

the United States, to be used as testimony in such case, which commission shall be directed as aforesaid, and the officer to whom any commission shall be issued, in pursuance of this act, is hereby authorized to administer the requisite oaths.

Sec. 3. All such depositions shall be taken by interrogatories, to be filed by the counsel regulating the taking thereof, of which reasonable notice shall be given to the adverse party, and cross-interrogatories by such adverse party, with like notice to the other side.

Depositions;
how taken.

Sec. 4. Any commission issued as aforesaid, with the interrogatories and cross-interrogatories, shall be forwarded to the commissioner who shall make return of his proceedings to such justice, and shall be entitled to the fees allowed by law for taking depositions.

Duty of commissioners;
fees, &c.

Sec. 5. This act shall take effect from and after its passage and approval.

When to take effect.

Approved, January 14th, 1864.

DIVORCE

CHAPTER XVIII.

AN ACT RELATIVE TO DIVORCE.

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

Section 1. All marriages which are prohibited by law, on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall, if solemnized within this territory, be absolutely void, without any decree of divorce, or other legal proceedings.

Marriages to be null and void when.

Sec. 2. When either of the parties to a marriage, for want of age or understanding, shall be incapable of assenting there-

Court to declare marriage null and void—when.

to, or, when the consent of either party shall have been attained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be void, from the time its nullity shall be declared by a court of competent authority.

Either party may file complaint, for certain causes.

Sec. 3. When a marriage is supposed to be void, or the validity thereof is disputed, for any of the causes mentioned in the two preceding sections, either party may file a complaint in the district court of the county where the parties, or one of them, reside, for annulling the same; and such complaint shall be filed, and proceedings shall be had thereon, as in the case of proceedings in said court for divorce; and upon due proof of the nullity of the marriage, it shall be adjudged null and void.

Marriage may be declared legal.

Sec. 4. When the validity of any marriage shall be denied or doubted by either of the parties, the other party may file a complaint in the manner aforesaid, for affirming the marriage, and upon due proof of the validity thereof, it shall be declared valid by a judgment or sentence of the court; and such judgment, unless reversed on appeal, shall be conclusive upon all persons concerned.

Not to be adjudged void in certain cases.

Sec. 5. In no case shall a marriage be adjudged a nullity, on the ground that one of the parties was under age of legal consent, if it shall appear that the parties after they had attained such age, had, for any time, freely cohabited together as husband and wife, nor shall the marriage of any insane person be adjudged void, after his or her restoration to reason, if it shall appear that the parties freely cohabited together, as husband and wife, after such insane person was restored to a sound mind.

Not to be void in case of idiocy or insanity—in certain cases.

Sec. 6. A marriage shall, in no case, be adjudged a nullity on the application of a party capable of contracting, who entered into the marriage state with any person under the age of legal consent, for that cause, nor shall the marriage of a person capable of contracting, with any idiot or insane person, for that cause, be annulled on the application of such person thus capable to contract, if he or she knew of such idiocy or insanity at the time of such marriage.

Sec. 7. A divorce from the bonds of matrimony may be ad-

judged and decreed by the several district courts, on suit brought in the county where the parties, or either of them, reside, for either of the following causes:

1. Adultery;
2. For impotency;
3. When either party subsequent to the marriage, has been sentenced to imprisonment in the penitentiary, and no pardon granted, after a divorce for that cause, shall restore to the party sentenced, to his or her conjugal rights;
4. Where the treatment of the wife by the husband has been cruel and inhuman, whether practiced by using personal violence, or by any other means, or when the wife shall be guilty to her husband;
5. When the husband or wife shall have been [an] habitual drunkard for the space of one year immediately preceding the filing of the complaint;
6. When it shall be made fully to appear that from any other reason or cause existing, the parties cannot live in peace and happiness together, and that their welfare requires a separation.

Sec. 8. No divorce shall be granted unless the complainant shall reside in this territory one year immediately preceding the time of exhibiting the complaint; except for adultery, alleged to have been committed whilst the complainant was a resident of this territory, or unless the marriage was solemnized in this territory, and the applicant shall have resided therein from the time of such marriage to the time of exhibiting the complaint.

