the expedition to Fort Pierre recently fitted out under the command of Major Pattee has deprived the settled portions of the territory of much of its available defense, by the withdrawal of a portion

of the garrison stationed during the past year at Fort Randall, together with all the field-pieces, save one howitzer for the protection of the post; that the present force now at Fort Randall is quite insufficient to a successful resistance to any contingent attack by hostile Indians; that in view of the premises the peace and safety of the territory is greatly endangered, and therefore urgently request that the volunteers under command of Captain Fuller be immediately mustered into the service of the United States, to be stationed at such points in the territory as may best secure the public safety.

*Resolved*, That a copy of this memorial be signed by the speaker of the house and the president of the council, and transmitted to Brigadier General Cook by the chief clerk of this house.

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## MAIL ROUTE.

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### CHAPTER 65.

A MEMORIAL TO CONGRESS FOR THE ESTABLISHMENT OF A MAIL ROUTE FROM MANKATO, IN BLUE EARTH COUNTY, STATE OF MINNESOTA, VIA MADEIRA, SIOUX FALLS, UPPER JAMES CROSSING, YANKTON, SMUTTY BEAR'S CAMP, BON HOMME, WANNARI, TUFTSVILLE, (OR NESHUDA), PHILBRICK'S CROSSING, (OR CHOTEAU), AND GREENWOOD TO FORT RANDALL, IN DAKOTA TERRITORY.

*To the Congress of the United States :*

The Legislature of the Territory of Dakota would respectfully represent, that a great inducement for emigration and settlement in a new country, is the early establishment of mail routes and postal facilities; that, affording the pioneer direct and accessible mail facilities with the east removes one of the greatest privations experienced by the early settlers, and induces others to join him in making the western country their home;

Route asked for.  
and benefits.



that although mail routes in sparsely settled communities may not pay in a pecuniary sense, yet the government may be doubly paid by more speedy settlement and advancement of the country. And your memorialists would more respectfully call the attention of your honorable body to the fact that, at present there is no mail connection between Minnesota and souther Dakota; and that it is of the greatest importance to the future growth and development of southwestern Minnesota, the Big Sioux valley, and the Missouri river country, that direct communication by mail be established, connecting the two sections. And they would further represent, that a large portion of the country lying between Mankato and the settlements on the Missouri, in Dakota Territory, is without convenient acceptable mail facilities, and that hereby the settlers of those regions have not the means of communication with the east; and that the settlement and advancement of the country is impaired and retarded. It is further believed that were postal facilities established connecting these two sections by way of the proposed route, that it would have great inducements and attractions, and great advantages over any other route leading into the territory; and in view of the prospect of the rapid settlement of the rich agricultural land in southwestern Minnesota and southern Dakota, and of the prospective rush of emigration, at a very early period, to the rich mineral regions of the latter, just west of the Missouri, known as the Black Hills; and in view of that fact that Fort Randall is gaining importance as a distributing and outfitting point for the vast regions up the Missouri, the Black Hills, the Pacific, via South Pass, and the Niobrara, or Running Water river; and that it is to be a starting point for a Pacific mail route, (as by schedule for the next mail letting); and in view of the fact that a large portion of the emigration which has already gone into the territory has gone by this route, the evidence is conclusive that it is the natural thoroughfare: Therefore, your memorialists, the Legislature of the Territory of Dakota, would most earnestly ask for the immediate establishment of a daily connection by mail, to be carried by first class conveyances, connecting Fort Randall, on the Missouri, with the nearest navigable waters in Minnesota, at Mankato, or the continuation, in fact, of route num-

ber thirteen thousand five hundred and seventy-seven, (13,577), from St. Paul to Mankato, to Fort Randall, in Dakota territory, an initiatory step to a project ardently desired by both sections: that is, a railroad connecting the large pine and timber forest of Minnesota with the rich and fertile prairies of southern Dakota, and your memorialists will ever pray.

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## MILITARY POSTS.

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### CHAPTER 66.

