

CRIMINAL PROCEDURE.

CHAPTER 9.

AN ACT TO ADOPT AND ESTABLISH A CRIMINAL CODE FOR
THE TERRITORY OF DAKOTA.

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

THAT the provisions of this act shall regulate the proceedings in all prosecutions and penal actions in all the courts of this territory, from and after the passage hereof, and shall be known as the Criminal Code.

PERSONS CAPABLE OF COMMITTING CRIMES.

SECTION 1. A crime or misdemeanor consists in a violation of a public law, in the commission of which there shall be a union of joint operation of act and intention, or criminal negligence. A crime or misdemeanor.

SECT. 2. Intention is manifested by the circumstances connected with the perpetration of the offence, and the sound mind and discretion of the person accused. Intention.

SECT. 3. A person shall be considered of sound mind who is neither an idiot nor lunatic, nor affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person knew the distinction between good and evil. Sound mind.

SECT. 4. An infant under the age of ten years shall not be found guilty of any crime or misdemeanor. Infant, when found guilty.

SECT. 5. A lunatic or insane person, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged: *Provided*, The act so charged as criminal shall have been committed in the condition of insanity. Lunatic found guilty, when.
Proviso.

SECT. 6. An idiot shall not be found guilty, or punished An idiot, when found guilty.

for any crime or misdemeanor with which he or she may be charged.

Person counselling, advising, or encouraging infant, lunatic, or idiot found guilty of crime.

SECT. 7. Any person counselling, advising, or encouraging an infant, under the age of ten years, lunatic, or idiot, to commit any offence, shall be prosecuted for such offence, when committed, as principal, and, if found guilty, shall suffer the same punishment that would have been inflicted on such person counselling, advising, or encouraging as aforesaid, had he or she committed the offence directly, without the intervention of such infant, lunatic, or idiot.

Married woman, when acting under threats of husband, not to be found guilty.

SECT. 8. A married woman, acting under the threats, command, or coercion of her husband, shall not be guilty of any crime or misdemeanor not punishable with death, provided it appear, from all the facts and circumstances of the case, that violent threats, command, or coercion were used; and in such case the husband shall be prosecuted as principal, and receive the punishment which would otherwise have been inflicted on the wife, if she had been found guilty.

Drunkenness no excuse for crime, except when.

SECT. 9. Drunkenness shall not be an excuse for any crime or misdemeanor, unless such drunkenness be occasioned by the fraud, contrivance, or force of some other person or persons, for the purpose of causing the perpetration of an offence; in which case the person or persons so causing said drunkenness, for such malignant purposes, shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offence, if he, she, or they had been possessed of sound reason and discretion.

Misfortunes or accidents.

SECT. 10. Acts committed by misfortune or accident shall not be deemed criminal where it satisfactorily appears that there was no evil design or intention, or culpable negligence.

Persons committing crimes under dangerous threats.

SECT. 11. A person committing a crime or misdemeanor, not punishable with death, under threats or menaces which sufficiently show that his or her life or member was in danger; or that he or she had reasonable cause to believe, and did believe, that his or her life or member was in danger, shall not be found guilty; and such threats or menaces, being proved and established, the person or persons compelling, by such threats or menaces, the commission of the offence, shall be considered as principal or principals, and suffer

the same punishment as if he or she had perpetrated the offence.

SECT. 12. A person that becomes lunatic or insane after the commission of a crime or misdemeanor, ought not to be tried for the offence during the continuance of the lunacy or insanity. If, after verdict of guilty, and before judgment pronounced, such person become lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue. And if, after judgment and before execution of the sentence, such person become lunatic or insane, then, in case the punishment be capital, the execution thereof shall be stayed until the recovery of said person, from insanity or lunacy. In all of these cases it shall be the duty of the court to impanel a jury to try the question, whether the accused be, at the time of impaneling, insane or lunatic.

If person becomes insane after commission of crime.

ACCESSORIES TO CRIME.

SECT. 13. An accessory is he or she who stands by and aids, abets, or assists; or who, not being present aiding, abetting, or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets, or assists, advises or encourages, shall be deemed and considered as principal, and punished accordingly.

Accessories. When deemed principals.

SECT. 14. An accessory after the fact is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with, or found guilty of, the crime. Any person being found guilty of being an accessory after the fact, shall be imprisoned for any term not exceeding two years, and fined in a sum not exceeding five hundred dollars, in the discretion of the court, to be regulated by the circumstances of the case and the enormity of the crime.

Accessories after the fact. How punished.

WHO MAY BE WITNESSES IN CRIMINAL CASES.

SECT. 15. The party or parties injured shall, in all cases, be competent witnesses, unless he, she, or they shall be rendered incompetent by reason of his, her, or their infamy, or other legal incompetency other than that of interest. The

Parties injured may be witnesses, when.

credibility of all such witnesses shall be left to the jury, as in other cases.

Competency of witnesses.

SECT. 16. All persons capable of understanding the nature of an oath (except negroes and Indians) shall be competent witnesses unless otherwise declared by law.

Affirmation sufficient. If false, same as perjury.

SECT. 17. The solemn affirmation of witnesses shall be deemed sufficient. A false and corrupt affirmation shall subject the witness to all the penalties and punishment provided for those who commit wilful and corrupt perjury.

OFFENCES AGAINST THE PERSONS OF INDIVIDUALS.

Murder is what.

SECT. 18. Murder is the unlawful killing of a human being, with malice aforethought, either expressed or implied. The unlawful killing may be perpetrated by poisoning, striking, starving, drowning, stabbing, shooting, or by any other of the various forms or means by which human nature may be overcome, and death thereby occasioned.

Express malice.

SECT. 19. Express malice is that deliberate intention unlawfully to take away the life of a fellow-creature, which is manifested by external circumstances capable of proof.

Implied malice. Penalty, death.

SECT. 20. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. The punishment of any person or persons convicted of the crime of murder shall be death.

Manslaughter.

SECT. 21. Manslaughter is the unlawful killing of a human being, without malice, express or implied, and without any deliberation whatever. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible or involuntary, in the commission of an unlawful act, or a lawful act, without due caution or circumspection.

The cause of voluntary manslaughter.

SECT. 22. In cases of voluntary manslaughter, there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing.

Killing must be without interval for reasoning.

SECT. 23. The killing must be the result of that sudden, violent impulse of passion, supposed to be irresistible; for if

there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and punished as a murder.

SECT. 24. Involuntary manslaughter shall consist in the killing of a human being without any intent so to do, in the commission of an unlawful act, or a lawful act, which probably might produce such a consequence, in an unlawful manner: *Provided, always,* That where such involuntary killing shall happen in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offence shall be deemed and adjudged to be murder.

Involuntary manslaughter.

Proviso.

SECT. 25. Every person convicted of the crime of manslaughter shall be punished by imprisonment in the penitentiary for a term not exceeding ten years.

Punishment.

SECT. 26. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered, in the computation of which the whole of the day on which the hurt was done shall be reckoned the first.

Killing, murder only, when the party hurt dies within a year and a day.

SECT. 27. If the injury be inflicted in one county and the party die within another county or without the territory, the accused shall be tried in the county where the cause of death was administered. And if the party killing shall be in one county and the party killed be in another county, at the time the cause of death shall be administered, the accused may be tried in either county.

If injured in one county and dies in another.

SECT. 28. Justifiable homicide is the killing of a human being in necessary self-defence, or in the defence of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a known felony such as murder, rape, robbery, burglary, and the like, upon either person or property, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

Justifiable homicide.

SECT. 29. A bare fear of these offences, to prevent which the homicide is alleged to have been committed, shall not be

Bare fear not sufficient to justify.

sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of those fears and not in a spirit of revenge.

Self-defence.

SECT. 30. If a person kill another in self-defence, it must appear that the danger was so urgent and pressing, that, in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear also, that the person killed was the assailant, or that the slayer had really, and in good faith, endeavored to decline any further struggle before the mortal blow was given.

When public officer may kill and be justified.

SECT. 31. If an officer in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer attempts to take a person charged with treason, murder, rape, burglary, robbery, arson, perjury, forgery, counterfeiting, or other crime, denominated felony by this code, and he be resisted in the endeavor to take the person accused, and to prevent the escape of the accused by reason of such resistance, he kill the person accused, the officer so killing shall be justified: *Provided*, That such officer, previous to such killing, shall have used all reasonable efforts to take the accused without success, and that, from all probability, there was no prospect of being able to prevent injury from such resistance, and the consequent escape of such accused person.

Proviso.

Same.

SECT. 32. Justifiable homicide may also consist in unavoidable necessity, without any will or desire, and without any inadvertence or negligence in the party killing. An officer who, in the execution of public justice, puts a person to death in virtue of a judgment of a competent court of justice, shall be justified. The officer must, however, in the performance of his duty, proceed according to the sentence and the law of the land.

Excusable homicide.

SECT. 33. Excusable homicide, by misadventure, is when a person is doing a lawful act, without any intention of killing, yet unfortunately kills another.

Other instances of homicide.

SECT. 34. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

SECT. 35. The homicide appearing to be justifiable or ex-

cusable, the person indicted shall, upon his trial, be fully acquitted and discharged. If justifiable, party to be fully acquitted.

SECT. 36. The killing being proved, malice shall be presumed, and the burden of proving circumstances of mitigation; or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide. Malice presumed, until justified or excused.

SECT. 37. If any woman shall endeavor, privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which, if born alive, would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother being convicted thereof shall suffer imprisonment in the county jail for a term not exceeding one year: *Provided, however,* That nothing herein contained shall be construed as to prevent such mother from being indicted and punished for the murder of such bastard child. If woman conceal death of her own issue.

SECT. 38. The distinction between petit treason and murder is hereby abolished. Any person who might have been indicted for petit treason, shall hereafter be indicted for murder, and if convicted, be punished accordingly. Distinction between petit treason and murder abolished.

SECT. 39. If any person hereafter shall wilfully and maliciously or by agreement, fight a duel or single combat, with any engine, instrument, or weapon, the probable consequence of which might be the death of either party, and in so doing shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party injured shall die thereof within one year thereafter, every such offender, his second, as well as the second of the person killed, and all aiders, abettors, and counsellors, being thereof duly convicted, shall be considered to have committed a felony, and shall be punished by confinement to labor in the penitentiary for any term not less than ten years, or death, at the discretion of the court. Duelling. Penalty for.

SECT. 40. If any person shall hereafter challenge another to fight a duel with any deadly weapon, or in any manner whatever, the probable issue of which might result in the death of either; or if any person shall accept a challenge or agree to fight a duel, every person so offending shall, upon Challenging to a duel.

conviction thereof, be rendered incapable of holding or being elected to any office of profit, trust, or emolument, either civil or military, under the government of this territory, and be fined in a sum not less than one hundred dollars, and be imprisoned in the penitentiary for a term not less than one year.

Delivering
challenge and
seconding duel.

SECT. 41. If any person shall willingly or knowingly, carry or deliver any written challenge, or verbally deliver any message intended as or purporting to be a challenge, or shall be present at the fighting of any duel as aforesaid, as second or aid, or give countenance thereto, such person being thereof duly convicted, shall be subject to the same fines and disabilities as are provided in the case of sending a challenge as aforesaid. It shall not be necessary in an indictment against any person or persons for fighting a duel, or against their seconds, aiders, abettors, or counsellors, or against any person for sending or accepting a challenge, or for carrying any challenge, or delivering any message intended as or purporting to be a challenge, or for being present at the fighting of any duel as second, or for aiding or giving countenance to any duel, or the sending or accepting any challenge, to specify the nature or kind of the engine, instrument, or weapon with which the duel shall be fought, or intended to be fought, so that it be alleged in the indictment, that the engine, weapon, or instrument was deadly, the probable consequence of fighting with which might be the death of either of the parties.

Poisoning.
Penalty for.

SECT. 42. Every person who shall wilfully and maliciously administer, or cause to be administered to, or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year and not more than seven years. And every person who shall administer, or cause to be administered or taken any such poison, substance, or liquid, with the intention to procure the miscarriage of any woman then being with child, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years, in the penitentiary, and fined not exceeding one thousand dollars.

Mayhem.
Penalty for.

SECT. 43. Mayhem consists in unlawfully depriving a

human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall unlawfully cut out or disable the tongue, put out any eye, slit the nose, ear, or lip, or disable any limb or member of another, or shall voluntarily and of purpose put out an eye or eyes, every such person shall be guilty of mayhem, and on conviction, shall be punished by confinement in the penitentiary for a term not less than one year nor more than three years: *Provided*, That no person shall be found guilty of mayhem where the fact occurred during a fight had by consent, nor unless it appear that the person accused shall have been the assailant, or that the party maimed had, in good faith, endeavored to decline further combat. But in all other cases where the fact shall happen in actual fight, the party accused being thereof duly convicted, shall be adjudged guilty of a felony, and punished by imprisonment in the penitentiary not exceeding one year, and be fined not exceeding one thousand dollars.

Proviso.

SECT. 44. Any person who shall wilfully and maliciously deprive any person of either or both, or of any part of either or both of their testicles, shall be punished by fine in the penitentiary, not less than five, nor more than fifteen years.

Depriving of testicles. Penalty for.

SECT. 45. Rape is the carnal knowledge of a female, forcibly and against her will. Every male person of the age of fourteen years and upward, who shall have carnal knowledge of any female child under the age of ten years, either with or without her consent, shall be adjudged to be guilty of the crime of rape. Every person convicted of the crime of rape shall be punished by confinement in the penitentiary, for a term not less than one year, and may extend to life.

Rape. Penalty for.

SECT. 46. It shall not be necessary to prove emission to convict any person of the crime of rape, or the crime against nature.

Not necessary to prove emission.

SECT. 47. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the penitentiary for a term not less than one year, and may extend to life.

Crime against nature. Penalty for.

SECT. 48. An assault is an unlawful attempt, coupled with a present ability to commit a violent injury on the person of another.

Assault.

SECT. 49. An assault, with an attempt to commit murder, rape, mayhem, robbery, or larceny, shall subject the offender

Assault, with intent to commit crime. Penalty for.

to confinement in the penitentiary, for a term not less than one year nor more than fourteen years. An assault with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall be adjudged to be a felony, and any person thereof duly convicted, shall be fined in a sum not exceeding one thousand dollars, and imprisoned not exceeding one year in the county jail.

Assault and battery.

SECT. 50. An assault and battery is the unlawful beating of another.

False imprisonment. Penalty for.

SECT. 51. False imprisonment is the unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment, shall be fined in any sum not exceeding five hundred dollars, or imprisoned not exceeding one year in the county jail.

Kidnapping.

SECT. 52. Kidnapping is the forcible abduction or stealing away of a man, woman, or child, from his or her own country, and sending or taking him or her into another.

Penalty for."

SECT. 53. Every person who shall forcibly steal, take, or arrest any man, woman, or child, whether white, black, or colored, in this territory, and carry him or her into another country, state, or territory, or who shall take or arrest any person or persons whatsoever, with a design to take him or her out of this territory, without having established a claim according to the laws of the United States, shall, upon conviction, be deemed guilty of kidnapping. Every person found guilty of kidnapping, shall be confined in the penitentiary for a term not less than one year, and not more than seven years, for each person kidnapped or attempted to be kidnapped.

Other kidnapping.

SECT. 54. Every person who shall hire, persuade, entice, decoy, or seduce, by false promises, misrepresentations, and the like, any negro, mulatto, or colored person, not being a slave, to go out of this territory, or to be taken or removed therefrom, for the purpose and with the intent to sell such negro, mulatto, or colored person into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or the use of another, without the free will and con-

sent of such negro, mulatto, or colored person, any person so offending, shall be deemed to have committed the crime of kidnapping, and upon conviction thereof, shall be punished as in the preceding section.

CRIMES AND OFFENCES AGAINST HABITATIONS AND OTHER BUILDINGS.

SECT. 55. Every person who shall wilfully and maliciously burn, or cause to be burned, any dwelling-house, kitchen, office, shop, barn, stable, storehouse, warehouse, malt house, stilling house, factory, mill, pottery, or other building, the property of any other person, or any church, meeting-house, school-house, state house, court house, work-house, jail, or other public building, or any boat or other water craft, or any bridge of the value of fifty dollars, erected across any of the waters of this territory, such person so offending shall be deemed guilty of arson, and upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term not less than one year, nor more than ten years: and should the life or lives of any person or persons be lost in consequence of any such burning, as aforesaid, such offender shall be deemed guilty of murder, and shall be indicted and punished accordingly. Every person who shall wilfully and maliciously set fire to any of the buildings or other property described in the foregoing section, with intent to burn or destroy the same, shall be deemed guilty of a felony, and upon conviction thereof, shall be imprisoned in the penitentiary for a term not exceeding two years, and be fined in a sum not exceeding five hundred dollars.

Arson. Pen-
alty for.

SECT. 56. Every person who shall, in the night time, wilfully and maliciously and forcibly break and enter, or wilfully and maliciously, without force (the doors or windows being open), enter into any dwelling-house, kitchen, office, shop, storehouse, warehouse, malt house, stilling house, mill, pottery, factory, water-craft, church, or meeting-house, with intent to commit murder, robbery, rape, mayhem, larceny, or other felony, shall be deemed guilty of burglary, and upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than ten years.