Sec. 9. In any suit brought for divorce, on the ground of adultery, although the fact of adultery be established, the court may deny a divorce in the following cases:

1. When the offence shall appear to have been committed by the procurement or with the connivance of the complainant;
2. When the adultery charged shall have been forgiven by the injured party, and such forgiveness be proved by express proof, or by the voluntary cohabitation of the parties, with the knowledge of the offence;
3. When there shall have been no express forgiveness, and no voluntary cohabitation of the parties, but the suit shall not have

causes for divorce.

Non-resident not to obtain divorce only in certain cases.

Court may deny a divorce when.

been brought within three years after the discovery by the complainant of the offence charged.

Proceedings to procure divorce

Sec. 10. A complaint for divorce, or for affirming or declaring the marriage contract void, may be exhibited by the wife in her own name, or by her next friend; and in all cases the defendant may answer without oath or affirmation. Application for a divorce shall be made to the district court of any county in this territory, and the proceedings shall be as follows:

1. The applicant shall file in the office of the clerk of the district court of the county, a complaint in writing containing the names and ages of the parties, and the name of the court in which the action is brought.

What complaint shall contain.

Sec. 11. Such complaint shall also contain a statement of the facts constituting the cause or grounds of the complaint, in ordinary concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

Complaint to be served, &c.

Sec. 12. A copy of such complaint must be served upon the defendant, with a notice to appear and answer to the same within thirty days after the service thereof; or such other notice as the court or judge may direct, shall be given for such reasonable time as the court or judge may direct; and like notice of the taking depositions shall be given in all cases.

Either party may claim trial by jury.

Sec. 13. If either party shall claim a trial by jury of the facts set forth in the petition, the court shall thereupon order a jury to be empanelled, in the same manner as a jury is empanelled for the trial of any civil action; when the jury is completed, it must be sworn to investigate the truth of the matters contained in the complaint, and to find a true verdict thereon, according to the evidence.

Proceedings—how conducted.

Sec. 14. The proceedings, on the trial of a complaint for a divorce, shall be conducted in the same manner as in the trial of a civil action, unless the complaint [shall] be filed upon the equity side of the court, in which case the proceedings shall be so far as may be without contravening the provisions of this chapter, according to the practice and usages of courts of equity.

Husband required to pay costs.

Sec. 15. In every suit specified in this chapter which shall be brought, the court may in its discretion require the husband

to pay any sums necessary to enable the wife to carry on or defend the suit during its pendency, and it may adjudge costs against either party, and award execution for the same.

Sec. 16. After the exhibiting of a complaint, in a suit to annul a marriage, or for a divorce, the court may at any time, either in term or vacation, on the petition of the wife, prohibit the husband from imposing any restraint on her personal liberty during the pending of the suit. Powers of court

Sec. 17. The court may in like manner on the application of either party, make such order concerning the care and custody of the minor children of the parties and their suitable maintenance during the pendency of such suit, and may make such temporary orders relative to the persons or property of the parties, as shall be deemed necessary and proper. Court may make order concerning children and property.

Sec. 18. Upon pronouncing a sentence, or granting a decree of nullity of marriage, and also upon granting a divorce, the court may make such further order as it shall deem just and proper, concerning the care, custody and maintenance of the minor children of the parties, and may determine with which of the parents the children, or any of them, shall remain; having due regard to the age and sex of such children. Power of court.

Sec. 19. The court may from time to time afterwards on the petition of either of the parents, revise and alter such orders concerning the care, custody and maintenance of the children, or any of them, and make a new order concerning the same, as the circumstances of the parents and the benefits of the children shall require. Court may modify and change its order.

Sec. 20. Whenever the nullity of a marriage or a divorce from the bonds of matrimony, for any cause excepting that of adultery committed by the wife, shall be ordered, and when the husband shall be sentenced to imprisonment for life, the wife shall be entitled to the immediate possession of all her real estate in like manner as if her husband were dead. Wife to be entitled to property—in certain cases

Sec. 21. Upon every such a dissolution of marriage as is specified in the preceding section, the court may make a further order for restoring to the wife the whole or such part as it shall deem just and reasonable, of the personal estate that shall have come to the husband by reason of the marriage, or for awarding to her the value thereof; and also the value of any Powers of court

real estate of the wife disposed of by the husband and wife during the coverture, to be paid by her husband in money; and such court may require the husband to disclose, on oath, what personal estate has come to him by reason of the marriage, and how the same has been disposed of, and what portion thereof remains in his hands.

Duty and power of court.