A MEMORIAL OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF DAKOTA, PRAYING FOR THE ESTABLISHMENT OF A MILITARY [POST] ON THE BIG SIOUX RIVER, NEAR SIOUX FALLS.

*To the Hon. E. M. Stanton, Secretary of War :*

Your memorialist, the legislative assembly of the territory of Dakota, would most respectfully represent that the frontier settlements of western Minnesota, north-western Iowa, and southern Dakota will require for several years to come, military protection to guard the inhabitants and their property from the attacks and plundering of roaming hostile bands of Indians who are constantly ravaging that section of country; further, that all the frontier settlements of south-western Minnesota, north-western Iowa, and almost the entire valley of the Big Sioux river in Dakota, have been depopulated during the past summer through fear of hostile Indians, the inhabitants having been partially butchered in several of these settlements; further, that for the last six years, the Minnesota Sioux and the Yankton Sioux have been in the habit of coming down the river of the Big Sioux, to a rendezvous near Sioux Falls, then making that a base, strike off into north-western Iowa and southern Dakota, where they steal, ravage, and harrass the settlers, then escape before any assistance can arrive from either Forts Ran-

Establishment  
of military post  
asked for.

dall or Ridgley, and had it not been for the soldiers stationed at Sioux Falls during the late massacre in Minnesota, it is more than probable that a large number of the settlers in this territory would have met with the same fate as those of the state of Minnesota: Therefore, your memorialists would most respectfully ask, that a military post be established and occupied at an early day as possible on the Big Sioux river, in the vicinity of Sioux Falls. Your memorialists would further represent that said Sioux Falls is about half way between Forts Randall and Ridgley, on a direct line with the same, and that a military post at said point would not only protect the immediate vicinity of Sioux Falls, but would amply protect the frontier settlements of south-western Minnesota, north-western Iowa, and southern Dakota. A small force of cavalry stationed at said post would be able to keep all hostile Indians north and west of a line running from Fort Ridgley, in Minnesota, to Fort Randall in Dakota. Further, your memorialists would represent that there is abundance of building material, stone, &c., at said Sioux Falls, and your memorialists will ever pray.

APPROVED January 2, 1863.

## CHAPTER 67.

*To the honorable the Senate and House of Representatives of the United States of America:*

Establishment  
of line of mili-  
tary posts  
asked for.

Your memorialists, the legislative assembly of the territory of Dakota, would most respectfully, yet earnestly represent, that the northern frontier of the territory of Dakota is in the most pressing need of military protection; that the only military post within the geographical limits of this territory, the largest in extent of any organized, is that of Fort Randall, situate on the Missouri river, about one hundred and fifty miles from the southern boundary line, and so remote from northern Dakota as to be of no possible availability or benefit as a tower of defense; that the region composing the counties of Sheyenne, Stevens, Chippewa, and important as the basis of imports and exports between the States and British America, is completely isolated from all nature of armed support and protection, and invites, in a special manner, the timely attention and aid of congress.

Your memorialists would submit and recommend to the favor-  
 able action of congress, a line of military posts from Fort  
 Abercrombie to the town of St. Joseph, in Kittson county, in  
 said territory, commencing at Georgetown, a distance of fifty  
 miles from Abercrombie, at the following points, to wit: One  
 on Elm river, twenty-five miles distant from Georgetown; one  
 on Goose river, forty miles from Elm river; one on Turtle  
 river, fifty miles from Elm river; one on Tongue river, fifty  
 miles from Turtle river, and one at St. Joseph, twenty miles  
 from Tongue river.

The line of these several posts would be on the only practi-  
 cable route from St. Paul through this portion of the territory  
 to British America, and on the line of a heavy trade (imports  
 and exports,) between the States and the British Possessions,  
 and is the only line of communication and travel, and the mail  
 route for all the mails passing to and from the same. Such a  
 line of defense, would, also, by imparting security, incalculably  
 increase the navigation of the Red River of the North, and  
 with it, open up strong inducements to a large immigration  
 from the States and Canada. This line of posts would likewise  
 traverse the heart of the Sioux country, and in the event of a  
 league of this nation of Indians, which is now ascertained to  
 be formed for aggressive warfare, the advantage of these posts  
 cannot be over-estimated, and appeals strongly to congress to  
 take immediate action in the premises.