Burglary.
Penalty for.

CRIMES AND OFFENCES RELATIVE TO PROPERTY.

Robbery.
Penalty for.

SECT. 57. Robbery is the felonious and violent taking of money, goods, or other valuable thing, from the person of another, by force or intimidation. Every person guilty of robbery, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than fourteen years.

Larceny.
Penalty for.

SECT. 58. Larceny is the felonious stealing, taking and carrying, leading, riding, or driving away the personal goods of another. Larceny shall embrace every theft which deprives another of his money, or other personal property, or those means or muniments, by which the right and title to property, real or personal, may be ascertained. Private stealing from the person of another, and from a house in the day-time, shall be deemed larceny. Larceny may also be committed by feloniously taking and carrying away any bond, bill, note, receipt, or any instrument of writing of value to the owner. Every person convicted of larceny, shall be punished by confinement in the penitentiary, for a term not less than one year, and not more than ten years.

Same.

SECT. 59. If any person shall remove, haul, or in any manner take away any claim-house, shanty, or other building, the property of another, he shall be deemed guilty of a larceny, and upon conviction thereof, shall be punished as provided in the last preceding section.

Receiving
stolen goods.
Not condemned
to penitentiary
unless amount
stolen exceeds
five dollars.

SECT. 60. Every person who for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or any thing, the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, shall, upon conviction, be punished by confinement in the penitentiary, for any term not less than one year, nor more than ten years, and every such person may be tried, convicted, and punished, as well before as after the trial of the principal. No person, convicted of larceny, or of buying or receiving goods or other things obtained by larceny, burglary, or robbery, shall be condemned to the penitentiary, unless the money or the value of the things stolen, bought or received, shall amount to five dollars.

SECT. 61. All property obtained by larceny, robbery, or burglary, shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property. Such owner may maintain his action, not only against the felon, but against any person in whose possession he may find the same.

Property restored to rightful owner in every case.

SECT. 62. Every person who shall mark or brand, alter or deface the mark or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat-cattle, or sheep, goat, hog, shoat or pig, not his or her own property, but belonging to some other person, with intent thereby to steal the same, or to prevent identification thereof by the true owner, shall, on conviction thereof, be punished by confinement in the penitentiary for a term not less than one year, nor more than three years: *Provided*, That no person shall be condemned to the penitentiary, under this section, unless the value of the property affected shall amount to five dollars. And in case the value of the property affected by the offences herein described, or by larceny, or by buying or receiving goods or other property obtained by larceny, robbery, or burglary, shall not amount to five dollars, then the offender shall be punished by imprisonment in the county jail, for a term not exceeding three months, and fined not exceeding fifty dollars.

Marking and branding, or defacing mark or brand of animals.

Proviso.

SECT. 63. Every servant, officer, or person employed in any public department, station, or office of the government of this territory, or any county of this territory, or in any office of a corporate body, who shall embezzle, steal, secrete, or fraudulently take and carry away any money, goods, chattels, effects, book or books of record or of account, bond or bonds, promissory note or notes, bank-bills or notes, or any other writing or security for the payment of money or property, of whatever description it may be, being the property of said territory, county, or corporate body, shall, on conviction, be punished by confinement in the penitentiary, for a term not less than one year, nor more than ten years.

Servants, officers, &c., fraudulently acting. how punished.

SECT. 64. If any officer or person who now is, or hereafter may be intrusted by law to collect, disburse, receive, or safely keep any money or moneys, revenue or revenues, belonging to this territory, or any county of this territory, to the school fund of this territory, to the school fund of any county or precinct in this territory, to any canal, turnpike, or railroad

Same

fund of this territory, or any county thereof, or to any fund for the improvement of any public road, river, creek, or other watercourse, bordering on or within this territory, or to any other fund now in being, or hereafter to be established by law for public purposes, and who shall fail or refuse to pay over all moneys, warrants, bills, notes, and orders, which any such officer or person shall receive for disbursement, and has not disbursed, or shall collect, or shall receive, or shall receive for safe keeping, belonging to this territory, to any county of this territory, or to any such fund as aforesaid, when such officer or person shall be thereto required by law, and demand duly made by the successor or successors of such officer or person in office, or by the officer or persons to whom such moneys, warrants, bills, notes, or order, ought by law to be paid over, or by his or their attorney or agent duly authorized, in writing, signed and acknowledged, if such demand be practicable; every such officer or person shall, on conviction thereof, be punished by confinement in the penitentiary, for any term not less than one year, nor more than ten years:

Proviso.

Provided, That no person shall be committed to the penitentiary, under this section, unless the money not paid over shall amount to five dollars, or if it appear that such failure or refusal shall be occasioned by unavoidable loss or accident. Every person convicted under the provisions of this section, shall forever thereafter be ineligible and disqualified from holding any office of honor or profit in this territory.

Damaging papers of value.
Penalty for.

SECT. 65. Every person who shall fraudulently or maliciously tear, burn, efface, cut, or in any other way destroy any deed, lease, bond, will, or any bank-bill or note, check [or] warrant for the payment of money, or other thing, or other security for the payment of money, or the delivery of goods, or any certificate or other public security of this territory, or of the United States, or of any state or any other territory, for the payment of money, or any receipt, acquittance, release, defeasance, discharge of any debt, suit, or other demand of any transfer or assurance of money, stock, goods, chattels, or other property, or any letter of attorney, or other power, or any day-book or other book of account, or any agreement or contract whatsoever, with intent to defraud, prejudice, or injure any person or body corporate, shall, upon conviction thereof, be punished by confinement in the peni-

tentiary, for a term not less than one year, nor more than five years.

SECT. 66. Every person who shall knowingly, maliciously, and fraudulently, cut, fell, alter, or remove any certain boundary tree or other allowed landmark, to the wrong of his neighbor or any other person, shall, on conviction thereof, pay a fine not exceeding one hundred dollars, or be imprisoned in the county jail, for a term not exceeding three months.

Removing boundary or landmark. Penalty for.

SECT. 67. If any clerk, apprentice, or servant, whether bound or hired, to whom any money, bank-bill or note, or goods or chattels, shall be intrusted or delivered by his or her master or mistress, shall withdraw himself or herself from his or her master or mistress, and go away with the said money, bank-bill, or note, or goods or chattels, or any part thereof, with intent to steal the same, and defraud his or her master or mistress thereof, contrary to the trust and confidence in him or her reposed by his or her said master or mistress, or being in the service of his or her said master or mistress, shall embezzle the said money, bank-bill or note, goods or chattels, or any part thereof, or otherwise shall convert the same to his or her own use, with like purpose to steal the same, every such person so offending shall be deemed guilty of larceny, and be punished accordingly.

Clerk, apprentice, or servant, embezzling, &c. Penalty for.

SECT. 68. If any bailee of any money, bank-bill or note, or goods or chattels, shall convert the same to his or her own use, with an intent to steal the same, he shall be deemed guilty of larceny in the same manner as if the original taking had been felonious, and on conviction thereof, shall be punished accordingly.

Bailee appropriating to his own use. Penalty for.

SECT. 69. If any lodger shall take away, with intent to steal, embezzle, or purloin any bedding, furniture, goods, or chattels, which he or she is to use, in or with his or her lodging, he or she shall be deemed guilty of larceny, and on conviction shall be punished accordingly.

Lodger taking away goods. Penalty for.

FORGERY AND COUNTERFEITING.

SECT. 70. Every person who shall falsely make, alter, forge, or counterfeit any record, or other authentic matter, of a public nature, or any charter, letters-patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond,

Counterfeiting and forging. Penalty for.

covenant, bank-bill or note, post note, check, draft, bill of exchange, contract, promissory note, due-bill for the payment of money or property, receipt for money or property, power of attorney, any auditor's warrant for the payment of money at the treasury, county order, or any accountable receipt, or any order or warrant, or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing or acquittance, release, or receipt for money or goods, or any acquittance or release or discharge, for any debt, account, action, suit, demand, or other thing, real or personal, or any transfer or assurance of money, stock, goods, chattels, or other property whatever, or any letter of attorney, or other power, to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien, or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft or order, or assignment of any bond, writing obligatory, or promissory note, for money or other property; or shall counterfeit or forge the seal or handwriting of another, with intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in, or belong to, this territory or not; or shall utter, publish, pass, or attempt to pass, as true and genuine, or cause to be uttered, published, passed, or attempted to be passed as true and genuine, any of the above-named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this territory or not: every person so offending shall be deemed guilty of forgery, and upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than fourteen years.

Counterfeiting
gold and silver
coin. Penalty
for.

SECT. 71. Every person who shall counterfeit any of the species of gold and silver coin now current, or that shall hereafter be current in this territory, or shall pass or give in payment, or offer to give in payment, such counterfeited coin, or permit, cause, or procure the same to be altered or

passed, with intention to defraud any person, body politic or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and being thereof duly convicted, shall be punished by confinement in the penitentiary, for a term not less than one year nor more than fourteen years.

SECT. 72. Every person who shall have in his or her possession, or receive for any other person, any counterfeit gold or silver coin or coins, of the species now current or hereafter to be current in this territory, with intention to utter or pass the same, or to permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by confinement in the penitentiary, not less than one nor more than fourteen years.

Person having possession of counterfeit coin. Penalty for.

SECT. 73. Every person who shall have in his or her possession, or shall receive from any other person, any forged promissory note or notes, or bank-bill, or bills for the payment of money, with intention to utter or pass the same, or to permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body corporate or politic, whether such person or persons, body corporate or politic, reside in, or belong to this territory or not, knowing the same to be forged or counterfeited, or shall have or keep in his possession any blank or unfinished note or bank-bill, made in form or similitude of any promissory note or bill for payment of money, made to be issued by any incorporate bank or banking company in this territory or elsewhere, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause or procure the same to be filled up and completed, in order to utter or pass the same, or to permit, or cause or procure the same to be uttered or passed, to defraud any person or persons, body politic or corporate, whether in this territory or elsewhere, shall, upon conviction thereof, be punished by confinement in the penitentiary, for a term not less than one year nor more than fourteen years.

Person having possession of forged note or bill. Penalty for.

SECT. 74. Every person who shall make, pass, utter, or publish, with an intention to defraud any other person or persons, body politic or corporate, either in this territory or else-

Person making, passing, &c., fictitious bill, note, or check. Penalty for.

where, or with like intention, shall attempt to pass, utter, or publish, or shall have in his or her possession, with like intent to pass, utter, or publish, any fictitious bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of said bank, corporation, copartnership, or individual, when in fact there shall be no such bank, corporation, copartnership, or individual in existence, the said person, knowing the said bill, note, check, or instrument of writing for the payment of money or property to be fictitious, shall be deemed guilty of the crime of forgery, and on conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one nor more than fourteen years.

Persons having possession of dies, plates, and apparatus for counterfeiting. Penalty for.

SECT. 75. Every person who shall make, or knowingly have in his possession, any die or dies, plate or plates, or any apparatus, paper, metal, machine, or thing whatever, made use of in counterfeiting the coin now current, or hereafter to be current in this territory, or in counterfeiting bank-notes or bills, whether such bank be situate in this territory or not, upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year nor more than fourteen years ; and all punch dies, plates, apparatus, paper, metal, or machines, intended for the purposes aforesaid, shall be destroyed.

On trial of said persons, not necessary to prove incorporation by charter.

SECT. 76. On the trial of any person for forging any bill or note, purporting to be the bill or note of some incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of any such bank or company by the charter or act of incorporation, but the same may be proved by general reputation.

Persons of skill competent to prove counterfeits.

SECT. 77. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeited.

Persons fraudulently defacing or counterfeiting seals and signatures. Penalty for.

SECT. 78. Every person who shall fraudulently forge, deface, corrupt, or counterfeit the seal of this territory, or the seal of any court or public officer, or by law entitled to have and use a seal, and shall make use of the same, or shall forge or counterfeit the signature of any public officers, or shall unlawfully and corruptly, or with evil intent, affix any of the said true seals to any commission, deed, warrant, pardon, certificate, or other writing, or who shall have in his possession or custody

any counterfeit seal, and shall wilfully conceal the same, knowing it to be falsely made and counterfeited, and shall thereof be convicted, shall be punished by confinement in the penitentiary, for a term not less than one nor more than fourteen years.

OFFENCES BY PUBLIC OFFICERS.

SECT. 79. If an officer or person who now is or hereafter may be intrusted by law to collect, receive, safely keep, disburse, or pay over any money or moneys, revenue or revenues belonging to this territory, or any county of this territory, to the school fund of this territory, to the school fund of any county or precinct of this territory, to any canal, turnpike, or railroad fund of this territory, or any county thereof, or to any fund for the improvement of any public road, river, creek, or other watercourse bordering on or within this territory, or to any other fund now in being or hereafter to be established by law for public purposes, shall directly or indirectly purchase or procure any order, warrant, certificate, or any other evidence of public indebtedness, to the payment of which such moneys, revenues, or funds, is by law to be applied, at any loss, depreciation, or discount below the value thereof, or shall in any manner obtain any order, warrant, certificate, or other evidence of public indebtedness by any other means or manner than by the payment of the same according to law out of such moneys, revenue, or fund at the full nominal value thereof, he shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than one nor more than three years.

Officers and persons intrusted by law with moneys or revenues, obtaining evidence of indebtedness by improper means, and at less than full nominal value.

SECT. 79a. If any person or persons shall buy, purchase, procure, or in any manner obtain, any order, warrant, certificate, or other evidence of public indebtedness, at any discount or depreciation, with any private moneys, means, or effects of any public officer, or with any such public money, revenue, or fund mentioned in the preceding section, whereby such person or public officer shall reap any gain, profit, or reward, he or they may be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine not exceeding one thousand dollars, and be imprisoned in the county jail not exceeding one year.

Same — through another person.

SECT. 79b. If any person or officer within this territory,

Such person or officer converting

such money into evidence of indebtedness, and depositing same.

charged with the collection, safe keeping, transfer, or disbursement of public money, shall convert any of such public money into any order, warrant, certificate, or any evidence of public indebtedness, and shall deposit the same with any public officer of this territory, in lieu of money, he shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by confinement in the penitentiary, not less than one nor more than three years.

OFFENCES AGAINST PUBLIC POLICY.

Persons interested in circulation of bill, check, &c., as money without legislative authority.

SECT. 80. If any person shall subscribe or become a member of, or be in any way interested in any association or company formed for the purpose of issuing or putting in circulation, any bill, check, ticket, certificate of deposit, promissory note, receipt, or other paper of any bank, to circulate as money in this territory, without being authorized so to do by charter from the general assembly of this territory, he shall be punished by imprisonment in the penitentiary, not more than one year, or by a fine of not more than one thousand dollars.

CRIMES AND OFFENCES AGAINST PUBLIC JUSTICE.

Perjury. Penalty for.

SECT. 81. Every person having taken a lawful oath, or made affirmation in any judicial proceeding, or in any other matter where, by law, an oath or affirmation is required, who shall swear or affirm, wilfully, corruptly, and falsely, in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury or subornation of perjury (as the case may be), and upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than fourteen years.

If perjury causes execution of innocent persons, deemed murder.

SECT. 82. Every person, who, by wilful and corrupt perjury, or subornation of perjury, shall procure the conviction and execution of any innocent persons, shall be deemed and adjudged guilty of murder, and upon conviction thereof, shall suffer the punishment of death.

Indictment for perjury.

SECT. 83. In every indictment for perjury, or subornation of perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and before what

court or authority the oath or affirmation was taken, averring such court or authority to have had full power to administer the same, together with the proper averment or averments to falsify the matter or matters wherein the perjury is assigned, without setting forth any part of the record or proceedings, either in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court, or other authority before whom the perjury was committed, or the form of the oath of affirmation, or the manner of administering the same.

SECT. 84. If any person or persons shall, directly or indirectly, give any sum or sums of money, or any other bribe, present, or reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, or reward, or any other thing, to obtain or procure the opinion, judgment, or decree of any judge or justice of the peace acting within this territory, or to corrupt, induce, or influence such judge, or justice of the peace to be more favorable to one side than to the other, in any suit, matter, or cause depending or to be brought before him or them, or shall, directly or indirectly, give any sum or sums of money, present, or reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, or reward, or other thing, to obtain, procure, or influence the vote of any member of the general assembly, or to incline, induce, or influence any such member of the general assembly, to be more favorable to one side than the other, on any question, election, matter or thing pending, to be brought before the general assembly, or either house thereof, the person so giving any money, bribe, present or reward, promise, contract, obligation, or security, with intent and for the purpose aforesaid, and the judge, justice of the peace, or member of the general assembly, who shall in anywise accept or receive the same, shall be deemed guilty of bribery, and, on conviction, shall be punished by confinement in the penitentiary, not less than one year, nor more than five years.

SECT. 85. If any person shall, directly or indirectly, give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, obligation, or security for the payment of any money, present or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner,

Persons bribing judges, justices, or members of general assembly. Penalty for.