Sec. 22. The court shall have power to appoint a trustee or trustees, whenever the same shall be deemed expedient, to receive any sum or sums of money ordered to be paid to the wife, upon trust to invest the same, and pay over the income for the support and maintenance of the wife, or of the wife and minor children of the parties, or any of them, in such manner as the court shall direct, or to pay over to the wife the principal sum in such proportions and at such times as the court shall order; regard being had in all such cases to the situation and circumstances of such wife, and also the children, if there be any, provided for in the order; and such trustees shall give such bond with surety as the court shall require, for the faithful performance of their trusts.

Court may order disposition of property.

Sec. 23. Upon every divorce from the bond of matrimony for any cause, excepting that of adultery committed by the wife, if the estate and property restored or awarded to the wife shall be insufficient for the suitable support and maintenance of herself and such children of the marriage as shall be committed to her care and custody, or if there be no such estate and property, the court may further order to her such part of the personal estate of the husband, and such alimony out of his estate as it shall deem just and reasonable, having regard to the ability of the husband and the character and situation of the parties, and all the other circumstances of the case.

Wife entitled to dower, when not guilty.

Sec. 24. When the marriage shall be dissolved by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery, committed by the husband, the wife shall be entitled to her dower in his lands in the same manner as if he were dead, and shall be entitled to right of dower in all other cases where she is not the guilty party.

Court may make allowances—when.

Sec. 25. In the case last mentioned, the court may, by order, allow the wife, for her subsistence, as much of her said

personal or real estate, or of the income thereof, as such court shall judge necessary.

Sec. 26. After an order for alimony, or other allowance for the wife and children, or either of them, and also after an order for the appointment of trustees to receive and hold any property for the use of the wife or children, as before provided, the court may from time to time, on petition of either of the parties, revise and alter such order respecting the amount of such alimony or allowance, and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any order respecting any of the said matters which such court might have made in the original suit.

Court may make any order deemed essential.

Sec. 27. The court shall, in all cases subject to the provisions of this chapter, regulate the division and distribution of the estate, real and personal, between the parties, and the allowance for the alimony to the wife, or to her and the minor children committed to her care and custody, according to the provisions of this chapter. But nothing contained in this chapter shall authorize the court to divest any part of their title to, or interest in, any real estate, further than is expressly specified therein.

Court shall regulate distribution of estate.

Sec. 28. When a man having by a woman one or more children, shall afterwards intermarry with such woman, such child or children, if recognized by him, shall be thereby legitimized; the issue of marriages declared null in law shall nevertheless be legitimate.

Children become legitimate—how.

Sec. 29. When an order of divorce has been granted, and the parties shall afterwards intermarry, the court, upon their joint application, and upon satisfactory proof of such marriage, may revoke all decrees and orders of divorce, alimony, and subsistence which will not effect the rights of third persons.

Court revoke all decrees and orders, in certain cases.

Sec. 30. If any persons after being divorced from the bond of matrimony for any cause whatever, shall cohabit together before intermarriage, they shall be liable to all the penalties provided by law against adultery.

Persons become liable.

Sec. 31. Whenever an order of divorce from the bond of matrimony is granted in this territory, by a court of competent authority, such order shall fully and completely dissolve the

Court may change the name of female.

marriage contract as to both parties. And in all suits for a divorce brought by a female, if a divorce be granted, the court may, for just and reasonable cause, change the name of such female, who shall thereafter be known and called by such name as the court in its order shall decree or appoint.

Conflicting acts
repealed

Sec. 32. All acts and parts of acts inconsistent with the [provisions] of this act are hereby repealed.

When take ef-
fect.

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

Approved, January 15, 1864.

ELECTIONS

CHAPTER XIX.

AN ACT TO REGULATE ELECTIONS, TO PRESCRIBE THE QUALIFICATIONS OF VOTERS, TO PREVENT ILLEGAL VOTING, AND TO PRESCRIBE THE CANVASS AND RETURN OF THE SAME.

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

Elections shall
be conducted—
how.

Section 1. That all elections hereafter to be held for Territorial, district, county, precinct and other officers, shall be held and conducted in the manner prescribed in this act.

election—when
held.

Sec. 2. That a general election shall be held in the several election precincts in this Territory, on the second Tuesday in October in each year, at which there shall be chosen so many of the following officers as are by law to be elected in each year, that is to say: A delegate to Congress, and other territorial officers, members of the legislature, judges of probate, district attorney, county commissioners, sheriffs, coroners, reg-

What officers to
be chosen.