There is an abundance of timber conveniently accessible for  
 the prosecution of the work on all the above mentioned  
 streams, and while the outlay to the general government would  
 not be great, these posts would, at the same time, amply com-  
 pensate for any and every needful expenditure. A small gar-  
 rison at each of these points would achieve more, in a military  
 point of view, than the concentration of the same requisite  
 force at any one point, and in view of this fact, your memori-  
 alists have herein recommended the creation of several posts in  
 lieu of one post at one of the places designated.

Your memorialists, trusting that the subject will commend  
 itself to the favorable consideration of congress, pray that this  
 relief may be granted at this session, and, as in duty bound,  
 your memorialists will ever pray.

## CHAPTER 68.

A MEMORIAL AND JOINT RESOLUTION RELATIVE TO  
MAKING FORT RANDALL A DISTRIBUTING POST.

*To the Hon. E. M. Stanton, Secretary of War :*

Asking that  
Fort Randall be  
made distribut-  
ing post.

Your memorialists, the legislative assembly of the territory of Dakota, respectfully represent, that your department could materially enhance the business and growth of this territory by making Fort Randall the distributing depot for the north-west, instead of Fort Leavenworth. Your department must be aware that freights can be transported via Fort Randall to Fort Laramie and Salt Lake much cheaper than by any other route. While the route by Niobrara valley is equally practicable, the distance in overland transportation is at least three hundred miles less than from Fort Leavenworth. It is needless to remind you of the obvious advantage to border settlements resulting from the establishment of an important military depot in this [their] midst. It is an assistance with which all other territories have been favored except Dakota. We ask what we believe will result in a great saving to the general government, and at the same time confer substantial benefit upon the people of Dakota, and we shall ever pray.

*Be it resolved by the Council and House of Representatives of the Territory of Dakota, That our delegate in Congress be and is hereby instructed to use all honorable means to bring this matter to the attention of the proper department.*

APPROVED January 3, 1863.

## MILITARY ROAD.

## CHAPTER 69.

A MEMORIAL TO ESTABLISH A MILITARY ROAD FROM  
FORT RIDGLEY, MINNESOTA, TO FORT RANDALL,  
DAKOTA TERRITORY.

*To the Honorable the Senate and House of Representatives of  
the United States:*

The legislature of the territory of Dakota would respectfully represent, that at present there is no traveled road connecting Fort Ridgley with any point in southern Dakota, and that the recent Indian troubles in Minnesota and Dakota fully show, first, that, in a military point of view, it has become of the greatest importance and interest to the government that there should be such a connection by a good and practical wagon road. Your memorialists are further convinced of the necessity of the construction of such a road, when it is remembered that the unprotected state of the Big Sioux valley will require a military post at or near the falls on said river, at a very early date; and that the most practical route between the two Forts, would be by way of the said falls and Yankton, the capital of the territory, on the Missouri, to Fort Randall. And whereas, there is now no traveled routes between said Forts, except the route by Spirit Lake and Sioux City, Iowa; therefore, your memorialists would pray that an appropriation of thirty-five thousand dollars be made, or such other sum as shall be deemed adequate to lay out and construct a military road connecting these two points via Sioux Falls and Yankton, a distance of two hundred and seventy miles, thereby shortening the distance from Fort Ridgely and southern Minnesota to Fort Randall and southern Dakota, one hundred miles. And your memorialists would further represent, that all mails from southern Minnesota would pass over the same, and that all emigration from Wisconsin and southern Minnesota, to Dakota,

Asking for a  
military road  
from Ft. Ridgley  
to Ft. Randall.

would pass over said road, instead of passing over the circuitous route now traveled, by Spirit Lake and Sioux City, Iowa; and that said road would pass over a fine rolling country, free from impracticable obstructions, well watered, and nearly every acre of which is susceptible of cultivation, and your memorialists will ever pray.

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## ORGANIC ACT.

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### CHAPTER 70.