Bribing other officers. Penalty for.

clerk, constable, jailer, attorney, member of the general assembly, or other officer, ministerial or judicial (but such fees as are allowed by law), with intent to induce or influence such officer to appoint any person to office, or to execute any of the powers in him vested, or to perform any duty of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer hath appointed any person to any office, or exercise any power in him vested, or performed any duty of him required, with partiality or favor, or otherwise contrary to law, the person so giving, and the officer so receiving, any money, bribe, present, reward, promise, contract, obligation, or security, with intent or for the purpose or consideration aforesaid, shall be deemed guilty of bribery, and, on conviction, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than five years.

Persons bribing and proposing to receive bribe to be fined.

SECT. 86. Every person who shall offer or attempt to bribe any member of the general assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney-general, district-attorney, or other ministerial or judicial officer, in any of the cases mentioned in either of the two preceding sections; and every member of the general assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney-general, district-attorney, or other ministerial or judicial officer, who shall propose or agree to receive a bribe in any of the cases mentioned in either of the two preceding sections, shall, on conviction, be fined in a sum not exceeding five hundred dollars.

Officers and persons injuring, destroying, or concealing important papers, &c. Penalty for.

SECT. 87. If any judge, justice of the peace, sheriff, coroner, clerk, recorder, or other public officer, or any person whatsoever, shall steal, embezzle, alter, corrupt, withdraw, falsify, or avoid any record, process, charter, gift, grant, conveyance, bond, or contract, or shall knowingly or wilfully take off, discharge, or conceal any issue, forfeited recognizance, or other forfeiture, or shall forge, deface or falsify, any document or instrument recorded, or any registry, acknowledgment, or certificate, or shall alter, deface, or falsify any minute, document, book, or any proceeding whatever, of or belonging to any public office within this territory, the person so offending, and being thereof duly convicted, shall be pun-

ished by confinement in the penitentiary, for a term not less than one year, nor more than seven years.

SECT. 88. Every jailer who shall be guilty of wilful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding five hundred dollars, and be removed from office.

Inhuman jailer, how punished.

SECT. 89. If any officer, whose office shall be abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he shall have resigned or been legally removed from his office, shall wilfully and unlawfully withhold or detain from his successor or other person entitled thereto by law, the records, papers, documents, or other writing appertaining or belonging to his office, or mutilate, destroy, or take away the same, the person so offending shall, on conviction, be punished by confinement in the penitentiary, for a term not less than one year, nor more than five years. The provisions of this section shall apply to any person or persons who shall have records, documents, papers, or other writings in his, her, or their possession, and who shall wilfully mutilate, destroy, withhold, or detain the same as aforesaid.

Officer withholding records, papers, &c., improperly.

Same applies to other persons.

SECT. 90. If any person shall, without due authority so to do, acknowledge or confess, or procure to be acknowledged or confessed, any fine, common recovery, deed, bond, power of attorney, mortgage, recognizance, bail or judgment, in the name of any other person, by personating any such other person, the person so offending, on conviction thereof, shall be punished by confinement in the penitentiary for any term not less than one year, nor more than ten years.

Personating another and committing fraud thereby. Penalty for.

SECT. 91. If any person shall knowingly and wilfully obstruct, resist, or oppose any sheriff, deputy-sheriff, coroner, constable, or other officer of this territory, or other person duly authorized, in serving or attempting to serve any lawful process or order of any court, judge, or justice of the peace, or any other legal process whatsoever, or shall assault or beat any sheriff, deputy-sheriff, coroner, constable, or other officer, or person duly authorized, in serving or executing, or attempting to serve or execute any process, or order aforesaid, or for having served or executed, or attempted to serve or execute the same, every person so offending shall be fined in any sum not exceeding five hundred dollars, and imprisoned

Persons opposing officer or person in execution of lawful process or order. Penalty for.

Proviso. for a term not exceeding one year: *Provided*, Any officer or person whatever that may or shall assault or beat any individual, under color of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment.

Setting at liberty person subject to death penalty.

Same person subject to penitentiary confinement.

If person charged with such offence is liberated.

If keeper or guard of prisoner fraudulently permit prisoner to escape penalty

SECT. 92. If any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is death, such person, on conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than fourteen years; and if any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is confinement in the penitentiary, whether such person be in custody of an officer or in the penitentiary, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

SECT. 93. If any person shall so set at liberty or rescue any person who, before conviction, stands charged or committed for any capital offence, or any crime punishable by confinement in the penitentiary, such person so offending shall be, on conviction, fined in a sum not exceeding one thousand dollars, and imprisoned in the penitentiary for a term not exceeding three years; and if the person rescued or set at liberty stands charged, committed, or convicted of any misdemeanor, or other offence punishable by fine or imprisonment, or both, the person convicted of such rescue, or setting at liberty, shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty, if he or she had been found guilty.

SECT. 94. If the warden of the penitentiary, or any servant, officer, or agent, belonging to, or in employment at the same, or any sheriff, deputy-sheriff, or jailer, or any person employed by them as a guard, shall fraudulently contrive, procure, aid, connive at, or otherwise voluntarily suffer the escape of any convict in custody or in said penitentiary committed, every such person, on conviction, shall be punished by confinement in said penitentiary, to solitary confinement, for a term not exceeding three months, and by confinement to hard labor for a term not exceeding ten years.

SECT. 95. If the warden of the penitentiary, or other person, as aforesaid, shall negligently suffer any convict committed, or in custody as aforesaid, under sentence of solitary imprisonment, to be at large without the cell or apartment assigned to such convict, or to be there visited, conversed with, comforted or relieved, contrary to the rules and regulations of the penitentiary, or shall negligently suffer such convict, or any other convict committed to the penitentiary, under sentence of confinement to hard labor, to be at large without the precincts of the penitentiary, or contrary to the rules and regulations thereof, to be out of close confinement, the warden or other person neglecting his duty in the premises, being thereof duly convicted, shall be punished by fine not exceeding two hundred dollars.

If warden or guard allow prisoners certain unlawful privileges.

SECT. 96. If any person shall convey to any convict in custody, or committed to the penitentiary, into the penitentiary, or other place where such convict may be confined, any tool, weapon, or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, every person so offending, on conviction thereof, shall be punished by fine not exceeding five hundred dollars, and imprisoned in the penitentiary not exceeding six months.

If person convey to convict tool, weapon, &c., enabling him to escape.

SECT. 97. If any person or persons shall rescue another in legal custody, on civil process, such person or persons shall on conviction be fined in any sum not exceeding the sum for which said civil process issued.

If persons rescue one in legal custody. Penalty.

SECT. 98. If any person shall aid or assist a prisoner, lawfully committed or detained in any jail, for any offence against this territory, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from jail, though no escape be actually made, or if any person shall convey or cause to be delivered to such prisoner, any disguise, instrument, or arms, proper to facilitate the escape of such prisoner, any person so offending (although no escape or attempt to escape be actually made) shall, on conviction, be punished by fine not exceeding five hundred dollars, and imprisoned in the county jail for a term not exceeding one year.

If aided, and escape be not made from confinement. Penalty.

SECT. 99. If any person shall aid or assist any prisoner to attempt to escape, or shall rescue, or attempt to rescue, any prisoner from the custody of any sheriff, deputy-sheriff,

If person shall aid or assist in escape of prisoner. Penalty.

coroner, constable, officer, or other person, who shall have the lawful custody of such prisoner; every person so offending shall, upon conviction thereof, be fined not exceeding one thousand dollars, and imprisoned in the county jail not exceeding one year.

Officer voluntarily permitting escape of prisoner. Penalty.

SECT. 100. If any sheriff, coroner, jailer, keeper of a prison, constable, or other officer or person whatever, having any prisoner in his legal custody, before conviction, shall voluntarily suffer or permit such prisoner to escape or go at large; every such officer or person so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned in the county jail for any term not exceeding six months: *Provided*, That if such prisoner be in custody charged with murder, or other capital offence, then such officer or person suffering or permitting such escape, shall be punished by confinement in the penitentiary for any term not less than one year, nor more than ten years. A negligent escape of a person charged with a criminal offence, before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and punished by fine not exceeding five hundred dollars.

Proviso.

Negligent escape. Penalty.

Proper officer refusing to receive prisoner. Penalty.

SECT. 101. If any sheriff, coroner, keeper of a jail, constable, or other officer, shall wilfully refuse to receive or arrest any person charged with a criminal offence, then such sheriff, coroner, jailer, constable, or other officer, shall, on conviction, be fined not exceeding five hundred dollars, and imprisoned not exceeding six months, in the common jail.

If person shall compound criminal offence. Penalty.

SECT. 102. If any person shall take money, goods, chattels, lands, or other reward, or promise thereof, to compound any criminal offence, such person or persons shall be fined in double the sum or value of the thing agreed for or taken, but no person shall be debarred from taking his goods or property from the thief or felon, or receiving compensation for the private injury occasioned by the commission of any such criminal offence.

Persons procuring false indictment for criminal offence. Penalty.

SECT. 103. If any two or more persons shall conspire or agree, falsely or maliciously, to charge or indict, or cause or procure to be charged or indicted, any person for any criminal offence, each of the persons so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned not exceeding one year.

SECT. 104. If any person shall take upon himself to exercise or officiate in any office or place of authority in this territory, without being lawfully authorized thereto, he shall, upon conviction, be fined in any sum not exceeding two hundred dollars.

If person shall unlawfully officiate in place of authority. Penalty.

SECT. 105. Embracery is an attempt to influence a juror or jurors corruptly on one side by threats or menaces, or by promises, persuasions, entreaties, money, entertainments, and the like. Every embracer who shall procure any juror to take money, gain, or profit, or shall corruptly influence any juror by persuasions, promises, entreaties, or by any other improper means, or shall threaten or menace any juror, shall be fined not exceeding five hundred dollars, and imprisoned in the penitentiary not exceeding one year. And any juror convicted of taking money, gain, or profit, or corruptly being influenced as aforesaid, shall suffer the like punishment, and be forever disqualified to act as juror. This section shall apply as well to the grand as the petit jurors.

Embracery. Penalty for.

SECT. 106. If any person or persons shall wickedly and wilfully excite and stir up any suits or quarrels between the people of this territory, either at law or otherwise, with a view to promote strife and contention, every such person so offending, shall be deemed to have committed the crime of "common barratry," and, upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars; and if he be an attorney or counsellor at law, he shall be suspended from the practice for any time not exceeding six months.

If person shall wickedly stir up suits or quarrels. Penalty.

SECT. 107. If any person shall officiously intermeddle in any suit at common law or in chancery, that in nowise belongs to, or concerns such person, by maintaining or assisting either party with money or otherwise, to prosecute or defend such suit, with a view to promote litigation, every such person so offending, shall be deemed to have committed the crime of "maintenance," and, upon conviction thereof, shall be fined and punished as in cases of "common barratry:" *Provided*, That it shall not be considered "maintenance" for a man to maintain the suit of his kinsman or servant, or poor neighbor, out of charity.

Intermeddling improperly in suits deemed "maintenance." Penalty.

Proviso.

SECT. 108. If any judge, justice of the peace, sheriff, coroner, constable, clerk, or other officer of this territory, ministerial or judicial, shall wilfully or corruptly receive or take

If public officer shall receive or demand improper fee or reward.

any fee or reward, to execute or do his duty as such officer, except such as is or shall be allowed by law, or if any such officer shall wilfully or corruptly ask or demand as a condition precedent to the performance of his duty as such officer, any fee or reward, except such as shall be allowed by law, every such officer so offending shall be deemed guilty of extortion, and, on conviction thereof, shall be fined in any sum not exceeding two hundred dollars.

Public officers palpably omitting duty, &c. Penalty.

SECT. 109. Every clerk, sheriff, coroner, constable, county commissioner, justice of the peace, recorder, county surveyor, attorney-general, or district attorney, who shall be guilty of any palpable omission of duty, or who shall wilfully or corruptly be guilty of oppression, malfeasance, or partiality in the discharge of his official duties, shall, upon conviction thereof, be fined in a sum not exceeding two hundred dollars, and the court shall have power, upon the recommendation of the jury, to add to the judgment of the court, that any officer so convicted, shall be removed from office. The court shall have power, whenever any clerk of the district or supreme court, attorney-general or district attorney, shall be presented or indicted, to appoint for that occasion a prosecuting attorney or clerk, as the case may require, who shall thereby be invested, in relation to such presentment or indictment, with all the powers of clerk, or attorney-general, or district attorney. It shall be the duty of the court, when the judgment shall extend to removal from office, to cause immediate notice of such removal to be given to the proper department, in order that the vacancy thus occasioned may be filled.

When certain officers indicted, offices, how filled.

When judgment extends to removal from office.

If person be guilty of threatening letters, &c. Penalty.

SECT. 110. If any person shall knowingly send or deliver any letter or writing, threatening to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities or failings, with intent to extort money, goods, chattels, or other valuable things, or threatening to maim, wound, kill, or murder, or to burn or destroy his or her house or other property, or to accuse another of a crime or misdemeanor, or to expose or publish any of his or her infirmities or failings, though no money, goods, chattels, or valuable thing be demanded, such person, so offending, shall, on conviction, be fined in a sum not exceeding five hundred dollars, and imprisoned not exceeding six months.

OFFENCES AGAINST THE PUBLIC PEACE AND TRANQUILLITY.

SECT. 111. If any person, at late and unusual hours of the night time, maliciously or wilfully disturb the peace or quiet of any neighborhood or family, by loud or unusual noises, or by tumultuous and offensive carriage, threatening, traducing, quarrelling, challenging to fight, or fighting, every person convicted thereof, shall be fined in a sum not exceeding fifty dollars, or imprisonment not exceeding two months.

If person, at late hours, creates disturbance. Penalty.

SECT. 112. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do, by a judge, justice of the peace, sheriff, coroner, constable, or other public officer, persons so offending shall, on conviction, be severally fined in any sum not exceeding fifty dollars, and imprisoned not exceeding one month.

If person do not disperse, after being commanded by proper officer. Penalty.

SECT. 113. If two or more persons shall, by agreement, fight in a public place to the terror of the citizens of this territory, the persons so offending shall be deemed guilty of an affray.

If persons fight in public place. Penalty.

SECT. 114. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing toward it, such persons shall be deemed guilty of an unlawful assemblage, and upon conviction thereof, be severally fined in a sum not exceeding fifty dollars, or imprisoned not exceeding three months.

Unlawful assemblage. Penalty for.

SECT. 115. If two or more persons shall meet to do an unlawful act, upon a common cause of quarrel, and make advances toward it, they shall be deemed guilty of a rout, and, on conviction, shall be severally fined in a sum not exceeding seventy dollars, or imprisoned not exceeding four months.

Making advances to quarrel. Penalty.

SECT. 116. If two or more persons actually do an unlawful act, with force or violence, against the person or property of another, with or without a common cause of quarrel, or even do a lawful act in a violent and tumultuous manner, the person so offending shall be deemed guilty of a riot, and on conviction, shall severally be fined not exceeding two hundred dollars, or imprisoned not exceeding six months.

Rioting. Penalty for.

Officer failing to attempt arrest of parties intending to fight duel. Penalty.

SECT. 117. If any judge, justice of the peace, sheriff, or other officer bound to preserve the public peace, shall have knowledge of an intention on the part of any two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the duel, every such officer shall be fined, not exceeding one hundred dollars.

Persons being published as cowards who refuse to accept challenge to duel. Penalty.

SECT. 118. If any person or persons shall, in any newspaper or handbill, written or printed, publish or proclaim any other person or persons as a coward or cowards, or use any other opprobrious or abusive language, for not accepting a challenge to fight a duel, or for not fighting a duel, such person or persons so offending, on conviction, shall be fined in a sum not exceeding five hundred dollars, or imprisoned for a term not exceeding three months. The publisher or printer of any such newspaper, handbill, or other publication, may be summoned as a witness, and shall be required to testify against the writer or writers of such handbill or publication; and if any such printer or printers shall refuse to testify in relation to the premises, either before the grand or petit jury, he or they shall be deemed guilty of a flagrant contempt of the court, and may be punished by fine and imprisonment, or either: *Provided, however,* That the testimony given by any such witness shall, in no case, be used in any prosecution against such witness.

Proviso.

Libel. Penalty for.

SECT. 119. A libel is a malicious defamation, expressed either by printing or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural defects of one who is alive, and thereby expose him or her to public hatred, contempt, or ridicule; every person, whether writer or publisher, convicted of this offence, shall be fined in a sum not exceeding five hundred dollars, or imprisoned not exceeding one year. In all prosecutions for a libel, the truth thereof may be given in evidence in justification, except libels tending to blacken the memory of the dead, or expose the natural defects of the living.

Truth thereof may be given in evidence, when.

OFFENCES AGAINST THE PUBLIC MORALITY, HEALTH, AND POLICE.

SECT. 120. Bigamy consists in the having of two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this territory, being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending shall, on conviction thereof, be punished by a fine, not exceeding one thousand dollars, and imprisoned in the penitentiary, not exceeding two years. It shall not be necessary to prove either of the said marriages by the register or certificate thereof, or other record of evidence; but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when such second marriage shall have taken place without this territory, cohabitation in this territory, after such second marriage, shall be deemed the commission of the crime of bigamy, and the trial in such case may take place in the county where such cohabitation shall have occurred. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together, prior to the second marriage, and he or she not knowing such husband or wife to be living within that time. Also, that nothing herein contained shall extend to any person that is or shall be at the time of such second marriage, divorced by lawful authority from the bands of such former marriage, or to any person where the former marriage hath been by lawful authority declared void.

