

two years thereafter a like election for delegate to congress shall take place.

SECT. 3. That when any vacancy shall happen in the office of delegate to congress from this territory, it shall be the duty of the governor to issue his proclamation, appointing a day to hold a special election to fill such vacancy. In case of vacancy in that office.

SECT. 4. This act to take effect from and after its passage. Take effect, when.
 Approved April 21, 1862.

W. JAYNE, *Governor.*

ENTRIES AND DETAINERS.

CHAPTER 34.

AN ACT TO PROVIDE A REMEDY FOR FORCIBLE ENTRIES AND UNLAWFUL DETAINERS.

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

SECTION 1. No person or persons shall hereafter make an entry into lands, tenements, or other possessions, but in cases where entry is given by law; and in such cases not with strong hands nor with a multitude of people, but only in a peaceable manner; and if any person from henceforth do to the contrary, and thereof be duly convicted, he shall be punished by fine. To make no other than lawful entry.

SECT. 2. Any justice of the peace shall have authority to inquire as hereinafter directed, as well against those who may make unlawful or forcible entry into lands, tenements, or other possessions, and detain the same, as against those who, having lawful and peaceable entry into lands, tenements, or other possessions, unlawfully and forcibly detain the same; and if it be found, upon such inquiry, that an unlawful or forcible entry hath been made, and that said lands, tenements, or other possessions are unlawfully detained by force and strong hands, or that the same, after a lawful entry, are so held or detained unlawfully, then such justice shall cause the party complaining to have restitution thereof. Justice may inquire into manner of entry.

Justice to issue
summons on
complaint.

SECT. 3. When any complaint shall be made in writing to any justice of the peace, of any such unlawful or forcible entry or unlawful detainer, said justice shall issue a summons, directed to the sheriff or any constable of the same county, commanding him to summons the person or persons against whom such complaint shall have been made, to appear before the said justice on a day in such summons named, which shall not be less than six nor more than ten days from the day of issuing said summons, and at the place therein named.

Summons, how
made.

SECT. 4. Such summons shall be served upon the person or persons, against whom the same is issued, by delivering a certified copy thereof to such person or persons, at least three days before the return day thereof; and the officer serving the same shall make a special return of the time and manner of serving said summons.

Justice to hear
and determine.

SECT. 5. After the return of the said summons served as hereinbefore provided, and at the time and place appointed in said summons, the said justice shall proceed to hear and determine said complaint: *Provided*, That if either party shall call for a trial by jury, the said justice shall issue a venire, in the same manner, upon the same terms, as in other cases provided for trial by jury in justices' courts; and such jury shall be sworn as in other cases.

Proviso.

If person
against whom
complaint is
issued be absent
from county.

SECT. 6. If at the time of making said complaint it shall be made to appear that the person or persons against whom said complaint is made, or either of them, are absent from the county, it shall be the duty of the justice before whom the same is made, to issue his summons as hereinbefore provided, and make the same returnable not less than six, nor more than ten days from the time of issuing the same, and such summons may be served by leaving a true and attested copy thereof at the last and usual place of such person or persons' abode, not less than six days before the return day thereof; such copy shall be left with some member of the family, or some person residing at such place, of suitable age and discretion, to whom the contents shall be explained by the officer leaving the same; and the said officer shall make a special return of the time and manner of issuing said summons; and the suit shall thereafter proceed the same as though a personal service were had of such summons.

SECT. 7. The justice may, at his discretion, adjourn any

trial under this act, not exceeding six days; but in all cases mentioned in section twelve in this act, if the defendant, his agent or attorney, shall make oath that he cannot safely proceed to trial, for the want of some material witness, naming him, that he has made due exertion to obtain said witness, and believes if an adjournment be allowed, he will be able to procure the attendance of said witness, or his deposition, in time to produce the same upon such trial; in which case, if such person or persons will give bond, with one or more sufficient sureties, conditioned to pay the said complainant for all rent that may accrue during the pendency of such suit, and all costs and damages consequent upon such adjournment, the said justice shall adjourn such cause for such reasonable time as may appear necessary, not exceeding three months.

Justice may
adjourn trial,
when.

SECT. 8. The deposition of any witness, whose testimony may be considered necessary by either party, may be taken for the same reason, in the same manner, and with the same effect as is provided by law for taking of depositions to be used in justices' courts.

Of deposition.

SECT. 9. If, upon the trial of any complaint under this act, the justice or jury shall find that the defendant or defendants, or either of them, are guilty of the allegation in the complaint, the said justice shall thereupon enter judgment for the complainant, to have restitution of the premises, and shall impose such fines, not exceeding one hundred dollars, considering all the circumstances, as he may deem just, and shall tax the costs for the complainant, and may upon execution in favor of said complainant, for such costs as in other actions ex delicto, and the said justice shall also award and issue a writ of restitution; but if the said justice or the jury find that the person complained of is not guilty, the complaint, in their opinion, not having been supported, the said justice shall tax the costs against the complainant, and issue execution therefor.