#### A MEMORIAL PRAYING CONGRESS TO AMEND SECTION SECOND OF THE ACT PROVIDING A TEMPORARY GOVERNMENT FOR THE TERRITORY OF DAKOTA.

*To the Honorable the Senate and House of Representatives of the United States in Congress assembled :*

Amendment of  
Organic Act,  
asked for.

Your memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully represent to your honorable bodies that section 2nd of the act providing a temporary government for the territory of Dakota confers unlimited veto power upon the governor of said Territory; and your memorialists earnestly pray that the aforementioned section be so amended as to give the legislature the power to pass laws by the usual two thirds majority.

Delegate in-  
structed.

Sec. 2. That our delegate be and is hereby instructed to bring this subject to the immediate notice of congress.

APPROVED January 3, 1863.

## RAILROAD AND TELEGRAPH.

### CHAPTER 71.

**MEMORIAL AND JOINT RESOLUTION TO CONGRESS,  
PRAYING THAT SECTION FOURTEEN OF "AN ACT TO  
AID IN THE CONSTRUCTION OF A RAILROAD AND  
TELEGRAPH LINE FROM THE MISSOURI RIVER TO  
THE PACIFIC OCEAN, AND TO SECURE TO THE GOV-  
ERNMENT THE USE OF THE SAME FOR POSTAL,  
MILITARY AND OTHER PURPOSES," APPROVED JULY  
FIRST, A. D. 1862, MAY BE AMENDED.**

*To the Honorable the Senate and House of Representatives in  
Congress assembled :*

Your memorialists, the legislative assembly of the territory <sup>Amendment  
asked for.</sup> of Dakota, would most respectfully represent to your honorable bodies, that an amendment to section fourteen of said act, that would require the Sioux City branch of said railroad to commence at Sioux City, Iowa, thence running west along the north side of the Missouri river, to a point at or near the mouth of the Nebraska, or Running Water river, thence up the valley of said river, on the most practicable route, connecting with the main trunk of said railroad at the most practicable point on the said railroad, a yet nearer than I would be advantageous to said railroad, and would pass over a natural route, on a direct western course, through a country well supplied with timber of the best quality, abundant and water along the whole route, and upon the Nebraska valley plenty of pine timber suitable for the construction of the road; and if the reports from explorers are to be credited, there is plenty of bituminous coal, which we believe are large inducements for the consideration of said amendments. Your memorialists would further represent that the present location of said branch road is through a barren country, entirely destitute of timber



and stone, and almost worthless, and running a south-west course to its connection, making a difference in the distance in favor of the proposed route of over one hundred miles to Fort Laramie, and the route via the Niobrara valley would open a country rich and fertile to the advancing wave of civilization, and be advantageous to government, as it would facilitate the settlement and disposal of the public lands. Trusting that this, our prayer, will receive your early attention, your memorialists will, as in duty bound, ever pray, &c.

Delegate instructed.

*Be it resolved by the Legislative Assembly of the Territory of Dakota,* That our delegate in Congress is hereby requested to use all honorable means to obtain the said amendment.

APPROVED January 7, 1863.

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## UNIVERSITY OF DAKOTA.

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### CHAPTER 72.

#### A MEMORIAL TO CONGRESS ASKING AN APPROPRIATION OF LANDS FOR THE UNIVERSITY OF DAKOTA.

*To the Honorable the Senate and House of Representatives of the United States:*

Asking appropriation of lands.

WE, your memorialists, the Legislative Assembly of the Territory of Dakota, would represent, that while the appropriation of public lands, by your honorable body, for the support of common schools is large and munificent, and one that will place the common schools of our territory upon a good and sufficient financial basis, yet there is needed for the more advanced education and discipline of our youth a university of high grade and character, and that it is our belief that such an institution is as essential to the preservation of our republican institutions as is the common school; and we would further represent, that

initiatory steps have already been taken toward the organization and incorporation of the university of Dakota, and that as soon as the necessity of the territory demands, suitable buildings will be erected or otherwise provided for the use of said university; and as no appropriation has yet been made for its endowment, we, therefore, your memorialists, most respectfully petition your honorable body to appropriate one half of a sections of land in every township, not otherwise appropriated, in the territory of Dakota, to be disposed of in a manner similar to that prescribed for the disposition of common school lands, and the proceeds thereof used exclusively for the endowment of the university of Dakota. And your memorialists will ever pray. Delegate instructed.

