

If acquitted on
ground of vari-
ance, &c.

SECT. 5. If any person who is indicted for an offence 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 the substance of an indictment, he may be arraigned again on a new indictment, and may be tried and convicted for the same offence, notwithstanding such former acquittal.

No punishment
until convicted,
how.

SECT. 6. No person who is charged with any offence against the law, shall be punished for such offence, unless he shall have been duly and legally convicted thereof, in a court having competent jurisdiction of the cause and of the person.

Take effect,
when.

SECT. 7. This act shall take effect and be in force from and after its passage, and approval by the governor.

Approved April 30, 1862.

W. JAYNE, *Governor.*

SALVAGE.

CHAPTER 80.

AN ACT RELATIVE TO SALVAGE.

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

When boat,
&c., found adrift,
may be secured
and retained,
with what effect.

SECTION 1. When any boat, canoe, or other vessel or raft shall be lost, wrecked, or found adrift and in a perishable condition, on or in any river in this territory, any person may take up and secure the same, at or near the place where found, and may retain the same against the rightful owner or owners thereof, until salvage be paid; or may have and maintain a civil action against such owner or owners for the amount of salvage due, under the provisions of this chapter.

Taken up, to do
what.

SECT. 2. Whenever any boat, canoe, or other vessel or raft, shall be taken up and secured, if the same shall exceed the

value of ten dollars, the taker up shall forthwith go before the justice of the peace nearest to the place, and in the precinct where such property shall have been secured, and make oath that the property was wrecked or lost, and found adrift, without the consent of the owner, as he believes, and was in a perishable condition, and that he was not directly or indirectly instrumental in causing the property to be so wrecked, lost, set adrift, or placed in a perishable condition; and shall further state, under oath, a description and the quantity and quality of such property, and the time it was taken up and secured, and that he has not secreted or disposed of, directly or indirectly, any part thereof; and shall forthwith put up notices in three public places near the place, and in the county in which said property was so taken up and secured, describing said property, and the time it was taken up, and notifying the owner thereof to prove property, pay charges, and take the same away.

SECT. 3. If the owners shall apply for and identify said property by proof, under oath, certified by any person authorized to administer the same, within thirty days from the day on which the same was taken up, and shall pay to the person so taking up and securing the same, the sum of five dollars for taking up and fifty cents per day for keeping said property, for each day that has expired between the day the said property was taken up and that on which the said owner shall have applied for and identified the same, he shall be permitted to take the same away; and, if the person so taking up said property shall refuse to deliver the same to the owner thereof, or his agent, after being tendered the amount above described, the said owner may apply to the nearest justice of the peace of the county in which said property was so secured, and before him prove his right of possession to the same; whereupon the said justice of the peace, if the property is not valued at more than one hundred dollars, shall receive the sum due for taking up and keeping said property, and shall forthwith issue a writ of restitution directed to the sheriff or constable of his county.

SECT. 4. Said sheriff or constable shall thereupon proceed to take said property and deliver the same into the possession of the person legally entitled to the same; and the fees of said justice, as well as [of] the witnesses and officers executing

Duty of owners.

If taken up,
refuses to deliver.

Sheriff or con-
stable to deliver.

Fees, how paid.

If property valued at more than one hundred dollars.

the same, and all other costs arising from said examination and restitution, shall be paid by the person taking up and securing such property; but, if said property is valued at more than one hundred dollars, the said justice, after hearing the testimony in the case, shall take the same down in writing, and shall certify, to the clerk of the district court of his proper county, all his proceedings in the case, and a copy of all testimony taken therein, with a bill of costs incurred before him; and the said clerk of the district court, if satisfied that the person so applying, from the testimony given, is entitled to the possession of the said property, shall receive the amount due to the person so taking up and securing the same, and shall forthwith issue a writ of restitution, requiring the sheriff of the county to cause the property to be placed in the possession of the persons so appearing to be entitled to the same; and the said person, so taking up and securing the said property, shall be liable for all costs.

If property not applied for within thirty days.