Bigamy. Penalty for.

Proof necessary.

If persons separated five years.

If persons lawfully divorced.

SECT. 121. If any man or woman, being unmarried, shall knowingly marry the husband or wife of another, such man or woman shall, on conviction, be fined not more than five hundred dollars, or imprisoned not more than one year.

If unmarried person marry husband or wife of another.

SECT. 122. Any man and woman who shall live together in an open state of adultery or fornication, or adultery and fornication, every such man and woman shall be indicted, and, on conviction, shall be fined in any sum not exceeding two hundred dollars each, or imprisoned not exceeding six months. This offence shall be sufficiently proved by cir-

Adultery or fornication. Penalty for.

Proof necessary.

cumstances which raise the presumption of cohabitation and unlawful intimacy; and for a second offence such man or woman shall be severally punished twice as much as the former punishment, and for the third offence treble, and thus increasing the punishment for each succeeding offence: *Provided, however,* That it shall be in the power of the party or parties offending, to prevent or suspend the prosecution, by their intermarriage, if such marriage can be legally solemnized, and upon the payment of the costs of such prosecution.

Proviso.

Family inter-marriage incestuous and void.

SECT. 123. Marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the half as well as of the whole blood, and between uncles and neices, aunts and nephews, are declared to be incestuous and absolutely void. This section shall extend to illegitimate as well as legitimate children and relations.

Persons so intermarrying or cohabiting. Penalty.

SECT. 124. Persons within the degrees of consanguinity within which marriages are declared by the preceding section to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, or who shall lewdly and lasciviously cohabit with each other, shall be liable to indictment, and, upon conviction, be punished by imprisonment in the penitentiary not exceeding ten years.

If father cohabits with daughter. Penalty.

SECT. 125. If a father shall rudely and licentiously cohabit with his own daughter, the father shall, on conviction, be punished by confinement in the penitentiary for a term not exceeding twenty years.

If person guilty of lewdness, keep open tippling on the Sabbath, or keep disorderly house for encouragement of wrong practices.

SECT. 126. If any person shall be guilty of open lewdness, or other notorious act of public indecency, tending to debauch the public morals, or shall keep open any tippling-house on the Sabbath day or night, or shall maintain or keep a lewd house or place for the practice of fornication, or shall keep a common ill-governed and disorderly house, to the encouragement of idleness, gaming, drinking, fornication, or misbehavior, every such person shall, on conviction, be fined not exceeding one hundred dollars, or imprisoned not exceeding six months.

If any person brings or offers for sale obscene books and prints. Penalty.

SECT. 127. If any person shall hereafter bring, or cause to be brought or imported into this territory for sale, or shall sell or offer to sell, any obscene book, pamphlet, print, picture, or

engraving; every such person shall, upon conviction, be fined in a sum not less than twenty-five dollars, nor more than fifty dollars.

SECT. 128. If any person shall, by himself, herself, servant, or other agent, for his or her gain or profit, keep, have, exercise, or maintain a common gaming-house, table, or room, or in any house or place occupied by him or her, procure or permit any persons to frequent or come together to play for money, or other valuable thing, at any game, every offender, on conviction, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding six months.

If person maintains gaming-house. Penalty.

SECT. 129. If any person or persons shall play for money, or other valuable thing, at any game with cards, dice, checks, or at billiards, or with any other article or instrument, thing or things whatsoever, which may be used for the purpose of playing or betting upon or winning or losing money, or any other thing or things, article or articles of value, or shall bet on any game others may be playing, every person so offending, shall be fined not exceeding one hundred dollars, and not less than ten dollars.

If persons game for money or other valuable thing. Penalty.

SECT. 130. Every tavern-keeper who shall suffer or permit any game or games, prohibited or intended to be prohibited by this chapter, to be played in his tavern or in any outhouse appendant thereto, shall, on conviction, be fined not exceeding one hundred dollars, and shall forfeit his license, and shall not be again licensed as a tavern-keeper, for one year from such conviction. It shall be the duty of all justices of the peace, sheriffs, coroners, and grand jurors, now in office or hereafter to be appointed, to take notice and give information to the proper authorities, of such offences as may be committed in their respective counties, contrary to the provisions of this chapter, whenever the same may in anywise come under their immediate observation. And if any officer whose duties it is made to execute the provisions of this chapter, shall neglect to enforce its provisions upon view or complaint, such officer, upon conviction thereof, shall be fined in the sum of one hundred dollars, and shall moreover be suspended from office for one year.

Tavern-keeper permitting same. Penalty.

Public officers to take notice of such practices. If they fail so to do. Penalty.

SECT. 131. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common street or alley of any town or village,

If person obstruct road, street, bridge, navigable river, or establish or

continue offensive trade, &c. Penalty.

or any public bridge or causeway, or public river or stream declared navigable by law, or shall continue such obstruction, so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, or manufacture, or business, or continue the same after it has been erected or established, or shall in anywise pollute or obstruct any water-course, lake, pond, marsh, or common sewer, or continue such obstruction or pollution, so as to render the same offensive or unwholesome to the county, town, village, or neighborhood thereabouts; every person so offending shall, upon conviction thereof, be fined not exceeding one hundred dollars. And every such nuisance may, by order of the court before whom the conviction may take place, be removed and abated by the sheriff of the proper county; and any inquest and judgment thereon, had under the provisions of any law authorizing a writ of ad quod damnum, shall be no bar to a prosecution under this chapter.

Such nuisances, how abated.

If person sells unwholesome provisions or drink. Penalty.

SECT. 132. If any person or persons shall knowingly sell any flesh of any diseased animal, or other unwholesome provisions, or any pernicious or adulterated drink or liquors, every person so offending shall be fined not exceeding one hundred dollars, or imprisoned not exceeding three months.

Persons or corporations issuing improper, unlawful circulating medium. Penalty.

SECT. 133. If any person, number of persons, or corporation, in this territory, without special leave from the general assembly, shall emit or utter any bill of credit, make, sign, draw, or indorse any bond, promissory note, or writing, bill of exchange, or order, to be used as a general circulating medium, as, and in lieu of, money or other currency, every such person or persons, or members of such corporation assenting to such proceedings, being thereof duly convicted, shall pay a fine not exceeding three hundred dollars, or be imprisoned not exceeding one year.

Persons damaging or destroying laws, proclamations, &c. Penalty.

SECT. 134. If any person shall intentionally deface, obliterate, tear down, or destroy, in whole or in part, any copy or transcript, or extract from, or of any law of the United States or of this territory, or any proclamation, advertisement, or notification set up at any place in this territory, by authority of any law of the United States or of this territory, or by order of any court, such person, on conviction, shall be fined in a sum not exceeding fifty dollars nor less than five dollars, or imprisoned for a term not exceeding one month: *Pro-*

Proviso.

vided, That this section shall not extend to defacing, tearing down, obliterating, or destroying any law, proclamation, publication, advertisement, or notification, after the time for which the same was by law to remain set up shall have expired.

SECT. 135. If any person shall be found having upon him or her, any picklock, crow, key, bit, or other instrument or tool, with intent feloniously to break and enter into any dwelling-house, store, warehouse, shop, or other building containing valuable property, or shall be found in any of the aforesaid buildings, with intent to steal any goods and chattels, every such person so offending shall, on conviction, be deemed a vagrant, and punished by confinement in the penitentiary for a term not exceeding two years. And if any person shall have upon him any pistol, gun, knife, dirk, bludgeon, or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined in a sum not exceeding one hundred dollars, or imprisoned not exceeding three months.

Persons having
housebreaking
tools, or being
found in build-
ing with intent
to steal. Pen-
alty.

Person having
offensive weapon,
with intent to as-
sault. Penalty.

SECT. 136. Every male person above eighteen years of age, who shall neglect or refuse to join the posse comitatus, or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons against whom there may have issued any civil or criminal process, or by neglecting or refusing to aid and assist in retaking any person or persons, who after having been arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offence, being thereto lawfully required by any sheriff, deputy-sheriff, coroner, constable, judge, or justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in a sum not less than ten dollars nor more than fifty dollars.

Male person
refusing to join
the posse comita-
tus. Penalty.

SECT. 137. If any person or persons shall open the grave or tomb where the body or bodies of any deceased person or persons shall have been deposited, and shall remove the body or bodies, or remains of any deceased person or persons from the grave or place of sepulture, for the purpose of dissection, or any surgical or anatomical experiment, or for any other purpose, without the knowledge and consent of the near rela-

Persons open-
ing graves and
tombs, and
removing dead
bodies, or assist-
ing, without con-
sent of relatives.
Penalty.

tions of the deceased, or shall in any way aid, assist, counsel, or procure the same to be done, every such person or persons so offending, shall, on conviction, be fined not less than one hundred dollars, nor more than five hundred dollars: *Provided*, That this section shall not extend to the dissection of any criminal, where the same shall be directed to be delivered up for that purpose by competent authority: *And provided, also*, That this section shall not be construed to prevent any person from removing the body or bodies of their deceased relations or intimate friends, to any other place of sepulture that he or she may think proper.

Persons voting more than once. Penalty. SECT. 138. If any person, being an elector, shall vote more than once at any election which may be held by virtue of any law of this territory, he shall, on conviction thereof, be fined in any sum not exceeding one hundred dollars.

Bribing or threatening an elector. SECT. 139. If any person shall, by bribery, menace, treating, or other corrupt means or device whatsoever, either directly or indirectly, attempt to influence any elector of this territory, in giving his vote at any election, every person so offending, and being thereof convicted, shall be fined not exceeding five hundred dollars, and shall thereafter be disqualified from voting at any election in this territory for five years.

Disturbing peace and order on the Sabbath. Penalty. SECT. 140. Any person who shall hereafter knowingly disturb the peace and good order of society by labor or amusement on the first day of the week, commonly called Sunday (works of necessity and charity excepted), shall be fined, upon conviction thereof, in any sum not exceeding five dollars.

Preceding section, how construed. SECT. 141. The preceding section shall not be construed to prevent watermen from landing their passengers, lading and unlading their cargoes, or ferrymen from carrying over the water travellers or persons moving with their families, on the first day of the week; nor to prevent the due exercise of the rights of conscience by any person who may think proper to keep any other day as a Sabbath, than the first day of the week.

Disturbing family on the Sabbath. Penalty. SECT. 142. Whoever shall be guilty of any noise, rout, or amusement on the first day of the week, called Sunday, whereby the peace of any private family may be disturbed, such person so offending, shall be deemed guilty of a misde-

meanor, and upon conviction thereof, shall be fined in any sum not exceeding twenty-five dollars.

SECT. 143. Any person who shall, by menace, profane swearing, vulgar language, or any disorderly or immoral conduct, interrupt or disturb any congregation or collection of citizens assembled together for the purpose of worshipping Almighty God, or who shall sell or attempt to sell, or otherwise dispose of ardent spirits or liquors, or any articles which will tend to disturb any worshipping congregation or collection of people, within one mile of such place, unless the person so selling or disposing of said spirituous liquors or articles, shall be regularly licensed to keep a tavern or grocery, and shall sell the same at his said tavern or grocery, any person so offending, shall be deemed guilty of a high misdemeanor, and upon conviction, shall be fined in any sum not exceeding fifty dollars: *Provided*, That this section shall not be so construed as to affect any person who may sell whiskey or any other ardent spirits at his own distillery, store, or dwelling-house.

Disturbing religious congregations. Penalty.

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SECT. 144. Justices of the peace, respectively, in their several counties, shall have jurisdiction of the aforesaid offences, and may on view or upon information on oath, cause every such person, having offended as aforesaid, to be apprehended and brought before him to answer such charge.

Justices of the peace have jurisdiction of such offences.

SECT. 145. Any person who shall be accused of either of the offences specified in the five preceding sections, if he choose it, shall have the cause tried by a jury of six lawful jurors, and if he shall insist on a full jury, by twelve, who shall be summoned to try the cause; and if the jury shall find the accused guilty, they shall assess and state the amount of the fine, not more than in said sections specified; upon which the justice, before whom the trial shall be had, or in case the person shall plead guilty, shall give judgment for fine and costs, and proceed to collect the same without delay; and when said fine shall be collected, the officer or person collecting the same shall be required to pay it over without delay to the treasurer of the proper county, taking his receipt therefor; and which receipt shall be filed with the clerk of the county; after which the said fine or fines which may be thus deposited shall be subject to the control of said court, and

Person accused of these offences may have jury.

Penalty, how stated, and used for benefit of orphans.

appropriated to the education of any poor orphan child or children of the proper county.

Judgments
subject to ap-
peals.

SECT. 146. The judgment rendered under the six preceding sections shall be subject to appeals as in cases of assault and battery and affrays, and shall be collected in the same manner.

OFFENCES COMMITTED BY CHEATS, SWINDLERS, AND OTHER
FRAUDULENT PERSONS.

Parties to
frauds, how pun-
ished.

SECT. 147. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance had, made, or contrived, with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands; or who, being parties as aforesaid, at any time shall wittingly and willingly put in use, avow, maintain, justify, or defend the same or any of them, as true, and done, had, or made in good faith, or upon good consideration, or shall sell, alien, or assign, any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him, her, or them conveyed as aforesaid, or any part thereof, he, she, or they so offending, shall, on conviction, be fined not exceeding one thousand dollars.

Person falsely
representing his
respectability,
wealth, &c., and
thereby defraud-
ing. Penalty.

SECT. 148. If any person, by false representations of his own respectability, wealth, or mercantile correspondence and connections, shall obtain a credit thereby, defraud any person or persons of money, goods, chattels, or any valuable thing, or if any person shall cause or procure others to report falsely of his honesty, wealth, or mercantile character, and by thus imposing upon any person or persons, obtain credit, and thereby fraudulently get into possession of goods, wares, or merchandise, or any valuable thing, every such offender shall be deemed a swindler; and on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars, and imprisoned not exceeding six months: *Provided*, That this section shall apply only to representations which shall

Proviso.

have been reduced to writing, and signed by the party to be charged thereby, prior to the obtaining such credit.

SECT. 149. If any person or persons shall, knowingly and designedly, by any false pretence or pretences, obtain from any other person or persons, any chose in action, money, goods, wares, chattels, effects, or other valuable thing whatever, with intent to cheat or defraud any such person or persons of the same, every person so offending shall be deemed a cheat, and upon conviction, shall be fined in any sum not exceeding one thousand dollars, and imprisoned not exceeding one year, and shall be sentenced to restore the property so fraudulently obtained, if it can be done: *Provided*, That this section shall not apply to cases of sales of property on credit.

Persons, by false pretences, obtaining money, goods, &c., deemed cheats. Penalty.

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SECT. 150. Any person or persons, after once selling, bartering, or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of any lands, or town lot or lots, who shall again knowingly and fraudulently sell, barter, or dispose of the same tract or tracts of land, or town lot or lots, or any parts thereof, or shall knowingly and fraudulently execute any bond or agreement to sell or barter, or dispose of the same land, or lot or lots, or any part thereof, to any other person or persons for a valuable consideration, every such offender, upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year, nor more than ten years.

Selling, bartering, or disposing of land, &c., twice. Penalty.

SECT. 151. If any person shall knowingly sell by false weights or measures, or shall knowingly use false measures at any mill, in taking toll for grinding corn, wheat, rye, or other grain, he or she shall be deemed a common cheat, and on conviction, shall be fined not less than two hundred dollars, and imprisoned not exceeding three months.

Using false weights and measures. Penalty.

FRAUDULENT AND MALICIOUS MISCHIEF.

SECT. 152. If any person shall wilfully or maliciously cut down, break down, level, demolish, or otherwise destroy or damage any bridge, embankment, or mill-dam, or break or destroy the windows or doors of any dwelling-house or other house, or shall set fire to or burn, or destroy, or procure, or cause to be burnt or destroyed, any barrack, cock, crib, rick,

Persons guilty of certain mischievous conduct. How punished.

or stack of hay, corn, wheat, oats, barley, or other grain of any kind, or shall cut down, girdle, or destroy any fruit-tree, or shade-tree, or shall cut, pull down, or destroy any gate, post, railing, or fence, or shall pull down, burn, or destroy any pile or piles of wood, boards, or planks, or other lumber, or shall overturn any cart, wagon, or other carriage, or shall run them into sloughs, holes, or other places, or shall cut loose or set adrift any canoe, ferry flat, skiff, boat, or other vessel, for mischief, or shall unlawfully, wantonly, wilfully, or maliciously kill, wound, disfigure, or destroy any horse, mare, filly, colt, or gelding, or any bull, ox, steer, bullock, cow, heifer, or calf, or any sheep or lamb, or any hog, pig, or dog, or any other useful animal, being the property of another, every person so offending, on conviction, shall be fined not exceeding one hundred dollars, or be imprisoned not exceeding three months, or both.

Destroying or
injuring public
place of confine-
ment. Penalty.