*Be it resolved*, That our delegate in congress be and hereby is instructed to use his endeavors to procure the appropriation specified in the above memorial.

## MESSAGES FROM THE GOVERNOR.

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No. 1.

DAKOTA TERRITORY, EXECUTIVE OFFICE, }  
Yankton, January 9, 1863. }

*To the Honorable the House of Representatives :*

GENTLEMEN: At the time when I defined the council and representative districts of this territory, and apportioned the representation thereto, I was in doubt as to the right of the white persons residing upon the unceded Indian lands on the Red River, in this territory, to be included within a council or representative district; but as I did not feel clear upon this point, I concluded to give them the benefit of the doubt. And when I approved the act of the last legislative assembly, defining the Red River district and fixing the representation thereof, I did so under a false apprehension as to the extent of the white population of said district. I have since learned, and now know by irrefragable evidence, that it entitled to a representation at all, the white population of said district would not, under the ratio of house file No. 22, entitle said district to a larger representation than one member of the house of representatives. And were it not for the existence of said act of the last legislative assembly, entitled "an act to apportion the representation to the Red River district," I could not at this time approve of any act giving to said district (if any) a larger representation than one member of the house of representatives. But, as I am convinced that a large majority of the voters of the territory desire an increased representation and a re-apportionment, I have approved and signed house file No.

22, entitled "an act dividing the territory of Dakota into council and representative districts, and apportioning the councilmen and representatives therein," and I herewith return the same.

Very respectfully,  
Your obedient servant,  
W. JAYNE, *Governor*

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No. 2.

*To the House of Representatives:*

GENTLEMEN: I have approved and signed bills of the following titles:

H. F. No. 33, An act granting to Ellis Wall a ferry charter across the Missouri river.

H. F. No. 43, A bill for an act to incorporate the University of Dakota.

H. F. No. 51, An act concerning the judicial districts of the territory, and fixing the time for holding the courts, and other purposes.

W. JAYNE, *Governor*.

EXECUTIVE OFFICE, January 9, 1863.

**PRIVATE LAWS**  
**OF THE**  
**TERRITORY OF DAKOTA,**

**PASSED AT THE SECOND SESSION**

**OF THE**  
**LEGISLATIVE ASSEMBLY,**

**COMMENCED AT THE TOWN OF YANKTON DECEMBER 1, 1862, AND CONCLUDED  
JANUARY 9, 1863.**

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**PUBLISHED BY AUTHORITY.**

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**YANKTON, DAKOTA TERRITORY.**  
**KINGSBURY & ZIEBACH, PUBLIC PRINTERS,**  
**DAKOTIAN OFFICE**  
**1862-3.**

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PRIVATE LAWS.

# PRIVATE LAWS.

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## CITIZENSHIP CONFERRED.

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### CHAPTER 1.

#### AN ACT CONFERRING THE RIGHTS OF CITIZENSHIP UPON WALTER ARCON:

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

Section 1. That Walter Arcon, of Cole county, territory of <sup>Walter Arcon  
declared a citi-  
zen.</sup> Dakota, be and is hereby declared to be a citizen of the territory of Dakota, and entitled to all the rights and privileges of other citizens of said territory.

Sec. 2. This act shall take effect and be in force from and <sup>To take effect  
when.</sup> after its passage and approval by the governor.

APPROVED January 3, 1863.



## CHANGE OF NAMES.

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### CHAPTER 2.

#### AN ACT TO CHANGE THE NAME OF NELS W. WIKING SON.

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

**Change of name** Section 1. The name of Nels W. Wikingson shall hereafter be Nels W. Berge, by which name he shall be called and known in all legal intents and purposes.