SECT. 5. If said property shall not be applied for previous to the expiration of thirty days from the date of its being taken up, then the person taking up and securing the same shall notify the justice of the peace, before whom he made oath in the first instance, relative to the taking up and securing said property, and it shall be the duty of said justice of the peace to cause three disinterested persons to examine and assess, under oath, the value of said property so taken up, its position and condition, and make report of said examination and assessment to the said justice; and, if the property is assessed at more than ten dollars, the said justice shall forthwith cause a description and valuation of said property to be published in a newspaper of his county, for three successive weeks, and notice given that unless the owner of the said property shall appear and identify the same, and pay the charges incurred thereon, within fifty days, the property will be sold to pay the same; and, if there is no paper printed in his county, the same notice, description, and valuation of said property shall be given, by posting up the same in three public places within his county.

If property more than ten dollars.

If property exceeds one hundred dollars, to be sold by sheriff, how.

SECT. 6. At the expiration of thirty days from the date of said notice, if the property remains unclaimed and exceeds the value of one hundred dollars, said justice shall certify to the clerk of the district court of his proper county, a copy of all his doings in the case; and on receipt of said certified

copy of the proceedings, the clerk of the district court shall direct the sheriff, under the seal of the court, to sell said property at public sale, to the highest bidder, for cash, whereupon the sheriff shall give such notice of the time and place of said sale, not less than ten days, as will make the sale five days subsequent to the expiration of the fifty days' notice given by the justice of the peace.

SECT. 7. The sheriff shall pay the amount received for said property to the clerk of the district court, who shall pay all costs which have accrued in the taking up, assessing, advertising, or otherwise allowing the same fees, as are allowed in all other civil cases for the same duties; and allowing the person taking up and securing said property to select between receiving five dollars for taking up and securing, and thirty dollars for keeping the same, or twenty-five per cent. on the net proceeds of the sale thereof; the remainder of the proceeds of said sale shall be paid into the county treasury, the clerk of the district court taking the treasurer's receipt thereof, and shall be paid to the owner of such property, if application and satisfactory proof of such ownership be made within one year from the day of the sale of said property.

Of the proceeds of sale.

SECT. 8. If any property shall be assessed at one hundred dollars or less, then the justice of the peace, instead of certifying his doings to the clerk of the district court, as provided for in section six, shall, at the expiration of thirty days from the date of the notice to publisher, as provided for in this chapter, direct the sheriff or some constable to sell said property at public sale, to the highest bidder for cash, giving not less than twenty days' notice thereof; and said justice shall receive and dispose of the proceeds of such sale in the same manner and under the same regulations in all respects; and the amount, if any remaining, after paying the demands against said property, shall be paid to the county treasurer, subject to be claimed in the same manner as is provided for any sale made under the provisions of this chapter, under the authority of the clerk of the district court.

If less than one hundred dollars.

SECT. 9. In all cases when the property so taken up shall, in the opinion, under oath, of the person taking up and securing the same, not exceed the value of ten dollars, then, and in that case, the person so taking up and securing said property, shall forthwith give notice by posting up three writ-

If less than ten dollars.

ten or printed notices, in three of the most public places in the neighborhood, where such property was taken up and secured: and if the owner shall apply therefor, prove property, and pay one dollar for taking up and securing, and twenty-five cents per day for keeping the same, then said property shall forthwith be delivered to said owner; and in case of the refusal of any person having taken up and secured said property, he shall be proceeded against in the same manner as prescribed in section three of this chapter, for persons refusing to deliver to the owner thereof any property exceeding the value of ten dollars, so taken up and secured; and if no person shall apply for and prove his right to possess said property, for twenty days from the date of the taking up and securing the same, then the property may be removed from the water, or otherwise disposed of by the person so taking up and securing the same, for his own use or benefit.

Indian canoes,
or lumber and
logs not subject
to this act, ex-
cept when.

Proviso.

SECT. 10. No canoes belonging to Indians, or cribs of lumber or logs shall be subject to the provisions of this chapter, but it shall be returned to the owners thereof, on application for and proof of the right to possess the same: *Provided*, That rafts or cribs of lumber, staves or logs, not purposely put adrift by the owners thereof, or their agents, for the purpose of driving the same, but shall have broken away contrary to the desire and against the will of the owners or the agents, and which may be subject to be injured and broken to pieces if suffered to proceed, shall be subject to all the provisions of this chapter.