SECT. 153. If any person shall, wilfully and intentionally, break down, pull down, or otherwise destroy or injure, in whole or in part, any public jail or other place of confinement, every person so offending shall, upon conviction, be fined in any sum not exceeding five thousand dollars, nor less than the value of such jail or place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act.

Setting fire to
woods and
prairies. Pen-
alty.

SECT. 154. If any person or persons shall, at any time hereafter, wilfully and intentionally, or negligently and carelessly, set on fire, or cause to be set on fire, any woods, prairies, or other grounds whatsoever, in the inhabited parts of this territory, every person so offending shall, on conviction, be fined in any sum 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 prairies adjoining his or her own farm, plantation, or inclosure, for the necessary preservation thereof from accident by fire, between the first day of March and the last day of November, by giving to his or her neighbors two days' notice of such intention: *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.

Proviso.

CONSTRUCTION OF THIS CHAPTER, AND DUTY OF COURTS AND
GRAND JURY.

SECT. 155. After the grand jury is impaneled, it shall be the duty of the court to appoint a foreman, who shall have power to swear or affirm witnesses to testify before them; and whose duty it shall be, when the grand jury, or any twelve of them, find a bill of indictment, to be supported by good and sufficient evidence, to indorse thereon "a true bill;" and when they do not find a bill to be supported by sufficient evidence, to indorse thereon "not a true bill;" and shall in either case sign his name as foreman, at the foot of said indorsement; and shall also, in each case in which a true bill shall be returned into court as aforesaid, note thereon the name or names of the witness or witnesses, upon whose evidence the same shall have been found.

Proceedings by
grand jury.

SECT. 156. Before the grand jury shall enter upon the discharge of their duties, the following oath shall be administered to the foreman, to wit:

Oath to be ad-
ministered to
foreman of grand
jury.

"You, as foreman of this inquest, do solemnly swear (or affirm, as the case may be,) that you will diligently inquire into and true presentment make of all such matters and things as shall be given you in charge, or shall otherwise come to your knowledge touching the present service; you shall present no person through malice, hatred, or ill-will; nor shall you leave any unrepresented through fear, favor, or affection, or for any fee or reward, or for any hope or promise thereof; but in all your presentments 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."

And the following oath or affirmation shall be administered to the other jurors, to wit:

Oath to the
jurors.

"The same oath that A—— B——, your foreman, has just taken before you on his part; you and each of you shall well and truly keep and observe on your respective parts: so help you God."

SECT. 157. No grand jury shall make presentments of their own knowledge, upon the information of a less number

Presentments
of their own
knowledge.

than two of their body, unless the juror giving the information is previously sworn as a witness, in which case, if the evidence shall be deemed sufficient, an indictment may be found thereon, in like manner as upon the evidence of any other witness, who may not be of the jury.

Indictment
deemed suffi-
cient, when.

SECT. 158. Every indictment or accusation of the grand jury, shall be deemed sufficiently technical and correct, which states the offence in the terms and language of this code, or so plainly that the nature of the offence may be easily understood by the jury. The commencement of the indictment shall be in substance as follows :

TERRITORY OF DAKOTA, }
— county, } ss.

Of the — term of the — district court, in the year of our Lord, 18—.

The grand jurors, chosen, selected, and sworn in and for the county of —, in the name and by the authority of the Territory of Dakota, upon their oaths present, &c. [Here insert the offence, the time and place of committing the same, with reasonable certainty.]

When there is
variance between
indictment and
evidence, indict-
ment may be
amended, how.

SECT. 159. Whenever on the trial of any indictment for any felony or misdemeanor, there shall appear to be any variance between the statement in such indictment and the evidence, offered in the proof thereof, in the name of any county, precinct, city, town, borough, township, town corporate, or place mentioned or described in any such indictment; or in the name or description of any person or persons, or body politic or corporate therein alleged or stated to be the owner or owners of any property, real or personal, which shall form the subject of any offence charged therein; or in the name or description of any person or persons, body politic or corporate, therein stated or alleged to be injured or damaged by the commission of such offence, or in the Christian name or surname or both Christian name and surname, or other description whatsoever of any person or persons whomsoever, therein named or described, or in the ownership of any property named or described, or in the ownership of any property named or described therein, it shall be and may be lawful for the court before which the trial shall be had, if it shall consider such variance not material to the merits of the case,

and that the defendant cannot be prejudiced thereby in his defence on such merits, to order such indictment to be amended, according to the proof, by some officer of the court, both in that part of the indictment where such variance occurs, and in every other part of the indictment which it may become necessary to amend on such terms as to postponing the trial to be had before the same jury or another jury, as such court shall think reasonable; and after any such amendment, the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects and with the same consequences, both with respect to the liability of witnesses to be indicted for perjury or otherwise, as if no such variance had occurred, and the order for amendment shall be indorsed on the indictment: *Provided*, That when any such trial shall be had before another jury, the territory and the defendant shall respectively be entitled to the same challenges as they were respectively entitled to before the first jury was sworn.

SECT. 160. Every verdict and judgment which shall be given after the making of any amendment under the provisions of this code, shall be of the same force and effect in all respects as if the same indictment had originally been in the same form in which it was after such amendment was made.

SECT. 161. If it shall be necessary at any time, for any purpose whatever, to draw up a formal record in any case when any amendment shall have been made under the provisions of this code, such record shall be drawn up in the form in which the indictment was after such amendment was made, without taking any notice of the fact of such amendment having been made.

SECT. 162. All exceptions which go merely to the form of an indictment, shall be made before trial, and no motion in arrest of judgment, or writ of error, shall be sustained for any matter not affecting the real merits of the offence charged in such indictment. No indictment shall be quashed for want of the words, "with force or arms," or of the occupation or place of residence of the accused, nor by reason of the disqualification of any grand juror or grand jurors.

SECT. 163. Nothing in this chapter contained shall be so

Proviso.

Verdict and judgment of same force as if no amendment had been made.

If formal record necessary, indictment to be inserted as amended.

Force of exceptions to form, &c.

Parties injured may maintain

action for damages as well as criminal offence.

construed as to prevent the party or parties injured from having and maintaining a civil action for all damages and losses that he, she, or they may have sustained, in consequence of the commission of any criminal offence herein punished ; and no court shall allow or entertain the plea that the private injury is merged in the crime, or in any manner affected thereby: *Provided, however,* The record of conviction shall not be used as evidence in any civil action brought on any forged writing, or to recover the damages and losses sustained by the commission of any such criminal offence.

Proviso.

Judges to make report of deficiencies or defects in code.

SECT. 164. It shall be and is hereby declared to be the duty of the judges of the supreme and district courts to make a special report biennially, to the legislature, of all such defects, omissions, or imperfections in this code, as experience may suggest.

Death penalty, how inflicted.

SECT. 165. The manner of inflicting the punishment of death, shall be by hanging the person convicted by the neck until death, at such time as the court shall direct, not less than fifteen nor more than sixty days from the time sentence is pronounced, unless, for good cause, the court or governor may prolong the time.

Court may order body delivered to surgeons.

SECT. 166. The court may order, on the application of any respectable surgeon or surgeons, that the body of the convict shall, after death, be delivered to such surgeon or surgeons for dissection.

This chapter extends to females.

Jury to name term of confinement. Judge to apportion it.

SECT. 167. This chapter shall extend to females committing any of the offences made punishable by this chapter, although they may not be expressly named. In all cases where the punishment shall be by confinement in the penitentiary, the jury shall say in their verdict for what term the offender shall be confined ; and the court, in pronouncing sentence, shall designate the portion of time such offender shall be confined to solitary imprisonment, and what portion to hard labor. Persons under the age of eighteen years shall not be punished by confinement in the penitentiary for any offence, except robbery, rape, manslaughter, burglary, or arson; in all other cases, where a penitentiary punishment is or shall be provided, such person, under the age of eighteen years, shall be punished by imprisonment in the county jail, for any term not exceeding eighteen months, at the discretion of the court.

Persons under 18 years, when confined in penitentiary and when in jail.

SECT. 168. All offences herein defined shall be prosecuted and punished as by this chapter is prescribed, and not otherwise; and all other offences may be punished by fine and imprisonment, in the discretion of the court: *Provided*, The fine in no case shall exceed one hundred dollars, and the imprisonment six months.

Offences punished.

Proviso.

SECT. 169. Whenever the punishment for any crime or misdemeanor is discretionary as to the extent or amount thereof, the court shall determine and affix the same, whether the punishment consist of corporeal punishment, imprisonment, or fine.

When punishment is discretionary, court to fix.

SECT. 170. All fines imposed by virtue of any of the laws of this territory for the punishment of crimes and misdemeanors, shall, when collected, be paid into the treasury of the county where the offence shall be tried, for the use of such county, unless otherwise specially directed: *Provided, however*, That nothing in this section contained shall be so construed, as to found or constitute a cause of challenge or objection to any grand or petit juror.

Fines paid into county treasury.

Proviso.

SECT. 171. The benefit of clergy, appeals of felony, and trials by battle, shall be and are hereby forever abolished.

Benefit of clergy, appeals of felony, and trials by battle abolished.

SECT. 172. The court shall have power, in all cases of conviction under this chapter, when any fine is inflicted to order, as part of the judgment of the court, that the offender shall be committed to jail, there to remain until the fine and costs are fully paid or otherwise legally discharged.

Court may order confinement until fine is paid.

SECT. 173. Each and every person who may hereafter be convicted of the crime of rape, kidnapping, wilful and corrupt perjury or subornation of perjury, arson, burglary, robbery, sodomy, or the crime against nature, incest, larceny, forgery, counterfeiting, or bigamy, shall be deemed infamous, and shall forever thereafter be rendered incapable of holding any office of honor, trust, or profit, of voting at any election, and of serving as a juror.

Persons guilty of certain crimes deemed infamous, and incapable of holding certain positions.

OF PROCESS, INDICTMENT, ARRAIGNMENT, TRIAL, JUDGMENT, EXECUTION, AND WRIT OF ERROR.

SECT. 173. It shall be the duty of the district court, when any indictment shall be found as a true bill, to make an order, fixing the amount of bail to each offence bailable by

How persons may be admitted to bail.

law, to be indorsed on the process by the clerk; and the sheriff, coroner, or other officer who shall arrest [may admit] the indicted person or persons to bail upon his, her, or their entering into a recognizance, with one or more securities, in the sum or sums specified on said process, which recognizance shall be made to the Territory of Dakota, conditioned for the appearance of the indicted person or persons, on the first day of the next district court to be holden in and for said county, to answer the said indictment, and not depart the court without leave, which recognizance shall be signed by the persons entering into the same, and certified by the officer taking it. Every recognizance so taken, is hereby declared to be valid and binding, and shall not be set aside or adjudged insufficient for want of form.

Clerks to issue process of arrest; arrest, how made, &c.

If offence not bailable.

Of arrests in other counties.

SECT. 175. It shall be the duty of the clerks of the district courts of each county of this territory, to issue process of *capias* for the apprehension of all persons indicted in said courts respectively, to be directed to the sheriff, coroner, and constable of the county where such indicted person or persons shall then be; and it shall be the duty of the sheriff, or, in case of his absence or inability, of the coroner or some one of the constables of the county to which said *capias* is directed, to arrest the person or persons therein named, and to let him or them to bail where the offence is bailable; or if the offence be not bailable, or not sufficient bail be offered, then the officer making the arrest shall bring his, her, or their bodies to the jail of the county where said *capias* is returnable, and deliver such accused person or persons, together with the *capias*, to the keeper of the jail, there to remain until discharged by due course of law. It shall also be the duty of any officer who shall take any recognizance in pursuance of this section, to return the same to the clerk by the first day of the court to which it may be returnable. It shall be lawful for any officer who has the custody of any prisoner or prisoners, by virtue of this section, to pass through any counties which lie in his route between the place of arrest and the county to which he is taking such prisoner or prisoners, and to lodge or deposit said prisoner or prisoners, in any jail on his route, for safe custody, for one night or more, as occasion may require; and it is hereby made the duty of the county commissioners' court of the county where such indictment

shall be found, to pay to the officer who shall bring any offender or offenders from another county, his reasonable charges for such service: *Provided*, That nothing contained in this or the preceding section, shall prevent a *capias* from being issued without such indorsement, returnable *instanter*, which *capias* shall authorize and require the accused to be arrested and immediately brought into court, when he or she shall be either committed, bailed, or tried at the term at which the indictment shall be found.

Proviso.

SECT. 176. It shall be the duty of the clerks of the district courts to issue *subpœnas*, either on the part of the territory or of the accused, in any indictment directed, as in the preceding section, to any county in this territory. And every witness who shall be duly *subpœnaed*, and shall neglect or refuse to attend any district court, pursuant to the requisitions of such *subpœna*, shall be proceeded against and punished for contempt of the court. And attachments against witnesses who live in a different county from that where such *subpœna* is returnable, may be served in the same manner as *capias* are directed to be served, out of the county from which they issue, in the preceding section.

Clerks issue *subpœnas* for witness. Contempt, &c.

SECT. 177. It shall not be necessary to issue a *venire* in any criminal case. And in all criminal cases where the panel of jurors shall be exhausted, by challenges or otherwise, and whether any juror has been elected and sworn or not, it shall be competent for the court to order on their minutes a *tales* for any number of jurors, not exceeding twenty-four, returnable *instanter*, out of which persons so ordered to be summoned, it shall be lawful to impanel a jury for the trial of any criminal case; but should the *tales* ordered be insufficient, by reason of challenges or otherwise, to form an impartial jury, the court may, from time to time, make such further orders on their minutes for additional *talesmen*, returnable *instanter*, until a full jury shall be obtained.

Venire not necessary in criminal case. If panel of jurors exhausted.

SECT. 178. No bill of indictment for false imprisonment, or wilful and malicious mischief, shall be found a "true bill," by any grand jury, unless a prosecutor is indorsed thereon by the foreman of the grand jury, with the consent of the prosecutor, except the same shall be found upon the information and knowledge of two or more of the grand jury, or upon the information of some public officer in the necessary discharge

Indictment for false imprisonment and malicious mischief.

of his duty, in which case it shall be stated, at the end of the indictment, how the same is found, and then no prosecutor shall be required; but in cases where a prosecutor is indorsed on the indictment, and the defendant shall be acquitted on trial, the petit jury acquitting each defendant, shall find, in addition to the verdict of "not guilty," whether the prosecutor had acted maliciously by instructing the prosecution or not; and whenever the petit jury shall return with a verdict of "not guilty," that the prosecutor had acted maliciously in the premises, the court shall enter judgment for costs against the prosecutor, including a fee of three dollars to the district attorney, and award execution for the same, as is done in civil cases: *Provided*, That nothing herein contained shall render the prosecutor incompetent to be a witness, either before a grand or petit jury.

Proviso.

Persons charged with certain crimes furnished with copy of indictment and list of witnesses.

SECT. 179. Every person charged with treason, murder, or other felonious crime or misdemeanor, shall be furnished previous to his trial, with a copy of the indictment, and a list of the witnesses, at his or her request, or the request of his or her counsel.

Arraignment and plea of prisoner, if not inserted in minutes.

SECT. 180. Upon the arraignment of a prisoner, it shall be sufficient, without complying with any other form, to declare, orally, by himself or herself, or his or her counsel, that he or she is not guilty; which declaration or plea shall be immediately entered upon the minutes of the court by the clerk, and the mention of the arraignment and such plea shall constitute the issue between the Territory of Dakota and the prisoner; and if the clerk should neglect to insert in the minutes the arraignment and plea, it may and shall be done at any time by order of the court, and then the error or defect shall be cured.

If party indicted stand mute, or refuse to plead.

SECT. 181. In all cases where the party indicted shall, on being arraigned, obstinately stand mute or refuse to plead, standing mute or refusing to plead, shall be adjudged and taken to be a denial of the facts charged in the indictment, and the court shall order the plea of "not guilty" to be entered on the minutes, and the trial, judgment, and execution shall proceed in the same manner as it would have done if the party had pleaded "not guilty."

If party pleads guilty.

SECT. 182. In all cases where the party indicted shall plead "guilty," such plea shall not be entered until the court

shall have fully explained to the accused the consequences of entering such plea; after which, if the party indicted persist in pleading "guilty," such plea shall be received and recorded, and the court shall proceed to render judgment and execution thereon, as if he or she had been found guilty by a jury. In all cases where the court possess any discretion as to the extent of the punishment, it shall be the duty of the court to examine witnesses as to the aggravation and mitigation of the offence.

If court possess discretion in punishment.

SECT. 183. Every person arraigned for any crime, punishable with death, shall be admitted, on his trial, to a peremptory challenge of sixteen jurors, and no more; and every person arraigned for any offence that may be punished by imprisonment for a term exceeding eighteen months, shall be admitted to a peremptory challenge of eight jurors; and in all other criminal trials the defendant shall be allowed a peremptory challenge of six jurors. The attorney, prosecuting on behalf of the territory, shall be admitted to a peremptory challenge of six jurors, in all cases where the offence charged is punishable with death, and of three jurors in all other cases.

Challenging of jurors, how limited.

SECT. 184. In no case shall the right to a trial by jury *de mediate lingua*, be allowed in criminal prosecutions.

Trial by jury, *de mediate lingua*, when not allowed.