**To take effect when.** Sec. 2. This act shall take effect from and after its passage and approval by the governor.

APPROVED January 3, 1863.

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### CHAPTER 3.

#### AN ACT TO CHANGE THE NAME OF TORBJORN W. TORRISON.

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

**Change of name** Section 1. That the name of Torbjorn W. Torrison shall hereafter be Thomas W. Thompson, by which name he shall be called and known in all legal intents and purposes.

**To take effect when.** Sec. 2. This act to take effect from and after its passage and approval by the governor.

APPROVED January 3, 1863.

# DIVORCES.

## CHAPTER 4.

### AN ACT TO DISSOLVE THE MARRIAGE CONTRACT BETWEEN MATILDA IRWIN AND JOHN A. IRWIN.

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

Section 1. That the marriage contract heretofore existing between Matilda Irwin and John A. Irwin be and the same is hereby dissolved, and the said parties are hereby restored to all the rights and privileges of unmarried persons.

Sec. 2. That all property acquired and now owned by the said Matilda Irwin be and the same is hereby declared exempt from any debts or liabilities of the said John A. Irwin, and the said John A. Irwin is forever barred from any alimony in and to said property, both real and personal, and the said Matilda Irwin shall have full power to sell any real estate now owned or hereafter acquired by her, and to make and execute deeds therefor, which shall be binding both in law and equity.

Sec. 3. *And be it further enacted,* That the said Matilda Irwin shall have full and exclusive control of her child, H. Irwin, begotten in wedlock, until he shall arrive at the age of majority.

Sec. 4. This act shall take effect from and after its passage and approval by the governor.

APPROVED January 7, 1863.

## CHAPTER 5.

AN ACT TO DISSOLVE THE MARRIAGE CONTRACT  
EXISTING BETWEEN MALINDA METCALF AND MOR-  
RIS METCALF.*Be it enacted by the Legislative Assembly of the Territory of  
Dakota:*Malinda Met-  
calf and Morris  
Metcalf divorced

Section 1. That the marriage contract heretofore existing between Malinda Metcalf and Morris Metcalf, be and the same is hereby dissolved, and the said parties are hereby restored to all the rights and privileges of unmarried persons.

To take effect  
when.

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

APPROVED January 9, 1883.

## FERRIES.

## CHAPTER 6.

AN ACT TO AUTHORIZE E. CHAPPEL AND J. S. PRES-  
CHO TO ESTABLISH AND RUN A FERRY ACROSS THE  
MISSOURI RIVER AT YANKTON.*Be it enacted by the Legislative Assembly of the Territory of  
Dakota:*E. Chappel and  
J. S. Prescho  
have this bill  
passed.

Section 1. That E. Chappel and J. S. Prescho, their heirs, executors, administrators and assigns shall have, for the period of twenty-five years, the exclusive right and privilege of carrying persons and property across the Missouri river at a point opposite the foot of Douglas Avenue, in the town of Yankton, in the county of Yankton, Territory of Dakota. And said ferry franchise shall extend from said point four miles up, and four miles down said river. And it shall be unlawful for any other

person or persons to run a ferry, for pay, within said limits, after said ferry owners shall have complied with the requirements of this act.

Sec. 2. The said Chapel and Preshe, their heirs, executors, administrators or assigns shall, on or before the first day of May, A. D. 1863, place or cause to be placed at said ferry a safe and sufficient boat or boats to convey across said river all persons, teams, live stock, freight and other property that may be on either side of said river and ready to be conveyed across; and shall run, or cause the said boats to be run, at all hours of the day from sunrise to sunset, except in winter, or when the navigation of said river is dangerous on account of running ice or foggy and tempestuous weather. Their duties.

Sec. 3. The owners of said ferry privilege shall be allowed to charge the following rates: Rates of ferryage.

For two horses, mules or oxen, and wagon, with driver and load, one dollar.

For two horses, mules and buggy, with driver, one dollar.

For each additional pair of horses, mules or oxen in a team, fifty cents.

For one horse or mule with buggy and driver, one dollar.

For each lead horse or mule, twenty-five cents.

For loose cattle per head, twenty cents.