If defendant
found guilty.
If not guilty.

SECT. 10. If the jury impaneled as aforesaid, cannot agree upon a verdict, the justice before whom the trial is pending, may discharge said jury, if in his opinion they are not likely to agree upon a verdict, and issue a venire returnable forthwith, or at some other time agreed upon by the parties for the purpose of impaneling a new jury.

If jury cannot
agree, new jury
to be impan-
neled.

SECT. 11. The complainant of any forcible entry, or any

If complainant
recover, it may

be for treble
damages and
costs.

unlawful detainer, as aforesaid, who shall recover against the person complained of as aforesaid, shall be entitled to recover treble damages, with costs of suit, by a civil action against the offender or offenders, to be brought before any justice of the peace or court of record, for that purpose: *Provided, always*, That nothing contained in the foregoing part of this act, shall be construed to extend to any person or persons, who have had quiet, peaceable, and uninterrupted occupation of any lands, tenements, or other possessions, otherwise than by devise or lease, for the period of three whole years, next before the entering of such complaint, any thing in this act to the contrary notwithstanding.

Proviso.

If tenant or
person holding
over refuse to
quit possession or
pay rent.

SECT. 12. When any person shall hold over any lands, tenements, or other possessions, after the sale thereof on execution against such person and expiration of the time for redemption, or after a sale thereof under a mortgage upon foreclosure by advertisement, or after the termination of the time for which they are demised or let to him or her, or to the person under whom he or she holds possession, or contrary to the conditions or covenants of the lease or agreement, under which he or she holds, or after any rent shall have become due, according to the term of such lease or agreement, and shall remain unpaid for the space of three years, in all such cases, if the lessor, his heirs, executors, administrators, assign, agent, or attorney, shall make demand in writing of such person or tenant holding over, that he or she shall deliver possession of the premises as aforesaid, and if such tenant or person holding over shall refuse, or neglect for the space of three days, after such demand, to quit the possession of such lands or tenements, or to pay the rent thereof, so due and unpaid as aforesaid, upon complaint thereof to any justice of the peace of the county, the justice shall proceed to hear, try, and determine the same, in the same manner as in other cases hereinbefore provided for: *Provided*, That in all cases mentioned in this section, the justice shall impose no fine upon such tenants or persons holding over.

Proviso.

Preceding sec-
tion does not
extend to whom.

SECT. 13. The preceding section shall not extend to any person who has or shall have continued in possession three years after the termination of the time for which the premises were demised or let to him or her, or those under whom he or she claims, or after the sale thereof as aforesaid, or to any

person who continues in possession three years quietly and peaceably by disseizin, any thing in this act to the contrary notwithstanding.

SECT. 14. The complainant shall be entitled to bring a civil action against the person complained of, and who shall be found guilty on the trial, and may recover treble damages from the time of notice to quit the premises, and until that time damages only.

Complainant may recover what damages.

SECT. 15. Every person summoned as a juror, or subpoenaed as a witness, who shall not appear, or appearing, shall refuse to serve or give evidence, in any prosecution instituted by virtue of this act, shall forfeit and pay for every such default or refusal, unless some reasonable cause be assigned, such fine, not exceeding ten dollars, as the said justice shall think proper to impose.

Jurors or witnesses refusing to serve or give evidence. Penalty.

SECT. 16. All fines imposed by virtue of this act, shall be paid to the county treasurer of the county where the action is commenced, for the use of common schools, and the said justice may commit the person against whom the fine is imposed, to the common jail of the county until such fine be paid, or the said justice may issue an execution therefor, as in other cases ex delicto.

Of fines, and disposition of same.

SECT. 17. If either party shall feel aggrieved by the verdict of the jury or decision of the justice, he may appeal within ten days, as in other cases tried before justices of the peace, except his bond shall be with two or more sufficient sureties, to be approved by said justice, conditioned to pay all costs of such appeal, and abide the order the court may make therein, and pay all rent and other damages justly accruing to said complainant during the pendency of such appeal.

Of appeals.

SECT. 18. Upon the taking of such appeal all further proceedings in the case shall be thereby stayed, and the appellate court shall thereafter issue all needful writs and processes, to carry out the provisions of this act, according to the true intent and meaning thereof.

Upon appeal further proceedings stayed.

SECT. 19. If a writ of restitution shall have been issued previous to the taking of any appeal, as provided in this act, the justice shall forthwith give the appellate a certificate of the allowance of such appeal, and upon the service of the [same upon the] officer having such writ of restitution, the

If writ of restitution has been issued previous to appeal.

said officer shall forthwith cease all further proceedings by virtue of such writ, and if such writ shall not have been completely executed, the defendant shall remain in possession of the premises, until the appeal shall have been determined.