SECT. 185. Where an offence shall be committed on a county line, the trial may be in either county divided by such line; and where any offence shall be committed against the person of another, and the person committing the offence shall be in one county, and the person receiving the injury shall be in another county, the trial may be had in either of said counties.

Where offence is committed on county line.

Injured party in one county and offender in another.

SECT. 186. In all complaints exhibited before the grand jury of any county, they shall hear the witnesses on behalf of the territory only, and may find an indictment on the oath of one witness only, or upon the information of two of their own body, except in cases of treason or perjury, where at least two witnesses to the same fact shall be necessary; and in finding a bill of indictment, at least twelve of the grand jury shall be present, and at least twelve of them shall agree to the finding. The foreman of the grand jury may swear or affirm all witnesses that may come before the jury.

Witness before grand jury for territory only.

Foreman administer oath or affirmation.

SECT. 187. All trials for criminal offences shall be con-

Trials by common law, unless

otherwise provided.

Juries, judges of law and fact.

When jury retire to consider their verdict.

Proviso.

If officer attending jury violates oath or affirmation.

When person convicted, to pay costs.

Property of person bound from time of

ducted according to the course of the common law, except when this chapter points out a different mode, and the rules of evidence of the common law shall also, unless changed by this chapter, be binding upon all courts and juries in criminal cases. Juries in all cases shall be judges of the law and the fact.

SECT. 188. When the jury shall retire to consider of their verdict in any criminal case, a constable or other officer shall be sworn or affirmed to attend the jury to some private and convenient place, and to the best of his ability, keep them together without meat or drink, water excepted, unless by leave of the court, until they shall have agreed upon their verdict, that he will not speak to them himself, except to ask them if they have agreed upon their verdict, nor suffer any other person to speak to them, and that when they shall have agreed on their verdict, he will return them into court: *Provided, however,* That in any cases of misdemeanor only, if the district attorney, and the person on trial, by himself or counsel, shall agree, which agreement shall be entered upon the minutes of the court, to dispense with the attendance of an officer upon the jury, or that the jury, when they have agreed upon their verdict, may write and seal the same, and after delivering the same to the clerk, may separate; it shall be lawful for the court to carry into effect any such agreement and receive any such verdict so delivered to the clerk, as the lawful verdict of any such jury.

SECT. 189. If any officer, sworn to attend upon a jury, shall knowingly violate his oath or affirmation, or shall so negligently perform his duties that the jury shall separate without leave of the court, or obtain food or drink (except water), or if any person, not belonging to the jury, shall hold conversation with any of the jury, every person and officer so offending shall be punished for a contempt of the court, by fine or imprisonment, or both, in the discretion of the court.

SECT. 190. In all cases where any person or persons shall be convicted of any crimes or misdemeanors specified in this chapter, or of any offences at common law, the court shall give judgment that the offender or offenders, so convicted, shall pay the costs of the prosecution.

SECT. 191. The property, real and personal, of every person who shall be convicted of any of the offences punished

by this chapter, shall be bound; and a lien is hereby created on the property, both real and personal, of every such offender, from the time of his or her arrest, if he or she be arrested before indictment, if not, then from the time of finding the indictment, at least so far as will be sufficient to pay the fine and costs of prosecution. And it shall be the duty of the clerk of the district court, at the end of each term, to issue an execution for every fine which shall have been imposed during the term, and which remains unpaid, and for all costs of conviction in criminal cases; in which execution shall be stated, the day on which the arrest was made, or indictment found, as the case may be, which execution shall be delivered to the sheriff or coroner, and shall be by him levied on all the estate, real and personal, which the defendant or defendants possessed, as his or her own real or personal estate, on the day mentioned in such execution, and any property, real and personal, subsequently acquired by him or her; which property, so to be levied upon, shall be advertised as in civil cases, and sold for what it will bring. It shall be no objection to the selling of any property, under such execution, that the body is in custody for said fine and costs.

indictment or conviction.

Execution issued by clerk, and to state what.

SECT. 192. It shall and may be lawful for any person or persons, convicted of any criminal offence, to replevy the judgment for the fine and costs, or the costs only when no fine shall be imposed, by such convicted person or persons, with one or more good and sufficient freeholders entering into a recognizance before the district court, to the people of this territory, for the payment of such fine and costs, or costs only, within five months from the date of the acknowledgment; which recognizance, so taken, is hereby declared valid in law, and to create a lien on the real estate of all such persons as shall acknowledge the same, and upon the breach thereof the clerk is hereby authorized to issue an execution against the goods and chattels, lands and tenements, of the persons who entered into recognizance, in the same manner as if it had been a judgment of the court, which execution shall be collected in the same manner as is prescribed in the preceding section. No scire facias shall be necessary previous to issuing such execution. In all cases where the person or persons, convicted as aforesaid, shall replevy the fine and costs, as is provided in this section, then no execution

Judgment may be replevied, undertaking with sureties.

shall issue for said fine and costs, as is prescribed in the next preceding section; and further, such person or persons, after replevying the fine and costs, as aforesaid, shall not be imprisoned for such fine and costs, but such person or persons shall be wholly discharged from any imprisonment, in consequence of any conviction, unless where imprisonment is by this chapter made a part of the punishment; in that case, such convicted person or persons shall be discharged from his or her, or their imprisonment, at the expiration thereof, if he, she, or they have replevied the fine and costs as aforesaid.

Such executions may be issued into any county in territory.

SECT. 193. Executions for fines and costs of prosecution, and on recognizances taken in pursuance of the preceding section, may be issued into any county in this territory.

Whenever it appears that confined person has not estate to pay fine and costs, to be released.

SECT. 194. Whenever it shall be made satisfactory to appear to the district court, after all legal means have been exhausted, that any person who is confined in jail for any fine or costs of prosecution, for any criminal offence, hath no estate wherewith to pay such fine and costs, or costs only, it shall be the duty of the said court to discharge such person from further imprisonment for such fine and costs; which discharge shall operate as a complete release of such fine and costs: *Provided*, That nothing herein shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned, as part of his or her punishment.

Proviso.

How securities may be discharged.

SECT. 195. In all cases of bail for the appearance of any person or persons charged with any criminal offence, the security or securities of such person or persons may, at any time before judgment is rendered, upon scire facias to show cause why execution should not issue against such security or securities, seize and surrender such person or persons charged as aforesaid, to the sheriff of the county wherein the recognizance shall be taken, and it shall be the duty of such sheriff on such surrender, and the delivery to him of a certified copy of the recognizance by which such security or securities are bound, to take such person or persons, so charged as aforesaid, into custody, and by writing, acknowledge such surrender, and thereupon the security or securities shall be discharged from such recognizance, upon payment of all costs occasioned thereby.

SECT. 196. In the trial of any person or persons for any crime or misdemeanor, it shall be the duty of the judge before whom such trial is pending, to sign and seal any bill of exception tendered to the court during the progress thereof: *Provided*, The truth of the case be fairly stated in such bill of exception; and thereupon the said exceptions shall, by the clerk of the said court, be entered in the record of such trial, and become, to all intents and purposes, a part thereof.

Judge to sign and seal bill of exceptions tendered.

Proviso.

SECT. 197. The party aggrieved by manifest and material error, appearing of record, in any capital prosecution by indictment, may be relieved by writ of error upon complying with the following terms, to wit: The party complaining that error has been committed, shall obtain a certified copy of the record from the clerk, and from the judge of the district court, or from the person who acted as prosecuting attorney on the trial, a certificate expressive of an opinion that said record contains a full and true history of the proceedings on said trial; which record, together with an assignment of the errors relied on for the reversal of the judgment, shall be presented to the supreme court, or to one of the justices thereof in vacation; and if after inspection of such transcript, the court or justice aforesaid shall be of opinion that there is reasonable cause for allowing a writ of error, the same shall be granted, by order indorsed on the back of said transcript. The allowance of such writ of error shall be sufficient authority to the clerk of the supreme court, to issue a supersedeas to stay the execution of the sentence of death, but not the discharge of the prisoner from jail. Where any judgment, the execution whereof has been stayed by writ of error, as aforesaid, shall be affirmed, the supreme court shall, by order, fix the time when the original sentence of death shall be executed, a copy of which order shall be sufficient authority to the sheriff for the execution of any prisoner therein mentioned, at the time specified.

Party in criminal prosecution relieved by writ of error, how.

SECT. 198. Writs of error in all criminal cases not capital, shall be considered as writs of right, and issue of course; but no writ of error shall be a supersedeas, unless the supreme court, or one of the justices thereof, in vacation, after inspecting a copy of the record, certified as in the preceding section, together with an assignment of the errors relied on for a reversal of the judgment, shall be of opinion that there is

Writs of error in criminal cases not capital.

reasonable cause for allowing a writ of error, then the writ shall be granted by order indorsed on the back of such record, in which case the clerk of the supreme court shall issue a supersedeas, which shall have the effect to stay the execution of the sentence, but not to discharge the prisoner from custody.

Party, how liberated, until writ determined.

If the party applying for such writ of error shall, at the same time be in custody, under the authority of the judgment prayed to be superseded, and the said court or justice shall be of opinion that the party obtaining such writ of error, ought to be bailed until the determination of such writ of error, the said supreme court or justice may make an order to discharge such prisoner from custody, upon the prisoner entering into a recognizance to the territory, before the sheriff of the county where he or she shall be imprisoned, in such sum and with such security, as said court or justice shall prescribe; which recognizance shall be conditioned that the prisoner will appear at the next district court, to be holden in the county where the trial of such prisoner took place, and at each subsequent term of the district court, on the first days, until the determination of such writs of error, and that he will be present and submit to such order as the supreme court shall make in the premises, and will not at any of the terms of said court in which he shall be bound to appear by said recognizance, depart the court without leave. The recognizance, so taken, shall be returned to the next district court and there entered of record, and such proceedings may be thereon had, in case of the breach of the condition of such recognizance of such, as shall be according to the course to the common law: *Provided, however,* That in cases where corporeal punishment is inflicted, the prisoner shall in no case be bailed upon the affirmance of any judgment brought into the supreme court, by virtue of this section; the said court shall order and direct the district court to carry into effect the judgment of the court below. In case of affirmance, judgment shall be given for costs against the party prosecuting such writ of error, and execution shall issue thereupon from the supreme court.

Proviso.

Of change of venue.

SECT. 199. When any defendant, in any indictment or information in any court in this territory, shall fear that he will not receive a fair and impartial trial in the court in which the trial is pending, on account that the judge is prejudiced, or

the minds of the inhabitants of the county wherein the trial is pending is prejudiced against him, such party may apply to the court in term time, or the judge thereof in vacation, for a change of venue, by petition, setting forth the cause of such application, verified by affidavit, reasonable previous notice having been given to the district attorney prosecuting for the district; and the court or judge may, in his discretion, award a change of venue to the next nearest county where the cause complained of does not exist; and in case the applicant be in custody or confined in jail, the court or judge shall make an order to the sheriff to remove the body of such applicant to the common jail of the county to which such venue is changed, and there deliver him to the keeper of said jail, together with the warrant by virtue of which he is confined or held in custody, not more than three days next before the first day of the term of said court; and the sheriff shall obey such order accordingly, and shall indorse on such warrant of commitment the reason of change of custody, and shall deliver such warrant, with the body of the prisoner, to the keeper at the jail of the proper county, who shall receive the same and give to the sheriff a receipt therefor, and shall take charge of and safely keep the prisoner in the same manner as if he originally had been committed to his custody: *Provided*,

Proviso.

SECT. 200. Change of venue shall not be granted after the first term of the court at which the party applying might have been heard, unless the party so applying shall show that the causes for which the change is asked have arisen or come to his or her knowledge subsequent to the term at which the application might have been made, and shall also have given to the opposite party ten days' previous notice of his or their intention to make such application, except in cases where the causes have arisen or come to the knowledge of the party making the application, within less than ten days of making the same.

Change permitted only at first term, except when.

SECT. 201. When any judge shall award a change of venue in vacation, in any criminal cause, he shall immediately transmit to the clerk of the court wherein the cause is pending, the petition and affidavit, together with an order in writ-

When judge shall award change of venue in vacation.

ing, ordering and directing the change of venue, and such clerk shall file the same in his office, and shall make out a copy thereof and a full transcript of the record and proceedings in such case, and shall certify and transmit the same to the proper court, together with all papers filed in the cause, and pertaining and forming a part of the record, including the indictment and recognizance of the party and all witnesses; and the clerk of the court to which such cause is certified shall file the same, and the cause shall be docketed by such clerk, and shall be proceeded in and determined by the court, in all things as well before as after judgment, as if it had originated therein.

Parties, witness, &c., to appear as notified.

SECT. 202. When the venue shall be changed in any criminal case, the parties, witnesses, and all others who may have entered into recognizances to attend the trial of such cause, having notice of the change of venue, shall be and are hereby required to attend at the time and place the trial is to be had, according to such change, and a failure to do so shall work a forfeiture of the recognizance.

When changed in term time.

SECT. 203. When the venue is changed in term time, in a criminal case, the district attorney shall have all witnesses on the part of the prosecution recognized to appear at the court, on the first day thereof, where the trial is to be had.

In case of change of venue, and defendant is sentenced to imprisonment.

SECT. 204. In all cases when a change of venue shall be ordered, in a criminal case, if the defendant shall be convicted and imprisonment shall be a part of the judgment, the sheriff of the county where such conviction shall be had, shall immediately take such prisoner and convey him to the county where the crime shall have been committed, and deliver him to the sheriff thereof, and take his receipt therefor, who shall retain him in custody, according to the judgment of said court, and all the costs and charges incurred in removing any prisoner as aforesaid, shall be allowed and paid out of the county treasury where the crime shall have been committed, if the defendant be unable to pay the same.

LIMITATION OF INDICTMENTS AND PENAL ACTIONS.

No person prosecuted for certain offence after the lapse of certain periods.

SECT. 205. No person or persons shall be prosecuted, tried, or punished, for any offence denominated by the common law felony (treason, murder, arson, and forgery excepted),

unless the indictment for the same shall be found by a grand jury, within three years next after the offence shall have been done or committed. Nor shall any person be prosecuted, tried, or punished for any misdemeanor or indictable offence below the grade of felony, or for any fine or forfeiture under any penal statute, unless the indictment, information, or action for the same shall be found or instituted within one year and six months from the time of committing the offence or incurring the fine or forfeiture: *Provided*, That nothing herein contained shall extend to any person fleeing from justice: *And provided also*, That where any suit, information, or indictment for any crime or misdemeanor, is limited by any statute, to be brought or exhibited within any other time than is hereby limited, then the same shall be brought or exhibited within the time limited by such statute: *Provided, also*, That where any indictment, information, or suit shall be quashed, or the proceedings on the same set aside or reversed on writ of error, the time during the pendency of such indictment, information, or suit so quashed, set aside or reversed, shall not be reckoned within this statute, so as to bar any new indictment, information, or suit for the same offence.

Proviso.

GENERAL PROVISIONS.

SECT. 206. The judges of the district courts in their respective districts, and justices of the peace in their respective counties, shall jointly and severally be conservators of the peace within their respective jurisdictions, as herein designated, and shall have full power to enforce, or cause to be enforced, all laws that now exist, or that shall hereafter be made, for the prevention and punishment of offences, or for the preservation and observance of the peace. They shall have power to cause to be brought before them, or any of them, all persons who shall break the peace, and commit them to jail, or admit them to bail, as the case may require, and to cause to come before them, or any of them, all persons who shall threaten to break the peace, or shall use threats against any person within this territory, concerning his or her body, or threaten to injure his or her property, or the property of any person whatever; and also all such persons as are not of good fame; and the said judge or justices

Powers of district judges and justices of the peace, conservators of the peace.

of the peace being satisfied, by the oath of one or more witnesses, of his or her bad character, or that he or she had used threats as aforesaid, shall cause such person or persons to give good security for the peace, or for their good behavior toward all the people of this territory, and particularly toward the individual threatened. If any person against whom such proceedings are had, shall fail to give a recognizance with sufficient security, it shall be the duty of the judge or justice of the peace before whom he or she shall be brought, to commit such person or persons to the jail of the proper county, until such security be given, or until the next term of the district court. Such judge or justice of the peace shall also take recognizances for the appearance of all witnesses at such courts. All recognizances to be taken in pursuance of this section, shall be returnable to the next district court, to be holden in the proper county, where all such recognizances shall be renewed or dismissed, as the said district court shall, upon examination of the witnesses, deem to be just and right. And where the person or persons committed are in jail at the sitting of such district court, the court shall examine the witnesses and either continue the imprisonment, bail the prisoner, or discharge him or her as to the said court shall appear to be right, having due regard to the safety of the citizens of this territory.

Public notice and fresh pursuit in case of felonious officer.

SECT. 207. When any felonious offence shall be committed, public notice thereof shall be immediately given in all public places near where the same was committed, and fresh pursuit shall be forthwith made after every person guilty thereof, by sheriffs, coroners, constables, and all other persons who shall be by any of them commanded or summoned for that purpose; every such officer who shall not do his duty in the premises shall be punished by fine in a sum not exceeding one hundred dollars, or imprisonment not exceeding three months.

In case of information of criminal offence and supposed criminal, duty of judge or justice.