For sheep and swine per head, ten cents.

For freight, per hundred, ten cents.

And for lumber per thousand feet, one dollar.

Sec. 4. The said F. Chapel and J. S. Preshe, or their heirs, executors, administrators, or assigns, shall, on or before the first day of May, A. D. 1863, execute and file in the office of the register of deeds in and for the said county of Yankton, a bond with ample security, to be approved by said officer, in the penal sum of two thousand dollars, conditioned that they faithfully discharge the duties of ferrymen, and that they will conduct and run said ferry agreeable to the provisions and stipulations of this act. And in case that the said parties herein named shall fail to comply with either or all of the provisions, of this act, then any other person or persons who shall, within thirty days after default has been made, comply with the provisions of this act, shall have all the rights and privileges that are hereby conferred upon said Chapel and Preshe. File bond.

Rates to be  
posted.

Sec. 5. The said ferry owners shall cause a written or printed bill of the rates fixed in section three of this act, to be posted up in a conspicuous place near said ferry landing, on both sides of said river, and said bill of rates shall be kept up in view of the passing public.

If person sus-  
tain injury.

Sec. 6. Any person or persons, corporation or corporations, feeling aggrieved, or being damaged in person or property by the negligence, or by the willful act or acts of said ferry owners, or their employees, or by the violation, on the part of said ferry owners or their employees, of either or any of the provisions of this act, or by being charged a higher rate of ferryage than is herein allowed, may have a cause of civil action upon the bond required by this act, in any court of justice of competent jurisdiction in this territory; and all amounts of damage which may be decreed by said court, together with all the attending costs, shall be collected as provided by law in other civil actions. And should the said ferry owners fail to pay the said damages and costs so adjudged, they shall forfeit all the rights and privileges herein conferred upon them.

To take effect  
when.

Sec. 7. This act shall take effect from and after its passage and approval: the legislature hereby reserves to itself the right to alter, change, modify or repeal at pleasure the said charter and all rights, privileges, and immunities by this act granted to said Chapel and Preshe, their heirs, executors, and administrators and assigns, or any portion thereof.

APPROVED January 3, 1863.

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## CHAPTER 7.

### AN ACT GRANTING A FERRY CHARTER ACROSS THE MISSOURI RIVER NEARLY OPPOSITE PONCA, NEBRASKA TERRITORY.

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

Asa Madison  
and Isaiah  
Boman have fer-  
ry privileges.

Section 1. That Asa Madison and Isaiah Boman, their heirs, executors, administrators, and assigns, shall have the exclusive privilege for the period of ten years, of keeping and

maintaining a ferry across the Missouri river, nearly opposite Ponca, Nebraska Territory, and for the distance of three miles above and below said point. Said incorporators to fix said point by some permanent mound or other object, before filing their bond.

Sec. 2. That said parties shall, at all times, keep a safe and good boat, or boats, in good repair for the accommodation of all persons wishing to cross said ferry, and shall give prompt and ready attention to all passengers, freight or teams, on all occasions, from sunrise to sunset, except in tempestuous weather. <sup>Their duties.</sup>

Sec. 3. The rates charged for crossing said ferry shall not exceed the following, to wit: <sup>Rates of ferry-  
age.</sup>

For two horses, mules or oxen and wagon, with driver, one dollar.

For each additional pair of horses, mules or oxen, thirty cents.

For each two horses or mules and buggy, with driver, seventy-five cents.

For each one horse or mule, with buggy and driver, fifty cents.

For each lead horse or mule, twenty-five cents.

For loose cattle, per head, fifteen cents.

For sheep and hogs, per head, ten cents.

For each hundred pounds of freight or merchandize, ten cents.

For each thousand feet [of] lumber, one dollar.

Sec. 4. Said incorporators shall, within six months after the passage of this act, file, or cause to be filed, in the office of the clerk of the board of county commissioners of the county within which said ferry is situated, a bond to said board, with one or more sureties, to be approved by said board, in the penal sum of five hundred dollars, conditioned that they will fulfill all the duties that are imposed upon them in this act, and in case of failure or neglect to do so, they shall forfeit all the benefits that might have accrued to them from the passage of this act, but any other parties who shall comply with the conditions of this charter within three months thereafter shall be entitled to all the benefits of this act. <sup>File bond.</sup>

If person sus-  
tain injury.