Owner may
have immediate
possession, how.

SECT. 11. The owner or his agent, on proof of ownership, before a justice of the peace, at any time previous to the day of sale, shall, on payment of five dollars for taking up the same, and fifty cents per day for each day thereafter, for keeping said property, together with any and all legal costs incurred for advertising, assessing, or otherwise, shall be entitled to the immediate possession of the property so taken up and secured.

If person un-
lawfully detains
or embezzles
such property.
Penalty.

SECT. 12. If any person unlawfully detain or embezzle property wrecked, lost, or adrift, contrary to the provisions of this chapter, or shall neglect to keep in safety, or shall allow the same to get aground after he shall have taken up and secured property, as aforesaid, the person so offending shall

be liable to pay double damages to the party injured, in a civil action before any court having competent jurisdiction.

SECT. 13. If any clerk of the district court, justice of the peace, or other officer receiving money under the provisions of this chapter, shall secrete or embezzle the same, or any part thereof, such clerks or other officer shall forfeit fourfold the value thereof, to be recovered in a civil action in any court having competent jurisdiction, one half to the party injured, and the other half to the use of the county in which said cause may be tried.

If any public officer embezzles money received. Penalty.

SECT. 14. When any person shall make oath before any justice of the peace that he has lost any property by wreck or the rising of the waters or other accident, and that he has good cause to believe that such property so lost is secreted by or in the possession or custody of any other person, it shall be lawful for such justice of the peace, by warrant, under his hand, to direct any constable to search for and take into his custody and charge the property so secreted or in the possession of any person; and the person so secreting or having such property in his possession shall not be entitled to salvage, and shall be further liable to pay a fine of not more than twenty nor less than five dollars, for the use of the county, upon being convicted of secreting or having such property in his possession, without advertising, as provided for in this chapter.

When person makes oath as to his belief of property being secreted, &c.

SECT. 15. No loose saw logs, of pine or other wood, floating in any stream of this territory, shall be taken up or stopped, without the consent or authority of the owner thereof, under the penalty, if said logs are marked or branded as required by law, of double the price of said logs so taken up or stopped; to be recovered in a civil action, before any court having competent jurisdiction.

If loose logs stopped. Penalty.

SECT. 16. Whenever any saw logs, owing to high waters, shall float or drift on the premises of any person, and shall there stop or lodge, the owner shall have authority to remove the same, doing as little damage to the fences, trees, or other property, as possible; and any person who shall attempt to prevent the owner of any logs, or his agent, taking said logs, shall be liable to a fine of not more than five dollars for every such offence.

If saw logs drift on to other premises.

SECT. 17. When saw logs or timber shall have lodged or

If not claimed for two months.

stopped on the premises of any person in this territory, and no person shall appear to claim the same for the space of two months, the owner [or] occupant of said land may convert the said logs or timber to his own use.

Of damage to
or secretion of
marked saw logs.

SECT. 18. Any person who shall wilfully cut, split, or otherwise injure any saw log that is marked or branded, or shall wilfully drive any saw logs into any slough, or on any island or bottom land, with a view to secrete the same, shall be liable to pay double damages to the owner of such logs.

Take effect,
when.

SECT. 19. This act to take effect from and after its passage, and approval by the governor.

Approved May 15, 1862.

W. JAYNE, *Governor.*

SCHOOLS.

CHAPTER 81.

AN ACT FOR THE REGULATION AND SUPPORT OF COMMON SCHOOLS.

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

County com-
missioners to ap-
point superinten-
dent.

SECTION 1. That the board of county commissioners of each county shall appoint a county superintendent of public instruction.

He shall take
oath and give
bond.

SECT. 2. The county superintendent of public instruction shall have charge of the common-school interests of the county. He shall, before he enters upon the discharge of the duties of his office, take and subscribe an oath or affirmation to support the constitution of the United States, and the act organizing this territory, and faithfully to discharge the duties of his office, which oath or affirmation shall be filed in the office of the register of deeds. He shall also execute a bond with approved security, payable to the board of