SECT. 208. It shall be lawful for any of the aforementioned judges or justices of the peace, upon oath or affirmation being made before him, that any person or persons having committed any criminal offence in this territory, or that a criminal offence has been committed, and that the witness or witnesses have just and reasonable grounds to suspect that such person or persons have committed the same, to issue his warrant,

under his hand, commanding the officer or person charged with the execution thereof, to arrest the person or persons so charged, and bring him, her, or them before the officer issuing said warrant, or in case of his absence, before any other judge or justice of the peace; the said judge or justice of the peace before whom any person shall be brought in pursuance of such warrant, or shall be brought without warrant, and charged with any criminal offence, before he shall commit such prisoner to jail, admit to bail, or discharge him or her from custody, shall inquire into the truth or probability of the charge exhibited against such prisoner or prisoners, by the oath of all the witnesses attending, and shall, upon consideration of the facts and circumstances then proved, either commit such person or persons, so charged, to jail, admit him, her, or them to bail, or discharge him, her, or them from custody. No justice of the peace shall admit to bail any person or persons charged with treason, murder, or any offence punishable with death. All recognizances taken in pursuance of this section shall require the accused to appear at and on the first day of the next district court, or if the court be then sitting, on some day of the term, to be therein designated.

SECT. 209. It shall be the duty of the judge or justice of the peace, who shall commit any offender to jail as aforesaid, or admit him to bail, to bind by recognizance the prosecutor, and all such as do declare any thing material to prove the offence charged, to appear before the next district court, on the first day thereof, or if the said court shall be then in sitting, on some day to be therein designated (and, in all cases, at the same time and place as the person or persons accused by said witnesses shall be bound to appear), to give evidence touching the offence so charged, and not depart the court without leave. If any person, upon being required to enter into recognizance as aforesaid, shall refuse, it shall be lawful for such judge or justice of the peace, to commit him or her to jail, there to remain until he or she shall enter into such recognizance or be otherwise discharged by due course of law.

In case accused is held for trial, prosecutor and witnesses to be also held for appearance.

SECT. 210. All recognizances that have any relation to criminal matters shall be taken to the Territory of Dakota, shall be signed by the person or persons entering into the

Of recognizances and their form.

same, be certified by the judge, justice of the peace, or other officer taking the same, and delivered to the clerk of the district court, on or before the day mentioned therein for the appearance of the witness or accused therein bound. Recognizances taken in courts of record need not be signed or certified as aforesaid. Recognizances for assaults, batteries, and affrays shall be for the appearance of the accused before the justice of the peace taking the same, or before some other justice of the county, on the day appointed by the justice for the trial of the offender.

When and how accused may be liberated in vacation.

SECT. 211. Where any person shall be committed to jail on a criminal charge, for want of good and sufficient bail, except for treason, murder, or other offence punishable with death, or for not entering into a recognizance to appear and testify, any judge, or any two justices of the peace may take such bail or recognizance in vacation, and may discharge such prisoner from his or her imprisonment. It shall be the duty of the judge or justice committing such person to jail, to indorse on the warrant of commitment, in bailable cases, in what sum bail ought to be taken.

If prosecution proves to be malicious.

SECT. 212. From and after the passage of this act, whenever any person has been bound, or shall be bound by any recognizances to keep the peace or for their good behavior, and for appearance of the party in the district court, if the prosecutor shall fail to appear and prosecute, or if upon the hearing it shall appear that a prosecution was commenced maliciously, without reasonable or probable cause, the court may, in its discretion, give judgment against the prosecutor for the costs of the prosecution and defence.

Warrant for arrest, issued when, and how executed.

SECT. 213. When a charge shall be exhibited upon oath, before any judge or justice of the peace, against any person for a criminal offence, it shall be the duty of the judge or justice of the peace before whom the charge shall be made, to issue his warrant for the apprehension of the offender, directed to all sheriffs, coroners, and constables within the territory; and it shall be the duty of any sheriff, coroner, or constable, into whose hands any such warrant shall come, to execute the same within any county in which such offender may be found, to arrest and convey such offender before the judge or justice of the peace who issued the warrant, or before some other justice of the peace of the same county. When any

such sheriff, coroner, or constable, or other person called to the assistance of such sheriff, coroner, or constable, shall be in pursuit of any offender, having a warrant for the apprehension of such offender, and the offender shall cross the line into the adjoining county, such sheriff, coroner, or constable, or other person, may pursue such offender into such adjoining county and make the arrest, as if such offender had been found in the county of the officer in pursuit.

SECT. 214. Any judge or justice of the peace, issuing any such warrant may make an order thereon, authorizing a person to be named in such warrant to execute the same, and the person named in such order may execute such warrant anywhere in the territory by apprehending and conveying such offender before the judge or justices issuing such warrant, or before some other justice of the same county; and all sheriffs, coroners, and constables, and others, when required, in their respective counties, to be aiding and assisting in the execution of such warrant.

Judge or justice may name person to execute warrant, &c., and his powers.

SECT. 215. Any person or persons, officer or officers, who may have the custody of any offender or offenders, by virtue of either of the two preceding sections, may take or carry such prisoner or prisoners into any other county which may be situated on his or their way back to the county from which the said prisoner or prisoners fled, and may deposit such prisoner or prisoners in any jail on his or their route, for safe custody, for one night or more, as occasion may require. Upon their arriving in the county to which the prisoner or prisoners is or are sent, under the last preceding section, such officer or officers, person or persons, shall deliver such prisoner or prisoners into the custody of the sheriff or jailer, together with the warrant of the said judge or justice, which shall be a sufficient justification to the said sheriff or jailer, to receive and detain such prisoner or prisoner, until he, she, or they obtain bail, if the offence be bailable, or be otherwise discharged by due course of law.

Officers or persons having charge of prisoners may transport them, how.

Upon their arriving in the county to which the prisoner is sent.

SECT. 216. It shall not be necessary to the validity of any warrant for the apprehension of any person charged with an offence, or warrant of commitment or search-warrant, that it be under the seal of the judge or justice of the peace granting or issuing the same; but every such warrant, under the hand of the judge or justice of the peace, shall be as valid in law

Not necessary for warrant to be sealed.

Of habeas
corpus.

as if a seal was affixed. And no person shall be discharged on habeas corpus from his imprisonment merely by reason of defect of legal precision, or want of technical form in the warrant of commitment, but the court or judge awarding such habeas corpus shall, in all such cases, proceed and determine as if the mittimus had all legal and technical form:

Proviso.

Provided, Sufficient appear on the face of the mittimus to ascertain for what crime or offence such prisoner or prisoners shall have been committed.

Of search-
warrant. Com-
plaint, issue of,
&c.

SECT. 217. It shall be lawful for any judge or justice of the peace, upon complaint made before him, upon oath or affirmation, that a larceny has been committed, and that the person affirming or swearing does verily believe that the stolen goods or other property, are or is concealed in any dwelling-house, out-house, garden, yard, or other place or places, to issue a warrant, under his hand, commanding every such dwelling-house or place to be searched in the day-time; and if any of the goods described in any such warrant be found therein, then that the said goods be seized or brought before the judge or justice issuing said warrant.

If goods appear
to be stolen.

If upon examination of witnesses before the judge or justice of the peace who issued said warrant, it shall be determined by said judge or justice that the goods so brought before him have been stolen, it shall be the duty of such judge or justice, either to keep possession of, or to deliver, or cause to be delivered, such goods to the sheriff of the proper county, there to remain until the conviction of the thief, or the claimant's right be otherwise legally ascertained. If the thief shall not be indicted at the next district court after the goods shall, or persons in whose possession such goods shall have been found, be seized, and an action shall not be commenced against the person for the recovery thereof, within one month after a district court shall have been held, after such seizure, the said district court shall, at their next session, order such goods to be redelivered to the person in whose possession they were found, which order shall be obeyed by the person in whose possession such goods may at the time be. In case the judge or justice of the peace shall, upon such examination as aforesaid, determine that such goods so seized had not been stolen, then the goods shall be immediately restored to the person from whose possession they were so taken.

If thief shall
not be indicted
at next term—
goods to be
restored.

SECT. 218. It shall be the duty of the judge or justice of the peace who shall commit any offender to jail, either because such offender is unable to procure bail for his appearance at court, or because the offence is not by law bailable, to write on the warrant of commitment the names and residences of the principal witnesses by whom the crime was proved before said judge or justice.

If defendant is committed, names of principal witnesses to be indorsed on commitment.

SECT. 219. Whenever any prisoner, in the custody of the sheriff or jailer of any county, on any warrant of commitment as aforesaid, shall demand of said sheriff or jailer a copy of said warrant of commitment, said sheriff or jailer shall indorse on the said copy the names of the witnesses written thereon as aforesaid, and any justice or judge who shall neglect to write the name or names of the witnesses aforesaid on the warrant of commitment, or any sheriff or jailer shall neglect to indorse the name of said witness or witnesses on a copy of said commitment, each justice, judge, sheriff, or jailer offending in the premises, shall be fined in the sum of twenty dollars, to be recovered by action of debt, in the name of, and for the use of, any person who shall sue for the same in any court of record.

If prisoner demands copy of commitment, and officer neglects to indorse names of witnesses. Penalty.

SECT. 220. Whenever a habeas corpus shall be issued to bring the body of any prisoner committed as aforesaid, unless the court or judge issuing the same shall deem it wholly unnecessary and useless, the said court or judge shall issue a subpœna to the sheriff of the county where said person shall be confined, commanding him to summon the witness or witnesses therein named, to appear before such judge or court, at the time and place when and where such habeas corpus shall be returnable; it shall be the duty of such sheriff to serve said subpœna, if it be possible, in time to enable such witness or witnesses to attend. It shall be the duty of the witness or witnesses thus served with said subpœna, to attend and give evidence before the judge or court issuing the same, on pain of being guilty of a contempt, and shall be proceeded against accordingly by said judge or court.

Of habeas corpus.

SECT. 221. On the hearing of any habeas corpus issued as aforesaid, it shall be the duty of the judge or court who shall hear the same, to examine the witness or witnesses aforesaid, and such other witnesses as the prisoner may request, touching any offence mentioned in the warrant of

Same.

commitment as aforesaid, whether said offence be technically set out in said commitment or not, and upon which hearing said judge or court may either recommit, bail, or discharge the prisoner, according to the facts of the case.

This code, and other law on crime, how construed.

SECT. 222. This code, and every other law upon the subject of crime which may be enacted, shall be construed according to the plain import of the language in which it is written, without regard to the distinction usually made between the construction of penal laws and laws upon other subjects, and no person shall be punished for an offence which is not made penal by the plain import of the words, upon pretence that he has offended against its spirit.

When definition of offence merely defective.

SECT. 223. When the definition of an offence made penal by the law of this territory is merely defective, the rules of the common law shall apply and be resorted to for the purpose of aiding in the interpretation of such penal enactment.

In construction, general controlled by special provision.

SECT. 224. In the construction of this code, each general provision shall be controlled by a special provision on the same subject, if there be a conflict.

When penalty altered by subsequent law.

SECT. 225. When the penalty of an offence is prescribed by one law and altered by a subsequent law, the penalty of such second law shall not be inflicted for a breach of the law committed before the second shall have taken effect. In every such case the offender shall be tried under the law in force when the offence was committed, and, if convicted, punished under that law, except that when by the provisions of the second law the punishment of the offence is ameliorated, the defendant shall be punished under such last enactment, unless he elect to receive the penalty prescribed by the law in force when the offence was committed.

When new penalty substituted by repealing statute.

SECT. 226. When by the provisions of a repealing statute a new penalty is substituted for an offence punishable under the act repealed, such repealing statute shall not exempt from punishment a person who has offended against the repealed law while it was in force, but in such case the rule prescribed in the next preceding statute shall apply.

Of offences, when penal law repealed, and no other penalty substituted.

SECT. 227. The repeal of a penal law, when the repealing statute substitutes no other penalty, will exempt from punishment all persons who may have offended against the provis-

ions of such repealing law, unless it be otherwise declared in the repealing statute.

SECT. 228. No penalty affixed to an offence by one law shall be considered as cumulative of penalties under a former law, and in any case where a new penalty is prescribed for an offence, the penalty of the first law shall be considered as repealed, unless the contrary be expressly provided in the law last enacted.

In case of new penalty, former penalty repealed, unless otherwise provided.

SECT. 229. If an offence be defined by one law and by a subsequent law the definition of this offence is changed, no such change or modification shall take effect as to the offenders already committed, but all the offences against the first law shall be tried, and their guilt or innocence determined in accordance with the provisions thereof.

If definition of offence changed, offender before committed to be tried by first definition.

SECT. 230. No offence committed, and no fine, forfeiture, or penalty incurred under existing laws previous to the time when this code shall take effect, shall be affected herein by the repeal of any such existing laws, but the punishment of such offences, and the recovery of such fines and the forfeitures take place as if the laws repealed had still remained in force, except that when any penalty, forfeiture, or punishment shall have been mitigated by the provisions of this code, such provisions shall apply to, and control any judgment to be pronounced after this code shall take effect, for any offence committed before that time, unless the defendant elect to be punished under the provisions of the repealed law.

Officers committed and fines, &c., incurred previous to passage of this code.

CUTTING TIMBER ON THE LAND OF ANOTHER.

SECT. 231. That every person who shall knowingly and wilfully, without color of title made in good faith, cut, box, fell, bore, or destroy any tree or sapling standing or growing upon the land of any person or corporation, without the license or consent of the owner of such land, shall be adjudged guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than ten nor more than one hundred dollars, or imprisoned in the county jail for any term not exceeding three months, in the discretion of the court in which such conviction is had.

Damaging timber. Penalty.

SECT. 232. That all offenders against this act shall be proceeded against by indictment, in the court of the proper

Proceeded against by indictment.

Owners competent witnesses. county having cognizance of indictable offences ; on the trial of which indictment the owner or owners of the land upon which such trespass shall be committed, are hereby declared competent witnesses.

Of fines and costs under this statute. SECT. 233. It shall be the duty of the court in all cases of conviction under this statute, when any fine is inflicted, to order, as a part of the judgment of the court, that the offender shall be committed to jail, there to remain until the fine and costs are fully paid or otherwise legally discharged, and any judgment for fine and costs hereafter rendered under this act, may be enforced by execution, as in other criminal cases.

Owner may have action to recover damages. SECT. 234. Nothing in this act contained shall be so construed as to prevent the owner from having his election, and maintaining a civil action to recover damages for the trespasses declared criminal by this act, and that an indictment under this act shall be a bar to the recovery of the penalty given by the statute by action of debt.

Not to apply to traveller or marketer using timber necessarily. SECT. 235. The action shall not apply to any traveller or marketer passing upon the highway, who, for the purpose of encampment and building camp-fires, shall violate the provisions of this act, by cutting such trees or saplings as may be necessary for above purposes.

Of whites and blacks uniting in adultery and fornication. Proviso. SECT. 236. That any black, colored, or mulatto man and white woman, and any white man and black, colored, or mulatto woman, who shall live together in an open state of adultery or fornication, or adultery and fornication, shall be indicted ; and on conviction shall be severally fined in any sum not exceeding five hundred dollars, and confined in the penitentiary for any term not exceeding one year : *Provided*, That nothing in this act shall be construed to extend to any case in which the man and woman living together, as aforesaid, shall both be white persons : *And provided further*, That the offence herein provided for, shall be sufficiently proved by circumstances which raise the presumption of cohabitation and unlawful intimacy ; and for a second offence such man or woman shall be severally punished twice as much as for the first offence, and for the third offence trebling, and thus increasing the punishment for each succeeding offence.

AN ACT TO PROVIDE FOR THE CUSTODY OF CONVICTS.

SECT. 237. Until the erection of a territorial penitentiary, it shall be the duty of the district judge or judge before whom any conviction under the provisions of this criminal code is had, to direct the sheriff of the county thereof to convey the convict or convicts, safely to any county jail in the territory that may be designated for his or her confinement, by said court or judge, and it shall likewise be the duty of said sheriff to safely keep in custody and deliver said convict or convicts to the jailer thereof, according to the order of the said court or judge or judges. The jailer of the county jail, thus designated by the court as aforesaid, shall receive of the sheriff and keep said convict or convicts, closely confined in said jail, or at hard labor, until discharged by due course of law.

Of keeping of prisoners before erection of territorial penitentiary.

SECT. 238. The sheriff or jailer, refusing or omitting to comply with the order of the court aforesaid of the provisions of this act, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not less than six months nor more than one year, at the discretion of the court before whom the conviction is had.

If sheriff or jailer refuse to receive prisoner. Penalty.

SECT. 239. If any person, confined in a place of confinement for any term less than for life, or in lawful custody going to the place of confinement, shall break such prison or custody, and escape therefrom, he shall, upon conviction, be punished by confinement for a term not exceeding five years, to commence from the expiration of the original term of imprisonment.

If prisoner escape from confinement. Penalty.

SECT. 240. All fines and forfeitures accruing by virtue of any of the provisions of this code shall be paid into the county treasury, one half thereof for the use of the school fund, to be distributed as other moneys, and the other half for the use of the respective counties where the prosecution or prosecutions are had: *Provided*, That wherever in this code moneys arising from certain fines and forfeitures are specially appropriated, such special and different appropriation shall prevail and be carried into effect.