Appellate court not to dismiss or quash for want of form only.

SECT. 20. In all cases of appeal under the provisions of this act, the appellate court shall not dismiss or quash the proceedings for want of form only, provided they have been conducted substantially, according to the provisions of this act.

Of amendments.

SECT. 21. Amendments may be allowed by the court at any time before final judgment, upon such terms as to the court shall appear just, in the same cases and manner, and to the same extent as in civil actions.

What may be set up in answer.

SECT. 22. All matters in excuse, jurisdiction, or avoidance of the allegations in the complaint, shall be set up in answer.

Appellate court has power to compel justice to make or amend return.

SECT. 23. The appellate court shall have power to compel the justice by attachment, to make or amend any return which shall be withheld, or insufficiently or improperly made.

SECT. 24. The following, or equivalent forms, shall be used in proceedings under this chapter.

FORM OF SUMMONS.

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

Form of summons.

To the sheriff or any constable of the county aforesaid.

Whereas —, of —, hath exhibited unto a justice of the peace, in and for said county aforesaid, a complaint against —, of —, for that the said —, on the — day of —, at (here insert the substance of the complaint with legal certainty); therefore, in the name of the United States, you are hereby commanded to summons the said —, if to be found in the said county, to appear before me at —, on the — day of —, at — of the clock in the — noon, there and then to make answer to, and defend against the complaint aforesaid, and further to be dealt with according to law, and make due return to me of this summons, with your doings thereon.

Dated at —, this — day of —, in the year one thousand eight hundred and —.

A— B—, Justice of the Peace.

FORM OF WRIT OF RESTITUTION.

TERRITORY OF DAKOTA, }
 — county, } SS.

To the sheriff or any constable of the county aforesaid.

Form of writ
 of restitution.

Whereas —, of —, at the court of inquiry of an unlawful detainer, or an unlawful forcible entry and unlawful detainer, held at —, in the county aforesaid, on the — day of —, one thousand eight hundred and —, before —, justice of the peace in and for the county aforesaid, by the consideration of the court recorded, recovered judgment against —, of —, to have restitution of (here describe the premises as in the complaint); therefore, in the name of the United States, you are hereby commanded, that taking with you the force of the county, if necessary, you cause the said — to be immediately removed from the aforesaid premises, and the said — to have peaceable restitution of the same; you are also hereby commanded, that of the goods and chattels of the said —, within said county, you cause to be levied, and the same being disposed of according to law, to be paid to the said — the sum of —, being the costs taxed against said — for the said —, at the court aforesaid, together with twenty-five cents for this writ, and thereof, together with this writ, make due return within thirty days from the date hereof, according to law.

Dated at —, the — day of —, one thousand eight hundred and —.

FORM OF VERDICT.

At a court of inquiry held at —, on the — day of —, one thousand eight hundred and —, before —, a justice of the peace in and for the county of —, complainant against —, respondent, the jury finds the facts alleged in the said complaint are true; that the said — is guilty thereof, and the said — ought to have restitution of the premises therein designated without delay (or in case the jury do not find the allegation of complaint proved), the jury find that the facts alleged in the same complaint are not proved, and that the said — is not guilty thereof.

Form of ver-
 dict.

Take effect,
when.

SECT. 25. This act shall take effect from and after its passage and approval.

Approved May 15, 1862.

W. JAYNE, *Governor*.

ESTRAYS.

CHAPTER 35.

AN ACT TO PROVIDE FOR AN ESTRAY LAW.

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

Freeholder may
take what ani-
mals, and when.

SECTION 1. That any freeholder may take up any stray horse, mule, neat-cattle, sheep, or swine, found within his inclosed premises, at any season of the year. Any estray found around the premises of any freeholder, between the first of November and the first day of April, may be taken up by such freeholder; and any horse or mule, with any portion of harness attached to them, and any oxen with yoke on, that are believed to have strayed away from their owner, may be taken up by any person at any time.

Duty of taker
up to give no-
tice.

SECT. 2. It shall be the duty of any person taking up an estray, to send a description of the same to the county clerk, within two weeks after taking it up; and the county clerk shall immediately record the same in a book kept for that purpose. The taker up of any estray shall, within two weeks thereafter, procure the publication of the description of such animal in any one newspaper published within the county.

Three weeks'
notice.

SECT. 3. The proprietor of such newspaper shall publish said description at least three consecutive weeks, and shall receive a reasonable compensation therefor.

Owner may
reclaim estray,
how.

SECT. 4. The owner of an estray may, at any time previous to its sale, reclaim the same, on proving property, by oath