Sec. 5. Any person who shall sustain any injury from the negligence or default of said ferry or ferrymen, in their employ, may have a remedy, by an action upon the bond required in this act.

To take effect  
when.

Sec. 6. This act shall take effect and be in force from and after its passage and approval.

APPROVED January 3, 1863.

## CHAPTER 8.\*

### AN ACT GRANTING TO ELLIS WALL AND HIS HEIRS A CHARTER TO A FERRY ACROSS THE MISSOURI RIVER.

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

Ellis Wall has  
what privileges.

Section 1. That Ellis Wall, his heirs, executors, administrators, or assigns, shall have the exclusive privilege, for the period of ten years, of keeping and maintaining a ferry across the Missouri river at a point opposite Greenwood, in said territory, and for a distance three miles above and below said point.

His duties.

Sec. 2. That said Wall shall at all times keep good and safe boats, in good repair, for the accommodation of all persons wishing to cross said ferry, and shall give prompt and ready attention to all passengers and teams, on all occasions, from sunrise to sunset, except in tempestuous weather.

Rates of ferri-  
age.

Sec. 3. The rates charged for crossing said ferry shall not exceed the following, to-wit:

For two horses, mules, or oxen, and wagon, with driver, one dollar.

To each additional pair of horses, mules, or oxen thirty cents.

For each two horses, or mules, and buggy, with driver, seventy-five cents.

For each one horse, or mule, with buggy with driver, fifty cents.

For each led horse or mule, twenty-five cents.

For loose cattle, per head, fifteen cents.

For sheep and hogs, per head, ten cents.

For each hundred weight of freight and merchandize ten cents.

For each thousand feet of lumber, one dollar.

Sec. 4. That said Ellis Wall shall within six months after ~~shall file bond.~~ the passage of this act, file or cause to be filed in the office of the clerk of county commissioners, within which said ferry is situated, a bond to said board, with one or more sureties, to be approved by said board, in the penal sum of five hundred dollars, conditioned that he will fulfill all the duties that are imposed upon him in this act, or in case of failure or neglect to do so, he shall forfeit all the rights and privileges that might have accrued to him from the passage of this act.

Sec. 5. Any person who shall sustain any injury from the <sup>Any person ag-</sup> negligence or default of said ferry or ferryman in his employ, <sup>grieved.</sup> may have a remedy by an action upon the bond required in this act.

Sec. 6. This act shall take effect from and after its passage. <sup>To take effect when</sup>

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\* See Governor's message No. 2, published on page 277.



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## ERRATA.

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- Page 37, sec. 1, line 7.—after office, add “or.”  
Page 39, sec. 6, line 1.—for “an,” read “any.”  
Page 43, sec. 21, line 4.—for “in,” read “of.”  
Page 43, sec. 22, line 6.—for “not,” read “no.”  
Page 47, sec. 2, line 9.—erase the word “he.”  
Page 49, sec. 10, line 5.—for “or,” read “nor.”  
Page 57, sec. 40, line 1.—for “or,” read “and.”  
Page 57, sec. 42, line 2.—before the word “toll,” insert “or,” and  
after that word erase “or.”  
Page 80, sec. 20, line 4.—for “same,” read “said.”  
Page 82, sec. 29, line 3.—erase the word “such.”  
Page 127, sec. 2, line 2.—before open, insert the word “in.”  
Page 132, sec. 3, line 2.—for “appeal,” read “appear.”  
Page 140, sec. 39, line 2.—before “criminal,” insert “all.”  
Page 166, sec. 12, line 3.—instead of “each,” read “such.”  
Page 175, sec. 59, line 4.—for “case,” read “cause.”  
Page 176, sec. 64, line 20.—for “name,” read “names.”  
Page 179, sec. 71, line 10.—for “ability,” read “liability.”