Fines and forfeitures to go one half to school fund, remainder to use of county.

ACT TO PREVENT FRAUD IN WAREHOUSEMEN AND OTHERS.

Of issuing of receipt or voucher not in store.

SECT. 241. That no warehouseman, wharfinger, or other person, shall issue any receipt or other voucher for any goods, wares, merchandise, grain, or other produce or commodity, to any person or persons, purporting to be the owner or owners thereof, unless such goods, wares, merchandise, or other produce or commodity, shall have been bona fide received into store by such warehouseman or wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt.

Same.

SECT. 242. That no warehouseman, wharfinger, or other person shall issue any receipt or other voucher, upon any goods, wares, merchandise, grain, or other produce or commodity, to any person or persons, as security for any money loaned or other indebtedness, unless such goods, wares, merchandise, grain, or other produce or commodity shall be, at the time of issuing such receipt, the property of such warehouseman or wharfinger, or other person, and shall be in store and under his control, at the time of issuing such receipt or other voucher as aforesaid.

No second receipt to be issued until first is cancelled.

SECT. 243. That no warehouseman, wharfinger, or other person, shall issue any second receipt for any goods, wares, merchandise, grain, or other produce or commodity, while any former receipt for any such goods or chattels as aforesaid, or any part thereof, shall be outstanding and uncanceled.

Goods receipted for not to be delivered without assent of holder of receipt.

SECT. 244. That no warehouseman, wharfinger, or other person, shall sell or encumber, ship, transfer, or in any manner remove beyond his immediate control, any goods, wares, merchandise, grain, or other produce or commodity, for which a receipt shall have been given, as aforesaid, without the written assent of the person or persons holding such receipt.

Warehouseman, &c., violating these provisions, deemed a cheat. Penalty.

SECT. 245. Any warehouseman, wharfinger, or other person, who shall violate any of the foregoing provisions of this act, shall be deemed a cheat and subject to indictment, and, upon conviction, shall be fined in any sum not exceeding one thousand dollars, and imprisoned in the penitentiary of this territory not exceeding five years; and all and every person, aggrieved by the violation of any of the provisions of this act, may have and maintain a civil action against the person or

persons violating any of the foregoing provisions of this act, to recover all damages, immediate or consequential, which he or they may have sustained by reason of any such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted as a cheat under this act or not.

AN ACT TO PUNISH THE FRAUDULENT ISSUE AND TRANSFER OF STOCK IN CORPORATIONS.

SECT. 246. That every president, cashier, treasurer, secretary, or other officer, and every agent of any bank, railroad, manufacturing, or other corporation, who shall wilfully and designedly sign, with intent to issue, sell, pledge, or cause to be issued, sold, or pledged, any false, fraudulent, or semi-related certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation, or any instrument purporting to be a certificate or other evidence of such ownership or transfer, for the signing, issuing, selling, or pledging of which such president, cashier, treasurer, or other officer or agent, shall not be authorized by the charter and by-laws of such corporations, or by some amendment thereof, shall be adjudged guilty of felony, and every such person or persons shall be liable to indictment, and on conviction, shall be punished by fine, not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine.

Of fraudulent issue and transfer of stock by officers of corporations. Penalty.

SECT. 247. That every president, cashier, treasurer, secretary, or other officer, and every agent, attorney, servant, or employee of any bank, railroad, manufacturing or other corporation, and every other person who shall knowingly and designedly, and with intent to defraud any person or persons, bank, railroad, manufacturing or other corporation, issue, sell, transfer, assign, or pledge, or cause or procure to be issued, sold, transferred, assigned, or pledged any false, fraudulent, or semi-related certificate or other evidence of ownership, of any share or shares of the capital stock of any bank, railroad, manufacturing or other corporation, every such person so issuing, selling, transferring, assigning or pledging, or causing the same to be done, shall be adjudged to be guilty of felony, and shall be liable to indictment, and on conviction,

Same.

shall be punished by fine, not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine.

EXCEPTIONS AND WRITS OF ERROR IN CRIMINAL CASES.

Exceptions and writs of error in criminal cases.

SECT. 248. That exceptions taken to opinions or decisions of any court in this territory, overruling motions in arrest of judgment for new trials, or for continuance or change of venue, shall be allowed in criminal cases and in penal and qui tam actions; and the party excepting to such decisions may assign the same for error, in the same manner as in civil cases.

DEFINITIONS.

Females included by what terms.

SECT. 249. The general terms "whoever," "any person," "any one," and the relative pronouns, "he" and "they," as referring to these terms, include females as well as males, unless there is some express declaration to the contrary. The word "man" is used to signify a male person of any age, and the word "woman" a female person of any age.

Same.

SECT. 250. The use of any word expressive of the "relationship, state, condition, office, or trust of any person, as of parent, child, ascendant, descendant, minor, infant, ward, guardian," or the like, or of the relative pronouns "he" or "they" in reference thereto, includes both males and females.

Singular and plural number.

SECT. 251. The use of the singular number includes the plural, and the plural the singular, and the words used in the masculine gender include the feminine also, unless by reasonable construction it appears that such was not the intention of the language.

Words generally used to designate "party" to apply to corporations, &c.

SECT. 252. Whenever any property or interest is intended to be protected, by a provision of the penal law, and the general term "person," or any other general term, is used to designate the "party" whose property is intended to be protected, the provisions of such penal laws and the protection thereby given, shall extend to the property of the territory, or of any county, and of all public or private corporations.

The words "accused" and "defendant."

SECT. 253. The word "accused" is intended to refer to any person who, in any legal manner, is held to answer for

any offence at any stage of the proceedings, or against whom complaint in a lawful manner is made, charging the commission of an offence, including all proceedings, from the order for arrest to the final execution of the law, and the word "defendant" is used in the same sense.

SECT. 254. A "criminal action," as used in this code, means the whole and any part of the procedure which the law provides for bringing offenders to justice, and the terms "prosecution," "criminal prosecution," "accusation," and "criminal accusation," in the same sense. "Criminal action," &c.

SECT. 255. An "accused person" is termed a convict after final condemnation by the highest court of resort, which by law has jurisdiction of his case, and to which he may have thought proper to appeal. "Accused person."

SECT. 256. The term "criminal process" is intended to signify any *capias*, warrant, citation, summons, attachment, or other written precept or order issued in a criminal proceeding, whether the same be to arrest, commit to jail, collect money, or for whatever other purpose used. "Criminal process."

SECT. 257. The word "writing" includes printing; the word "oath" includes affirmation. "Writing"—"oath."

SECT. 258. The word "signature" includes the mark of a person unable to write his name; a mark shall have the same effect as a signature, when the name is written by some other person, and the mark is made near thereto by the person unable to write his name. "Signature."

SECT. 259. Except where a word, term, or phrase is specially defined, all words used in this code are to be taken and construed in the sense in which they are understood in common language, taking into consideration the context and subject-matter relative to which they are employed. What not specially defined.

SECT. 260. And be it further enacted, that all civil rights which have accrued under any former act or law of this territory are hereby reserved and continued, and the same may be prosecuted to judgment and enforced by execution and satisfaction, and that all violations of the criminal law heretofore in force may be proceeded with by indictment and trial, or other lawful or proper proceeding or proceedings, to conviction and punishment, the same as if this criminal code had not been enacted. Civil rights accrued under former act or law continued.

SECT. 261. That the words General Assembly, when used

The words
"General assem-
bly" mean what.

Take effect,
when.

in the criminal code, be construed to mean the Legislative Assembly of Dakota Territory.

SECT. 262. This criminal code shall take effect and be in force from and after its passage and approval by the governor.

F O R M S .

The following forms may be substantially followed, varying the terms to suit the case :

FORM OF INFORMATION.

THE TERRITORY OF DAKOTA, } ss.
— county,

Form of infor-
mation.

The complaint and information of A B, of said county, made before C D, esquire, one of the justices of the peace in and for said county, on the — day of —, 18—, who being duly sworn, on his own oath says, that the crime of (larceny) has been committed in the county of —, (and that one E F committed the same), or say (and that he has just and reasonable grounds to suspect that one E F had committed the same).

Subscribed and sworn to before me,
C— D—, Justice of the Peace.

FORM OF A WARRANT.

THE TERRITORY OF DAKOTA, } ss.
— county,

In the name and by the authority of the Territory of Dakota.

Form of a war-
rant.

To all sheriffs, constables, and coroners of said territory (and to esquire, if directed to a private person) :

It appearing that E F has committed the crime of (larceny) in the county of —, you are therefore commanded forthwith to arrest E F, and bring him before me or some other magistrate of said county, to be dealt with according to law.

A— B—, Justice the Peace.

FORM OF ORDER THEREON WHEN SUCH WARRANT IS TO BE EXECUTED
BY A PERSON THEREIN NAMED.

Ordered, That John Boe, named in the within warrant, be hereby authorized to execute the same.

(Date.) A—— B——, Justice of the Peace.

FORM OF COMMITMENT FOR FURTHER EXAMINATION.

THE TERRITORY OF DAKOTA, }
—— county, } ss.

In the name and by the authority of the Territory of Dakota.

To the keeper of the common jail of said county :

Receive into your custody, and safely keep, for further examination, E F, who is charged, before me, with having committed the offence of (larceny).

Form of commitment.

Given under my hand this —— day of ——, 18—.

A—— B——, Justice of the Peace of said county.

FORM OF AN ORDER TO BRING UP A PRISONER FOR EXAMINATION.

THE TERRITORY OF DAKOTA, }
—— county, } ss.

In the name and by the authority of the Territory of Dakota.

To the keeper of the common jail of said county :

You are hereby commanded to bring E F, a prisoner in your custody, to my office, in ——, in said county, for further examination.

Form of an order to bring up prisoner for examination.

Given under my hand this —— day of ——, 18—.

A—— B——, Justice of the Peace.

FORM OF SUBPCENA FOR WITNESSES TO ATTEND AN EXAMINING COURT.

THE TERRITORY OF DAKOTA, }
—— county, } ss.

In the name and by the authority of the Territory of Dakota.

To any sheriff or constable of said county :

You are commanded to summon A, E, I, O, and U, to be and appear before me at my office at ——, in said county, forthwith (or on the —— day of ——, instant, at — o'clock, in the — noon), to testify the truth in behalf of the plaintiff

Form of subpoena for witness to attend.

(or defendant), on the examination of the charge against E F, of having committed the offence of (larceny).

Given under my hand this — day of —, 18—,
A— B—, Justice of the Peace of said county.

FORM OF OATH OF WITNESSES ON THE EXAMINATION.

Form of oath
of witnesses on
examination.

You do solemnly swear that the evidence you shall give between the Territory of Dakota and E F, touching the charge exhibited against him, now in hearing, shall be the truth, the whole truth, and nothing but the truth; so help you God.

FORM OF AN AFFIRMATION.

Form of affir-
mation.

You do solemnly, sincerely, and truly declare and affirm that the evidence you shall give between the Territory of Dakota and E F, touching the charge exhibited against him, now on trial, shall be the truth, the whole truth, and nothing but the truth; and this you do under the pains and penalties that may ensue thereon.

FORM OF RECOGNIZANCE OF BAIL.

THE TERRITORY OF DAKOTA, }
against E— F—, } For the offence of larceny.

Form of recog-
nizance of bail.

Be it remembered that on the — day of —, 18—, A—, of — county, Dakota, and B—, of — county, Dakota, appeared personally before me, A B, a justice of the peace of — county, and severally acknowledged themselves jointly indebted to the Territory of Dakota, in the sum of — dollars, to be made and levied of their respective goods, chattels, lands, and tenements, to be void, however, if the said E F, shall personally appear at the next (October) term of the district court of — county, on the first day thereof, or if the recognizance be taken in term time, then it must require the party to appear on some day of the term to be herein designated to answer to an indictment preferred against him for the offence of (larceny) and to do and receive what shall be by said court, then and there enjoined upon him, and shall not depart the said court without leave.

Witness our hands, this — day of —, 18—.

A—,
B—.

Taken, subscribed, and acknowledged, }
the day and year first above written. }

A— B—, Justice of the Peace.

RECOGNIZANCE OF A WITNESS.

THE TERRITORY OF DAKOTA }
 against E— F—, } For the offence of larceny.

Be it remembered that on the — day of —, 18—, that G H, of the county aforesaid, appeared before me, a justice of the peace of said county, and acknowledged himself indebted to the Territory of Dakota, in the sum of — dollars, to be levied on his goods, chattels, lands, and tenements, to be void, however, upon his appearing in the district court of said county of —, on the first day of its next (October) term (or if the recognizance is taken in term time, then it must require the witness to appear on some day of the term, to be herein designated), to testify on behalf of the plaintiff (or defendant) in the above-named prosecution, and not depart without leave of said court.

Taken, subscribed, and acknowledged, }
 the day and year above written. } G. H.
 A— B—, Justice of the Peace.

FORM OF MITTIMUS IN OFFENCES NOT BAILABLE.

THE TERRITORY OF DAKOTA, }
 — county, } ss.

In the name and by the authority of the Territory of Dakota.

To the keeper of the common jail of said county.

You are commanded to receive into the jail of — county, E F, and him safely keep until discharged by due course of law, he having been held by me as an examining court for trial in the district court of — county, on the charge of —, after first having inquired into the truth and probability of said charge exhibited against him by the oath of all the witnesses attending such examination.

Given under my hand, as justice of the peace of — county, this — day of —, 18—.

A— B—, Justice of the Peace.

FORM OF MITTIMUS IN BAILABLE CASES.

THE TERRITORY OF DAKOTA, }
 — county, } ss.

In the name and by the authority of the Territory of Dakota.

To the keeper of the common jail of said county:

You are commanded to receive into the common jail of — county, E F, and him safely keep until discharged by

due course of law, he having been held by me as an examining court for trial, in the district court of — county, on the charge of (larceny), after having first inquired into the truth and probability of said charge exhibited against him by the oath of all the witnesses in attendance on such examination, and allowed to give bail in the sum of — dollars, for default of which he is committed to jail.

Given under my hand, as justice of the peace of — county, this — day of —, 18—.

A— B—, Justice of the Peace.

FORM OF AN INDORSEMENT ON THE FOREGOING.

Bail ought to be taken in the sum of — dollars.

A— B—, Justice of the Peace.

FORM OF BAIL AFTER COMMITMENT.

THE TERRITORY OF DAKOTA, }
 — county, } ss.

Form of bail
 after commit-
 ment.

Be it remembered, that on the — day of —, 18—, E F, of — county, Dakota, and G H and I J, of — county, Dakota, appeared personally before the undersigned, two justices of the peace of — county, and severally and jointly acknowledged themselves indebted to the Territory of Dakota, in the sum of — dollars, to be made and levied on their respective goods, chattels, lands, and tenements, to be void, however, if the said E F, who has been committed to the common jail of — county, shall personally be and appear at the next — term of the district court of — county, on the first day thereof, to answer an indictment to be preferred against him, for the offence of (larceny), and to do and receive what shall be by said court enjoined upon him, and shall not depart the said court without leave.

Witness our hands, this — day of —, 18—.

E— F—,
 G— H—,
 I— J—.

Taken, subscribed, and acknowledged the day and year first above written.

A— B—, Justice of the Peace.
 K— L—, Justice of the Peace.

FORM OF COMMITMENT OF WITNESS FOR REFUSING TO ENTER INTO A RECOGNIZANCE.

THE TERRITORY OF DAKOTA, }
 — County, } ss.

In the name and by the authority of the Territory of Dakota.

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

Form of commitment of witness for refusing to enter into recognizance.

We command you, the said constable, forthwith to convey and deliver into the custody of the said keeper, the body of C D, it appearing, by the examination of the said C D, on oath, before me, one of the justices of the peace of said county, that he is a material witness against the said E F, on a charge of (larceny), and it having been adjudged by me that the said offence has been committed, and that there is probable cause to believe the said E F to be guilty thereof, and the said C D, having been required to enter into recognizance in the sum of — dollars for his personal appearance at the next — term of the district court of — county, on the first day thereof, to give evidence on behalf of the territory against the said E F for the offence aforesaid, with which requisition the said C D has refused to comply, and you, the said keeper of the said jail are hereby required to receive the said C D into your custody, in the said jail, and him safely keep, until he shall enter into such recognizance, or be otherwise discharged according to law.

Given under my hand, this — day of —, 18—.

A— B—, Justice of the Peace.

FORM OF A WARRANT TO DISCHARGE A PRISONER UPON HIS FINDING SURETIES AFTER COMMITMENT.

THE TERRITORY OF DAKOTA, }
 — County, } ss.

In the name and by the authority of the Territory of Dakota.

To the keeper of the common jail of said county :

Discharge from imprisonment E F, if detained in your custody for no other cause than what is mentioned in the warrant for his commitment, under the hand of A B, justice of the peace for said county, dated the — day of —, 18—.

Form of warrant to discharge prisoner upon finding sureties after commitment.

Given under — hand as justice of the peace of said county, this — day of —, 18—.

A— B—, Justice of the Peace.

K— L—, Justice of the Peace.

Approved April 28, 1862.

W. JAYNE, Governor.